

AGREEMENT XXX-XX-XX

BY AND BETWEEN

CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY

AND

[public entity]

FOR THE PROVISION OF SERVICES

This **AGREEMENT** (“Agreement”) entered into as of the ___ day of _____, 20___ (“Date of Agreement”) is by and between the **CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**, a public body and legal public entity (“COMMISSION”) and _____ **[insert correct name and type of public entity, e.g., City of XXX, a California municipal corporation]** (“CONTRACTOR”). This Agreement shall be administered by the Executive Director of COMMISSION or his or her authorized designee (“ADMINISTRATOR”).

RECITALS

A. In order to facilitate the creation and implementation of an integrated, comprehensive, and collaborative system of information and services to enhance optimal early childhood development, the legislature adopted legislation set forth in the California Children and Families Act of 1998, Health and Safety Code Section 130100, *et seq.* (as amended, the “Act”), implementing the Children and Families First Initiative passed by the California electorate in November of 1998, establishing the California Children and Families Commission and providing for establishment in each county of Children and Families Commissions, including COMMISSION.

B. COMMISSION adopted its Strategic Plan to define how funds authorized under the Act should best be used to meet the critical needs of Orange County’s children prenatal through age five as codified in the Act, which plan has been amended and after the Date of Agreement may be further amended, updated, or revised (“Strategic Plan”).

C. CONTRACTOR is a public entity organized and existing under the laws of the State of California, and its powers include without limitation, provision of services to and activities for the benefit of Orange County’s children through age five.

D. On (date of Commission action), COMMISSION took action and approved funding for this agreement.

E. COMMISSION desires to contract with CONTRACTOR to provide services, carry out certain performance obligations, and achieve certain outcomes, while promoting the purposes of the Act and the Strategic Plan on the terms and conditions set forth in this Agreement and the Project Summary, Exhibit A; Work Plan, Exhibit A-1; and Project Budget, Exhibit B (together, “Services”).

F. As and if applicable, COMMISSION and CONTRACTOR desire to enter into a matching fund program opportunities with the California Children and Families Commission (“First 5 California”) and other matching fund opportunities as may become available.

G. CONTRACTOR desires to provide the services in furtherance of the purposes of the Act and the Strategic Plan on the terms and conditions set forth in this Agreement.

NOW, based on the Recitals, which are a substantive part of this Agreement, and agreed mutual consideration, COMMISSION and CONTRACTOR agree as follows:

1. TERM OF AGREEMENT. The term of this Agreement shall commence on [_____] and terminate on [_____], unless earlier terminated pursuant to the provisions of Paragraph 23 of this Agreement. CONTRACTOR and ADMINISTRATOR may mutually agree in writing to extend the term of this Agreement, provided that COMMISSION’s Maximum Payment Obligation in this Agreement does not increase as a result.

2. ALTERATION OF TERMS. This Agreement, together with and including any Exhibits fully express all understanding of the parties with respect to the subject matter of this Agreement, and shall constitute the total Agreement between the parties, except as otherwise expressly provided in this Paragraph 2 and in Subparagraph 8.5. No amendment, addition to, or alteration of, the terms of this Agreement, whether written or oral, shall be valid unless the amendment is made in writing and formally approved and executed by both parties, except as provided in this Paragraph 2 or Subparagraph 8.5 in this Agreement.

2.1 CONTRACTOR work plans, budgets, and scopes of services will be subject to an annual review to determine consistency with the COMMISSION's strategic direction. Changes to the work plan, budgets, and scopes of services may be directed by ADMINISTRATOR to bring the Agreement scope into better alignment with the COMMISSION's evolving strategic direction. These changes may include, but are not limited to, reprioritization of the targeted service population, redirection of resources to provide more intensive services, and increased focus on sustainability strategies. If CONTRACTOR is unable to redirect its program to be consistent with this direction, COMMISSION may reduce funding provided in successive years of this agreement.

2.2 Administrator Modification Authority. Notwithstanding anything to the contrary, provided any modifications do not alter the overall goals and basic purpose of the Agreement and do not increase COMMISSION’s Maximum Payment Obligation during the term of the Agreement, ADMINISTRATOR has the authority to, with the agreement of CONTRACTOR, make modification(s) to the activities, tasks, deliverables, and performance timeframes specified in the Project Summary as set forth in the Scope of Work, Exhibit A; the Work Plan, Exhibit A-1; the funding allocation between and among the line items and the “Funds Due” period(s) budgeted in the Project Budget, Exhibit B; the Payment interval; the percentage of Initial Payment(s); the percentage of Retention Amount(s); and the timing of the Retention Amount(s) withheld as described in this Agreement.

3. STATUS OF CONTRACTOR. CONTRACTOR is and shall at all times be deemed to be an independent CONTRACTOR and shall be wholly responsible for the manner in which it performs the Services required of it by the terms of this Agreement. As a condition to commencing performance of any Services for this Agreement and to be eligible for any compensation for services rendered for this Agreement, CONTRACTOR shall execute an Acknowledgment of Independent Contractor Status,

Exhibit C, attached hereto and fully incorporated by this reference. Nothing in this Agreement shall be construed as creating the relationship of employer and employee or principal and agent between COMMISSION and CONTRACTOR or any of CONTRACTOR's agents or employees. CONTRACTOR knowingly, voluntarily, and expressly assumes exclusively the responsibility for the acts of its employees or agents as they relate to the Services to be provided during the course and scope of their employment, whether the employee(s) are compensated through funds received by CONTRACTOR through this Agreement or otherwise related directly or indirectly to the performance of Services under this Agreement. CONTRACTOR, its elected or appointed officials, officers, agents, employees, and Subcontractors shall not, in any respect whatsoever, be entitled to any rights or privileges of COMMISSION employees and shall not be considered in any manner to be COMMISSION employees. COMMISSION shall neither have nor exercise any control or direction over the methods by which CONTRACTOR shall perform its obligations under this Agreement. COMMISSION shall not be responsible or liable for the acts or failure to act, whether intentional or negligent, of any employee, agent, or volunteer of CONTRACTOR. CONTRACTOR shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters. CONTRACTOR shall indemnify and hold harmless COMMISSION and the County of Orange ("County") from any liability, damages, costs, and expenses of any nature arising from alleged violations of personnel practices and employment laws.

3.1 COMMISSION as Independent Entity. Notwithstanding other provisions in this Agreement, such as insurance and indemnity provisions protecting COMMISSION and the County of Orange, CONTRACTOR acknowledges that pursuant to the Act, specifically Health & Safety Code Section 130140.1(a)(1), COMMISSION is a legal public entity separate from the County of Orange with independent powers and that in no event will CONTRACTOR look to the County of Orange for performance or indemnity under this Agreement, and CONTRACTOR expressly waives any rights it may have against the County of Orange in any way related to this Agreement. With respect to the above provisions CONTRACTOR agrees all rights under Section 1542 of the California Civil Code and any similar law of any state or territory of the United States are expressly waived. Section 1542 reads as follows:

CIVIL CODE SECTION 1542. GENERAL RELEASE; EXTENT. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

4. CONTRACTOR DELEGATION AND ASSIGNMENT. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of ADMINISTRATOR. Consent by COMMISSION shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

5. SUBCONTRACTS. Except to the extent expressly provided for in the Project Summary, Exhibit A, or as approved by ADMINISTRATOR, CONTRACTOR shall not enter into a subcontract,

consulting agreement, or an agreement for professional services (each and all referred to as “Subcontract”) for the provision of services or performance of tasks included within the scope of the Services required by this Agreement without the prior written consent of ADMINISTRATOR. Any Subcontracts approved by ADMINISTRATOR shall not alter in any way any legal responsibility or performance obligation of CONTRACTOR to COMMISSION to perform or cause performance of the Services required under this Agreement. ADMINISTRATOR may require CONTRACTOR to submit a true copy of any permitted Subcontract. All records related to each Subcontract, if any, are subject to examination and audit by ADMINISTRATOR or his or her designee and must be retained for a period of (i) three (3) years after the date of final disbursement of funds under this Agreement, or (ii) three (3) years after any pending audit is completed, whichever occurs later.

5.1 Minimum Subcontract Terms. Each permitted Subcontract, including all terms and provisions shall be independently negotiated between CONTRACTOR and its Subcontractor. Each Subcontract shall include provisions that meet or exceed the following requirements: (i) any specific requirements set forth in the Project Summary, Exhibit A; (ii) a clear and complete description of the nature, extent, and tasks of the work to be performed by the Subcontractor and the relation of the work to the Services required under this Agreement; (iii) identification of the personnel by classification, and, if available by name, who will work or provide services to CONTRACTOR under the Subcontract, including a description of the minimum qualifications, education, experience, and any required licensing for each classification of personnel and number of hours described in relation to full time equivalent (e.g., 1.0 FTE or 0.5 FTE); (iv) a compensation schedule, including hourly rates or fees for each classification of personnel and a maximum payment obligation under the Subcontract, which total amount shall in no event exceed the amounts set forth in the Project Budget, Exhibit B; (v) insurance and indemnification comparable to the requirements and provisions set forth in this Agreement, which insurance shall protect CONTRACTOR, COMMISSION, and the County of Orange from any Claims and other liabilities that arise out of the Subcontract and performance of Subcontractor under the Subcontract; (vi) the term of Subcontract, which term shall not exceed the term of this Agreement; (vii) obligation to maintain and retain accurate and complete client and financial records, which recordkeeping shall be fully compliant with applicable laws and regulations and obligation to maintain records related to work and services provided under the Subcontract shall be maintained for the same retention period referenced in Paragraph 5 above, (viii) remedies and termination provisions which may be available to CONTRACTOR in the event Subcontractor fails to perform under the Subcontract; (ix) compliance with laws and regulations applicable to CONTRACTOR, as a public entity, entering into contracts, including without limitation that any subcontract is duly authorized, approved, and executed and in compliance with notice and bidding and contracting requirements, if any, and prevailing wage laws, if applicable, pursuant to applicable laws and regulations; and (x) any and all other requirements expressly provided in this Agreement.

6. GENERAL INDEMNIFICATION.

CONTRACTOR agrees to and shall indemnify, defend with counsel approved in writing by COMMISSION, hold harmless COMMISSION, its Commissioners, the County of Orange, and their respective officers, agents, and employees from and against all liability, claims, losses, demands, injuries to or death of any person or persons, or damages to property, including but not limited to property of Commissioners, officers, employees, or agents of COMMISSION or the County of Orange (together, “Claims”), including defense costs, resulting from court action or in any manner arising out of, pertaining to, related to, or incident to any intentional, malicious, negligent acts, inactions, errors, or omissions of CONTRACTOR, its officers, employees, agents, or Subcontractors in the performance of this Agreement.

6.1 No elected official, no public official, no Commissioner, no officer, no committee member, no employee, and no agent of COMMISSION or the County of Orange shall be personally liable to CONTRACTOR, any successor in interest, or to any Subcontractor in the event of any default or breach by COMMISSION or for any amount that may become due to CONTRACTOR or to its successor or Subcontractor or for breach of any obligation of the terms of this Agreement.

7. INSURANCE. Without limiting CONTRACTOR's liability for indemnification of COMMISSION as set forth in Paragraph 6 above, CONTRACTOR shall obtain and maintain, in effect, during the term of this Agreement, certain minimum coverage of insurance through any or all of the following types of insurance, as further described, and as applicable, in Subparagraphs 7.1, 7.2, and 7.3 below: (a) self-insurance through the State or as otherwise approved by ADMINISTRATOR or his or her Risk Management designee; (b) insurance via a pooled or joint powers insurance authority; or (c) insurance policies secured from insurance companies that are admitted in California and rated A-:VIII or better or FPR Ratings of 9 through 7 and have a Financial Size Category (FSC) of VIII or better according to the current Best's Key Rating Guide/Property-Casualty/United States, ambest.com, or from an insurance company of equal financial stability as approved by ADMINISTRATOR or his or her Risk Management designee. Evidence of required insurance coverages obtained under (a), (b), or (c) in this Paragraph 7 shall be submitted to ADMINISTRATOR prior to and as a condition precedent to commencement of any Services or proceeding with any work under this Agreement. Submittal and approval of insurance coverage, including self-insurance or pooled coverage, shall neither relieve nor decrease the liability of CONTRACTOR.

7.1 Certificate of Self-Insurance Coverage. In lieu of maintaining insurance coverage by separate insurance policies secured through third party insurance companies as described in Paragraph 7 above and Subparagraph 7.3 below, CONTRACTOR may be self-insured with respect to the minimum amounts and types of required insurance coverage under this Agreement.

7.1.1 Certificate of Self-Insurance. A certificate signed by a duly authorized officer or member of CONTRACTOR shall be submitted to ADMINISTRATOR evidencing self-insurance prior to and as a condition precedent to commencement of Services or proceeding with any work under this Agreement. Further, during the term of this Agreement ADMINISTRATOR may, in his or her reasonable discretion, request reconfirmation of CONTRACTOR's status as self-insured for the required coverage. The self-insurance certificate(s) shall verify that on behalf of _____ **[insert name of public entity]**, CONTRACTOR has and maintains self-insurance in the following categories and amounts of coverage, including the amounts and companies, if any, that may provide any secondary or additional level of coverage. Further the certification shall state that the self-insurance is intended to cover as additional insureds (or the equivalent of being an additional insured) COMMISSION, its Commissioners, the County of Orange, the members of COMMISSION, the Board of Supervisors of the County of Orange, and their respective officers, agents, and employees, individually and collectively, and that the self-insurance shall apply as primary insurance and that other insurance maintained by COMMISSION or the County of Orange (whether through insurance policies, self-insurance, or pooled/joint powers coverage) shall be excess only and not contributing with insurance provided under the self-insurance. In the event CONTRACTOR elects to no longer self-insure under any of the required types of coverage in this Subparagraph 7.1, then CONTRACTOR shall provide to ADMINISTRATOR not less than thirty (30) days prior written notice of the cancellation or change in coverage. In this event, CONTRACTOR shall obtain and maintain insurance coverages pursuant to Subparagraphs 7.2 or 7.3 below.

7.1.2 Types of Self-Insurance Coverage. CONTRACTOR shall evidence it is self-insured through the State or as otherwise approved by ADMINISTRATOR or his or her Risk Management designee in his or her sole discretion for the following required coverage:

(a) **Comprehensive General Liability** coverage for bodily injury (including death) and property damage equivalent to not less than One Million Dollars (\$1,000,000) combined single limit (CSL) per occurrence and not less than Two Million Dollars (\$2,000,000) annual aggregate, including self-insurance covering premises and operations, products/completed operations, contractual liability, and personal injury liability.

(b) **Comprehensive Automobile Liability** coverage for bodily injury (including death) and property damage equivalent to not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned, and hired vehicles/watercraft, with not less than One Million Dollars (\$1,000,000) annual aggregate.

(c) **Workers' Compensation** coverage shall be maintained for workers' compensation risk claims in amounts equivalent to coverage required by the State of California, applicable statutory requirements, and including the equivalent of a broad form all-states endorsement and waiver of subrogation.

(d) **Employers' Liability** coverage for all employees engaged in Services or operations under this Agreement equivalent to not less than One Million Dollars (\$1,000,000) per occurrence.

(e) **Professional Liability.** If the Project Summary, Exhibit A, includes or requires staffing or Services by a licensed professional, such as physician, dentist, pharmacist, registered nurse, psychologist, engineer, architect, etc., then coverage for professional liability/errors and omissions is required equivalent to not less than One Million Dollars (\$1,000,000) per claims made or per occurrence and One Million Dollars (\$1,000,000) annual aggregate. If CONTRACTOR's professional liability policy is a "claims made" policy, CONTRACTOR shall agree to maintain professional liability coverage for two (2) years following the termination of this Agreement.

(f) **Sexual Misconduct Liability.** If the Project Summary, Exhibit A, includes services which require custody, transportation or unsupervised contact by CONTRACTOR, or any Subcontractor, with recipients of services under this Agreement, then insurance policies and coverage for Sexual Misconduct Liability is required in an amount not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate.

7.2 Pooled and/or Joint Powers Insurance Coverage. CONTRACTOR may provide insurance coverage through membership and participation in a pooled insurance cooperative or joint powers insurance authority, or both, with respect to the minimum amounts and types of required insurance coverage under this Agreement.

7.2.1 Certificate of Pooled/Joint Powers Insurance. A certificate signed by an authorized officer or member of CONTRACTOR and by an authorized officer of the pooled and/or joint powers insurance authority shall be submitted to ADMINISTRATOR evidencing membership and participation in pooled or joint powers insurance prior to and as a condition precedent to commencement of Services or proceeding with any work under this Agreement. Further, during the term of this Agreement ADMINISTRATOR may in his or her reasonable discretion request

reconfirmation of CONTRACTOR's status as a member in good standing and participant in pooled and/or joint powers insurance for the required coverage. The certificate shall verify that on behalf of _____ **[insert name of public entity]**, CONTRACTOR has and maintains insurance in the categories and amounts of coverage described for self-insurance above in Subparagraph 7.1, including the amounts and companies, if any, that may provide any secondary or additional level of coverage. Further the certificate shall state that the pooled or joint powers insurance is intended to cover as additional insureds (or the equivalent of being an additional insured) COMMISSION, its Commissioners, the County of Orange, the members of COMMISSION, the Board of Supervisors of the County of Orange, and their respective officers, agents, and employees, individually and collectively, and that the pooled and/or joint powers insurance shall apply as primary insurance and other insurance maintained by COMMISSION or the County of Orange (whether through insurance policies, self-insurance, or pooled/joint powers coverage) shall be excess only and not contributing with insurance provided under the pooled or joint powers insurance. Pooled or joint powers insurance provided under this Subparagraph 7.2 shall not be canceled or changed so as to no longer meet the specified COMMISSION or County insurance requirements without thirty (30) days prior written notice of the cancellation or change being delivered to ADMINISTRATOR.

7.3 Insurance Policies through Independent Insurance Companies. CONTRACTOR may obtain and maintain insurance policies for the required coverage under this Agreement.

7.3.1 Evidence of Coverage. Prior to commencement of any Services or proceeding with any work under this Agreement, CONTRACTOR shall provide on an insurance industry approved form a Certificate of Insurance (COI) certifying that coverage as required in this Subparagraph 7.3 has been obtained and remains in force for the period required by this Agreement. In addition, a certified copy of the policy or policies shall be provided by CONTRACTOR upon request of ADMINISTRATOR at the address specified in Paragraph 22. Each policy shall meet the following requirements:

(a) Required Coverage Forms

(i) Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

(ii) Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

(b) Required Endorsements. Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

(i) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the COMMISSION, the County of Orange, and their elected and appointed officials, officers, employees, agents as Additional Insureds.

(ii) A primary non-contributing endorsement evidencing that CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the COMMISSION and the County of Orange shall be excess and non-contributing.

(c) **Notice of Cancellation or Change of Coverage Endorsement.** Each policy shall include an endorsement evidencing that the policy shall not be canceled or changed so as to no longer meet the specified COMMISSION or County insurance requirements without thirty (30) days prior written notice of the cancellation or change being delivered to ADMINISTRATOR at the address shown on the COI; or, ten (10) days' notice for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the COI.

(d) **Separation Clause Endorsement.** Each policy shall include an endorsement evidencing that the policy provides coverage separately to each insured who is seeking coverage or against whom a Claim is made or a suit is brought, except with respect to the company's limit of liability (standard in the ISO CG 0001 policy).

(e) **Termination of Insurance.** If insurance is terminated for any reason, CONTRACTOR agrees to purchase an extended reporting provision of at least two (2) years to report Claims arising from work performed, or any action or any inaction in connection with this Agreement.

(f) **Qualifying Insurers.** All coverages shall be issued by qualified insurance companies meeting the criteria described in Paragraph 7 above.

(g) **Deductible Amounts in Standard Policy.** COMMISSION acknowledges that a deductible amount on a policy of insurance is acceptable, but only as approved in writing in the sole discretion of ADMINISTRATOR or his or her Risk Management designee; provided no approved deductible shall in any way limit liabilities assumed by CONTRACTOR under this Agreement, including:

(i) Any policy deductible or self-insured retention on any insurance policy (except auto) which exceeds \$25,000. Such policy requires prior written approval of ADMINISTRATOR or his or her Risk Management designee.

(ii) Any policy deductible or self-insured retention on automobile liability over \$5,000. Such policy requires prior written approval of ADMINISTRATOR or his/her Risk Management designee.

(iii) All self-insured retentions or deductibles shall be clearly stated on the COI. If no self-insured retentions or deductibles apply, indicate this on the COI.

(h) **Subcontractor Insurance Requirements.** Should any of the Services under this Agreement be provided by a Subcontract, CONTRACTOR shall require each Subcontractor of any tier to provide the coverages mentioned in this Paragraph 7, or CONTRACTOR may insure any Subcontractor under its own policies.

(i) **Occurrence Versus Claims Made Coverage.** It is the intent of COMMISSION to secure "occurrence" rather than "claims made" coverage whenever possible. If coverage is written on a "claims made" basis, the COI shall clearly so state. In addition to coverage requirements above, each policy shall provide that:

(i) Policy retroactive date coincides with or precedes CONTRACTOR's start of work (including subsequent policies purchased as renewals or replacements).

(ii) CONTRACTOR will make every effort to maintain similar insurance during the required extended period of coverage following completion of services, including the requirement of adding all additional insureds.

(iii) Policy allows for reporting of circumstances or incidents that might give rise to future claims.

7.3.2 Types of Insurance Policies/Coverages. If CONTRACTOR provides insurance through a policy or policies, then the following types and coverages are required.

(a) **Comprehensive General Liability Insurance.** Comprehensive General Liability Insurance for bodily injury, including death and property damage which provides not less than One Million Dollars (\$1,000,000) combined single limit (CSL) per occurrence and not less than Two Million Dollars (\$2,000,000) annual aggregate.

(i) The coverage shall include:

(A) Premises and Operations.

(B) Products/Completed Operations with limits of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate to be maintained for two (2) years following the end of the term of this Agreement.

(C) Contractual Liability expressly including liability assumed under this agreement, except such requirement does not apply to service contracts.

(D) Personal Injury Liability.

(E) **Comprehensive Automobile Liability Insurance.** Comprehensive Automobile Liability Insurance for bodily injury, including death, and property damage which provides total limits of not less than One Million Dollars (\$1,000,000) CSL per occurrence and One Million Dollars (\$1,000,000) annual aggregate applicable to all owned, non-owned and hired vehicles/watercraft,

(b) **Workers' Compensation Insurance.** Workers' Compensation Insurance shall be maintained. Statutory California Workers' Compensation coverage shall include a broad form all-states endorsement and waiver of subrogation.

(c) **Employers' Liability Coverage.** Employers' Liability Coverage of not less than One Million Dollars (\$1,000,000) per occurrence for all employees engaged in Services or operations under this Agreement.

(d) **Professional Liability.** If the Project Summary, Exhibit A, includes or requires staffing or services by a licensed professional, such as physician, dentist, pharmacist, registered nurse, psychologist, accountant, engineer, architect, etc., then insurance policy(ies) and coverage for professional liability/errors and omissions is required in an amount not less than One Million Dollars (\$1,000,000) per claims made or per occurrence and One Million Dollars (\$1,000,000) aggregate. If CONTRACTOR's professional liability policy is a "claims made" policy, CONTRACTOR shall agree to maintain professional liability coverage for two (2) years following the termination of this Agreement.

(e) **Sexual Misconduct Liability.** If the Project Summary, Exhibit A, includes services which require custody, transportation or unsupervised contact by CONTRACTOR, or any Subcontractor, with recipients of services under the Agreement, then insurance policies and coverage for Sexual Misconduct Liability is required in an amount not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate.

7.4 Change in Coverage.

COMMISSION expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by ADMINISTRATOR or his or her Risk Management designee as appropriate to adequately protect COMMISSION. COMMISSION shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not provide copies of acceptable COIs and endorsements incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR, and COMMISSION shall be entitled to all legal remedies.

7.5 Duration of Insurance. CONTRACTOR shall maintain all coverage and insurance for the entire term and for any extended period agreed upon within this Agreement.

7.6 Maintain Records of Insurance Coverage. CONTRACTOR shall maintain records regarding all coverage and insurance for the term of this Agreement and for any extended period agreed upon within this Agreement.

7.7 Withhold Payment for Lack of Required Coverage. COMMISSION reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the applicable insurance requirements outlined in this Paragraph 7.

7.8 Remedies for Failure to Provide or Maintain Required Insurance or Endorsements. In addition to any other remedies COMMISSION may have if CONTRACTOR (or any Subcontractor) fails to provide or maintain any insurance required by this Paragraph 7 to the extent and within the time required by this Agreement, COMMISSION may, at its sole option:

(a) Obtain the insurance and deduct and retain the amount of the premiums for the insurance from any monies due under this Agreement.

(b) Order CONTRACTOR and any Subcontractor to cease performance of the Services and withhold any payment(s) which become due to CONTRACTOR or any Subcontractor until CONTRACTOR or Subcontractor demonstrates compliance with the insurance requirements of this Agreement.

(c) Immediately and without further cause terminate this Agreement.

7.9 Exercise of any of the above remedies are in addition to any other remedies COMMISSION may have and are not the exclusive remedies for CONTRACTOR's or its Subcontractor's failure to maintain or secure appropriate policies or endorsements. Nothing in this Agreement shall be construed as limiting in any way the extent to which CONTRACTOR or any Subcontractor) may be held responsible for payments of damages to persons or property resulting from CONTRACTOR's or any Subcontractor's performance under this Agreement.

8. RESPONSIBILITIES OF CONTRACTOR

8.1 Conditions to COMMISSION's Obligation to Proceed under Agreement. COMMISSION's obligation to proceed with performance and the payment of each invoice payment under this Agreement is expressly conditioned upon the satisfaction by CONTRACTOR of each of the following conditions precedent ("Conditions") below. These Conditions may be waived in writing by ADMINISTRATOR, in his or her sole discretion, or expressly waived in the Project Summary, Exhibit A. CONTRACTOR may satisfy one or more of the Conditions at any time prior or subsequent to the Date of Agreement, provided that all Conditions shall be satisfied prior to the date the first COMMISSION payment to CONTRACTOR is due. CONTRACTOR shall provide satisfactory evidence of compliance with each of the Conditions.

8.1.1 Evidence of CONTRACTOR Approval of Agreement. CONTRACTOR shall submit evidence of the approval of this Agreement by resolution of CONTRACTOR's governing board, or a true copy of the minutes of the public meeting at which this Agreement was considered and approved, or other evidence of approval satisfactory to ADMINISTRATOR.

8.1.2 Insurance. All provisions and submittal of endorsements or other evidence of insurance required by Paragraph 7 shall be in place and approved by ADMINISTRATOR or his or her Risk Management designee.

8.1.3 Other Conditions. CONTRACTOR has complied with the other Conditions listed in the Project Summary, Exhibit A, if any.

8.2 No Supplanting Government Funds. CONTRACTOR shall not supplant government funds intended for the purposes of this Agreement with any other funds intended for the purposes of this Agreement. CONTRACTOR shall not submit an invoice for payment from COMMISSION, or apply sums received from COMMISSION with respect to that portion of its obligations which have been paid by another governmental source of revenue. As a material provision of this Agreement and substantive criterion in COMMISSION's selection of CONTRACTOR for the Services provided under this Agreement and in furtherance of the express directives of the Act, CONTRACTOR is required to ensure that, in the performance of this Agreement, all funding shall be expended and used to supplement, not supplant, existing levels of service.

8.3 Technical Requirements for PCs and Software Used by CONTRACTOR for all Recordkeeping and Reporting for the Services and Agreement. CONTRACTOR agrees to obtain and maintain all computer hardware and software necessary to meet the requirements of Paragraph 19 in its entirety with respect to COMMISSION's evaluation and contract management system. CONTRACTOR is required to contact COMMISSION's designated contractor for its evaluation and contract management system prior to the commencement of work pursuant to this Agreement to ensure that CONTRACTOR's computer hardware and software is capable of meeting CONTRACTOR's evaluation and contract management system obligations.

8.4 Staffing Obligations for Services.

COMMISSION and CONTRACTOR agree that the Scope of Work, the level and description of Services, and the classification, number, and qualifications of personnel and staff necessary for the Services, and budget for staffing to be provided by CONTRACTOR in furtherance of the Strategic Plan and the Act are set forth in the Exhibits. CONTRACTOR agrees to provide the level and type of

staffing, facilities, equipment and supplies necessary to provide the Services and to meet the outcomes set forth in these Exhibits.

8.4.1 Staffing Conferences. At ADMINISTRATOR's request, CONTRACTOR agrees to send appropriate staff to attend orientation session(s) or progress meeting(s) arranged or given by COMMISSION or ADMINISTRATOR.

8.4.2 Personnel Disclosure. If requested by ADMINISTRATOR, CONTRACTOR shall make available to ADMINISTRATOR a current list of all personnel providing Services or performing any work under this Agreement, including personnel of any Subcontractor. Changes to the list shall be immediately provided to ADMINISTRATOR. CONTRACTOR shall prepare and maintain up-to-date personnel records and information about its employees and, if requested by ADMINISTRATOR and to the extent permitted by applicable laws, make available to ADMINISTRATOR the following information/records:

(a) The required list of personnel, including any Subcontractor, which shall include each of the following:

(i) All full time staff positions and all part-time staff positions by name and title, including volunteer positions, who are assigned to, performing under, or providing Services.

(ii) The qualifications and experience, including professional degree(s) and required licensing, if applicable, required for each position.

(iii) The language skill(s), if applicable, of the personnel, such as bi-lingual, sign language, Braille, or other communication skills.

(b) CONTRACTOR shall immediately notify ADMINISTRATOR concerning the arrest or subsequent conviction, for other than minor traffic offenses, of any employee or volunteer staff providing Services under this Agreement when the information becomes known to CONTRACTOR.

8.4.3 CONTRACTOR to Maintain Complete Personnel Records. CONTRACTOR shall maintain complete and accurate records relating to all personnel listed (or required to be listed) in Subparagraph 8.4.2 above. The record keeping shall include evidence that CONTRACTOR has conducted adequate pre-employment and pre-volunteer screening, such as information that CONTRACTOR has conducted or caused to be conducted on each employee or volunteer a pre-employment/hiring background check and that CONTRACTOR has taken all reasonable steps to assure all employees and volunteers assigned to perform Services under this Agreement are suitable to perform the work and do not pose a reasonably foreseeable risk of harm to children or other persons receiving or participating in the Services. CONTRACTOR acknowledges it has a duty to disclose to COMMISSION and ADMINISTRATOR information within its knowledge that may pose a reasonably foreseeable risk of harm to children. Nothing in the above provisions shall obligate CONTRACTOR to disclose to COMMISSION or ADMINISTRATOR confidential personnel information about employees or volunteers except and to the extent disclosure is permitted by applicable laws or authorized by judicial or administrative order. Nothing in the above provisions shall affect or modify the provisions of this Agreement affirming the independent contractor status of CONTRACTOR.

8.5 Implementing Exhibits. As directed by ADMINISTRATOR during the term of this Agreement and pursuant to the Exhibits CONTRACTOR will be required to prepare and submit to ADMINISTRATOR certain planning and implementing documents regarding the Services under this Agreement aimed toward achieving the outcomes set forth in the Work Plan, Exhibit A-1. The planning and implementing documents may include, but are not limited to, service plans, business plans, and supplements to the Work Plan, each of which may clarify or further describe and define the Services required under this Agreement and required dates for performance of certain Services. Each implementing document approved by ADMINISTRATOR, shall become part of the Exhibits and shall be attached to and incorporated into this Agreement. CONTRACTOR shall perform and meet the tasks and requirements set forth in all Exhibits as performance obligations of this Agreement.

9. GENERAL TERMS AND CONDITIONS.

9.1 Compliance with Laws. CONTRACTOR shall provide all Services in accordance with all applicable federal and state laws, statutes, regulations, and local ordinances and resolutions. CONTRACTOR shall comply with the Act, and all laws, rules or regulations applicable to the Scope of Work and provision of Services, as any may now exist or as amended or added after the Date of Agreement.

9.2 Familiarity with Work. By executing this Agreement and prior to performing or providing any Services under the Agreement, CONTRACTOR warrants and shall be satisfied that (a) it has thoroughly investigated and considered the Services, (b) it has carefully considered how the Services should be performed, will be implemented, and will be completed, and (c) it fully understands the facilities, difficulties, and restrictions, attending carrying out the performance obligations of this Agreement. Should CONTRACTOR discover any latent or unknown conditions materially differing from those inherent in the work or as represented by COMMISSION or ADMINISTRATOR, it shall immediately inform COMMISSION in writing of this fact and shall not proceed except at CONTRACTOR's risk until written instructions are received from ADMINISTRATOR.

9.3 Care of Work. CONTRACTOR shall adopt reasonable methods during the term of this Agreement to furnish continuous protection to the property (real and personal property), facilities, equipment, persons providing or receiving Services, work product, records, and other papers to prevent losses or damages. CONTRACTOR shall be responsible for all losses or damages to persons or property (including real property, personal property, both tangible and intangible), except the losses or damages caused by COMMISSION's sole negligence. The performance of Services by CONTRACTOR shall not relieve CONTRACTOR from any obligation to correct any incomplete, inaccurate, or defective work or service at no further cost to COMMISSION when the inaccuracies are due to the negligence, action, inaction, or intentional misconduct of CONTRACTOR.

9.4 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be determined to be invalid by a final judgment or decree of a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.5 California Law. This Agreement shall be construed and interpreted both as to validity and to performance in accordance with the laws of the State of California. Legal actions concerning

any default, dispute, interpretation, declaration of rights, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, and CONTRACTOR covenants and agrees to submit to the personal jurisdiction of the court in the event of any action.

9.6 Waiver. No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair any right or remedy or be construed as a waiver. One party's consent or approval of any act by the other party requiring the other party's consent or approval shall not be deemed to waive or render unnecessary the party's consent to or approval of any subsequent act of the party. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

9.7 Rights and Remedies Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of the rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

9.8 Covenant Against Discrimination. In the performance of this Agreement, CONTRACTOR shall not engage in, nor permit any employee or agent to engage in, discrimination in employment of persons or provision of Services or assistance, nor exclude any person from participation in, nor deny any person the benefits of, nor or subject any person to discrimination under any program or activity funded in whole or in part with COMMISSION funds on the grounds of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, or sexual orientation, except as permitted by applicable provisions of federal and state law. CONTRACTOR shall comply with Title II of the Americans with Disabilities Act, (42 U.S.C. §12101, *et seq.*) as it relates to public accommodations.

9.9 Legal Action. In addition to any other rights or remedies, either party may take legal action, at law or at equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

9.10 Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the non-prevailing party.

9.11 Waiver of Jury Trial. Both COMMISSION and CONTRACTOR agree and acknowledge that each is aware of and has had the opportunity to seek advice of counsel of its choice with respect to its rights to trial by jury, and each party, for itself and its successors, creditors, and assigns, expressly and knowingly waives and releases all rights to trial by jury in any action, proceeding or counterclaim brought by any party against the other or against its officers, Commissioners, directors, employees, agents, or subsidiary or affiliated entities on or with regard to any matters of any kind or type arising out of or in any way connected with this Agreement or any other claim of injury or damage.

9.12 Use of Commission Name and Logo. Funded and partnering organizations are required to use COMMISSION's name and logo on all materials, promotional information and products that relate to Commission-funded programs, unless otherwise agreed to between CONTRACTOR and ADMINISTRATOR at ADMINISTRATOR's sole discretion. CONTRACTOR

shall comply with COMMISSION's guidelines related to the use of COMMISSION's name and logo as stated in its Policies and Procedures Guide.

9.13 Time of Essence. Time is of the essence in the performance of this Agreement.

9.14 No Broker or Finders' Fee. CONTRACTOR warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.15 No Use of Funds for Lobbying. CONTRACTOR shall not expend any monies paid or payable under this Agreement for the purpose of influencing or attempting to influence an officer, member, or employee of COMMISSION, a member of the Orange County Board of Supervisors, any County of Orange officer or employee, any member or employee of First 5 California, any member of the State legislature or member of Congress, or any other officer or employee of any public agency or entity, in connection with the awarding of any contract, the making of any contract, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any contract, grant, loan, or cooperative agreement.

9.16 Constitutional Use of Funds. As an express condition to this Agreement, CONTRACTOR agrees that the funds provided by COMMISSION to CONTRACTOR shall not be used to promote any religion, religious creed or cult, denomination, sectarian organization or religious belief or to fund any proselytizing activities. The parties agree the above covenant is intended to and shall be construed for the limited purpose of assuring compliance with respect to the use of COMMISSION funds by CONTRACTOR with applicable constitutional limitations respecting the establishment of religion as set forth in the establishment clause under the First Amendment of the United States Constitution and Article I, Section 4 of California Constitution, and is not in any manner intended to restrict other activities of CONTRACTOR.

9.17 Child Abuse Reporting. CONTRACTOR shall establish a procedure to ensure that all employees, volunteers, consultants, agents, or Subcontractors performing Services under this Agreement, report child abuse or neglect to a child protective agency as defined in Penal Code Section 11165.9 to the extent required by applicable law. CONTRACTOR shall require each employee, volunteer, agent, and Subcontractor who provides Services to or for CONTRACTOR in implementation of the Scope of Work described in Exhibit A and funded by this Agreement to the extent each person is legally subject to the requirements, to sign a statement acknowledging these reporting requirements and to comply with the reporting requirements to the extent required by applicable law.

9.18 CONTRACTOR Cooperation with Other COMMISSION Contractors. CONTRACTOR acknowledges that the goal of COMMISSION and its Strategic Plan is to develop an integrated quality service system to ensure access to a quality child and family support services delivery system for Orange County children from the prenatal stage to age five. CONTRACTOR agrees to cooperate reasonably with COMMISSION and ADMINISTRATOR to achieve the objectives of the Strategic Plan and support COMMISSION by forming cooperative partnerships to serve children prenatal through age five and their families with other services funded through COMMISSION.

9.19 Political Activity. CONTRACTOR agrees that the funds provided by this Agreement shall not be used to promote, directly or indirectly, any political party, political candidate or political activity, except as permitted by law.

9.20 Child Care Provider Notification; Admission Procedures and Parental and Authorized Representative's Rights. If applicable to the Services, CONTRACTOR shall establish and carry out the requirements of California Code of Regulations (CCR) Title 22 relating to child care providers and provision of licensed child care, day care, or other early care and education. To the extent required by applicable laws and regulations, CONTRACTOR shall complete the following:

9.20.1 CONTRACTOR shall comply with CCR Title 22, Section 101218.1 to ensure all parents and authorized representatives of minor children receiving services under this Agreement are notified regarding any employee, volunteer, consultant, or agent of CONTRACTOR with a criminal record exemption.

9.20.2 CONTRACTOR shall (i) post a current copy of the California Department of Social Services (CDSS) Parents' Rights Poster in a prominent location; (ii) provide all parents and authorized representatives current copies of all CDSS notification forms and retain all parent signature or acknowledgement portions of those forms in the child's file; (iii) upon request, provide parents and authorized representatives with the name of any person associated with CONTRACTOR (including any employee, volunteer, consultant, or agent of CONTRACTOR) who has been granted a criminal record exemption and that person's relationship to CONTRACTOR.

9.21 CONTRACTOR shall document all requests by parents or authorized representatives for criminal exemption information. Such documentation shall be jointly signed by an authorized representative of CONTRACTOR and the parent or authorized representative and maintained in the child's file.

9.22 Suspension and Debarment. CONTRACTOR certifies that CONTRACTOR's officers and principals are not debarred or suspended from federal financial assistance programs or activities.

10. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR. CONTRACTOR makes the following representations and warranties to COMMISSION. These representations and warranties are ongoing and CONTRACTOR shall advise ADMINISTRATOR in writing if there is any change pertaining to any matters set forth or referenced in the following Subparagraphs 10.1 through 10.6, inclusive.

10.1 No Conflict. To the best of CONTRACTOR's knowledge, participation by public officials of CONTRACTOR in the negotiation, consideration, and action on this Agreement and CONTRACTOR's execution, delivery, and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement, or order to which CONTRACTOR is a party or by which it is bound, nor is there a conflict of interest under the California Political Reform Act, Government Code Section 81000, *et seq.* and Section 87100, *et seq.*, or Government Code Section 1090, *et seq.*

10.1.1 CONTRACTOR agrees that no officer, Commissioner, employee, agent, or assignee of COMMISSION having direct or indirect control of any monies allocated by COMMISSION, inclusive of the subject funds, shall serve as an officer or director of CONTRACTOR without the express written acknowledgement of COMMISSION.

10.1.2 Any conflict or potential conflict of interest of any public official of CONTRACTOR shall be fully disclosed in writing prior to the execution of this Agreement and shall be attached to and become a part of this Agreement.

10.2 No Bankruptcy. CONTRACTOR is not the subject of any current or threatened bankruptcy.

10.3 No Pending Legal Proceedings. CONTRACTOR is not the subject of a current or threatened litigation that would or may materially affect CONTRACTOR's performance under this Agreement.

10.4 Application Veracity. All provisions of and information provided in CONTRACTOR's application for funding submitted to COMMISSION including exhibits are true and correct in all material respects.

10.5 No Pending Investigation. CONTRACTOR is not aware that it is the subject of any current or threatened criminal or civil action investigation by any public agency, including, without limitation, a police agency or prosecuting authority, related, directly or indirectly, to the provision of Services under this Agreement.

10.6 Licenses, Permits, and Standards. CONTRACTOR warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, County of Orange, any local jurisdiction in which it may do business or provide Services, and all other appropriate governmental agencies. CONTRACTOR agrees to maintain these licenses and permits in effect for the duration of this Agreement. CONTRACTOR shall only contract with Subcontractors that are duly licensed, insured, and qualified to provide Services under this Agreement, as applicable. CONTRACTOR warrants that its employees, agents, contractors, and Subcontractors shall conduct themselves in compliance with the laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, sexual harassment, and ethical behavior.

10.6.1 Failure to Obtain or Maintain Licenses. CONTRACTOR shall notify ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any appeal, any of the permits, licenses, approvals, certificates, waivers, and exemptions. The inability shall be cause for termination of this Agreement by COMMISSION or ADMINISTRATOR.

11. CONFIDENTIALITY. CONTRACTOR shall maintain the confidentiality of all records, including any hard copies, electronic or computer-based data, and audio and video recordings, in accordance with all applicable state and federal codes and regulations relating to privacy and confidentiality, with COMMISSION's adopted Confidentiality and Data Sharing Protocol, attached hereto and incorporated by this reference, as each now exists or may be amended after the Date of Agreement, and as may be required by any other funding sources allocated through this Agreement.

11.1 CONTRACTOR Obligation.

11.1.1 All records and information concerning any and all persons referred to CONTRACTOR by COMMISSION, or COMMISSION's designee, shall be considered and kept confidential by CONTRACTOR and CONTRACTOR's staff, agents, employees, subcontractors, and volunteers.

11.1.2 CONTRACTOR shall require its employees, agents and volunteers to sign an acknowledgement or other certification which certifies that each will keep the identities and any information with respect to any and all service recipients of CONTRACTOR related to services authorized under this Agreement confidential except as may be required to provide Services under this Agreement, to comply with any reporting and auditing requirements specified in this Agreement, as required by COMMISSION in the administration of this Agreement, and as otherwise permitted by law.

11.1.3 CONTRACTOR agrees that any and all approved subcontracts entered into shall include the confidentiality requirements of this Agreement.

11.1.4 CONTRACTOR shall inform all of its employees, agents, subcontractors, volunteers, and partners of this provision that any person who knowingly and intentionally violates the provisions of federal, state or local confidentiality laws may be guilty of a crime or subject to civil action.

11.2 Authorized Data Sharing. The provisions of Subparagraphs 11.1.1 through 11.1.4 are not applicable to authorized data sharing pursuant to COMMISSION-funded projects and as permitted by law.

12. DISPUTES.

12.1 Except as otherwise provided in this Agreement, when a dispute arises between CONTRACTOR and COMMISSION, the parties shall meet to resolve the issue. If the parties do not reach a resolution, the dispute will be decided by the ADMINISTRATOR, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the ADMINISTRATOR shall be the final and conclusive administrative decision.

12.2 Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of ADMINISTRATOR. Nothing in this Agreement, however, shall be construed as making final the decision of any COMMISSION official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

13. REPORTING REQUIREMENTS.

13.1 Reports. Separate from any other reports required in the Project Summary, Exhibit A, or the Work Plan, Exhibit A-1, CONTRACTOR shall prepare and submit to ADMINISTRATOR reports concerning the performance of the Services required by this Agreement and any other reports as ADMINISTRATOR may reasonably require.

13.2 Ancillary Reporting Requirement Related to Enforcement of Child Support Obligations.

13.2.1 County Requirements. In order to comply with child support enforcement requirements of the County of Orange, CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) days of the award of this Agreement:

(a) in the case of an individual contractor, his or her name, date of birth, Social Security number, and residence address;

(b) in the case of a contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity;

(c) a certification that contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and

(d) a certification that contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

13.2.2 Failure to Comply Breach. The failure of CONTRACTOR to timely submit the data or certifications required by Subparagraphs 13.2.1 (a), (b), (c), or (d); to comply with all federal and state employee reporting requirements for child support enforcement; or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of notice from the County of Orange or COMMISSION shall constitute grounds for termination of this Agreement.

13.2.3 Use of Data Solely for Government Enforcement of Child Support Orders. It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, and for no other purpose.

13.2.4 Exemptions. Agreements with public entities shall be exempt from the requirements of Subparagraph 13.2, above. Agreements with non-profit organizations which have no owners; shall be exempt from the requirements of Subparagraph 13.2.1(b) above.

14. AUDITS. CONTRACTOR shall prepare and maintain adequate records of its performance under this Agreement in sufficient detail to permit an evaluation of the work and Services and an audit of records as described in this Agreement.

14.1 Fiscal Audit of Contract. CONTRACTOR shall employ an independent, licensed Certified Public Accountant (“CPA”) who shall prepare and file with ADMINISTRATOR a “Fiscal Audit” of this Agreement that shall include a review of the invoices submitted and paid for the reasonable cost of Services under this Agreement and a sampling (test) of the supporting documentation.

14.1.1 Multi-Year Funding. There shall be a Fiscal Audit completed for each year of this Agreement. Each annual Fiscal Audit shall become due within sixty (60) days after the anniversary date of the Date of this Agreement. The final Fiscal Audit shall become due within sixty (60) days after the end of the term of the Agreement or the date of termination of this Agreement, whichever occurs earlier. CONTRACTOR and ADMINISTRATOR may mutually agree in writing to extend the date by which each Fiscal Audit is due.

14.1.2 Retention Amount. Upon successful completion of each Fiscal Audit, ADMINISTRATOR shall release the applicable Retention Amount.

14.1.3 Scope of CPA Opinion for Fiscal Audit. CONTRACTOR shall require the CPA who completes each Fiscal Audit to provide an unqualified professional written opinion that states

whether the invoices for payment submitted by CONTRACTOR under this Agreement were for actual and reasonably necessary costs and expenses to pay for work performed or goods purchased pursuant to the terms and conditions of this Agreement and whether the indirect cost rate applied to staffing for invoices submitted and paid, if any, is in accordance with the requirements of Subparagraph 15.5. CONTRACTOR shall ensure that corrective action is taken with respect to audit exceptions for lack of internal controls or adequate procedures noted in the Fiscal Audit within six (6) months after issuance of the applicable Fiscal Audit report.

14.2 Retention Amount Withheld Pending Timely and Successful Completion of Each Fiscal Audit. The Retention Amount shall be withheld pending timely and successful completion of each Fiscal Audit described in this Paragraph 14.

14.3 Other and Additional Auditing Authority—Retention of Rights to Audit Performance under Agreement. COMMISSION and ADMINISTRATOR and their authorized representatives, and First 5 California, and any of its authorized representatives, (collectively “Representatives”), reserve all rights and shall have access to any books, documents, papers and records, including medical records, of CONTRACTOR and any Subcontractor performing Services under this Agreement for the purpose of financial monitoring or auditing conducted by an independent CPA concerning CONTRACTOR’s and Subcontractors’ performance under this Agreement. The Representatives have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement and the premises in which it is being performed.

14.4 Availability of Records for Auditing Purposes. In the event that CONTRACTOR’s corporate headquarters and its financial records are located outside the borders of Orange County, California, then CONTRACTOR shall make available its books and financial records within the borders of Orange County within ten (10) days after receipt of written demand by ADMINISTRATOR for any audit purposes under this Agreement. All CONTRACTOR’s books of accounts and records related and applicable to any costs of Services, client fees, charges, billings, and revenues received directly or indirectly related to the Services shall be made available at one (1) location within the limits of the County of Orange. All records specified in this Subparagraph 14.4 and maintained pursuant to the terms of this Agreement shall be made available, after appropriate advance notice and during the party’s normal business hours, to designated representatives of the Auditor General of the State of California; First 5 California, an entity independent of the State of California; COMMISSION, an entity independent from the County of Orange; and any other entities as required by state statute or court order. In the event CONTRACTOR does not make available its books and financial records for the Services within the borders of Orange County for the Fiscal Audit, CONTRACTOR agrees to pay all necessary and reasonable expenses incurred by COMMISSION, ADMINISTRATOR, or their designee necessary to obtain, review, and audit CONTRACTOR’s books and financial records.

14.5 Monitoring. COMMISSION, ADMINISTRATOR, and First 5 California, and respective representatives, are authorized to conduct on-site monitoring at their discretion during reasonable times, including unannounced on-site monitoring as elected in the Exhibits. Monitoring activities may also include, but are not limited to, questioning employees, volunteers, and participants for the subject Services and entering any premises or any site in which any of the Services funded by this Agreement are conducted or in which any of the records of CONTRACTOR or any Subcontractor are kept. Nothing in this Agreement shall be construed to require access to any privileged or confidential information as set forth in federal or state law.

14.6 Compliance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. If CONTRACTOR receives federal funding under this Agreement, CONTRACTOR shall comply with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. CONTRACTOR shall employ a licensed certified public accountant who shall prepare and file with ADMINISTRATOR an annual organization-wide audit of related expenditures during the term of this Agreement in compliance with the Audit requirements in 2 CFR Part 200.500, *et seq.* The audit must be performed in accordance with generally accepted government auditing standards and 2 CFR Part 200.500, *et seq.*

15. MAXIMUM PAYMENT OBLIGATION. The “Maximum Payment Obligation” of COMMISSION to CONTRACTOR under this Agreement shall be _____ Dollars (\$ _____) or the actual reasonable cost incurred and paid for performance of the Services, whichever is *less*.

15.1 Multi-Year Contracts. For multi-year contracts, the Maximum Payment Obligation for each period shall be as follows: [If not a multi-year contract, rather than deleting this section in its entirety, please just delete the text of 15.1 and the subparagraphs but leave the heading so that the paragraph numbering for the subsequent sections do not change. Change to “15.1 [Reserved]”]

15.1.1 The Maximum Payment Obligation of COMMISSION to CONTRACTOR for the services to be provided for the period _____ through _____ shall be \$ _____.

15.1.2 The Maximum Payment Obligation of COMMISSION to CONTRACTOR for the services to be provided for the period _____ through _____ shall be \$ _____.

15.1.3 [as necessary] The Maximum Payment Obligation of COMMISSION to CONTRACTOR for the services to be provided for the period _____ through _____ shall be \$ _____.

15.2 Initial Payment. ADMINISTRATOR may, in his or her sole discretion, make an initial payment to CONTRACTOR in an amount not to exceed 25% [or 12.5% per year for a two year agreement or 8.33% per year for a three year agreement] of COMMISSION’s Maximum Payment Obligation described in Paragraph 15 above, upon receipt of a written request(s) by CONTRACTOR, which request(s) shall be accompanied by the justification as ADMINISTRATOR may require. ADMINISTRATOR may approve subsequent requests for initial payment not to exceed twenty-five percent (25%) of any budget period, contingent upon CONTRACTOR having repaid all prior initial payment amounts in any prior budget period. The initial payment is intended to cover initial costs that are estimated to have been incurred or are expected to be incurred in the performance of Services by CONTRACTOR. ADMINISTRATOR may, in his or her sole discretion, deduct the initial payment(s) from any one or more subsequent payments owed to CONTRACTOR during the term of this Agreement. If, at the end of the term of this Agreement, there is any balance of the initial payment not deducted from subsequent payment requests, CONTRACTOR shall owe and shall immediately refund said monies to COMMISSION.

15.3 Provisional Payment. At ADMINISTRATOR’s sole discretion, CONTRACTOR may submit an invoice prior to the beginning of the mutually agreed upon billing period to perform the Services required by this Agreement, and COMMISSION shall pay CONTRACTOR’s provisional

payment invoice within a reasonable period of time estimated to be thirty (30) days after receipt of a correctly completed invoice. CONTRACTOR shall submit to ADMINISTRATOR a reconciliation of actual costs incurred during the billing period covered by the provisional payment no later than ninety (90) days after the provisional payment invoice is submitted or within thirty (30) days of the end date of this Agreement, whichever occurs earlier. Any overpayment resulting from a Provisional Payment(s) and subsequent reconciliation of actual cost incurred for the period shall be deducted from subsequent invoices submitted by CONTRACTOR or repaid by CONTRACTOR to COMMISSION in accordance with the provisions of Paragraph 16 below.

15.4 Billing/Payment Interval. COMMISSION shall pay CONTRACTOR invoice payments monthly or quarterly in arrears, at ADMINISTRATOR's sole discretion, as specified in Exhibit A, for actual reasonable costs incurred and paid by CONTRACTOR to perform the Services required by this Agreement in accordance with the amounts and categories specified in the Project Budget, Exhibit B, for the Services; provided, however, that payments for each line item shall not exceed the amount specified, and ADMINISTRATOR may approve adjustments of the amount set forth within each line item, so long as the total of all amounts within all line items, as adjusted, shall not exceed COMMISSION's Maximum Payment Obligation. Notwithstanding the monthly or quarterly invoice payments and exclusive of the initial payment or the provisional payment, if any, an amount equal to ten percent (10%) of each monthly or quarterly invoice shall be withheld by COMMISSION through ADMINISTRATOR as the Retention Amount (defined in Subparagraph 15.8 below) pending the timely and successful completion of each Fiscal Audit as described above in Paragraph 14. The total of all invoice payments and provisional payments shall not exceed COMMISSION's Maximum Payment Obligation.

15.5 Indirect Cost Rate. CONTRACTOR shall apportion any indirect costs attributable to this Agreement determined by the Maximum Payment Obligation solely attributable and allocable to Services under this Agreement as the percentage of CONTRACTOR's total revenue received during the previous fiscal year. Notwithstanding anything to the contrary, CONTRACTOR's indirect cost rate shall in no event exceed ten percent (10%) of the applicable funding under this Agreement.

15.6 Facilities/Lease Costs. In the event that CONTRACTOR has an ownership interest in real property where Services are to be provided under this Agreement, CONTRACTOR shall only be entitled to the proportionate share of depreciation of the improvements at the rate of no more than four percent (4%) each year plus the proportionate share of real property taxes and maintenance.

15.7 Invoices. CONTRACTOR shall submit completed invoices monthly or quarterly upon a form approved or supplied by ADMINISTRATOR.

15.7.1 Each monthly or quarterly invoice shall be submitted with an express written certification by CONTRACTOR representing and affirming to COMMISSION the following:

(a) CONTRACTOR has and maintains accurate records evidencing the requested monthly or quarterly payment, including, without limitation, the following: (1) original invoice(s), (2) original or true copies of source documents including, *inter alia*, statement of work performed, itemized on a monthly basis, general ledgers, supporting journals, time sheets, invoices, canceled checks (if received), or bank statements, receipts, and receiving records, and (3) originals or true copies of other receipts, agreement(s), or other documentation supporting and evidencing how the funds have been expended during the applicable quarter; provided, however, for the first monthly or quarterly payment, ADMINISTRATOR, in his or her sole discretion, may consider and approve an

invoice from CONTRACTOR that includes reimbursement of CONTRACTOR expenses incurred prior to the Date of Agreement, as more fully set forth in the Project Budget, Exhibit B; and

(b) the Services provided during the preceding quarter (or other period for which payment is requested) have not and do not supplant existing services but in fact enhance or establish new services to Orange County's prenatal through age five children.

15.7.2 CONTRACTOR shall maintain, at CONTRACTOR's facility, source documentation for all invoices including, but not limited to, ledgers, journals, time sheets, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided.

15.7.3 COMMISSION shall exercise reasonable efforts to cause the monthly or quarterly payments to be released within a reasonable time period from submittal of a complete invoice and current compliance with reporting obligations of Paragraph 19, approximately thirty (30) days after receipt of the invoice.

15.8 Retention Amount. CONTRACTOR expressly acknowledges and agrees that an amount equal to ten percent (10%) of each quarterly invoice attributable and allocable to Services ("Retention Amount") may be withheld by COMMISSION through ADMINISTRATOR pending the timely and successful completion and performance of each Fiscal Audit for the Services as described in Paragraph 14. At ADMINISTRATOR's sole discretion, in place of an amount equal to ten percent (10%), CONTRACTOR's entire final monthly or quarterly invoice in each fiscal year may be withheld as the Retention Amount pending the timely and successful completion and performance of each Fiscal Audit for the Services as described in Paragraph 14.

15.9 Final Invoice/Settlement. With the exception of the Retention Amount payment, any and all final invoices for Services must be received by ADMINISTRATOR no later than sixty (60) days after the end of the term of this Agreement or sixty (60) days from the date of the earlier termination of this Agreement. Invoices for Services received after this date and time may not be processed for payment or reimbursed. CONTRACTOR and ADMINISTRATOR may mutually agree in writing to modify the date upon which the final invoice must be received.

15.10 Source of COMMISSION Funding. CONTRACTOR knowingly and expressly acknowledges and agrees that the sole source of funding provided and to be provided pursuant to this Agreement is and shall only be from monies allocated, received, and available to COMMISSION from the surcharges, taxes, and revenues collected and allocated to COMMISSION through the provisions of the Act, unless otherwise expressly stated in Exhibit A. To the extent, if at all, any or all provisions of the Act are found invalid, stayed, tolled, or are modified by litigation, subsequent initiative, or legislation, and the funding provided for under this Agreement is affected, then COMMISSION is and shall be relieved of obligations under this Agreement, or this Agreement shall be modified or amended to conform to the changes to the Act, as elected by COMMISSION. If COMMISSION is not allocated or does not receive adequate funding for its performance under this Agreement, then COMMISSION shall be relieved of obligations under this Agreement, or this Agreement shall be amended to conform to the changes in funding allocations or changes to the Act, as elected by COMMISSION.

15.11 Leveraging Funds. For program sustainability, CONTRACTOR shall make all reasonable efforts to secure State of California or federal funds including, but not limited to certain State of California programs known to both parties as County-based Medi-Cal Administrative Activities (CMAA) and Targeted Case Management (TCM) where COMMISSION funds may be

properly identified and used as a required eligible funding source to draw down such other funds. CONTRACTOR agrees that funds from this Agreement shall be used to perform CMAA and TCM claimable activities and that state and federal funds received, including funds received outside the term of this Agreement, as the direct result of its leveraging efforts shall be used for sustainability of and be reinvested in CONTRACTOR's COMMISSION funded programs. In order to receive CMAA or TCM funds, CONTRACTOR shall sign and maintain an agreement for the provision of CMAA or TCM Services with the County of Orange Health Care Agency and comply with all County contracting requirements. CONTRACTOR shall not use COMMISSION funds identified as a match for another funding source for the purposes of drawing down CMAA or TCM funds. This covenant shall survive the termination or expiration of this Agreement and shall be actionable at law or in equity by COMMISSION against CONTRACTOR and its successors in interest.

15.12 PROGRAM FEES

15.12.1 The parties agree that the following guidelines apply in the event fees of any amount are charged by CONTRACTOR to COMMISSION's target population of Orange County's children ages prenatal to five years and their families ("Program Participants") for any service(s) provided under this Agreement.

15.12.2 CONTRACTOR shall not charge fees to COMMISSION's Program Participants prior to obtaining ADMINISTRATOR's acknowledgement in writing.

15.12.3 CONTRACTOR shall advise each COMMISSION Program Participant that fees may be charged and shall notify the Program Participant of any such fees prior to rendering services.

15.12.4 CONTRACTOR shall advise each COMMISSION Program Participant that all fees will be waived if the Program Participant indicates an inability to pay and CONTRACTOR shall waive all fees if the Program Participant is unable to pay.

15.12.5 CONTRACTOR shall not deny services to any COMMISSION Program Participant for any reason, including Program Participant's inability to pay for services.

15.12.6 A full accounting of all fees charged and collected shall be documented by CONTRACTOR and shall be provided to ADMINISTRATOR upon request. At no time is CONTRACTOR permitted to collect fees for any purpose other than to continually provide services identified in this Agreement.

15.12.7 All fees collected shall be fully accounted for and included in CONTRACTOR's Fiscal Audit as described in Paragraph 14.1 of this Agreement.

16. OVERPAYMENTS. Any payment(s) made by COMMISSION to CONTRACTOR in excess of that to which CONTRACTOR is entitled under this Agreement shall be immediately due to COMMISSION and repaid by CONTRACTOR. CONTRACTOR shall make repayment on any overpayment within thirty (30) days of COMMISSION's request. CONTRACTOR agrees to pay all fees and costs, including attorneys' fees, incurred by COMMISSION necessary to enforce the provisions set forth in this Agreement.

16.1 Offset Permitted. In the event an overpayment has been made or exists, ADMINISTRATOR may reconcile and offset the amount of the overpayment against the next installment payment due or against the final invoice amount due and to be paid, as elected in the sole discretion of ADMINISTRATOR. In the event the overpayment exceeds the final payment, the amount is immediately due and payable, and CONTRACTOR shall pay COMMISSION the sum within five (5) days of written notice from ADMINISTRATOR. Nothing in this Agreement shall be construed as limiting the remedies of COMMISSION in the event that an overpayment has been made.

16.1.1 Offset Permitted under Subsequent Renewal or Other Pending Contract. COMMISSION's Strategic Plan is implemented through funding of various initiatives and certain contractors/funding recipients are and have been awarded multiple or renewed funding for services related and comparable to the Services provided under this Agreement. CONTRACTOR agrees that if this Agreement is either (i) a renewal contract related to prior funding to CONTRACTOR for services comparable to the Services, or (ii) CONTRACTOR has one or more other contracts pending with COMMISSION with a term or terms concurrent in whole or in part with this Agreement, then in the event an overpayment has been made or exists under this Agreement ADMINISTRATOR may reconcile and offset the amount of the overpayment against monies payable under the renewal contract or other contract pending with COMMISSION.

17. RECORDS.

17.1 Maintain Complete Books and Records. CONTRACTOR shall keep the books and records as shall be necessary relating to the Services so as to enable ADMINISTRATOR to evaluate the cost and the performance under this Agreement. Books and records pertaining to costs shall be kept and prepared in accordance with Generally Accepted Accounting Principles (GAAP). ADMINISTRATOR, COMMISSION, and their staff, general legal counsel, and other COMMISSION consultants, as approved by ADMINISTRATOR, shall have full and free access to all books and records of CONTRACTOR and any Subcontractor, arising out of this Agreement, at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from the records.

17.1.1 CONTRACTOR shall prepare and maintain accurate and complete financial records of its business operations and in particular all records related to the Services. Financial records shall be retained by CONTRACTOR for a minimum of three (3) years from the date of payment on the final invoice submitted by CONTRACTOR to ADMINISTRATOR under this Agreement or three (3) years after all pending audits are completed, whichever is *later*.

17.2 Separation of Accounts. All funds received by CONTRACTOR from COMMISSION pursuant to this Agreement shall be maintained in an account in a federally insured banking or savings and loan institution with record keeping of the accounts maintained pursuant to reasonable and prudent business practices. CONTRACTOR is not required to maintain separate depository accounts for funds; provided however, CONTRACTOR must be able to account for receipt, obligation, and expenditure of all COMMISSION funds.

17.3 Form of Records. CONTRACTOR may retain records in any reasonable and customary format as mutually determined in writing between CONTRACTOR and ADMINISTRATOR. The following forms of records are acceptable and pre-approved between the parties:

- (a) original hard copies;

(b) information may be saved/retained electronically in a readily retrievable basis through a Microsoft Word™ 2007 or comparable or compatible format in accordance and consistent with standard business practices, customs, and records retention procedures of businesses in Orange County, California;

(c) financial data and other spreadsheet information may be saved/retained electronically in a readily retrievable basis through a Microsoft Excel™ or comparable or compatible format in accordance and consistent with standard business practices, customs, and records retention procedures of businesses in Orange County, California; or

(d) other technology for maintaining and transmitting records as approved in advance by ADMINISTRATOR.

17.4 Release of Records. The records of Services, data, surveys, drawings, specifications, reports, records, documents, evaluation reports, and other materials prepared by CONTRACTOR in the performance of this Agreement shall not be released publicly without the prior written approval of ADMINISTRATOR or as required by law. CONTRACTOR shall not disclose any information regarding the activities of COMMISSION, except as required by law or as authorized by ADMINISTRATOR.

17.5 Ownership of Records. Specialized methodology, formulae, software programs of CONTRACTOR and other intellectual processes which have been specifically designed and developed by CONTRACTOR and which were not funded by or assisted in the development by COMMISSION or its agents which shall be deemed proprietary in nature and shall be and remain the proprietary property of CONTRACTOR. All other documents, information, software, and intellectual property and records, including, without limitation, the originals of all drawings, specifications, reports, records, data, surveys, documents, and other materials, whether in hard copy or electronic form, which are prepared by CONTRACTOR, its employees, Subcontractors, or agents in the performance of this Agreement, are and shall remain the property of COMMISSION and shall be delivered to ADMINISTRATOR, as appropriate, upon the termination of this Agreement or upon the earlier request of ADMINISTRATOR. CONTRACTOR shall have no right to further contracts, additional employment or employees, or additional compensation of whatever kind or nature as a result of the exercise by COMMISSION of its full rights of ownership of the documents and materials under this Agreement. CONTRACTOR may retain copies of the documents and materials for its own use but shall not enter into any contract or license for use or for payment of the documents. CONTRACTOR shall cause each Subcontractor to assign to COMMISSION any documents or materials prepared by it. In the event CONTRACTOR fails to secure the assignment, CONTRACTOR shall indemnify COMMISSION for all damages suffered by the failure to obtain the assignment. COMMISSION agrees that, if necessary, it will undertake reasonable and appropriate steps to maintain the proprietary nature of CONTRACTOR's proprietary property, except as may be required by applicable laws.

17.6 Inspection and Access to Records. ADMINISTRATOR and any authorized COMMISSION representatives, any authorized representatives of the State of California, and any authorized representatives of First 5 California shall have access to CONTRACTOR's records for the purpose of monitoring performance and provision of the Services pursuant to this Agreement. CONTRACTOR shall make available its records within the borders of Orange County within ten (10) days after receipt of written demand by ADMINISTRATOR. In the event CONTRACTOR does not make available its records within the borders of Orange County, CONTRACTOR agrees to pay all

necessary and reasonable direct and indirect expenses incurred by COMMISSION or COMMISSION's designee(s) necessary to obtain CONTRACTOR's records.

18. PATENT AND COPYRIGHT INFRINGEMENT.

18.1 In lieu of any other warranty by COMMISSION or CONTRACTOR against patent or copyright infringement, statutory or otherwise, it is agreed that CONTRACTOR shall defend at its expense any claim or suit against COMMISSION on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U. S. letters patent or copyright, and CONTRACTOR shall pay all costs and damages finally awarded in any such suit or claim, provided that CONTRACTOR is promptly notified in writing of the suit or claim and given authority, information, and assistance at CONTRACTOR's expense for the defense of same. CONTRACTOR will not indemnify COMMISSION if the suit or claim results from: (1) COMMISSION's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by CONTRACTOR when such use in combination infringes upon an existing U.S. letters patent or copyright.

18.2 CONTRACTOR shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONTRACTOR shall not be obligated to indemnify COMMISSION under any settlement made without CONTRACTOR's consent or in the event COMMISSION fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at CONTRACTOR's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONTRACTOR, at no expense to COMMISSION, shall obtain for COMMISSION the right to use and sell said item, or shall substitute an equivalent item acceptable to COMMISSION and extend this patent and copyright indemnity thereto.

19. CONTRACTOR OBLIGATION TO PROVIDE DATA FOR COMMISSION'S EVALUATION AND CONTRACTS MANAGEMENT SYSTEM.

19.1 Evaluation and Contracts Management System. Services under this Agreement include tracking service data related to client outcomes about Orange County children from prenatal through age five in furtherance of the goals and objectives of COMMISSION's Strategic Plan adopted pursuant to the Act. CONTRACTOR acknowledges and agrees that as a part of the integrated data structure of the evaluation and contract management system in its performance under this Agreement, there may be individual client-shared core data elements. It is the responsibility of each funding recipient, including CONTRACTOR, to participate in the evaluation and contract management system using the COMMISSION Confidentiality and Data Sharing Protocol. CONTRACTOR agrees it shall cooperate with COMMISSION, ADMINISTRATOR, and COMMISSION's designated contractor/consultant for its evaluation and contract management system and other information technology contractors; it shall provide data to COMMISSION's designated contractor/consultant for its evaluation and contract management system; and it shall utilize the evaluation and contract management system, or other data system, as elected by COMMISSION and its ADMINISTRATOR in their sole discretion, for reporting data related to or created by the Services provided under this Agreement in order for COMMISSION to track, analyze, and evaluate all services provided by CONTRACTOR and each and all of COMMISSION's funding recipients. The level of participation with the evaluation and contract management system required by CONTRACTOR shall be determined by ADMINISTRATOR.

19.1.1 CONTRACTOR acknowledges and agrees that as a part of the integrated data structure of the evaluation and contract management system in its performance under this Agreement, there shall be project-level reporting to COMMISSION with respect to CONTRACTOR's work plan through the evaluation and contract management system's Administrative Management Module ("AMM"), and, in some instances, through the evaluation and contract management system's Client Level Data Module ("CLDM"), as set forth in the Work Plan, Exhibit A-1. CONTRACTOR agrees to participate in AMM, and, if applicable to the Services to CLDM, and to cooperate with COMMISSION, ADMINISTRATOR, and COMMISSION's designated contractor/consultant for its evaluation and contract management system and other information technology contractors. CONTRACTOR shall provide data to COMMISSION's designated contractor/consultant for its evaluation and contract management system, utilize the AMM, and, if applicable, provide data of Services to CLDM, for reporting data related to or created by the Services provided under this Agreement in order for COMMISSION to track, analyze, and evaluate all Services provided by CONTRACTOR and each and all of COMMISSION's funding recipients.

19.2 Confidentiality. Nothing in the above provisions relating to collection and reporting to the evaluation and contracts management system shall require CONTRACTOR to release or disclose confidential health data or other patient identification which is expressly protected from disclosure by applicable federal and state laws; provided however, any applicable exception set forth in applicable federal or state laws which permits disclosure by CONTRACTOR to COMMISSION of health or other data shall require disclosure by CONTRACTOR to COMMISSION and ADMINISTRATOR in order to input to the evaluation and contracts management system.

20. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS. To the extent any intellectual property, tangible or intangible, is developed, created, or modified with the monies provided by COMMISSION under this Agreement, or is otherwise separately funded by COMMISSION under other projects, programs, contracts, or agreements and utilized by CONTRACTOR under this Agreement, COMMISSION does and shall own all right, title and interest (including patent rights, copyrights, trade secret rights, and other intellectual property rights throughout the world) relating to any and all the inventions (whether or not patentable), works of authorship, designs, know-how, ideas, and information made or conceived or reduced to practice, in whole or in part, by CONTRACTOR pursuant to the scope of Services provided by CONTRACTOR to COMMISSION under this Agreement (collectively the "Inventions"). CONTRACTOR agrees it shall promptly disclose all Inventions to COMMISSION. CONTRACTOR agrees to make all assignments and execute the legal documents necessary to accomplish the ownership and control for the benefit of COMMISSION. CONTRACTOR shall further assist COMMISSION, at COMMISSION's expense, to further evidence, record, and perfect the assignments and documentation, and to perfect, obtain, maintain, enforce, and defend any rights relating to the Inventions. CONTRACTOR irrevocably designates and appoints COMMISSION as its agent to lawfully perfect ownership and control of the Inventions (and if legally required for force and effect in order to perfect the ownership and control of the Inventions as its attorney-in-fact). As agent, COMMISSION may act for and on CONTRACTOR's behalf to execute and file any document and to do all other lawfully permitted and required acts to effect the ownership and control of the Inventions. If CONTRACTOR uses, provides, or discloses any of the Inventions when acting within the scope of CONTRACTOR's performance of Services or otherwise on behalf of COMMISSION, COMMISSION will have and CONTRACTOR grants COMMISSION a perpetual, irrevocable, worldwide royalty-free, non-exclusive, sublicensable right and license to exercise all rights to the Inventions.

21. COPYRIGHT ACCESS. COMMISSION, the County of Orange, and First 5 California, shall have a royalty-free, nonexclusive, and irrevocable license to publish, translate, or use of all material and work product (both tangible and intangible), if any, developed under this Agreement including those materials covered by copyright.

22. NOTICES.

22.1 Method and Form of Notice. Unless otherwise specified, all formal notices, invoices, claims, correspondence, or reports shall be addressed as follows:

COMMISSION: Children and Families Commission of Orange County
Contracts Manager
1505 E. 17th Street, Suite 230
Santa Ana, CA 92705

CONTRACTOR: See Exhibit A

All notices shall be deemed effective when in writing and personally delivered or deposited in the United States mail, express, priority, or first class, postage prepaid and addressed as above. ADMINISTRATOR and CONTRACTOR may mutually agree in writing to change the addresses to which notices are sent.

22.2 Advisory Notices Required. Notwithstanding the provisions of this Agreement relating to Claims, CONTRACTOR shall notify COMMISSION, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature which may expose COMMISSION to liability. These occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COMMISSION property in possession of CONTRACTOR.

23. RIGHTS OF TERMINATION.

23.1 Termination for Convenience Prior to Expiration of Term.

23.1.1 COMMISSION may terminate this Agreement for its convenience at any time upon fifteen (15) days' written notice to CONTRACTOR. Upon receipt of a notice of termination for convenience, CONTRACTOR shall immediately cease performance under this Agreement, including all Services, except the Services that may be specifically approved by ADMINISTRATOR. CONTRACTOR shall be entitled to compensation for that part of the Services rendered prior to receipt of the notice of termination and for the part of the Services authorized by ADMINISTRATOR after the notice in accordance with the Project Budget, Exhibit B, or other arrangement for compensation as may be approved by the ADMINISTRATOR in writing.

23.2 Termination for Cause Due to Default of CONTRACTOR. COMMISSION reserves the express right to terminate this Agreement for cause due to the default, as defined in Paragraph 24, by CONTRACTOR in its performance obligations under this Agreement. In the event of termination, CONTRACTOR shall immediately cease performance and provision of Services as of the date the notice of default is received or deemed received, whichever occurs earlier. COMMISSION may take over the work and prosecute the same to completion by contract or otherwise. CONTRACTOR shall be liable to the extent that the total cost for completion of the Services required by this Agreement exceeds the compensation stipulated in this Agreement, provided that

COMMISSION shall use reasonable efforts to mitigate damages. COMMISSION expressly reserves the right to withhold any outstanding payments to CONTRACTOR for the purpose of set off or partial payment of the amounts owed COMMISSION as previously set forth in this Agreement.

24. DEFAULT.

24.1 Default by CONTRACTOR. Failure by CONTRACTOR to perform or comply with any provision, covenant, or condition of this Agreement shall be a default of this Agreement. In addition to immediate termination as set forth above in Paragraph 23.2 and any other remedies available at law, in equity, or otherwise specified in this Agreement, ADMINISTRATOR, in his or her sole discretion, may elect any or all of the following:

24.1.1 Afford CONTRACTOR a time period of fifteen (15) days from the date notice is mailed to cure the default, or to commence to cure the breach and diligently pursue to completion the cure of the breach within thirty (30) days of date notice is mailed;

24.1.2 Discontinue payment and eligibility for payment to CONTRACTOR for and during the period in which CONTRACTOR is in breach, which payment may not be entitled to later recovery;

24.1.3 Offset against any funds invoiced by CONTRACTOR but yet unpaid by COMMISSION those monies disallowed pursuant to the above offset authority; and

24.1.4 Withhold from any monies payable to CONTRACTOR sufficient funds to compensate COMMISSION for any losses, costs, liabilities, or damages it reasonably believes were suffered by or have been incurred by COMMISSION due to the default of CONTRACTOR in the performance of the Services required by this Agreement.

25. REVERSION OF ASSETS.

25.1 Unencumbered or Unexpended Funds. Upon the termination or expiration of the term of this Agreement, CONTRACTOR shall transfer to COMMISSION any unexpended and unencumbered COMMISSION funds on hand at the time of the termination or expiration and any accounts receivable attributable to the use of subject funds.

25.2 Real or Personal Property Assets. Any real property or moveable or immovable personal property under CONTRACTOR's control or ownership that was acquired or improved in whole or in part with COMMISSION funds disbursed under this Agreement, the original cost of the property exceeded five thousand dollars (\$5,000) shall either be, at the election of ADMINISTRATOR: (1) used by CONTRACTOR for the Services or comparable services meeting the purposes of the Act and Strategic Plan for a period of five (5) years after termination or expiration of this Agreement, unless a longer period is specified in the Project Summary, Exhibit A; or (2) disposed of and proceeds paid to COMMISSION in a manner that results in COMMISSION being reimbursed in the amount of the fair market value at the time of termination or expiration of this Agreement (assuming depreciation in accordance with customary business practices) of the real or personal property less any portion of the value attributable to CONTRACTOR's out of pocket expenditures using non-COMMISSION funds for acquisition of, or improvements to, the real or personal property and less any direct and reasonable costs of disposition, including a reasonable and customary broker's fee incurred in listing and completion of sale of the asset.

25.2.1 In furtherance of the above provisions, if ADMINISTRATOR selects continued use of the capital asset, then CONTRACTOR agrees that it shall be subject to an ongoing operating and use covenant relating to the subject real or personal property. This covenant shall survive the termination or expiration of this Agreement and shall be actionable at law or in equity by COMMISSION against CONTRACTOR and its successors in interest.

25.2.2 In the event ADMINISTRATOR selects disposition of the subject real or personal property, then CONTRACTOR shall exercise due diligence to dispose of the property in conformity with applicable laws and regulations and in accordance with customary business practices. The net proceeds of the disposition shall be disbursed directly to and be payable to COMMISSION upon the close of the applicable disposition transaction, such as close of escrow for the sale of real property, transfer of motor vehicle “pink slip” in accordance with applicable California Vehicle Code requirements, or completion of sale of personal property by bill of sale in accordance with UCC requirements.

26. COUNTERPARTS. This Agreement may be executed in several counterparts, all of which shall constitute but one and the same instrument. Faxed or electronically scanned signatures shall have the same force and effect as an original signature.

27. FORCE MAJEURE

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party, and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, COMMISSION and CONTRACTOR have caused this Agreement to be effective in the County of Orange, State of California, on the date first above written.

COMMISSION

CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY, a public body and legal public entity

Dated: _____ By: _____
Chair

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIR OF COMMISSION

By: _____
Susan Novak
Clerk of the Commission

Dated: _____

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: _____
James M. Donich, Commission Counsel

[Signature block for CONTRACTOR on next page.]

[Signature block continued from previous page.]

CONTRACTOR

_____, a
California Public Entity

Dated: _____

By: _____
[Name], [Board Title]

Following signatures as appropriate

ATTEST

Clerk/Secretary of CONTRACTOR

APPROVED AS TO FORM

Counsel to CONTRACTOR

EXHIBIT A

PROJECT SUMMARY

CONTRACTOR

Agreement # _____ FXX-XX-XX

Project Name _____

Term: _____

1. FUNDING RECIPIENT

_____ Contractor
a California _____
Address _____, CA _____

Contact: Name/Title/Telephone Number/email address
Name/Title/Telephone Number/email address

Work Plan and Data Entry Contact: Name/Title/Telephone Number/email address

Invoices/Documentation Contact: Name/Title/Telephone Number/email address

Designated Level of Data Reporting: **AMM and CLDM**

Signatories: Name/Board Title
Name/Board Title

2. BACKGROUND

As appropriate

3. PURPOSE AND SCOPE OF WORK

The purpose of this Agreement is to provide _____

CONTRACTOR shall provide Services described in Exhibit A to achieve the outcomes described in the Work Plan, Exhibit A-1, within the funding limitations of the Project Budget, Exhibit B, and the staffing described in Attachment 1 to Exhibit B. CONTRACTOR shall:

3.1

3.2

4. ATTACHMENTS TO EXHIBIT B (As applicable)

- Staffing
- Direct Project Expenses
- Subcontractors List
- Location of Services to be Provided
- Indirect/Administrative Expenses

5. WAIVERS/AMENDMENTS TO AGREEMENT

None. [as applicable, list approved waiver(s)]

6. INVOICING/PAYMENT ELECTIONS

As of the Date of Agreement, the Parties mutually agree to the following invoicing/payment elections. Notwithstanding anything to the contrary and provided that any modifications to these elections do not alter the overall goals and basic purpose of the Agreement, and provided these modifications do not increase COMMISSION's Maximum Payment Obligation during the term of the Agreement, ADMINISTRATOR and CONTRACTOR may, in accordance with the authority described in Section 2.2 of this Agreement; make future modifications to the following invoicing/payment elections.

6.1 Initial Payment. The Parties do **[do not]** anticipate an Initial Payment request as described in Paragraph 15.2 of this Agreement.

6.2 Billing/Payment Interval. The Parties agree that the interval for Billing and/or Payment for this Agreement as described in Paragraph 15.4 is **quarterly [monthly]**.

6.3 Retention Timing. The Parties agree **an amount equal to ten percent (10%) of each quarterly [monthly] invoice attributable and allocable to Services [CONTRACTOR's entire final quarterly [monthly] invoice attributable and allocable to Services]** ("Retention Amount") as described in Paragraph 15.7 shall be withheld by COMMISSION through ADMINISTRATOR pending the timely and successful completion and performance of each Fiscal Audit for the Services as described in Paragraph 14 of this Agreement.

7. Funding Source and Additional Requirements (As applicable)

7.1 The parties acknowledge that funding for this Agreement includes (federal funding, or California Child Signature Program grant funds).

7.2 The records retention period for this Agreement shall be five (5) years from the date of final disbursement of funds under this Agreement or the completion of any pending.

8. CMAA and TCM (As applicable)

EXHIBIT A-1

WORK PLAN

(See attached)

EXHIBIT B
PROJECT BUDGET

Public Entity Name	Funds Due _____	Funds Due _____
Staffing		
Direct Project Expenses		
Capital Equipment		
Indirect/Administrative		
Subcontracts		
TOTAL FUNDS DUE		

MAXIMUM PAYMENT OBLIGATION: \$_____

Attachment 1 to Exhibit B

STAFFING TABLE

FTE **FTE**
FY____ **FY**____

Position Title:

Minimum Qualifications:(Include education, licenses, and experience as applicable)

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Position Title:

Minimum Qualifications:(Include education, licenses, and experience as applicable) \$

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Position Title:

Minimum Qualifications:(Include education, licenses, and experience as applicable) \$

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Position Title:

Minimum Qualifications:(Include education, licenses, and experience as applicable) \$

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Position Title:

\$

Attachment 1 to Exhibit B

Attachment 1 to Exhibit B

Minimum Qualifications:(Include education, licenses, and experience as applicable)

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Position Title:

\$

Minimum Qualifications:(Include education, licenses, and experience as applicable)

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Position Title:

\$

Minimum Qualifications:(Include education, licenses, and experience as applicable)

Job Duties: Provide services as described in subparagraphs _____, _____, _____ and _____ of Exhibit A to this Agreement.

Summary Table of Staffing Costs

FTE	FTE
FY_____	FY_____
\$	\$

Attachment 2 to Exhibit B

DIRECT PROJECT EXPENSES TABLE

Expense Type	FY	FY	1-2 sentence narrative description of expenses.
Category			Annual cost for
Category			Annual cost for
Category			Annual cost for
Category			Annual cost for
Category			Annual cost for
Category			Annual cost for
Category			Annual cost for

Total Direct Project Expenses		
--------------------------------------	--	--

Attachment 3 to Exhibit B

SUBCONTRACTOR TABLE

Contact Name and Phone Number	FY	FY	1-2 sentence description of services sub-contracted. This table is for services outsourced to a third Party.

Total	FY	FY

Attachment 4 to Exhibit B

LOCATION TABLE

Location (Name)	Address (Street, City, Zip Code)	Contact Name, Phone Number	Services Provided at Location

Attachment 5 to Exhibit B

INDIRECT PROJECT EXPENSES TABLE

Definition: General management costs consist of administrative activities necessary for the general operation of the agency. Costs incurred for a common or joint objective: Services of the accounting staff, cost of utilities, local telephone service and communication infrastructure and salaries of personnel engaged in providing a broad range of departmental support activities.

****Indirect costs are to be prorated and specifically based on this Agreement only****

Example: Expense Type	FY	FY	1-2 sentence narrative description of expenses.
Human resources, legal counsel			Annual cost
Office space			Annual cost
Utility costs: heating, lighting			Annual cost
Insurance			Annual cost
Telecommunications and Infrastructure			Annual cost
Building maintenance, custodial services			Annual cost
Security services			Annual cost
Total Indirect Project Expenses	\$	\$	

EXHIBIT C

ACKNOWLEDGMENT OF INDEPENDENT CONTRACTOR STATUS

This **Acknowledgment of Independent Contractor Status** (“Acknowledgment”) is an exhibit and fully incorporated into that certain Agreement for provision of Services (“Agreement”) dated _____, 20__ by and between **Children and Families Commission of Orange County** (“COMMISSION”) and _____, a _____ (“CONTRACTOR”). This Acknowledgment is intended to define and affirm the relationship between COMMISSION and CONTRACTOR as set forth in the Agreement. CONTRACTOR has been fully informed, has had the opportunity to be advised or has been advised by counsel of its choosing, and knowingly and willingly acknowledges and agrees as follows:

1. CONTRACTOR on behalf of itself and each and every person acting by, through, or for CONTRACTOR (together, “CONTRACTOR”), is not an employee of COMMISSION.
2. CONTRACTOR is an independent contractor to COMMISSION.
3. Because CONTRACTOR is not an employee of COMMISSION, CONTRACTOR is not entitled to receive health benefits or any other benefits provided by COMMISSION to its regular employees.
4. CONTRACTOR is not eligible to join in or participate in any benefit plans offered to those individuals listed on COMMISSION’s payroll as regular employees.
5. CONTRACTOR is and shall remain ineligible for employment benefits provided to COMMISSION’s regular employees, or for participation in such benefit plans, even if it is later determined that COMMISSION has misclassified CONTRACTOR as an independent contractor for tax or other purposes.
6. CONTRACTOR hereby waives any right it may have to claim it is an employee or challenge its status as an independent contractor of COMMISSION.
7. CONTRACTOR releases COMMISSION and its Commissioners, officers, board members, employees and agents (together, “COMMISSION”) from any and all obligations, liabilities, causes of action, and/or claims that exist or may arise under applicable laws that relate to CONTRACTOR’s acknowledgement, release, and agreement of its status as an independent contractor (not an employee) of COMMISSION.
8. In making this Acknowledgment and the release and waiver for this Agreement, CONTRACTOR acknowledges it has been advised concerning the content and meaning or and understands and is familiar with the provisions of California Civil Code Paragraph 1542, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

CONTRACTOR represents and warrants it understands the purpose, meaning, and effect of Paragraph 1542 above, but nevertheless freely and knowingly waives and relinquishes any right or benefit that it has or may have under Paragraph 1542 of the Civil Code of the State of California, or any similar provision of law as such relates to the status of CONTRACTOR as an independent contractor, not an employee, of COMMISSION.

CONTRACTOR

_____, a _____

By:

Signature

Date: