

AGREEMENT
Kern County Children and Families Commission
and
INSERT ORGANIZATION NAME

THIS AGREEMENT is made and entered into this **INSERT DATE**, by and between the Kern County Children and Families Commission, a legal public entity established in accordance with the California Children and Families Act of 1998 (hereinafter “Commission”), and **INSERT ORGANIZATION NAME**, (hereinafter “Contractor”), whose principal place of business is **INSERT TOWN/CITY NAME**, California. (Whenever Commission and Contractor perform duties or obligations jointly, Commission and Contractor will be referred to as “Parties”.)

WITNESSETH:

WHEREAS

- a. The voters of the State of California have enacted the California Children and Families Act of 1998 (hereinafter “The Act”), codified in Health and Safety Code Section 130100 et seq., also known as Proposition 10; and
 - b. The Board of Supervisors of Kern County has established, pursuant to The Act and Kern County Ordinance Code 2.100, the Kern County Children and Families Commission; and
 - c. Commission desires to create and implement a comprehensive, collaborative, and integrated system for the purposes of promoting, supporting, and improving the early development of children from the prenatal stage to five years of age; and
 - d. Commission is authorized to enter into agreements for professional services pursuant to The Act and the Kern County Ordinance Code; and
- a. Contractor is able, qualified and willing to perform services for Commission.

NOW THEREFORE, in consideration of the promises herein stated and intending to be legally bound hereby, the Parties hereto mutually agree as follows:

1. TERM

This Agreement shall be deemed in force as of the date first above written and shall remain in effect until **INSERT DATE**, unless sooner terminated as hereinafter provided.

2. RESPONSIBILITIES OF CONTRACTOR

Contractor shall provide, to the satisfaction of the Commission, the services described in **Attachments INSERT #, Unified Scope of Work – Evaluation Plan**. Contractor agrees to comply with all requirements of the Commission, including policies and procedures now in effect, or yet to be established, for monitoring, reporting, and evaluating

Contractor's performance and for payment of Contractor's actual cost of providing the services herein described. The Commission shall apply policies and procedures developed after the date of this Agreement prospectively from the date of their adoption.

Contractor agrees to provide any information that is reasonably related to the performance of this Agreement required at the time of the execution of this Agreement or at any time during the term of this Agreement.

Contractor agrees to comply with the requirements of and to implement the actions and activities described in **Attachment INSERT #, Project Sustainability Plan.**

3. RESPONSIBILITIES OF COMMISSION.

Commission shall have and exercise responsibility for establishing and providing policies and procedures for monitoring, reporting, and evaluating Contractor's performance and for payment of Contractor's compensation.

4. COMPENSATION

Compensation to Contractor shall be based upon actual costs as described in **Attachments INSERT #, Project Budget.** Commission will reimburse Contractor for all necessary and reasonable expenses incurred in accordance with the Project Budget for providing the services on behalf of Commission in an aggregate amount not to exceed **INSERT AMOUNT** in accordance with **Attachments INSERT #** which is attached hereto and made a part hereof. No reimbursement will be made for any expense that is determined by the Commission in its sole discretion to be a supplanting of state or local General Fund money.

5. REIMBURSEMENT POLICY AND BILLING REQUIREMENTS

Contractor shall submit all Requests for Payment quarterly in a form approved by Commission, and said form shall contain an itemization of all costs and fees broken down quarterly. Contractor shall send each Request for Payment to Commission for review and processing. Commission will make payment to Contractor within forty-five (45) days of receipt and approval of each Request for Payment. At Commission's option, Commission may make an initial payment at the beginning of each fiscal year for expenses. Such payment shall not exceed twenty percent (20%) of the annual budget as identified in **Attachments INSERT #, Project Budget** In the event that such initial payment is made, subsequent reimbursements will be subject to any and all procedures and limitations as determined by Commission in its sole discretion.

If, during the term of this Agreement, Contractor obtains funding or other income from a source other than the Commission and such funding or other income is in excess of that shown as part of the Project Budget and such funding or other income relates directly to the program or activity funded pursuant to this Agreement, then Contractor shall so notify the Commission

in writing at the next quarterly request for payment. Commission may, at its sole discretion reduce the amount of funding by the amount of unanticipated revenue received by Contractor.

6. REPRESENTATIONS

Contractor makes the following representations, which are agreed to be material to and form a part of the inducement for this Agreement:

- a. Contractor has the expertise, support staff and facilities necessary to provide the services described in this Agreement; and,
- b. Contractor does not have any actual or potential interests adverse to Commission, nor does Contractor represent a person or firm with an interest adverse to Commission with reference to the subject of this Agreement; and
- c. Contractor shall diligently provide all required services in a timely and professional manner in accordance with the terms and conditions stated in this Agreement.

7. SUPPLEMENTING EXISTING SERVICE LEVELS AND SUPPLANTING OTHER FUNDING

The Parties to this Agreement have read and understand the provisions of Section 30131.4 of the Revenue and Taxation Code relating to the use of the funds collected pursuant to the California Children and Families Act of 1998. Contractor agrees that all funds shall be expended only for the purposes expressed in the California Children and Families Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service. Contractor further agrees and guarantees that no funds provided by Commission shall be used to supplant state or local General Fund money for any purpose. Any material act of omission or commission causing failure to fully comply with these requirements shall be cause for immediate termination of the Agreement.

8. EVALUATION

- a. Services to be provided by Contractor shall be evaluated by Commission on a continuing basis. The evaluation of the services will be based upon the Results Based Accountability framework described in the Commission's Strategic Plan, which is incorporated by this reference as if set forth in full. Contractor understands and agrees to cooperate fully in the continuing development of the evaluation program and methodology. The continued funding of the services to be provided is expressly understood and agreed to be dependent upon the success of the program. Contractor and Commission will use the methodology stated in **Attachment INSERT #, Unified Scope of Work - Evaluation Plan**, to make judgments regarding success. Contractor understands and agrees that any determination regarding the success of the program for purposes of the continuation of funding of the program is solely the responsibility and prerogative of the Commission.

- b. Commission shall notify Contractor of deficiencies in writing. Said written notification shall provide a detailed description of the deficiency and a procedure to respond or contest the deficiency. Contractor shall have ten (10) working days from receipt of the deficiency statement to respond in writing to the Commission. Commission or Commission's designee shall have sole discretion in determining whether Contractor's response sufficiently explains any deficiency. Commission may accept Contractor's explanation in full, in part, and/or direct Contractor to take corrective action. Commission shall notify Contractor in writing of Commission's final decision. Responses by Contractor shall be in accordance with Section 16, Notices. Nothing in this section shall limit or preclude Commission's right to terminate the contract as provided for in Section 9, Termination. Nothing in this Agreement prevents Contractor from seeking judicial review of such a final administrative decision.

9. TERMINATION

Commission may at its election, at any time and without cause ("Termination without Cause"), terminate this Agreement by written notice to Contractor. Said termination shall be deemed effective ten (10) days after personal delivery, or fifteen (15) days after mailing by regular U.S. mail, postage prepaid. Should the Commission terminate this Agreement without cause as provided in the foregoing sentence, Commission shall pay Contractor for all satisfactory services rendered by Contractor prior to the effective date of termination in an amount not to exceed the maximum dollar amount indicated in Section 4 herein. Furthermore, either Party may immediately terminate this Agreement should the other Party fail to substantially perform in accordance with the terms and conditions of this Agreement through no fault of the Party initiating the termination. In the event of Termination with Cause, where the Commission has failed to substantially perform, the Commission shall be liable to the Contractor for all satisfactory services rendered by Contractor. Contractor shall not be entitled to any other damages of whatever kind or nature, general, consequential, or punitive. In the event of Termination with Cause where Contractor failed to substantially perform, the Commission shall, in addition to terminating the Contract, have the right to pursue all remedies in law or equity.

10. NON-APPROPRIATION

In addition to termination with cause under Section 9, Commission reserves the right to terminate this Agreement in the event insufficient funds are appropriated or budgeted to the Commission from its funding source under the Act (or any other source of funding for the Commission) for this Agreement in any fiscal year. Notwithstanding any other notice provision in this Agreement, Commission shall give Contractor thirty (30) days written notice of the termination. Said termination shall be deemed given ten (10) days after personal delivery, or fifteen (15) days after mailing by regular U.S. mail, postage prepaid. Upon such termination, Commission will be released from any further financial obligation to Contractor, except for services performed prior to the date of termination or any liability due to any default existing at the time this clause is exercised. Should Commission terminate this Agreement as provided herein, Commission shall pay Contractor for all satisfactory services

rendered by Contractor prior to the effective date of termination in an amount not to exceed the maximum dollar amount indicated in Section 4 herein. Contractor shall not be entitled to any other compensation or damages of any kind or nature.

11. ASSIGNMENT

Contractor shall not assign or transfer this Agreement or its obligations hereunder, or any part thereof. Contractor shall not assign any monies due or which become due to Contractor under this Agreement without the prior written approval of Commission.

12. NEGATION OF PARTNERSHIP

In the performance of the services under this Agreement, Contractor shall be, and acknowledges that Contractor is in fact and law, an independent contractor and not an agent or employee of Commission. Contractor has and retains the right to exercise full supervision and control over the manner and methods of providing services to Commission under this Agreement. Contractor retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Contractor in the provision of services under this Agreement. With respect to Contractor's employees, if any, Contractor shall be solely responsible for payment of wages, benefits and other compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether federal, State or local, and compliance with any and all other laws regulating employment.

13. INDEMNIFICATION

Contractor agrees to indemnify, defend and hold harmless Commission and Commission's agents, Commission members, elected and appointed officials and officers, employees, volunteers and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorneys' fees of Commission Counsel and counsel retained by Commission, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of Contractor or Contractor's officers, agents, employees, independent contractors, subcontractors of any tier, or authorized representatives except to the extent caused by the active sole negligence of the Commission, its agents, Commission members, officers, employees, volunteers or authorized representatives. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons; damage to any property, regardless of where located, including the property of Commission; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of Contractor by any person or entity.

14. INSURANCE

Contractor, in order to protect Commission and its members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Contractor's actions in connection with the performance of Contractor's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Contractor shall not perform any work under this Agreement until Contractor has obtained all insurance required under this section and the required certificates of insurance and completed endorsements have been filed with and approved by Commission. Contractor shall pay any deductibles and self-insured retentions under all required insurance policies.

- a. Workers' Compensation Insurance Requirement. Contractor shall submit written proof that Contractor is insured against liability for workers' compensation in accordance with the provisions of Section 3700 of the Labor Code. In signing this Agreement, Contractor makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

Contractor shall require any subcontractors to provide workers' compensation for all of the subcontractors' employees, unless the subcontractors' employees are covered by the insurance afforded by Contractor. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code Section 3700, Contractor shall provide and/or require each subcontractor to provide adequate insurance for the coverage of employees not otherwise covered.

- b. Liability Insurance Requirements.

- 1) Contractor shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:
 - a) Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work under this Agreement. Said insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability equal to the policy limits, but not less than Five Hundred Thousand Dollars (\$500,000) each occurrence and One Million Dollars (\$1,000,000) aggregate.

- b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired and non-owned vehicles used in the performance of services pursuant to this Agreement with minimum limits for Bodily Injury and Property Damage liability equal to the policy limits, but not less than Five Hundred Thousand Dollars (\$500,000) each occurrence and One Million Dollars (\$1,000,000) aggregate. Such insurance shall be provided by a business or commercial vehicle policy.
 - c) Professional Liability Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with limits equal to the policy limits, but not less than Five Hundred Thousand Dollars (\$500,000) per claimant and One Million Dollars (\$1,000,000) aggregate.
- 2) The Commercial General Liability Insurance required in this subparagraph b. shall include an endorsement naming the Commission and Commission members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto.
 - 3) If any of the insurance coverage required under this Agreement is written on a claims-made basis, the insurance policy shall provide an extended reporting period of not less than four (4) years following the termination of this Agreement or completion of Contractor's work specified in this Agreement, whichever is later.
 - 4) Prior to Contractor commencing any of its obligations under this Agreement, evidence of insurance in compliance with the requirements above shall be furnished to Commission by Certificate of Insurance and a copy of the completed endorsement. Receipt of evidence of insurance that does not comply with above requirements shall not constitute a waiver of the insurance requirements set forth above.
- c. Cancellation of Insurance. The above-stated insurance coverage required to be maintained by Contractor shall be maintained until the completion of all of Contractor's obligations under this Agreement, and shall not be reduced, modified, or canceled without thirty (30) days prior written notice to Commission. Contractor shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.
 - d. Company Rating. All insurance shall be issued by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-, VII" rating, or in special circumstances, be pre-approved by Commission.
 - e. Self-Insurance. If Contractor is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Contractor shall provide coverage equivalent to the insurance coverage and endorsements required above.

Commission will not accept such coverage unless Commission determines, in its sole discretion and by written acceptance that the coverage proposed to be provided is equivalent to the above-required coverage.

- f. Primary Insurance. All insurance afforded by Contractor pursuant to this Agreement shall be primary to and not contributing to any other insurance maintained by Commission.
- g. Relief from Liability. Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Contractor for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude Commission from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.
- h. Failure to Maintain Insurance. Failure by Contractor to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Contractor. Commission, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, Commission may purchase such required insurance coverage, and without further notice to Contractor, Commission shall deduct from sums due to Contractor any premiums and associated costs advanced or paid by Commission for such insurance. If the balance of monies obligated to Contractor pursuant to this Agreement is insufficient to reimburse Commission for the premiums and any associated costs, Contractor agrees to reimburse Commission for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by Commission to take this alternative action shall not relieve Contractor of its obligation to obtain and maintain the insurance coverage required by this Agreement.

15. RESTRICTIONS ON USE OF PROPERTY

Commission may reimburse Contractor pursuant to this Agreement for the purchase of real property and/or improvements and/or personal property (hereinafter "Property" in respect to Section 15 of this Agreement only). During the Change in Use Restriction Period, Contractor shall be responsible for the continued use of such property for the purpose described herein. In the event that Contractor cannot or fails to utilize the Property for the purpose described herein throughout the Change in Use Restriction Period, Contractor shall immediately notify the Commission regarding the Contractor's proposed new use of the Property. Commission, at its option, may require that Contractor comply with one of the following:

- a. Convert the Property to another use which is eligible for Proposition 10 funding and which is approved by Commission; or

- b. Reimburse Commission in an amount equal to the Grant funds expended for this project or its "proportionate share" of the current "Fair Market Value" (as defined by the California Code of Civil Procedure, Part 3, Title 7, Chapter 9, Article 64, Section 1263.320) of all property for which Proposition 10 assistance was provided pursuant to this Agreement, whichever is more. "Proportionate share" is that amount equivalent to the Commission's percentage contribution toward the total acquisition, design, construction or other cost(s) of the property, as described in Attachment "A" of this Agreement, or
- c. Offer the Property for which Proposition 10 funds were expended pursuant to this Agreement for sale at "Fair Market Value" and, subsequent to sale, reimburse Commission for its "proportionate share" of the sales price.

Contractor and Commission shall first use good faith efforts in an attempt to agree on the "Fair Market Value." If, however, Contractor and Commission are unable to agree, then Commission's decision shall be final and binding.

The "Change in Use Restriction Period" means that period which starts upon the execution of this agreement or the filing of the Notice of Completion, in the case of construction work, and ends five (5) years after Commission ceases to consider the Contractor to be part of the Commission's entitlement jurisdiction.

Contractor may cease to be part of Commission's entitlement jurisdiction by:

- d. Expiration of, or Contractor's failure to renew, this Agreement; or
- e. Commission's order to terminate this Agreement; or
- f. Commission ceasing to be eligible for Proposition 10 funds.

16. NOTICES

Notices to be given by one Party to the other shall be given in writing by personal delivery, by certified mail, return receipt requested, or express delivery service at the addresses specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A Party may change the address to which notice is to be given by giving notice as provided above.

Notice to Commission shall be addressed as follows:

Larry J. Rhoades, Interim Executive Director
Kern County Children and Families Commission
2724 L Street
Bakersfield, CA 93301

Notice to Contractor shall be addressed as follows:

INSERT NAME, TITLE
ORGANIZATION NAME
MAILING ADDRESS

Nothing in this Agreement shall be construed to prevent or render ineffective delivery of notices required or permitted under this Agreement by personal service.

17. SPONSORSHIP AND FUNDING ATTRIBUTION

Contractor shall provide public recognition for the Commission and Proposition 10 funding in all materials produced for the purpose of public education and outreach regarding the project. Materials shall include, but not be limited to brochures; flyers; television, radio and print ads and public service announcements; presentations; telephone hold messages; and outdoor ads. In order to assist in the public recognition of the Commission and Proposition 10 funding Contractor agrees to the following:

- a. Generally, to follow policies and procedures related to public education and outreach as provided by the Commission.
- b. When the Project is ready for announcement to the public, the Contractor will contact the Commission's media consultant or other designee to discuss the Project and arrange for publicity and media coverage.
- c. All public education and outreach materials produced for the purpose of publicizing the Project will be approved by the Commission before they are disseminated to the public.
- d. All materials will include the language "Sponsored by First 5 Kern. Funded by Proposition 10."
- e. Where appropriate, Contractor will use the Commission logo in public education and outreach materials. All questions regarding the appropriateness of use will be directed to the Commission.

Where appropriate, the Contractor will allow placement of a commemorative plaque recognizing the Commission and Proposition 10 in making the Project possible.

18. OWNERSHIP AND MAINTENANCE OF DOCUMENTS

All reports, documents and other items (including but not limited to research, scientific, statistical and/or marketing material or data) generated, gathered or otherwise produced in the course of providing services to Commission under this Agreement are and shall remain the property of Commission, and shall, at the option of the Commission, be returned to Commission upon full completion of all services by Contractor or termination of this

Agreement, whichever first occurs. If, however, the Commission does not request the return of any or all of the documents at the conclusion or termination of this Agreement, Contractor shall maintain such documentation for the period, and in the manner, specified in Section 34.a., herein below. Additionally, no report, document or other items (including but not limited to research, scientific, statistical and/or marketing material or data) generated, gathered or otherwise produced in the course of providing services to Commission may be released, transferred or published in any fashion whatsoever without the written consent of Commission.

19. CONFLICT OF INTEREST

The Parties to this Agreement have read and understand the provisions of Section 1090, et seq. and Section 87100, et seq. of the Government Code relating to conflict of interest of public officers and employees. Contractor agrees that they are unaware of any financial or economic interest of any public officer or employee of Commission relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, Commission may immediately terminate this Agreement by giving written notice thereof. Contractor shall comply with the requirements of Government Code Section 87100, et seq. during the term of this Agreement.

20. SOLE AGREEMENT

This document, including all attachments hereto, contains the entire agreement between the Parties relating to the services, rights, obligations and covenants contained herein and assumed by the Parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

21. AUTHORITY TO BIND COMMISSION

It is understood that Contractor, in Contractor's performance of any and all duties under this Agreement, has no authority to bind Commission to any agreements or undertakings.

22. MODIFICATIONS OF AGREEMENT

This Agreement may be modified in writing only, signed by the Parties in interest at the time of the modification.

23. NON-WAIVER

No covenant or condition of this Agreement can be waived except by the written consent of Commission. Forbearance or indulgence by Commission in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Contractor. Commission shall be entitled to invoke any remedy available to Commission under this Agreement or by law or in equity despite said forbearance or indulgence.

24. CHOICE OF LAW AND VENUE

The Parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Kern. Accordingly, the Parties agree that the venue of any action relating to this Agreement shall be in the County of Kern.

25. CONFIDENTIALITY

No Party to this Agreement shall, without written consent of the other Party, communicate confidential information, designated in writing or identified in this Agreement as such to any third Party and shall protect such information from inadvertent disclosure to any third Party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. Upon completion of this Agreement, the provisions of this paragraph shall continue to survive.

26. OPINIONS AND DETERMINATIONS

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, discretion, option, or determination of either the Commission or Contractor, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, discretion, option, or determination to be arbitrary, capricious, or unreasonable.

27. SEVERABILITY

Should any part, term, portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first instance.

28. COMPLIANCE WITH LAW

Contractor shall observe and comply with all applicable county, state and federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by this reference as if set forth in full.

29. NON-EMPLOYMENT OF CERTAIN PERSONS

During the term of this Agreement, and only to the extent allowed by law, Contractor shall not have in its employ or service any official, officer, employee, volunteer or other authorized or prospectively authorized representative, (including all persons as described in Health and Safety Code section 1596.871(b)(1)) whose duties are or will be directly connected to the proposed program or activity, who has been convicted (a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court or an arrest pending trial) of any sex crime, drug crime, or crime of violence as described in Penal Code Section 11105.3 (h), or any other crime against a minor child or any felony theft, fraud or embezzlement crime.

30. CAPTIONS AND INTERPRETATION

Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a Party because that Party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the Parties.

31. TIME OF ESSENCE

Time is hereby expressly declared to be of the essence of this Agreement and of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

32. COUNTERPARTS

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

33. NONDISCRIMINATION

Neither Contractor, nor any officer, agent, employee, servant or subcontractor of Contractor shall discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age or sex, either directly, indirectly or through contractual or other arrangements.

34. AUDIT, INSPECTION AND RETENTION OF RECORDS

- a. Contractor agrees to maintain and make available to Commission accurate books and records relative to all its activities under this Agreement. Contractor shall permit Commission to audit, examine and make excerpts and transcripts from such

records, and to conduct audits or reviews of all Request for Payment, materials, records or personnel or other data related to all other matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon Commission herein. For purposes of this subsection, records shall include personnel records not otherwise subject to disclosure under the California Public Records Act or student records subject to the confidentiality provisions of the California Education Code or the Federal Family Educational Rights and Privacy Act of 1974 as amended or any other records determined to be confidential under any other applicable provision of state or federal law. While state and federal law provide for the confidentiality of certain records, Commission reserves the right to claim or review any record related to Commission funding where Contractor would not be in violation of state or federal law by releasing said record to Commission.

- b. Contractor shall keep records that are sufficient to permit the tracing of funds to a level of expenditure adequate to insure that the funds have not been spent unlawfully. Contractor's records shall describe and support the use of funds for the agreed upon project.
- c. The method used by Contractor to determine costs must conform to Generally Accepted Government Accounting Standards (G.A.G.A.S).
- d. Each contractor shall submit an audited program specific financial report prepared by an independent certified public accountant to the Commission within one hundred eighty (180) days after the end of the organization's fiscal year. Single audits as performed under OMB A-133 are acceptable with the inclusion of a program specific audit that covers the organization's fiscal year and the expenses incurred under this Agreement. Contractor and the reports submitted by Contractor shall in all ways comply with the Commission's audit policy. If contractor fails to submit an acceptable audit, the Commission has the authority to withhold funding until an acceptable audit is received by the Commission.

35. NON-COLLUSION COVENANT

Contractor represents and agrees that it has in no way entered into any contingent fee arrangement with any firm or person concerning the obtaining of this Agreement with Commission. Contractor has received from Commission no incentive or special payments, nor considerations not related to the provision of services under this Agreement.

36. NO POLITICAL OR RELIGIOUS ACTIVITY

Commission funds shall be used only for the purposes specified in this agreement and in any attachments hereto. No Commission funds shall be used for any political activity, or to further the election or defeat of any candidate for political office. No Commission funds shall be used for purposes of religious worship, instruction, or proselytizing.

37. SIGNATURE AUTHORITY

Each Party represents that they have full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

38. CONCURRENT REMEDY

No right or remedy herein conferred on or reserved to Commission is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

39. EXECUTION

This Agreement is effective upon the date indicated herein above. It is the product of negotiation and all Parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

IN WITNESS TO WHICH, each Party to this Agreement has signed this Agreement upon the date indicated, and agrees, for itself, its employees, officers, partners and successors, to be fully bound by all terms and conditions of this Agreement.

“Commission”

“Contractor”

Larry J. Rhoades
Interim Executive Director

NAME, TITLE
ORGANIZATION NAME
Tax Identification #

Date Signed: _____

Date Signed: _____

Approved as to form:
Office of the County Counsel

Approved as to content:

Deputy County Counsel

NAME TITLE
ORGANIZATION NAME