

RESOLUTION NO. 2010-445

Adopted by the Sacramento City Council

July 27, 2010

ACCEPTING A GRANT/AGREEMENT FOR COVER THE KIDS PROGRAM: FIRST 5 SACRAMENTO COMMISSION

BACKGROUND

- A. The Department of Parks and Recreation has operated the City's Cover the Kids (CTK), Sacramento Children's Health Initiative since 1998 successfully assisting more than 34,000 children access affordable health care.
- B. In April of 2010, CTK submitted a proposal to the First 5 Sacramento Commission for a three-year grant to provide outreach, enrollment, retention, and utilization services to families with children up to age six.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. A three-year grant with two, one-year renewal options in an amount not to exceed \$6,007,000 over the five years, from the First 5 Sacramento Commission is accepted.
- Section 2. The City Manager, or a designated representative, is authorized to execute all agreements and any extensions, amendments, re-applications or other documents related thereto with the First 5 Sacramento Commission as necessary for the City to accept a three-year First 5 Sacramento Commission grant with two, one-year renewal options for the purpose of providing the City's CTK program with approximately \$1,221,400 in each fiscal year (FY) for FY2010/11, FY2011/12, FY2012/13, FY2013/14, and FY2014/15.
- Section 3. The agreement described in Section 2 is attached as Exhibit A and made a part of this Resolution.

Table of Contents:

Exhibit A – Agreement with the First 5 Sacramento Commission

Adopted by the City of Sacramento City Council on July 27, 2010 by the following vote:

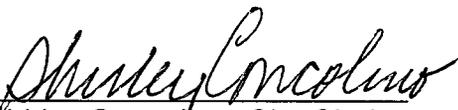
Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Waters, and Mayor Johnson.

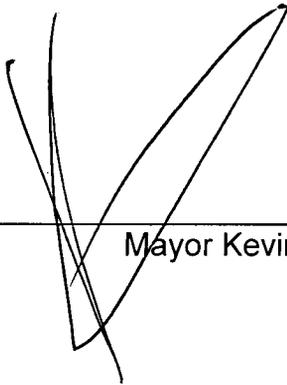
Noes: None.

Abstain: None.

Absent: Councilmember Tretheway.

Attest:


Shirley Concolino, City Clerk



Mayor Kevin Johnson

FIRST 5 SACRAMENTO COMMISSION

AGREEMENT
TABLE OF CONTENTS

1. SCOPE OF SERVICES 2
 2. TERM 2
 3. SUPLANTATION OF FUNDS 2
 4. NOTICE 2
 5. DIRECTOR 3
 6. COMPLIANCE WITH LAWS 3
 7. GOVERNING LAWS AND JURISDICTION 3
 8. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING 3
 9. PERFORMANCE STANDARDS 3
 10. OWNERSHIP OF WORK PRODUCT 4
 11. PUBLIC STATEMENTS/MATERIALS 4
 12. STATUS OF CONTRACTOR 4
 13. CONTRACTOR IDENTIFICATION 5
 14. BENEFITS WAIVER 5
 15. CONFLICT OF INTEREST 5
 16. LOBBYING AND UNION ORGANIZATION ACTIVITIES 6
 17. GOOD NEIGHBOR POLICY 6
 18. ANTI-TOBACCO POLICY 7
 19. USE OF FUNDS 7
 20. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES 7
 21. MANDATED REPORTING 8
 22. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING REQUIREMENTS 8
 23. CONFIDENTIALITY 8
 24. INDEMNIFICATION 9
 25. INSURANCE 9
 26. INFORMATION TECHNOLOGY ASSURANCES 9
 27. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS 10
 28. LEGAL TRAINING INFORMATION 10
 29. SUBCONTRACTS, ASSIGNMENT 10
 30. AMENDMENT AND WAIVER 11
 31. ENTIRE AGREEMENT 11
 32. SUCCESSORS 11
 33. TIME 11
 34. INTERPRETATION 11
 35. DISPUTES 11
 36. TERMINATION 12
 37. EVALUATION 13
 38. REPORTS 13
 39. AUDIT AND RECORDS 13
 40. PRIOR AGREEMENTS 15
 41. SEVERABILITY 15
 42. FORCE MAJEURE 15
 43. SURVIVAL OF TERMS 15
 44. DUPLICATE COUNTERPARTS 16
 45. AUTHORITY TO EXECUTE 16

Attachments:

- Exhibit A – Scope of Services
- Exhibit B – Insurance Requirements
- Exhibit C – Budget Requirements

AGREEMENT

THIS AGREEMENT is made and entered into as of this 1st day of July 2010, by and between the FIRST 5 SACRAMENTO COMMISSION, hereinafter referred to as "COMMISSION," and City of Sacramento, a governmental entity, hereinafter referred to as "CONTRACTOR."

RECITALS

WHEREAS, in November 1998 the voters of California passed Proposition 10, the "California Children and Families Act of 1998." Proposition 10 is designed to provide funding for community health care, quality child care and education programs for young children and families, customized to meet local needs;

WHEREAS, in April 1999 the Sacramento County Board of Supervisors established the Sacramento County Children and Families Commission whose mission is to support the healthy development of children prenatal to age five, the empowerment of families and the strengthening of communities. On January 14, 2003, the Sacramento County Board of Supervisors adopted Ordinance No. SCC-1236, that renamed the Children and Families Commission to the First Five Sacramento Commission. On February 28, 2006, the Sacramento County Board of Supervisors adopted Ordinance No. SCC-1321, that renames the First Five Sacramento Commission to First 5 Sacramento Commission;

WHEREAS, on July 13, 2009, the COMMISSION approved the Implementation Plan for FY 2010/11 to 2014/15;

WHEREAS, the Health Access Implementation Plan includes the following strategies:

- Strategy 1: Increase coverage options for uninsured children by providing the Healthy Kids health insurance product as a payer of last resort.
- Strategy 2: Increase outreach, enrollment, retention and utilization (OERU) in existing and new health insurance plans/programs and intensive case management for families that under-utilize their benefits.
- Strategy 3: Provide leadership and advocacy by continuing to support Cover the Kids (CTK), Children's Health Insurance Coordinating Council (CHICC) and Healthy Kids Healthy Future (KHKF)
- Strategy 4: Develop a "No Wrong Door" partnership with emergency rooms and other social service agencies
- Strategy 5: Require all First 5 Sacramento contractors to screen and, if indicated, refer children to Cover the Kids.

WHEREAS, COMMISSION has been contracting with CONTRACTOR'S, Cover the Kids program since July 1, 2005 to provide outreach, enrollment, utilization and retention (OERU) services for children ages zero to five and is the local OERU arm for Sacramento County;

WHEREAS, on April 5, 2010, COMMISSION authorized and directed its Executive Director through Resolution FFC-2010-0019 to negotiate and execute an agreement with CONTRACTOR in the amount not to exceed \$3,543,000. The parties may extend this Agreement twice, on substantially the same terms, with each extension being for a one year term. If so extended, the total Maximum Payment Amount for the first extension year shall not exceed \$1,206,000 and the Maximum Payment Amount of the second extension shall not

exceed \$1,258,000. The total Maximum Payment Amount for the three year term plus the two additional one-year extensions shall not exceed \$6,007,000;

WHEREAS, COMMISSION AND CONTRACTOR desire to enter into this Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COMMISSION and CONTRACTOR agree as follows:

1. **SCOPE OF SERVICES**

CONTRACTOR shall provide services in the amount, type and manner described in Exhibit A, *Scope of Services*, which is attached hereto and incorporated herein.

2. **TERM**

This Agreement shall be effective and commence as of July 1, 2010 and shall end on June 30, 2013.

The parties may extend this Agreement twice, on substantially the same terms, with each extension being for a one year term. If so extended, this Agreement may not extend beyond June 30, 2015.

3. **SUPPLANTATION OF FUNDS**

Proposition 10 funds shall be used exclusively to develop new projects, expand existing programs and/or services or to enhance existing programs and services. CONTRACTOR shall not utilize Proposition 10 funds to supplant state or local General Fund money for any purpose. If, upon receipt of Proposition 10 funds, CONTRACTOR uses such funds to replace state or federal categorical funds, CONTRACTOR shall demonstrate to the COMMISSION'S satisfaction that such state or federal categorical funds have increased the level of services provided to children 0-5 years of age.

CONTRACTOR shall execute a certification that it has complied with the anti-supplantation requirement stated in Section 30131.4 of the California Tax & Revenue Code. Such certification shall be executed prior to release of Proposition 10 funds and CONTRACTOR shall annually execute such certification as part of the fiscal audit requirement. If COMMISSION determines that supplantation has occurred, CONTRACTOR shall be required to reimburse COMMISSION for all Proposition 10 funds that were used in violation of this Section. Use of Proposition 10 funds in violation of this Section shall be grounds for termination of this Agreement.

4. **NOTICE**

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be

either personally delivered or sent by mail, addressed as follows:

First 5 Sacramento Commission
Toni J. Moore, Executive Director
2750 Gateway Oaks Drive, Suite 330
Sacramento, CA 95833

City of Sacramento
Cover the Kids
Jennifer Kwan, Executive Director
1331 Garden Hwy
Sacramento, CA 95833

Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

5. DIRECTOR

As used in this Agreement, "DIRECTOR" shall mean the Executive Director of the First 5 Sacramento Commission or his/her designee.

6. COMPLIANCE WITH LAWS

CONTRACTOR shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

7. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

8. LICENSES, PERMITS AND CONTRACTUAL GOOD STANDING

- A. CONTRACTOR shall possess and maintain all necessary licenses, permits, certificates and credentials required by the laws of the United States, the State of California, County of Sacramento and all other appropriate governmental agencies, including any certification and credentials required by COMMISSION. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by COMMISSION.
- B. CONTRACTOR further certifies to COMMISSION that it and its principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, State or county government contracts. Contractor certifies that it shall not contract with a Subcontractor that is so debarred or suspended.

9. PERFORMANCE STANDARDS

CONTRACTOR shall perform services required under this Agreement in accordance with the professional standards applicable to CONTRACTOR'S services. Work products delivered to the COMMISSION pursuant to this Agreement shall be prepared in a first-

class manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR'S profession.

10. OWNERSHIP OF WORK PRODUCT

All technical data, evaluations, plans, specifications, reports, documents, or other work products of CONTRACTOR provided hereunder shall become the property of COMMISSION and shall be delivered to COMMISSION upon completion of the services authorized hereunder; provided, however, that any capital improvement constructed with funds received from COMMISSION shall be the property of CONTRACTOR. CONTRACTOR may retain copies thereof for its files and internal use. Publication of the information directly derived from work performed or data obtained in connection with services rendered under this Agreement must first be approved in writing by COMMISSION. COMMISSION recognizes that all technical data, evaluations, plans, specifications, reports, and other work products are instruments of CONTRACTOR'S services and are not designed for use other than what is intended by this Agreement.

11. PUBLIC STATEMENTS/MATERIALS

CONTRACTOR shall use COMMISSION'S logo in all media statements, press release(s), statements to the public or printed materials i.e. brochures, newsletters, websites and promotional materials, that are developed to describe and promote COMMISSION funded programs and CONTRACTOR shall indicate on said materials that the program is "Funded by the First 5 Sacramento Commission."

CONTRACTOR shall submit all public statements/materials to the COMMISSION'S Communications and Media Officer or authorized staff for review and approval prior to release to the public. Any exceptions to using the COMMISSION'S logo must be pre-approved by the COMMISSION.

12. STATUS OF CONTRACTOR

- A. It is understood and agreed that CONTRACTOR (including CONTRACTOR'S employees) is an independent CONTRACTOR and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR'S assigned personnel shall not be entitled to any benefits payable to employees of COMMISSION. COMMISSION is not required to make any deductions or withholdings from the compensation payable to CONTRACTOR under the provisions of this agreement; and as an independent CONTRACTOR, CONTRACTOR hereby indemnifies and holds COMMISSION harmless from any and all claims that may be made against COMMISSION based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.
- B. It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of its obligation hereunder is subject to the control or direction of COMMISSION as to the designation of tasks to be performed, the results to be accomplished by the services hereunder agreed to be rendered and performed, and not the means, methods, or sequence used by CONTRACTOR for accomplishing the results.

- C. If, in the performance of this agreement, any third persons are employed by CONTRACTOR, such person shall be entirely and exclusively under the direction, supervision, and control of CONTRACTOR. All terms of employment, including hours, wages, working conditions, discipline, hiring, and discharging, or any other terms of employment or requirements of law, shall be determined by CONTRACTOR, and the COMMISSION shall have no right or authority over such persons or the terms of such employment.
- D. It is further understood and agreed that as an independent CONTRACTOR and not an employee of COMMISSION, neither the CONTRACTOR nor CONTRACTOR'S assigned personnel shall have any entitlement as a COMMISSION employee, right to act on behalf of COMMISSION in any capacity whatsoever as agent, nor to bind COMMISSION to any obligation whatsoever. CONTRACTOR shall not be covered by worker's compensation; nor shall CONTRACTOR be entitled to compensated sick leave, vacation leave, retirement entitlement, participation in group health, dental, life and other insurance programs, or entitled to other fringe benefits payable by the COMMISSION to employees of the COMMISSION.
- E. It is further understood and agreed that CONTRACTOR must issue W-2 and 941 Forms for income and employment tax purposes, for all of CONTRACTOR'S assigned personnel under the terms and conditions of this agreement.

13. **CONTRACTOR IDENTIFICATION**

CONTRACTOR shall provide the COMMISSION with the following information for the purpose of compliance with California Unemployment Insurance Code Section 1088.8 and Sacramento County Code Chapter 2.160: CONTRACTOR'S name, residence address, telephone number, social security number, and whether dependent health insurance coverage is available to CONTRACTOR.

14. **BENEFITS WAIVER**

If CONTRACTOR is unincorporated, CONTRACTOR acknowledges and agrees that CONTRACTOR is not entitled to receive the following benefits and/or compensation from COMMISSION: medical, dental, vision and retirement benefits, life and disability insurance, sick leave, bereavement leave, jury duty leave, parental leave, or any other similar benefits or compensation otherwise provided to permanent civil service employees pursuant to the County Charter, the County Code, the Civil Service Rule, the Sacramento County Employees' Retirement System and/or any and all memoranda of understanding between COMMISSION and its employee organizations. Should any employee or agent of CONTRACTOR seek to obtain such benefits from COMMISSION, CONTRACTOR agrees to indemnify and hold harmless COMMISSION from any and all claims that may be made against COMMISSION for such benefits.

15. **CONFLICT OF INTEREST**

CONTRACTOR and CONTRACTOR'S officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or

source of income which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

16. LOBBYING AND UNION ORGANIZATION ACTIVITIES

- A. CONTRACTOR shall comply with all certification and disclosure requirements prescribed by Section 319, Public Law 101-121 (31 U.S.C. § 1352) and any implementing regulations.
- B. If services under this Agreement are funded with state funds granted to COMMISSION, CONTRACTOR shall not utilize any such funds to assist, promote or deter union organization by employees performing work under this Agreement and shall comply with the provisions of Government Code Sections 16645 through 16649.

17. GOOD NEIGHBOR POLICY

- A. CONTRACTOR shall comply with COMMISSION'S Good Neighbor Policy. CONTRACTOR shall establish good neighbor practices for its facilities that include, but are not limited to, the following:
 - 1. Provision of parking adequate for the needs of its employees and service population;
 - 2. Provision of adequate waiting and visiting areas;
 - 3. Provision of adequate restroom facilities located inside the facility;
 - 4. Implementation of litter control services;
 - 5. Removal of graffiti within seventy-two hours;
 - 6. Provision of control of loitering and management of crowds;
 - 7. Maintenance of facility grounds, including landscaping, in a manner that is consistent with the neighborhood in which the facility is located;
 - 8. Participation in area crime prevention and nuisance abatement efforts; and
 - 9. Undertake such other good neighbor practices as determined appropriate by COMMISSION, based on COMMISSION'S individualized assessment of CONTRACTOR'S facility, services and actual impacts on the neighborhood in which such facility is location.
- B. CONTRACTOR shall identify, either by sign or other method as approved by the DIRECTOR, a named representative who shall be responsible for responding to any complaints relating to CONTRACTOR'S compliance with the required good neighbor practices specified in this Section. CONTRACTOR shall post the name and telephone number of such contact person on the outside of the facility, unless otherwise advised by DIRECTOR.
- C. CONTRACTOR shall comply with all applicable public nuisance ordinances.

- D. CONTRACTOR shall establish an ongoing relationship with the surrounding businesses, law enforcement and neighborhood groups and shall be an active member of the neighborhood in which CONTRACTOR'S site is located
- E. If COMMISSION finds that CONTRACTOR has failed to comply with the Good Neighbor Policy, COMMISSION shall notify CONTRACTOR in writing that corrective action must be taken by CONTRACTOR within a specified time frame. If CONTRACTOR fails to take the necessary corrective action, COMMISSION shall take such actions as are necessary to implement the necessary corrective action. COMMISSION shall deduct any actual costs incurred by COMMISSION when implementing such corrective action from any amounts payable to CONTRACTOR under this Agreement.
- F. CONTRACTOR'S continued non-compliance with the Good Neighbor Policy shall be grounds for termination of this Agreement any may also result in ineligibility for additional or future contracts with COMMISSION.

18. ANTI-TOBACCO POLICY

CONTRACTOR shall comply with COMMISSION'S Anti-Tobacco Policy that was approved by the COMMISSION on March 3, 2003. CONTRACTOR shall be required to certify compliance with the anti-tobacco policy prior to receipt of COMMISSION funds.

19. USE OF FUNDS

Funds provided by the COMMISSION shall be expended only for the purposes authorized by the "California Children and Families First Act of 1998."

20. NONDISCRIMINATION IN EMPLOYMENT, SERVICES, BENEFITS AND FACILITIES

- A. CONTRACTOR agrees and assures COMMISSION that CONTRACTOR and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COMMISSION, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COMMISSION employees and agents, and recipients of services are free from such discrimination and harassment.
- B. CONTRACTOR represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) and regulations and guidelines issued pursuant thereto.
- C. CONTRACTOR agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable anti-discrimination laws and this provision.

- D. CONTRACTOR shall include this nondiscrimination provision in all subcontracts related to this Agreement.
- E. If CONTRACTOR is a faith-based organization or contracts with a faith-based organization for services to be performed under this Agreement, participation in the faith shall not be a prerequisite for receiving services. Outreach for services utilizing Proposition 10 dollars will be to the community at large, and shall not be limited to those members of the community that share the same faith as CONTRACTOR or its agents.

21. MANDATED REPORTING

CONTRACTOR shall comply with the training requirements for identification and reporting of child abuse as defined in Penal code Section 11165.7. All training shall be documented in an individual personnel file. CONTRACTOR shall establish procedures for paid and volunteer staff for reporting suspected child abuse cases.

22. COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING REQUIREMENTS

- A. CONTRACTOR'S failure to comply with state and federal child, family and spousal support reporting requirements regarding a CONTRACTOR'S employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family and spousal support obligations shall constitute a default under this Agreement.
- B. CONTRACTOR'S failure to cure such default within 90 days of notice by COMMISSION shall be grounds for termination of this Agreement.

23. CONFIDENTIALITY

CONTRACTOR shall comply with all applicable state and/or federal confidentiality statutes to assure that:

- A. All applications and records concerning an individual made or kept by CONTRACTOR, COMMISSION, or any public officer or agency in connection with the administration of any provisions of the Welfare and Institutions Code relating to any form of public social services or for services provided under this Agreement, for which grants in aid are received by this State from the Federal Government, shall be confidential and shall not be open to examination for any purpose not directly connected with the administration of such public social services, without the written consent of COMMISSION.
- B. No person shall publish or disclose, or use or permit or cause to be published, disclosed, or used, any confidential information pertaining to a participant, including the fact of the participant's status as an applicant for or recipient of public social services.

- C. CONTRACTOR shall inform all of its officers, employees, agents, subcontractors and partners of the above provisions, and that a knowing and intentional violation of said provisions of State and/or federal law may be a misdemeanor.

24. INDEMNIFICATION

CONTRACTOR shall indemnify, defend, and hold harmless COMMISSION, its representatives, officers, directors, agents, employees, and volunteers, from and against any and all claims, demands, actions, losses, liabilities, damages and costs, including payment of reasonable attorney's fees, arising out of or resulting from the performance of this Agreement, caused in whole or in part by any negligent or intentional act or omission of CONTRACTOR, its officers, directors, agents, employees, subcontractors, volunteers or anyone directly or indirectly acting on behalf of CONTRACTOR,

COMMISSION shall defend, indemnify and hold harmless CONTRACTOR, its officers, directors, agents, and employees, from and against all demands, claims, actions, liabilities, losses, damages and costs, including payment of reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, cause in whole or in part by the negligent or intentional acts or omissions of COMMISSION, its elected representatives, directors, agents, employees, or volunteers.

It is the intention of COMMISSION and CONTRACTOR that the provision of this paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers and COMMISSION and CONTRACTOR'S subcontractors. It is also the intention of COMMISSION and CONTRACTOR that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, COMMISSION and CONTRACTOR's subcontractors.

25. INSURANCE

Each party, at its sole cost and expense, shall carry insurance or self-insure its activities in connection with this Agreement, and obtain, keep in force and maintain, insurance or equivalent programs of self-insurance, for general liability, professional liability, workers compensation, and business automobile liability adequate to cover its potential liabilities hereunder. Each party agrees to provide the other thirty (30) days' advance written notice of any cancellation, termination or lapse of any of the insurance or self-insurance coverages.

26. INFORMATION TECHNOLOGY ASSURANCES

CONTRACTOR shall take all reasonable precautions to ensure that any hardware, software, and/or embedded chip devices used by CONTRACTOR in the performance of services under this Agreement, other than those owned or provided by COMMISSION, shall be free from viruses. Nothing in this provision shall be construed to limit any rights or remedies otherwise available to COMMISSION under this Agreement.

27. COMPENSATION AND PAYMENT OF INVOICES LIMITATIONS

- A. Compensation under this Agreement shall be limited to the Maximum Total Payment Amount set forth in Exhibit C, or Exhibit C as modified by COMMISSION in accordance with express provisions in this Agreement.
- B. CONTRACTOR shall submit an invoice in the format and in accordance with the procedures prescribed by COMMISSION on a quarterly basis, upon completion of services. Invoices shall be submitted to COMMISSION no later than the fifteenth (15th) day of the month following the invoice period, and COMMISSION shall pay CONTRACTOR within thirty (30) days after receipt of an appropriate and correct invoice.
- C. Excepting the fiscal year end invoices, invoices for services that are received more than ninety (90) days after the last day of the billing period may not be honored unless the CONTRACTOR has obtained prior written approval for such late submittal.

COMMISSION operates on a July through June fiscal year. Fiscal year end invoices must be submitted no later than July 31, one month after the end of the fiscal year. Invoices submitted after July 31 for the prior fiscal year shall not be honored by COMMISSION unless CONTRACTOR has obtained prior written COMMISSION approval to the contrary.

Invoices shall be considered to have been received only when all accurate and necessary budget revisions, quarterly reports, and accurate and complete evaluation data have also been received.

- D. CONTRACTOR shall maintain for four years following termination of this agreement full and complete documentation of all services and expenditures associated with performing the services covered under this Agreement. Expense documentation shall include: time sheets or payroll records for each employee; receipts for supplies; applicable subcontract expenditures; applicable overhead and indirect expenditures.

28. LEGAL TRAINING INFORMATION

If under this Agreement CONTRACTOR is to provide training of COMMISSION personnel on legal issues, then CONTRACTOR shall submit all training and program material for prior review and written approval by County Counsel. Only those materials approved by County Counsel shall be utilized.

29. SUBCONTRACTS, ASSIGNMENT

- A. CONTRACTOR shall obtain prior written approval from COMMISSION before subcontracting any of the services delivered under this Agreement. CONTRACTOR shall obtain prior written approval from the COMMISSION if it becomes necessary to change the Subcontractor(s) identified in subsection C of this section. CONTRACTOR remains legally responsible for the performance of all Agreement terms including work performed by third parties under subcontracts. Any subcontracting will be subject to all applicable provisions of

this Agreement. CONTRACTOR shall be held responsible by COMMISSION for the performance of any Subcontractor whether approved by COMMISSION or not. CONTRACTOR shall require its Subcontractors listed below in Subsection C of this section to comply with the provisions of this Agreement.

- B. This Agreement is not assignable by CONTRACTOR in whole or in part, without the prior written consent of COMMISSION.
- C. Notwithstanding Subsection A, CONTRACTOR is authorized to subcontract with:
Department of Human Assistance
Child Action
Talos Technologies, Inc.

30. **AMENDMENT AND WAIVER**

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon the COMMISSION unless agreed in writing by DIRECTOR and counsel for COMMISSION.

31. **ENTIRE AGREEMENT**

This Agreement, together with all exhibits attached hereto, constitutes the entire Agreement between the parties hereto, all other representation or statements heretofore made, verbal or written, are merged herein.

32. **SUCCESSORS**

This Agreement shall bind the successors of COMMISSION and CONTRACTOR in the same manner as if they were expressly named.

33. **TIME**

Time is of the essence of this Agreement.

34. **INTERPRETATION**

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

35. **DISPUTES**

In the event of any dispute arising out of or relating to this Agreement, the parties shall attempt, in good faith, to promptly resolve the dispute mutually between themselves. Pending resolution of any such dispute, CONTRACTOR shall continue without delay to carry out all its responsibilities under this Agreement unless the Agreement is otherwise terminated in accordance with the Termination provisions herein. COMMISSION shall not be required to make payments for any services that are the subject of this dispute

resolution process until such dispute has been mutually resolved by the parties. If the dispute cannot be resolved within 15 calendar days of initiating such negotiations or such other time period as may be mutually agreed to by the parties in writing, either party may pursue its available legal and equitable remedies, pursuant to the laws of the State of California. Nothing in this Agreement or provision shall constitute a waiver of any of the government claim filing requirements set forth in Title 1, Division 3.6, of the California Government Code or as otherwise set forth in local, state and federal law.

36. TERMINATION

- A. Either party may terminate this Agreement without cause upon ninety (90) days written notice to the other party. Notice shall be deemed served on the date of mailing. If notice of termination for cause is given by COMMISSION to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to this paragraph (A).
- B. COMMISSION may terminate this Agreement for cause immediately upon giving written notice to CONTRACTOR should CONTRACTOR materially fail to perform any of the covenants contained in this Agreement in the time and/or manner specified. In the event of such termination, COMMISSION may proceed with the work in any manner deemed proper by COMMISSION. If notice of termination for cause is given by COMMISSION to CONTRACTOR and it is later determined that CONTRACTOR was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to paragraph (A) above.
- C. COMMISSION may terminate or amend this Agreement immediately upon giving written notice to CONTRACTOR, 1) if advised that funds are not available from external sources for this Agreement or any portion thereof, including if distribution of such funds to the COMMISSION is suspended or delayed; 2) if funds for the services and/or programs provided pursuant to this Agreement are not appropriated by the State; 3) if funds in COMMISSION's yearly proposed and/or final budget are not appropriated by COMMISSION for this Agreement or any portion thereof; 4) if funds that were previously appropriated for this Agreement are reduced, eliminated, and/or re-allocated by COMMISSION as a result of mid-year budget reductions.
- D. If this Agreement is terminated under paragraph A or C above, CONTRACTOR shall only be paid for any services completed and provided prior to notice of termination. In the event of termination under paragraph A or C above, CONTRACTOR shall be paid an amount which bears the same ratio to the total compensation authorized by the Agreement as the services actually performed bear to the total services of CONTRACTOR covered by this Agreement, less payments of compensation previously made. In no event, however, shall COMMISSION pay CONTRACTOR an amount which exceeds a pro rata portion of the Agreement total based on the portion of the Agreement term that has elapsed on the effective date of the termination.

- E. CONTRACTOR shall not incur any expenses under this Agreement after notice of termination and shall cancel any outstanding expenses obligations to a third party that CONTRACTOR can legally cancel.

37. EVALUATION

- A. CONTRACTOR shall participate in and comply with results-based and community impact evaluation activities including training and technical assistance, sponsored by the COMMISSION.
- B. CONTRACTOR shall participate in and cooperate with COMMISSION'S evaluation consultants and other COMMISSION sponsored evaluation activities including statewide efforts to evaluate Proposition 10 efforts, whether it occurs during the term of this Agreement or after. CONTRACTOR shall participate in and cooperate with programmatic audit activities required by the COMMISSION.
- C. CONTRACTOR shall utilize evaluation questionnaires or such other tools as required by COMMISSION for purposes of evaluating CONTRACTOR'S services.

38. REPORTS

- A. CONTRACTOR shall, without additional compensation therefore, make fiscal, program evaluation, progress, and such other reports as may be reasonably required by COMMISSION concerning CONTRACTOR'S activities as they affect the contract duties and purposes herein. The COMMISSION shall explain procedures for reporting the required information.
- B. CONTRACTOR shall submit any required quarterly reports, including complete and accurate evaluation data, by the 15th of the month following the end of the quarter. COMMISSION may not make any payments under this Agreement until such reports have been submitted. If submission of any required reports is delayed over ninety (90) days beyond the end of the billing period, the invoice corresponding to the quarterly report may not be honored unless the CONTRACTOR obtained prior written approval of such late submission.

39. AUDIT AND RECORDS

- A. CONTRACTOR shall maintain separate accounting books and records for Proposition 10 Funds. Records shall be maintained in accordance with generally accepted accounting principles.
- B. CONTRACTOR shall maintain adequate client records that include diagnostic studies (when applicable), client intervention, program notes, records of services provided by professional and paraprofessional services in sufficient detail to permit evaluation of whether such services comply with all applicable federal, state, County, COMMISSION records maintenance requirements.
- C. For a period of four years following termination of the Agreement, CONTRACTOR shall make records available for copying upon COMMISSION'S request and at COMMISSION'S expense.

- D. Upon COMMISSION'S request, COMMISSION or its designee shall have the right at reasonable times and intervals to audit, at CONTRACTOR'S premises, CONTRACTOR'S financial and program records as COMMISSION deems necessary to determine CONTRACTOR'S compliance with legal and contractual requirements and the correctness of claims submitted by CONTRACTOR.
- E. At regular times during normal business hours, COMMISSION shall have the right to inspect or evaluate CONTRACTOR'S records that pertain to services performed and amounts payable under this Agreement. COMMISSION shall have the right to withhold any payment under this Agreement until CONTRACTOR has provided access to CONTRACTOR's financial and program records related to this Agreement
- F. CONTRACTOR shall submit to the COMMISSION an annual financial and compliance audit conducted by an independent auditor. CONTRACTOR may use its organizational audit provided that the audit report shows Proposition 10 revenues and expenses separately.
1. The audit shall be conducted in accordance with generally accepted auditing standards, as promulgated by the American Institute of Certified Public Accountants and Generally Accepted Government Auditing Standards issued by the General Accounting Office and the Comptroller General of the United States of America."
 2. COMMISSION staff shall review the audit for completeness and findings and then submit the audit to the COMMISSION'S Auditor-Controller for technical review. COMMISSION shall be allowed access to all financial and program records, as COMMISSION deems necessary to determine that funding was spent in compliance with applicable guidelines and this Agreement.
 3. If the Agreement is terminated for any reason during the Agreement period, the independent audit shall cover the entire period of the Agreement for which services were provided and shall be submitted within six months of the end of the Agreement period.
 4. The audit shall be submitted to the COMMISSION no later than 30 days after the CONTRACTOR'S organizational audit is completed. Should there be any delay, CONTRACTOR shall immediately inform COMMISSION staff. Under no circumstances shall the audit be submitted later than nine months after the Agreement period ended.
 5. COMMISSION shall not pay any invoices should an audit not be received within timeframes specified in paragraphs 3 and 4 above unless, prior to the expiration of this Agreement, the CONTRACTOR has obtained prior written approval from COMMISSION for any delay in submittal of an invoice.

6. Should any material findings be noted in the audit report, CONTRACTOR must submit an action plan with the audit report detailing how the deficiency will be addressed. Findings shall be corrected within six months after the audit report. CONTRACTOR shall submit a report documenting corrections of identified audit deficiencies. If CONTRACTOR refuses or fails to cooperate or fails to submit an annual audit as required by this Agreement, COMMISSION may, in its sole discretion, withhold amounts payable under this Agreement until CONTRACTOR has complied with the requirements of this Section to the satisfaction of COMMISSION.
7. CONTRACTOR shall comply with First 5 California Commission audit requirements.

40. PRIOR AGREEMENTS

This Agreement constitutes the entire contract between COMMISSION and CONTRACTOR regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COMMISSION and CONTRACTOR regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

41. SEVERABILITY

If any term or condition of this Agreement or the application thereof to any person(s) or circumstance is held invalid or unenforceable, such invalidity or unenforceability shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this Agreement are declared severable.

42. FORCE MAJEURE

Neither CONTRACTOR nor COMMISSION shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without fault or negligence of such party. Such events shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism, or other disasters, whether or not similar to the foregoing, and acts or omissions or failure to cooperate of the other party or third parties (except as otherwise specifically provided herein).

43. SURVIVAL OF TERMS

All services performed and deliverables provided pursuant to this Agreement are subject to all of the terms, conditions, price discounts and rates set forth herein, notwithstanding the expiration of the initial term of this Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Agreement shall so survive.

44. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts. The Agreement shall be deemed executed when it has been signed by both parties.

45. AUTHORITY TO EXECUTE

Each person executing this agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement for or on behalf of the parties to this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized

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

FIRST 5 SACRAMENTO COMMISSION

CITY OF SACRAMENTO

By: _____
TONI J. MOORE
Executive Director

By: _____
GUS VINA
Interim City Manager

Date: _____

Date: _____

Contract and Contractor Tax Status Reviewed and Approved by County Counsel:

By: _____
Michele Bach
Supervising Deputy County Counsel

Date: _____

APPROVED AS TO FORM:

By: _____
Michael T. Sparks
Senior Deputy City Attorney