

**ATTACHMENT 3**  
**GENERAL TERMS AND CONDITIONS FOR FIRST 5 CONTRACTORS**

AGREEMENT BETWEEN MERCED COUNTY,  
ON BEHALF OF FIRST 5 MERCED COUNTY

**AND**

\_\_\_\_\_

THIS AGREEMENT is made and entered into this \_\_\_\_\_, by and between the County of Merced, a political subdivision of the State of California (hereinafter referred to as "COUNTY") on behalf of First 5 Merced County, established pursuant to County Ordinance 1747 in compliance with the Children and Families First Act of 1998 (hereinafter referred to as COMMISSION) and \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as CONTRACTOR).

WHEREAS, COMMISSION has received funds under the Children and Families First Act of 1998 (Proposition 10) to enhance and improve early childhood development for children age 0 through 5 and their families, within Merced County, and

WHEREAS, COMMISSION has adopted a Strategic Plan to implement services and programs to achieve the intent of the Act, and

WHEREAS, the Strategic Plan provides for procurement processes for the COMMISSION to select projects for funding to achieve desired services and programs, and

WHEREAS, CONTRACTOR is specially trained, experienced, and competent to perform such services, and

WHEREAS, COMMISSION utilizes relevant administrative structure, policies and procedures of the County to distribute those funds, and

WHEREAS, CONTRACTOR submitted a proposal (*Agency, Program Name*) which COMMISSION has determined is in support of the furtherance of the intentions of the Strategic Plan and the Act and warrants funding.

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree as follows:

**1. GENERAL**

CONTRACTOR shall provide such services in a good and professional manner in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this agreement or modified herein:

- EXHIBIT A – Scope of Work
- EXHIBIT B – Budget
- EXHIBIT C – Budget Narrative
- EXHIBIT D – Invoice Form

CONTRACTOR warrants it has the expertise, appropriate licenses, support staff and facilities necessary to provide the services described in this Agreement.

**2. SCOPE OF WORK**

Services to be provided under this agreement by CONTRACTOR shall include all necessary services to fulfill the SCOPE OF WORK, Exhibit A, as set forth herein, and made part of this agreement. CONTRACTOR shall perform all such services as an independent CONTRACTOR; not as an agent or employee of the COUNTY.

CONTRACTOR shall conduct the approved project as stated in Exhibits A, B, and C.

**3. TERM**

The term of this agreement shall commence on the \_\_\_\_\_, and end the \_\_\_\_\_, unless sooner terminated in accordance with Sections TERMINATION FOR CONVENIENCE, TERMINATION FOR CAUSE, and/or CONDITION SUBSEQUENT / NON-APPROPRIATION OF FUNDING as specified elsewhere in this agreement.

**4. COMPENSATION**

In consideration of CONTRACTOR performing such work as set forth under Section 2: SCOPE OF WORK, COMMISSION shall, through the County Auditor-Controller, pay CONTRACTOR for actual project expenses in accordance with the categories and amounts established in the line item budget attached as Exhibit B budget.

In no event shall the total payments exceed \_\_\_\_\_ for the entirety of the contract term.

Additionally, unless otherwise modified as allowed under the terms of this Agreement, in no event shall the payments for any fiscal year within the contract term (if applicable) exceed the amounts as shown in Exhibit B, Budget, and below:

- Fiscal year 2017/2018: \_\_\_\_\_
- Fiscal year 2018/2019: \_\_\_\_\_
- Fiscal year 2019/2020: \_\_\_\_\_
- Fiscal year 2020/2021: \_\_\_\_\_

No other expenses shall be paid to CONTRACTOR without formal approval by the COMMISSION and amendment of this agreement.

CONTRACTOR may request revisions in the line item budget for the project as included in Exhibit B, Budget during the term of this agreement in accordance with COMMISSION'S budget revision procedures.

Indirect costs cannot exceed ten percent (10%) of personnel costs less fringe benefits.

If any funds have not been completely expended as approved, or otherwise modified and subsequently approved, at the end of any fiscal year within the term as described in Exhibit B, Budget, or at the end of the term of this agreement, CONTRACTOR shall return such funds to the COMMISSION.

CONTRACTOR warrants that no employee, volunteer, agent or independent subcontractor of CONTRACTOR who has been convicted of a felony or against whom a civil judgment has been entered based upon misappropriation of funds or similar action shall have authority or discretion in any way relating to funding provided to CONTRACTOR by COMMISSION such to be able to control disbursements/withdrawals of said funds.

CONTRACTOR warrants that all employees and volunteers, and employees and volunteers of agents or subcontractors of CONTRACTOR, who will have direct contact with service recipients in the course of providing services outlined in the Scope of Work, shall have finger print clearance through an entity determined by COMMISSION, prior to direct contact with service recipients. Documentation demonstrating this clearance shall be kept on file for examination by COMMISSION at its discretion.

## **5. TERMS OF PAYMENT**

Payment for project expenses and satisfactory performance of such services set forth in Section 2: SCOPE OF WORK of this agreement shall be made in the following manner:

CONTRACTOR shall submit invoices, using Exhibit D, Invoice Form, on a quarterly basis, unless otherwise directed on an alternative schedule, for reimbursement of actual project expenses incurred during the previous period.

Invoices required quarterly are to be submitted by the following dates each fiscal year:

October 31 for program expenses from July 1 – September 30  
January 31 for program expenses from October 1 – December 31  
April 30 for program expenses from January 1 – March 31  
July 31 for program expenses from April 1 – June 30

Invoices are to be accompanied by all required supporting documentation necessary to demonstrate that expenses incurred are consistent with the approved budget and budget narrative in this agreement.

CONTRACTOR may receive an advanced payment of funds provided for under the

Compensation section of this Agreement when deemed to be in the interests of furthering the aims of the COMMISSION's strategic plan and subsequent to COMMISSION'S approval.

In order to be considered complete for processing for payment, invoices shall be prepared in accordance with Exhibit D, Invoice Form.

The COMMISSION may request any additional information or supporting data as deemed necessary for COMMISSION to properly evaluate or process CONTRACTOR'S invoice.

Upon approval by COMMISSION, the sum due hereunder shall be paid to CONTRACTOR through the disbursement process of the COUNTY in a timely manner. Payments will be held if CONTRACTOR is delinquent with any required reports or other submission requirements under this agreement.

Failure to comply with invoice submission and all related submittal requirements may result in the assessment of a late fee that reduces the amount of payment due to CONTRACTOR, per the COMMISSION'S procedures for late submission penalties.

Address for the purpose of remitting payment is as follows:

Agency name
Address
City, State, Zip code
First and Last Name, Title

If no expenses are incurred by CONTRACTOR in any reporting period, CONTRACTOR shall submit a letter to COMMISSION by the invoice submission deadlines, stating such.

**6. NON-SUPPLANTATION**

CONTRACTOR shall abide by the intent of the California Children and Families Act of 1998, and Section 30131.4 of the Revenue and Taxation Code which states: "All moneys raised pursuant to taxes imposed by Section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service."

CONTRACTOR warrants that no funds provided by COMMISSION shall be used to supplant existing funds from any source for any purpose.

**7. SERVICES FOR CHILDREN AGE 0-5 YEARS AND THEIR FAMILIES**

CONTRACTOR shall abide by the intent of the California Children and Families Act of 1998, and Section 130100 of the Health and Safety Code, which states the program is created for the "purposes of promoting, supporting, and improving the

early development of children from the prenatal stage to five years of age. Funds provided under this agreement shall be used solely for the benefit of, and/or services to, children 0-5 and their families.

## **8. EVALUATION AND MONITORING**

Services provided by CONTRACTOR shall be evaluated. CONTRACTOR shall submit evaluation data and related reports, and otherwise participate in the First 5 evaluation, using approved evaluation methods.

Required evaluation data shall be submitted on a regular basis as determined by the First 5 evaluation requirements.

Services provided by CONTRACTOR shall be monitored through quarterly, or as COMMISSION requires, program progress reporting and site visits.

Program progress reporting will be required on a regular basis to ensure compliance with contractual obligations.

At least once per year, the COMMISSION shall conduct a site visit as part of this monitoring process. Unless exercised sooner in accordance with Section 21: RECORDS AND INSPECTION, the COMMISSION may include the examination and auditing of records relating to program services during site visits.

Any deficiencies noted in the provision of services may be addressed by COMMISSION through a corrective action plan in order to remedy any identified deficiency(-ies).

Payments will be held if CONTRACTOR is delinquent with any required reports or submission requirements under this agreement or otherwise fails to address any deficiencies noted in the provision of services.

## **9. TOBACCO & NUTRITION**

During the term of this agreement, CONTRACTOR agrees to:

Maintain a tobacco free environment on CONTRACTOR'S property including inside agency buildings and vehicles, and outside of building entrances within 15 feet of facilities or 25 feet of children's play areas, and as otherwise required by law.

Provide referral information to staff and/or clients on smoking cessation and support programs, and the dangers of second hand smoke, as applicable.

If CONTRACTOR is a family day care provider, CONTRACTOR acknowledges that smoking in a private residence during the hours of operation as a licensed family day care home is prohibited by California law.

If CONTRACTOR is a licensed childcare center, CONTRACTOR acknowledges that smoking on the premises is prohibited by California law.

Provide healthy food and snack options when meals or foods are provided during the course of implementing the Scope of Work, per the approved budget, Exhibit B.

**10. AUDITS & REPORTS**

Annually, CONTRACTOR shall be responsible for the procurement and performance of an independent fiscal and compliance audit. Any audit undertaken must be performed in accordance with the following standards: Generally Accepted Auditing Standards, Governmental Auditing Standards, and OMB Circular A-133.

CONTRACTOR shall submit to COMMISSION within one hundred twenty (120) days of CONTRACTOR'S fiscal year-end the completed audit for the prior year.

An audit of a public agency, when performed pursuant to state law, will meet the requirements of this section.

COMMISSION reserves the right to require a program specific audit at COMMISSION'S discretion.

COMMISSION may request additional reports as deemed necessary or as required by the California State Children and Families Commission.

**11. TERMINATION FOR CONVENIENCE**

This Agreement, notwithstanding anything to the contrary herein above or hereinafter set forth, may be terminated by COMMISSION at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

Upon effective date of termination, COMMISSION shall have no further liability to CONTRACTOR except for payment for actual services incurred during the performance hereunder. Such liability is limited to the time specified in said notice and for services not previously reimbursed by COMMISSION. Such liability is further limited to the extent such costs are actual, necessary, reasonable, and verifiable costs and have been incurred by CONTRACTOR prior to, and in connection with, discontinuing the work hereunder.

**12. TERMINATION FOR CAUSE**

The COMMISSION may terminate this Agreement for and be relieved of making any payments to CONTRACTOR, and all duties to contractor should the CONTRACTOR fail to perform any material duty or obligation of the Agreement. Notice shall be given as otherwise provided herein. In the event of such termination the COMMISSION may proceed with the work in any manner deemed proper by the COMMISSION. All costs to the COMMISSION shall be deducted from any sum otherwise due the contractor and the balance, if any, shall be paid to the CONTRACTOR upon demand. Such remedy is in addition to such other remedies

as may be available to the COMMISSION provided by law.

**13. CONDITION SUBSEQUENT / NON-APPROPRIATION OF FUNDING**

The compensation paid to CONTRACTOR pursuant to this Agreement is based on COMMISSION'S continued appropriation of funding for the purpose of this Agreement, as well as the receipt of local, COMMISSION, state and/or federal funding for this purpose. The parties acknowledge that the nature of government finance is unpredictable and that the rights and obligations set forth in this Agreement are therefore contingent upon the receipt and/or appropriation and/or continued retention of the necessary funds. In the event that funding is terminated and / or previously approved funds are de-appropriated or otherwise recaptured by the original funding entity, in whole or in part, for any reason, at any time, this Agreement and all obligations of the COMMISSION arising from this Agreement shall be immediately discharged. COMMISSION agrees to inform CONTRACTOR no later than ten (10) calendar days after the COMMISSION determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available. Under these circumstances, all billing or other claims for compensation or reimbursement by CONTRACTOR arising out of performance of this Agreement must be submitted to COMMISSION prior to the final date for which funding is available. In the alternative, COMMISSION and CONTRACTOR may agree, in such circumstance, to a suspension or modification of either party's rights and obligations under this Agreement. Such a modification, if the parties agree thereto, may permit a restoration of previous contract terms in the event funding is reinstated. Also in the alternative, the COMMISSION may, if funding is provided to the COMMISSION in the form of promises to pay at a later date, whether referred to as "government warrants," "IOUs," or by any other name, the COMMISSION may, in its sole discretion, provide similar promises to pay to the CONTRACTOR, which the CONTRACTOR hereby agrees to accept as sufficient payment until cash funding becomes available.

**14. ASSESSMENT FOR LEVERAGING FUNDING**

CONTRACTOR agrees to partner with COMMISSION in participating in necessary activities to assess opportunities for, and leverage external funding from, non-First 5 funding sources, as may be available for services described in CONTRACTOR'S Scope of Work.

**15. EXTENSION OF CONTRACT**

In the event the CONTRACTOR offers to supply their service for the same price as awarded from the result of this proposal for any succeeding period, or in the event the CONTRACTOR is willing to negotiate any justifiable price increase at the time of any succeeding Contract renewal period, if applicable, and it would be economical and in the best interest of COMMISSION, and provided the services have been to the satisfaction of COMMISSION, COMMISSION reserves the right to extend any Contract resulting from this proposal on a term-by-term basis to the CONTRACTOR

awarded the Contract.

**16. MODIFICATION OF AGREEMENT**

Notwithstanding any of the provisions of this agreement, the parties hereafter, by mutual consent, may agree to modifications hereof or additions hereto, in writing, which are not forbidden by law and which are signed by both parties. For any proposed revisions, CONTRACTOR shall submit a revised Scope of Work, Budget and/or Budget Narrative, for review and action by COMMISSION and/or COMMISSION Executive Director, per COMMISSION'S contract revision processes. In the event of any proposed modifications to CONTRACTOR'S budget, a budget revision must be approved prior to the expenditure of any funds in excess of prior-approved amounts.

**17. DURABLE EQUIPMENT**

Any equipment, materials, supplies, or property of any kind purchased for or financed from funds provided under this Agreement, excepting any funds received for indirect expenses pursuant to the budget document attached as Exhibit B, having a useful life of three (3) years or greater or a value in excess of Five Thousand Dollars (\$5,000.00), shall be defined as an inventory item. All inventory items not fully consumed in the work described herein shall be the property of the COMMISSION at the termination of this Agreement unless the COMMISSION, at its sole discretion, makes an alternative disposition.

**18. CHANGES IN CONDITION**

CONTRACTOR agrees to provide written notice within 14 calendar days to the COMMISSION if significant changes or events occur during the term of this agreement which could potentially impact CONTRACTOR'S progress toward, or completion of, the Scope of Work, including, but not limited to changes in CONTRACTOR'S management personnel, loss of funding, or revocation of the CONTRACTOR'S tax-exempt status, business license or permit.

**19. ATTRIBUTION**

CONTRACTOR will ensure that all publications, including but not limited to media activities, posters, conferences, brochures, etc., that are used in the approved project shall include a statement that the project is funded by "FIRST 5 Merced County" with the official COMMISSION logo. (Official logo shall be provided CONTRACTOR for such use.) The cost for any materials not meeting the above provisions may not be reimbursed under this Agreement at the sole discretion of COMMISSION.

CONTRACTOR shall be required on occasion to disseminate COMMISSION materials on various issues to further the objectives of COMMISSION'S Strategic Plan. Such materials will be provided to CONTRACTOR with reasonable notice and



instructions for dissemination.

## 20. **PROGRAM INCOME**

In the event that any funds provided under this agreement result in program income for CONTRACTOR (i.e., funds received from third party payor sources of any nature), COMMISSION may off-set future disbursements to CONTRACTOR in an amount up to the program income amount, at the COMMISSION'S sole discretion. CONTRACTOR shall notify and receive COMMISSION approval, prior to incurring any expenses of COMMISSION funds that may result in the earning of program income that COMMISSION may deduct from future disbursements.

## 21. **INSURANCE**

CONTRACTOR shall purchase and maintain the following type of insurance for minimum limits indicated during the term of this agreement and provide Certificates of Insurance evidencing such coverage to the COMMISSION Attn: Certificates of Insurance, 260 E. 15<sup>th</sup> Street, Merced, California 95341. Certificates of Insurance shall be submitted to the COMMISSION within the first 90 calendar days of the contract term.

1. Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering bodily injury, personal injury and property damage. The County and its officers, employees and agents shall be endorsed to above policies as additional insured, using ISO form CG2026 or an alternate form that is at least as broad as form CG2026, as to any liability arising from the performance of this Agreement.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage, or alternatively split limits of \$500,000 per person and \$1,000,000 per accident for bodily injury with \$250,000 per accident for property damage.
3. Workers Compensation: Statutory coverage, if and as required according to the California Labor Code, including Employers' Liability limits of \$1,000,000 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the County.

*(Note to Buyer – Waiver of auto & workers comp insurance “Use this clause only when appropriate to SCOPE OF WORK. If in doubt, coordinate with Risk Management”).*

4. If the successful bidder elects to deliver products to the County using a common carrier that is not related to the bidders business entity. The bidder may request waiver of the automobile and workers compensation insurance requirements.

*(Note to preparer of this agreement: Professional Liability, as*

indicated, below should, only be inserted when contracting for clinical, medical, health, accounting, legal, insurance, advertising, architectural/engineering, or computer programming services.)

5. Professional Liability: \$1,000,000 limit per occurrence and \$5,000,000 annual aggregate limit covering Contractors wrongful acts, errors and omissions. Any aggregate limit for professional liability must be separate and in addition to any CGL aggregate limit.

#### Insurance Conditions

Insurance is to be placed with admitted insurers rated by A.M. Best Co. As A:VII or higher. Lower rated, or approved but not admitted insurers, may be accepted if prior approval is given by the COUNTY Risk Manager.

Each of the above required policies shall be endorsed to provide the COUNTY and the COMMISSION with 30 days prior written notice of cancellation. Neither the County nor the COMMISSION is liable for the payment of premiums or assessments on the policy. No cancellation provisions in the insurance policy shall be construed in derogation of the continuing duty of CONTRACTOR to furnish insurance during the term of this agreement.

## 22. **INDEMNIFICATION**

CONTRACTOR has the contracted duty (hereinafter "the duty") to indemnify, defend and hold harmless COMMISSION, its governing board, officers, employees, agents and assigns from and against any and all claims, demands, liability, judgments, awards, interest, attorney's fees, costs, experts' fees and expenses of whatsoever kind or nature, at any time arising out of or in any way connected with the performance of this Agreement, whether in tort, contract or otherwise. This duty shall include, but not be limited to, claims for bodily injury, property damage, personal injury, and contractual damages or otherwise alleged to be caused to any person or entity including, but not limited to employees, agents and officers of CONTRACTOR.

CONTRACTOR'S liability for indemnity under this Agreement shall apply, regardless of fault, to any acts or omissions, willful misconduct or negligent conduct of any kind, on the part of the CONTRACTOR, its agents, subcontractors and employees. The duty shall extend to any allegation or claim of liability except in circumstances found by a jury or judge to be the sole and legal result of the willful misconduct of COMMISSION. This duty shall arise at the first claim or allegation of liability against COMMISSION. CONTRACTOR will on request and at its expense, defend any action suit or proceeding arising hereunder. This clause for indemnification shall be interpreted to the broadest extent permitted.

## 23. **INDEPENDENT CONTRACTOR**

It is mutually understood and agreed that CONTRACTOR is an independent CONTRACTOR in the performance of the work duties and obligations devolving

upon CONTRACTOR under this agreement. COUNTY and/or COMMISSION shall neither have, nor exercise any control or direction over the methods by which CONTRACTOR shall perform his professional work and functions. The sole interest and responsibility of the COUNTY and the COMMISSION is to assure that the services covered by this agreement shall be performed and rendered in a competent, efficient and satisfactory manner.

It is mutually understood and agreed that no employer-employee relationship is created and CONTRACTOR shall hold COUNTY and COMMISSION harmless and be solely responsible for withholding, reporting and payment of any federal, state or local taxes, contributions or premiums imposed or required by workers compensation, unemployment insurance, social security, income tax, other statutes or codes applying to CONTRACTOR, or its sub-CONTRACTORS and employees, if any.

It is mutually agreed and understood that CONTRACTOR, its sub-CONTRACTORS and employees, if any, shall have no claim under this agreement or otherwise against the COUNTY or the COMMISSION for vacation pay, sick leave, retirement or social security benefits, occupational or non-occupational injury, disability or illness, or loss of life or income, by whatever cause.

**24. RECORDS AND INSPECTIONS**

CONTRACTOR shall maintain full and accurate records with respect to all matters covered under this agreement. To the extent permitted by law, the COUNTY and/or the COMMISSION shall have free access at all proper times or until the expiration of seven (7) years after the furnishing of services to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, premises, procedures, and activities pertaining to this agreement.

**25. QUALITY OF SERVICE**

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances, codes and regulations in performing its services. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its reports, and other related items or services.

**26. PERSONAL SATISFACTION AS A CONDITION PRECEDENT**

The obligations of the COUNTY and/or the COMMISSION as provided in this agreement are expressly conditioned upon the CONTRACTORS compliance with the provisions of the contract to the personal satisfaction of the COMMISSION and the COMMISSION shall determine compliance in good faith and as a reasonable person would under the circumstances.

**27. COMPLETENESS OF AGREEMENT**

This agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of the agreement or any part thereof shall have any validity or bind any of the parties hereto.

**28. COUNTY NOT OBLIGATED TO THIRD PARTIES**

Neither the COUNTY nor the COMMISSION shall be obligated or liable hereunder to any party other than CONTRACTOR.

**29. COMPLIANCE WITH STATE LAWS AND REGULATIONS**

The CONTRACTOR, the COUNTY and the COMMISSION agree to comply with all State laws and regulations that pertain to construction, health and safety, labor, fair employment practice, equal opportunity, lobbying, and all other matters applicable to the CONTRACTOR, COUNTY and the COMMISSION, their sub-grantees, CONTRACTORS, or subcontractor and their work.

**30. COUNTY'S AND COMMISSION'S RIGHTS NOT WAIVED BY PAYMENTS**

In no event shall the making, by the COMMISSION, of any payment to CONTRACTOR constitute, or be construed as, a waiver by the COMMISSION or the County of any breach of covenant, or any default which may then exist, on the part of the CONTRACTOR, and the making of any such payment by the COMMISSION while any such breach or default shall not be construed as acceptance of substandard or careless work or as relieving CONTRACTOR from its full responsibility under the agreement.

**31. SUBCONTRACTS**

CONTRACTOR assumes full responsibility for all services and activities covered by this Agreement, whether or not directly provided by CONTRACTOR. CONTRACTOR shall be considered the sole point of contact regarding contractual matters, including payment of any and all charges resulting from this Agreement.

If CONTRACTOR should propose to subcontract with one or more third parties to carry out a portion of those services covered by this Agreement, any such subcontract in excess of \$5,000 shall be in writing, containing a proposed Scope of Work and Budget, and be subject to the review and action by COMMISSION prior to approval and execution.

COMMISSION shall have the right to reject any such proposed subcontract. Any such subcontract, together with all other activities by or caused by CONTRACTOR, shall not require compensation greater than the approved total program budget as set forth in Attachment B to this Agreement.

CONTRACTOR shall be responsible to COMMISSION for the proper performance of any subcontract.

Subcontractors shall be subject to the same terms, conditions, data collection, and other reporting requirements, that CONTRACTOR is subject to under this Agreement.

**32. PERSONNEL**

CONTRACTOR represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. All of the services required hereunder will be performed by CONTRACTOR or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. CONTRACTOR'S personnel are expressly agreed to be the employees of the CONTRACTOR and not the employees of the COUNTY.

**33. NOTICES**

All notices, requests, demands or other communications under this agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- 1) Personal delivery. When personally delivered to the recipient. Notice is effective upon delivery.
- 2) First class mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
- 3) Certified mail. When mailed certified mail, return receipt requested. Notice is effective upon receipt, if delivery is confirmed by a return receipt.
- 4) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the senders account. Notice is effective on delivery, if delivery is confirmed by the delivery service.
- 5) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice. Notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purposes of giving notice are as follows:

**COMMISSION**  
First 5 Merced County

**CONTRACTOR**  
Agency name

260 E. 15<sup>th</sup> Street  
Merced, CA 95341  
Attn: Executive Director

Address  
City, State, Zip code  
First and Last Name, Title

b) Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission by the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery services.

c) Any party may changes its address or fax number by giving the other party notice of the change in any manner permitted by this agreement.

**34. APPLICABLE LAW**

All parties agree that this agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties to this agreement are subject to and governed by the laws of the State of California in all respects as to interpretation, construction, operation, effect and performance.

Notwithstanding any other provisions of this agreement, any dispute concerning any question of fact or law arising under this agreement, which is not disposed of by agreement between the parties shall be decided by a Court of competent jurisdiction of the State of California.

**35. WAIVER**

Both parties reserve the right to waive any breach of this agreement and no waiver of any breach, failure of any term or any right to remedy contained in or granted by this agreement will be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. This waiver shall not be construed as a waiver of any subsequent breach or failure of the same term, provision or condition or a waiver of any other term or condition in this agreement. This waiver does not establish or evidence any course of dealing between the parties.

**36. BREACH OF CONTRACT**

Upon breach of the agreement by CONTRACTOR, the COUNTY and the COMMISSION shall have all remedies, both in equity and/or at law, necessary to recover and satisfy CONTRACTOR'S obligation which it failed to provide as prescribed under the agreement.

**37. REMEDY FOR BREACH AND RIGHT TO CURE**

If CONTRACTOR fails to perform any agreement or obligation contained in this agreement, the COMMISSION may itself perform, or cause the performance of, such agreement and obligation. In that event, CONTRACTOR will on demand, fully

reimburse the COMMISSION for all such expenditures. Alternatively, the COMMISSION at its option, may deduct from any funds owed to CONTRACTOR the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the COMMISSION by law or as otherwise stated in this agreement.

**38. SUCCESSORS IN INTEREST**

All the terms, covenant, and conditions of the agreement shall be binding and in full force and effect and inure to the benefit of the successors in interest and assigns of the parties hereto. This paragraph shall not be deemed as a waiver of any of the conditions against assignment set forth herein.

**39. CONFLICT OF INTEREST**

CONTRACTOR warrants and covenants that no official or employee of the COUNTY, or the COMMISSION nor any business entity in which an official of the COUNTY or the COMMISSION has an interest has been employed or retained to solicit or aid in the procuring of the agreement, nor that any such person will be employed in the performance of such agreement without immediate divulgence of such fact to the COMMISSION.

**40. EQUAL EMPLOYMENT OPPORTUNITY**

CONTRACTOR shall comply with U.S. Executive Order 11246 entitled, Equal Employment Opportunity as amended by U.S. Executive Order 11375, and as supplemented in U.S. Department of Labor Regulations (41 CFC Chapter 60).

**41. UNRUH CIVIL RIGHTS ACT**

Pursuant to §51.5 of the California Civil Code, CONTRACTOR shall not discriminate or in any way limit access to the business services to be performed under this agreement on the basis of race, creed, religion, color, national origin, sex, disability or medical condition.

**42. SECULAR ACTIVITIES**

CONTRACTOR, in the performance of the services pursuant to this agreement, shall refrain from any religious teaching, instruction, indoctrination, proselytizing, exposure or discussion. All services provided shall be secular and CONTRACTOR shall have the obligation to ensure compliance with this provision by employees or anyone under CONTRACTOR'S control. The failure of CONTRACTOR to comply with this provision shall be deemed a material breach of this agreement.

**43. DRUG-FREE WORK PLACE**

CONTRACTOR shall comply with the provisions for a drug-free workplace as set forth by the Federal Drug-Free Workplace Act of 1988 or as last revised.

**44. CAPTIONS**

The captions of each paragraph in the agreement are inserted as a matter of convenience and reference only, and in no way define, limit, or describe the scope or intent of the agreement or in any way affect it.

**45. ASSIGNMENT**

CONTRACTOR shall not subcontract or consign this agreement, or any part thereof, or interest therein, directly or indirectly, voluntarily or involuntarily, to any person without obtaining written consent by COUNTY and COMMISSION.

**46. FEDERAL, STATE, AND LOCAL TAXES**

CONTRACTOR shall pay all taxes lawfully imposed upon it with respect to this agreement or any product delivered with respect to this agreement. COUNTY and COMMISSION make no representation whatsoever as to the exemption from liability to any tax imposed by any government entity on CONTRACTOR.

**47. SEVERABILITY**

If a court or an arbitrator of competent jurisdiction holds any provision of this agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected.

**48. COPIES OF AGREEMENT**

This agreement is executed in counterparts, each of which shall be deemed a duplicate original.

**COMMISSION**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Supervisor Lee Lor,  
Chair, First 5 Merced County

**CONTRACTOR**



Date: \_\_\_\_\_

Signature: \_\_\_\_\_

First and Last name, Title  
Agency Name

**APPROVED AS TO LEGALITY  
AND FORM**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

James N. Fincher,  
Counsel for First 5 Merced County