

**INDEPENDENT CONTRACTOR AGREEMENT
FOR**

(First 5 Fresno County –)

THIS SERVICE PROVIDER AGREEMENT (this "Agreement") is made and entered into this day of , 20 (the "Effective Date"), by and between the CHILDREN & FAMILIES COMMISSION OF FRESNO COUNTY, a California public entity established in accordance with the California Children and Families Act of 1998 (the "Commission"), and a California ("Contractor"). The Commission and Contractor are collectively referred to herein as the "Parties" or singularly by their individual names or as a "Party."

RECITALS:

- A. The Commission, which was created pursuant to the California Children and Families Act of 1998, funds programs for children aged zero to five and their families.
- B. The Commission requires an independent contractor to provide
- C. Contractor acknowledges that it possesses the qualifications and resources required to provide said services.
- D. The Commission desires to retain Contractor to provide the services described herein, pursuant to the terms and subject to the conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the recitals set forth above, which are hereby incorporated by this reference, and the mutual promises contained herein, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

- 1. **Scope of Work.** The Commission hereby engages Contractor to perform the work as specified in Exhibit "A," attached hereto and incorporated herein by this reference (the "Services").
- 2. **Term.** This Agreement shall commence on the Effective Date and shall continue in effect until Contractor has performed the Services in full and the Commission executes a notice of completion of Contractor's obligations hereunder, whichever occurs first; or (iii) unless sooner terminated as provided by this Agreement (the "Term").
- 3. **Compensation.** Compensation by the Commission to Contractor for completion of the Services shall be at the rates also set forth in Exhibit "A" (the "Services Fee"). Notwithstanding any provision of this Agreement to the contrary, the Services Fee shall not, under any circumstances, exceed (\$) (the "Maximum Services Fee"), nor shall the Commission, under any circumstances, be obligated to pay Contractor any amount in excess of the Maximum Services Fee, except as may be mutually agreed in writing.

4. **Payment.** Contractor shall send the Commission monthly invoices, which itemize actual expenses incurred by Contractor in providing the Services. Invoices shall be submitted by the 1st day of each month, and shall be itemized to identify the tasks undertaken to provide the Services. The Commission shall, at the rates specified under the Services Fee, pay charges due for Services satisfactorily performed within thirty (30) calendar days after its receipt of invoices from Contractor. The Commission reserves the right to withhold or reject payment in the event that, in the Commission's sole reasonable determination, Contractor has improperly performed a Service. The Commission shall have the right to demand of Contractor the repayment of funds to the Commission of any funds disbursed to Contractor under this Agreement, which in the Commission's reasonable determination were not expended in accordance with the terms of this Agreement. Contractor shall promptly refund any such funds upon demand.

5. **Termination.**

(a) **Event of Non-Appropriation or Reduction of Funding.** The terms of this Agreement are contingent on the continued appropriation of funds to the Commission by the appropriating agency(ies). Should the Commission not receive, or otherwise receive a reduction of, appropriated funds from any federal, state, or local governmental agency, the Commission, in its sole discretion, shall have the option to terminate this Agreement at any time by giving Contractor thirty (30) days prior written notice.

(b) **Termination For Cause.** Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notification to the breaching Party. Termination shall be effective immediately upon receipt of the notice, or three (3) days from mailing of the notice, whichever occurs first. For the purposes of this Paragraph, material breach of this Agreement shall include, but not be limited to, the following:

- (1) Failure of the Commission to pay Contractor in accordance with Paragraph 4 of this Agreement and not cure such failure within thirty (30) days of delinquency;
- (2) Contractor's submission to the Commission of an incorrect or incomplete invoice; or
- (3) Failure of Contractor to perform the Services in a timely manner and to the satisfaction of the Commission, in the Commission's sole discretion.

In no event shall any payment to Contractor by the Commission constitute a waiver by the Commission of any breach of this Agreement or any default which may then exist on the part of Contractor. Such payment shall neither impair nor prejudice any remedy available to the Commission with respect to the breach or default.

(c) **Termination Without Cause.** The Commission may, at its sole discretion, terminate this Agreement without cause for any reason not otherwise covered in this Section 5, upon giving Contractor thirty (30) days prior written notice.

6. **Independent Contractor.** Contractor is an independent contractor. All persons employed to furnish the Services under this Agreement are employees of Contractor and not of the Commission.

(a) In performance of the work, duties and obligations assumed by Contractor under this Agreement, the Parties mutually understand and agree that Contractor, including any and all of Contractor's owners, officers, agents, employees, and independent contractors, will at all times be acting and performing as an independent contractor, and shall act in its independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of the Commission. Furthermore, the Commission shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its obligations under this Agreement. However, the Commission shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions of this Agreement.

(b) Contractor shall have the sole obligation to provide its employees with all legally required notices and postings, as well as all employee wages and benefits, and will withhold there from all Social Security and other withholdings required by applicable Federal or state laws and regulations.

7. **Defense, Indemnity, and Hold Harmless.** Contractor shall defend, indemnify, and hold harmless the Commission, its directors, officers, employees, agents, independent contractors, authorized volunteers, attorneys and consultants from and against any and all losses, costs, demands, attorneys' fees, expenses, obligations, liabilities, penalties, interests, recoveries, damages, claims and judgments alleged to result from, arise out of, or be in any way connected with any willful acts, active or passive negligence, errors, or omissions of Contractor or Contractor's directors, officers, employees, agents, independent contractors, or volunteers, directly or indirectly related to the performance of the Services to be provided under this Agreement.

8. **Licensure.** Contractor shall maintain in full force and effect all applicable licenses and certificates required for the provision of the Services pursuant to the terms and conditions of this Agreement. Commission reserves the right to demand and inspect Contractor's licenses and certificates. Contractor shall provide the Commission copies of such records within five (5) days of such demand.

9. **Insurance.** On or before the Effective Date, Contractor shall furnish to the Commission satisfactory proof of the required insurance (Certificates of Insurance), which shall include a commitment by Contractor's insurers that they will mail notice of any cancellation or reduction of coverage below the amounts herein required by the Commission, at least thirty (30) days prior to the effective date of such cancellation or change. Such required insurance shall include:

(a) **General Liability.** Comprehensive general liability coverage of at least one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately or the general aggregate limit shall be twice the required occurrence limit (i.e., \$2,000,000). Contractor shall list the Commission, its directors, officers, employees, independent contractors, authorized volunteers and consultants as additional insureds.

(b) **Professional Liability (Errors and Omissions).** In the event Contractor employs or contracts with licensed professional staff in providing the Services, professional liability (errors and omissions) insurance with limits of not less than one million dollars (\$1,000,000).

(c) **Automobile Liability.** Comprehensive automobile liability coverage with a combined single limit of at least one million dollars (\$1,000,000) per accident for bodily injury and property damage on all vehicles operated under Contractor's authority, whether or not owned by Contractor. Contractor shall list the Commission, its directors, officers, employees, independent contractors, authorized volunteers and consultants as additional insureds.

(d) **Worker's Compensation.** Workers' compensation insurance in accordance with the California Labor Code.

(e) **Fidelity Bond/Crime Insurance.** Upon the Commission's request, an Employee Dishonesty Bond (also known as crime insurance) or a Fidelity Bond of at least one million dollars (\$1,000,000), including coverage for theft or loss of Commission property.

10. **Audits and Inspections.** Contractor shall at any time during normal business hours, and as often as the Commission may deem necessary, make available to the Commission for examination all of its records and data with respect to the matters covered by this Agreement. Contractor shall, upon request by the Commission, permit the Commission to inspect all such records and data necessary to ensure the Contractor's compliance with this Agreement.

11. **General.**

(a) **Commission Representatives.** The Executive Director of the Commission and his or her duly appointed representative(s) shall administer this Agreement, and shall have authority to act on behalf of the Commission.

(b) **Entire Agreement.** This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties relating to the Services described herein, and supersedes all prior and contemporaneous agreements, representations, and understandings of the Parties with regard thereto.

(c) **Modification.** No waiver, alteration, modification, or termination of this Agreement shall be valid unless made in writing.

(d) **Notices.** All notices required or permitted by this Agreement or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, by facsimile transmission, or by electronic transmission (email) and shall be deemed sufficiently given if served in a manner specified in this Subparagraph (e). The addresses and addressees noted below shall be that Party's designated address and addressee for delivery or mailing of notices. Any Party may by written notice to the other specify a different address for notice. Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, three (3) days after the postmark thereon. If sent by regular mail the notice shall be deemed given forty-eight (48) hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given twenty-four (24) hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means (including email) shall be deemed delivered upon telephone or similar confirmation of delivery (confirmation report from fax machine is sufficient), provided a copy is also delivered via personal delivery or mail. If notice is received after 4:30 p.m. or on a Saturday, Sunday or legal holiday it shall be deemed received on the next business day:

To the Commission: Kendra Rogers, Executive Director
CHILDREN & FAMILIES COMMISSION OF
FRESNO COUNTY
550 East Shaw Avenue, Suite 215
Fresno, California 93710
Facsimile: (559) 241-6510
Email: krogers@first5fresno.org

To Contractor:

Facsimile:
Email:

(e) **Non-Discrimination and Equal Opportunity.** Contractor shall comply with all applicable laws providing equal employment opportunities. Contractor shall not discriminate against any person on the grounds of race, color, creed, gender, gender identity, religion, marital status, registered domestic partner status, age, national origin or ancestry, physical or mental disability, medical condition including genetic characteristics, sexual orientation, pregnancy, citizenship status, military or veteran status, or any other characteristic made unlawful by federal, state, or local laws. These non-discrimination and equal opportunity requirements shall apply, without limitation, to retirement, recruitment advertising, hiring, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation, use of facilities, and other terms and conditions of employment.

(f) **Assignment and Binding Effect.** Contractor shall not assign all or any part of this Agreement, or any obligation or interest hereof, or any monies due or which may become due hereunder, without the prior written consent of the Commission, which consent may be withheld in the Commission's sole discretion. Subject to the provisions of the preceding sentence, this Agreement shall be binding upon, and inure to the benefit of, the respective heirs, executors, administrators, successors and assigns of the Parties.

(g) **Headings.** The subject headings of the sections and paragraphs of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

(h) **Construction.** All words used in this Agreement shall be construed to include the plural as well as the singular number, and vice versa; words used in this Agreement in the present tense shall include the future as well as the present; and words used in this Agreement in the masculine gender shall include the feminine and neuter genders, whenever the context so requires.

(i) **Costs and Expenses.** Each Party shall pay all costs and expenses incurred, or to be incurred, by it in negotiating and preparing this Agreement and all exhibits to this Agreement, and in closing an carrying out the transactions contemplated by this Agreement, including, without limitation, its attorneys', paralegals', and other professionals' fees and costs.

(j) **Attorneys' Fees.** If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys', paralegals' and other professionals' fees and costs in addition to any other reasonable

relief to which it may be entitled.

(k) **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The Parties agree that venue for any dispute or litigation arising under this Agreement shall be in the County of Fresno, State of California, if instituted in the State courts, or the Eastern District of California (Fresno), if instituted in the Federal courts.

(l) **Waiver.** A waiver of any breach of this Agreement by the Parties to this Agreement shall not constitute a continuing waiver, or a waiver of any subsequent breach of the same, or any breach of another provision of this Agreement.

(m) **Partial Invalidity.** If any provision of this Agreement, or any portion thereof, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement, including, without limitation, the portions thereof not held to be invalid, void or unenforceable, shall nevertheless continue to be in full force and effect without being impaired or invalidated in any way.

(n) **Time.** Time is of the essence of this Agreement and all of its provisions.

(p) **Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument.

(o) **Dispute Resolution.** If a dispute arises during the Term, then within three (3) business days after a written request by either Party, the Commission's representative and Contractor's representative, or a person designated by either such representative, shall confer to resolve the issue. If the Parties' representatives or the designated person, as the case may be, cannot resolve the dispute or either Party determines they are not making progress toward resolution of the issue within twenty (20) business days after their initial conference, then the Parties reserve the right to resolve such dispute in any manner provided by law.

12. **Subcontracts**

(a) **Contractor's Responsibility.** Contractor assumes full responsibility for the performance of the Services, whether or not directly provided by Contractor. Contractor is considered the sole point of contact regarding contractual matters, including payment of any and all charges resulting from this Agreement. Contractor is responsible to Commission for the full and proper performance of any subcontract. Any subcontractor is subject to the same terms and conditions to which Contractor is subject under this Agreement.

(b) **Procedures for Subcontracting.** If Contractor desires to subcontract with one or more third parties to carry out a portion of the Services, any subcontract must be in writing and approved as to form and content by Commission prior to execution and implementation. If the subcontract amount exceeds \$5,000.00, Contractor must submit, in addition to the subcontract, a budget or fee schedule for the subcontract. Commission has the sole right to reject any proposed subcontract. Any subcontract, together with all other activities by or caused by Contractor, may not require compensation greater than the Contract Amount. Contractor must submit an executed copy of any subcontract and must receive a receipt confirmation from Commission before any implementation.

13. **Materials Identification and Ownership**

(a) **Identification.** Contractor will acknowledge and give proper credit to Commission as the funding source in all publications that are paid for by Commission funds or used by Contractor in providing the Services ("Information Materials"). These Information Materials include, but are not limited to, posters, press releases, brochures, and other publicity or public relations materials. To appropriately credit Commission, Contractor must comply with the "Proper Crediting Policy" in the Manual, as amended. Commission may elect, at its sole discretion, not to reimburse Contractor for the costs of any Information Materials for which Contractor fails to properly credit Commission. Commission, at its sole discretion, may elect to treat as a disallowed cost the costs of any Information Materials not properly credited to Commission.

(b) **Ownership.** All Information Materials and records related to the Services, as defined in Section 1 above, are the property of Commission. Contractor, at Commission's sole discretion, must turn over all Information Materials to Commission at the expiration of the Term or earlier termination of this Agreement. Commission, at its sole discretion, may elect to treat as a disallowed cost the costs of any Informational Materials that Contractor fails to turn over to Commission.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date and year first above written.

"Commission"

Children & Families Commission of Fresno County, a California public entity established in accordance with the California Children and Families Act of 1998

By

Name: Susan Anderson
Title: Commission Chair

Date _____

Recommended by Executive Director

Kendra Rogers

Date _____

"Contractor"

_____, a California

By _____

Name:

Title:

Date _____

Contract #

Exhibit "A"

Services & Fees