

**Please review this Draft Agreement. It contains content that may be included in agreements with successful applicants.**

## **ATTACHMENT E: DRAFT MINIGRANT AGREEMENT**

### **AGREEMENT FOR RECEIPT OF MINI-GRANT FUNDS**

**FIRST 5 MERCED COUNTY  
CONTRACT NO. \_\_\_\_\_**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ by and between the County of Merced, a political subdivision of the State of California (hereinafter referred to as "COUNTY") on behalf of First 5 Merced County (hereinafter referred to as "COMMISSION"), and "*NAME OF GRANTEE AND CONTACT INFO*" (hereinafter referred to as "GRANTEE").

**WHEREAS**, COMMISSION desires to GRANT FUNDS to GRANTEE in that GRANTEE has successfully proposed strategies and/or services in furtherance of the COMMISSION'S STRATEGIC PLAN.

**WHEREAS**, GRANTEE has been deemed to be an appropriate recipient and is experienced and competent to perform such agreement in connection with "*List what the grant funds are going to be used for*"

**WHEREAS**, the parties desire to set forth herein the terms and conditions under which said agreement shall be furnished.

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

#### **1. SCOPE OF AGREEMENT**

GRANTEE shall utilize all such received Grant Funds (or items purchased for GRANTEE by COMMISSION with grant funds) to provide for the "*STATE THE PURPOSE OF THE FUNDS GRANTED*" and related services in accordance with the terms and conditions stated herein, and any specifically referenced attachments hereto. GRANTEE'S agreement includes, but is not limited to, the following:

- A. Scope of Work
- B. Budget
- C. Budget Narrative
- D. Invoice Form
- E. Program Evaluation Form

The following exhibits are specifically incorporated by reference, attached hereto, and made a part hereof, except when in conflict with this agreement or modified herein:

- Exhibit A – Scope of Work
- Exhibit B – Budget
- Exhibit C – Budget Narrative
- Exhibit D – Invoice Form
- Exhibit E – Program Evaluation Form

**2. TERM**

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

**3. GRANT AMOUNT**

COMMISSION agrees to reimburse to RECIPIENT up to a Total Grant Fund amount of \_\_\_\_\_ and No/100 Cents (\$\_\_\_\_\_), after submission of the appropriate INVOICE form with sufficient back-up documentation and final report, in exchange for GRANTEE’S agreement as provided herein and is more specifically set forth under Section 1, "SCOPE OF AGREEMENT". No other fees or expenses of any kind shall be paid to GRANTEE. This Grant may be subject to withholding for State of California income tax.

Any and/or all payments made under this Agreement shall be paid by check, payable to the order of the GRANTEE and be mailed or delivered to GRANTEE at:

- Agency Name
- Address
- City/State/Zip Code
- First and Last Name, Title

GRANTEE may request that COUNTY mail the check to GRANTEE to another address, if designated prior to the time of distribution of funds. Such request must be made in writing in accordance with the procedures as outlined under Section 5, "NOTICES".

**4. TERMS OF PAYMENT**

The Grant Fund amount shall be distributed as provided herein and as set forth under Section 3, "GRANT AMOUNT." Payment shall be made in the following manner:

Grantee shall submit one invoice for all incurred expenses under this grant. Upon receipt of Invoice form with sufficient back-up documentation and final report, as set forth under Section 1, "SCOPE OF AGREEMENT," COMMISSION shall, through the County Auditor-Controller, pay GRANTEE for actual project expenses in accordance with the categories and amounts established in the line item budget attached as Exhibit B budget.

Invoice for expenses incurred under this grant are to be submitted by July 15.

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

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

CONTRACTOR may receive an advanced payment of funds provided for under the Compensation section of this Agreement when deemed to be in the interests of furthering the aims of the COMMISSION'S strategic plan and subsequent to COMMISSION'S approval.

## 5. NOTICES

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

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

Information for notice to the parties to this agreement at the time of endorsement of this agreement is as follows:

**County of Merced c/o**

First 5 Merced County  
260 E. 15<sup>th</sup> Street  
Merced, CA 95341  
Attn: Executive Director

**Recipient-**

Agency Name  
Address  
City/State/Zip Code  
First and Last Name, Title

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

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

**6. NON-SUPLANTATION**

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

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

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

GRANTEE shall abide by the intent of the California Children and Families Act of 1998, and Section 130100 of the Health and Safety Code, which states the program is created for the "purposes of promoting, supporting, and improving the early development of children from the prenatal stage to five years of age." Funds provided under this agreement shall be used solely for the benefit of, and/or services to, children 0-5 and their families.

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

The Grant Fund amount to be distributed to GRANTEE pursuant to this Agreement is based on COMMISSION'S continued receipt of local, state and/or federal funding for this purpose. In the event that funding is terminated, in whole or in part, for any reason, this Agreement and all obligations of the COMMISSION arising from this Agreement shall be immediately discharged. COMMISSION agrees to inform GRANTEE no later than ten (10) calendar days after receiving notification that funding will be terminated and the final date for which funding will be available.

**9. MODIFICATION OF AGREEMENT**

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

any proposed modifications to GRANTEE'S budget, a budget revision must be approved prior to the expenditure of any funds in excess of prior-approved amounts.

## **10. INSURANCE**

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

Minimum General Commercial Liability insurance will be provided for the event, as follows: \$500,000 combined single limits per occurrence and \$1,000,000 annual aggregate covering bodily injury, personal injury and property damage.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, or split limits of \$500,000 per person, \$1,000,000 per accident for bodily injury and \$250,000 per accident for property damage.

## **11. INDEMNIFICATION**

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

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

## **12. RECORDS AND INSPECTIONS**

GRANTEE shall maintain full and accurate records with respect to all matters covered under this agreement. To the extent permitted by law, the COUNTY and/or the COMMISSION shall have free access at all proper times or until the expiration of seven (7) years after the furnishing of services to such records, and the right to

examine and audit the same and to make transcripts therefrom, and to inspect all data, documents, premises, procedures, and activities pertaining to this agreement.

**13. WRITTEN NOTICE**

GRANTEE agrees to provide immediate written notice to the COMMISSION if significant changes or events occur during the term of the GRANT which could potentially impact the progress or outcome of the GRANT including, but not limited to, changes in the GRANTEE'S management personnel, loss of funding, revocation or suspension of the GRANT recipient's tax-exempt status (if applicable) or license(s).

**14. TERMINATION FOR CONVENIENCE**

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

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

**15. TERMINATION FOR CAUSE**

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

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

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

**17. COMPLETENESS OF AGREEMENT**

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

**18. COMMISSION NOT OBLIGATED TO THIRD PARTIES**

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

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

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

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

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

No waiver by either party of any default, breach or condition precedent shall be valid unless made in writing and signed by the parties hereto. No oral waiver of any default, breach or condition precedent shall be binding on any of the parties hereto. 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.

**21. APPLICABLE LAW**

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

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

**22. BREACH OF CONTRACT**

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

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

If GRANTEE fails to perform any agreement or obligation contained in this agreement, the COMMISSION may itself perform, or cause the performance of, such agreement and obligation. In that event, GRANTEE will on demand, fully reimburse the COMMISSION for all such expenditures. Alternatively, the COMMISSION at its option, may deduct from any funds owed to GRANTEE the amount necessary to cover any expenditures under this provision. This is in addition to any other remedies available to the COMMISSION by law or as otherwise stated in this agreement.

**24. CONFLICT OF INTEREST**

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

**25. CAPTIONS**

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

**26. SEVERABILITY**

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

**27. DUPLICATE COUNTERPARTS**

This agreement is executed in counterparts, each of which shall be deemed a duplicate original. The Agreement shall be deemed executed when it has been signed by both parties.

**28. 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 them. If the dispute cannot be resolved by mutual agreement, nothing herein shall preclude either



party's right to pursue remedy or relief by civil litigation, pursuant to the laws of the State of California.

**29. ADVERTISEMENT**

The GRANTEE agrees to utilize the First 5 Merced County logo or a statement shall appear on all documents, for the duration of the contract, designating that the agency/organization or individual receives funding from First 5 Merced County.

**30. SECULAR ACTIVITIES**

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

**COUNTY OF MERCED**

**RECIPIENT**

By \_\_\_\_\_  
Supervisor Lee Lor  
Chair, First 5 Merced County

By \_\_\_\_\_  
First and Last Name, Title  
Agency/Organization

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Dated

**APPROVED AS TO LEGAL FORM**

Merced County Counsel

By \_\_\_\_\_  
James N. Fincher  
Counsel for First 5 Merced County

\_\_\_\_\_  
Dated