

PROFESSIONAL SERVICES AGREEMENT NO. PS-_____

BETWEEN

CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY

AND

A _____

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) entered into as of the ___ day of _____, 200__ (“Date of Agreement”), which date is enumerated for purposes of reference only and corresponds to the date of action on and approval of funding for this Agreement by COMMISSION, is by and between the **CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**, a public body and legal public entity (“COMMISSION”) and _____, a _____ [insert type of entity or individual professional] (“PROFESSIONAL”). This Agreement shall be administered by the Executive Director of COMMISSION or his/her authorized designee (“ADMINISTRATOR”).

RECITALS

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

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

C. PROFESSIONAL is a [insert type of entity, individual, etc., e.g., a LLP, California corporation, individual].

D. COMMISSION desires to engage PROFESSIONAL, and PROFESSIONAL desires to accept the engagement, to perform certain professional, technical and consulting services as set forth in the Professional Services Summary attached as Exhibit B and fully incorporated by this reference and to carry out the performance obligations promoting the purposes of the Act and the Strategic Plan on the terms and conditions set forth in this Agreement (“Professional Services”).

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

1. TERM OF AGREEMENT. The term of this Agreement shall commence on _____, 200__ and terminate on _____ 200__, unless earlier terminated pursuant to the provisions of

Paragraph 16 of this Agreement. PROFESSIONAL and ADMINISTRATOR may mutually agree in writing to extend the term of this Agreement, provided that COMMISSION's Maximum Payment Obligation in this Agreement does not increase as a result.

2. ALTERATION OF TERMS. This Agreement, together with and including any Exhibits attached and incorporated into this Agreement by reference, fully express all understandings of the parties and is the total Agreement between the parties as to the subject matter of the Agreement. No addition to, or alteration of, the terms of this Agreement, whether written or verbal, by the parties, their officers, agents, or employees, shall be valid unless made in the form of a written amendment to this Agreement which is formally approved and executed by both parties. Notwithstanding anything to the contrary, PROFESSIONAL and ADMINISTRATOR may mutually agree in writing to make revisions to the activities, tasks, deliverables and/or performance timeframes specified in this Agreement, including the Exhibits, provided any of the revisions do not alter the overall goals and basic purpose of the Agreement, and provided any of the revisions do not increase COMMISSION's Maximum Payment Obligation.

3. STATUS OF PROFESSIONAL.

PROFESSIONAL is, and shall at all times remain, an independent contractor to COMMISSION in providing services for this Agreement and otherwise to COMMISSION and is not and shall not be construed to be an employee (neither a contract nor regular employee) of COMMISSION. In furtherance of such status and in full acknowledgement, PROFESSIONAL agrees that a condition precedent to it commencing performance of any services for this Agreement and/or being eligible for any compensation for services rendered for this Agreement, to execute an Acknowledgment of Independent Contractor Status, substantially in the form of Exhibit A attached hereto and fully incorporated by this reference. PROFESSIONAL is and shall remain wholly responsible for the manner in which it performs the services required by the terms of this Agreement so long as such services are within the Scope of Services, Exhibit B to this Agreement. Nothing in this Agreement shall be construed as creating the relationship of employer and employee, or principal and agent, between COMMISSION and PROFESSIONAL or any of PROFESSIONAL's employees, subcontractors, or agents. PROFESSIONAL assumes exclusively the responsibility for the acts of its employees, subcontractors, or agents as they relate to the services to be provided during the Term of this Agreement and/or the course and scope of employment of any such employees, subcontractors, or agents. PROFESSIONAL, its employees, agents, and subcontractors, shall not be entitled to any rights and/or privileges of COMMISSION, or its employees or officers or PROFESSIONALS, and shall not be considered in any manner to be COMMISSION employees. In performing the services set forth in this Agreement, PROFESSIONAL shall exercise its professional judgment with respect to hours of work, location of worksite, and the specific details of the manner and method of completing performance tasks and providing services for this Agreement. COMMISSION retains PROFESSIONAL by this contract to perform certain professional and/or consulting services as set forth in this Agreement, but will not direct the manner or method of achieving the end result.

4. PROFESSIONAL'S PERSONNEL.

4.1 Direct Performance. Unless otherwise set forth in the Professional Services Summary, Exhibit B, all Services under this Agreement shall be performed by PROFESSIONAL.

4.1.1 PROFESSIONAL shall be solely responsible for the satisfactory work performance of all personnel engaged in performing the Professional Services required by this Agreement, and compliance with all reasonable performance standards established by COMMISSION.

4.1.2 PROFESSIONAL shall be responsible for payment of all employees' and any Subcontractor's wages and benefits, and shall comply with all requirements pertaining to employer's liability, workers' compensation, unemployment insurance, and Social Security.

4.1.3 PROFESSIONAL shall indemnify and hold harmless COMMISSION and the County of Orange from any liability, damages, costs and expenses of any nature arising from alleged violations of personnel practices and employment laws.

4.2 Prohibition of Delegation and Assignment. PROFESSIONAL shall not delegate its duties nor assign its rights under this Agreement, either in whole or in part, without the prior written consent of ADMINISTRATOR. Any attempted assignment or delegation in derogation of this Paragraph 4 shall be deemed void. ADMINISTRATOR may authorize an assignment or delegation of rights by PROFESSIONAL under this Agreement, in his sole and complete discretion.

5. INTERPRETATION OF CONTRACT REQUIREMENTS. If either party or the parties together identify a term or provision under this Agreement which is subject to interpretation or requires clarification or additional direction, the interpretation issue shall be identified in writing by either party and submitted to the other party, then PROFESSIONAL's representative(s) and ADMINISTRATOR shall meet and seek to resolve the interpretation issue to the mutual satisfaction of the parties. In this regard, ADMINISTRATOR is vested with the right to issue interpretation(s) and waiver(s) and modification(s) to the terms and provisions of this Agreement so long as the interpretation(s) and waiver(s) and modification(s) does/do not substantively or materially amend or modify this Agreement. If the interpretation issue is not or cannot be disposed of within a reasonable period of time between PROFESSIONAL's representative(s) and ADMINISTRATOR, or other staff designee, the matter may be brought to the attention of COMMISSION, as elected by the ADMINISTRATOR. If consensus cannot be reached through this application, either party may assert its other rights and remedies within this Agreement or within a court of competent jurisdiction. COMMISSION and PROFESSIONAL agree that, in the event of an interpretation issue, they will continue without delay to carry out all their responsibilities under this Agreement that are not affected by the issue.

6. GENERAL INDEMNIFICATION.

6.1 PROFESSIONAL Indemnification of COMMISSION. PROFESSIONAL agrees to and shall indemnify, defend, hold harmless COMMISSION, the County of Orange, and their Commissioners, officers, agents, and employees from and against all liability, claims, losses and demands, damages to property or injuries to or death of any person or persons, including property of the Commissioners, officers, employees, or agents of COMMISSION or the County of Orange, including defense costs (together, "Claims"), whether resulting from court action or otherwise, resulting from, related in any manner to, or arising out of the intentional, malicious, negligent acts, inactions, errors or omissions of PROFESSIONAL, or its officers, employees and agents (or any pre-approved subcontractor) in the performance of this Agreement.

6.1.1 With regard to the above indemnity clause, COMMISSION acknowledges PROFESSIONAL does not assume responsibility for payment of Claims to the extent a court of competent jurisdiction determines the PROFESSIONAL was not responsible for all or a part of the Claim(s), i.e., liability did not result from intentional, malicious, negligent acts, inactions, errors or omissions of PROFESSIONAL, its officers, employees, agents, and/or Subcontractors in the performance of this Agreement, but were the result of the negligent or intentional act or omission of COMMISSION or its Commissioners, officers, agents or employees. PROFESSIONAL agrees the above provisions do not limit or affect its obligation to accept tender of defense and indemnification for a Claim from the COMMISSION or ADMINISTRATOR. Provided however, if COMMISSION

or its Commissioners, officers, agents or employees are found liable for all or a part of the Claim by a court of competent jurisdiction due to negligent or intentional act or omission of COMMISSION or its Commissioners, officers, agents or employees, then COMMISSION shall be responsible to pay the part of Claim it is determined responsible for and PROFESSIONAL may recover costs of defense directly attributable to the part of Claim.

6.1.2 Without limiting PROFESSIONAL's indemnification, it is agreed that PROFESSIONAL shall maintain in force at all times during the term of this Agreement, the policy or policies of insurance covering its operations and performance under this Agreement in the form and amounts set forth in Paragraph 7, which insurance obligations shall apply independently of all indemnification provided under this Agreement.

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

6.2 COMMISSION Indemnification of PROFESSIONAL. COMMISSION agrees to indemnify and hold harmless PROFESSIONAL from all Claims, including defense costs, whether resulting from court action or otherwise, arising out of the sole intentional or grossly negligent acts or omissions of COMMISSION and its Commissioners, officers, agents or employees in the performance of this Agreement.

6.2.1 COMMISSION warrants it is self-insured or maintains policies of insurance placed with reputable insurance companies licensed to do business in the State of California which insures the perils of bodily injury, medical, professional liability and property damage.

6.3 Notice of Claim; Tender of Indemnification. Each party agrees to provide the indemnifying party with written notification of any Claim within thirty (30) days notice of the Claim, to allow the indemnifying party control over the defense and settlement of the Claim, and to cooperate with the indemnifying party in its defense.

6.4 Defense of Claim. COMMISSION and PROFESSIONAL, at their sole discretion and expense, may employ legal counsel and participate in the defense of any actions.

6.5 Cooperation with Claims. Each party to this Agreement shall cooperate with another party to this Agreement in the defense of any action brought for conduct resulting under this Agreement and shall make available to said party any and all records in their respective possessions or control reasonably required by a party for use in contesting or defending liability.

7. INSURANCE. Without limiting PROFESSIONAL's liability for indemnification of COMMISSION as set forth in Paragraph 6 above, PROFESSIONAL shall obtain and maintain in effect, during the term of this Agreement, the following insurance coverage and provisions.

7.1 Evidence of Coverage. Prior to commencement of any Services under this Agreement, PROFESSIONAL shall provide on an insurance industry approved form a Certificate of Insurance certifying that coverage as required in this Paragraph 7 has been obtained and remains in force for the period required by this Agreement. In addition, a certified copy of the policy or policies shall be provided by PROFESSIONAL upon request of ADMINISTRATOR at the address specified in Paragraph 15. Each policy shall meet the following requirements.

7.1.1 Additional Insured Endorsement: Each policy shall include an endorsement evidencing that the policy also applies to COMMISSION, the County of Orange, the

members of COMMISSION, the Board of Supervisors of the County of Orange, and their officers, agents, and employees, individually and collectively, as additional insureds.

7.1.2 Primary Insurance Endorsement: Each policy shall include an endorsement evidencing that the policy afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by COMMISSION or the County of Orange, or their officers, agents, and employees shall be excess only and not contributing with insurance provided under this policy.

7.1.3 Notice of Cancellation or Change of Coverage Endorsement: Each policy shall include an endorsement evidencing that the policy shall not be canceled or changed so as to no longer meet the specified COMMISSION or County insurance requirements without thirty (30) days prior written notice of the cancellation or change being delivered to ADMINISTRATOR at the address shown on the Certificate of Insurance.

7.1.4 Separation Clause Endorsement: Each policy shall include an endorsement evidencing that the policy provides coverage separately to each insured who is seeking coverage or against whom a Claim is made or a suit is brought, except with respect to the company's limit of liability.

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

7.1.6 Qualifying Insurers. All coverages shall be issued by insurance companies that must be:

(a) Rated A-:VIII or better or FPR Ratings of 9 through 7, and have a Financial Size Category (FSC) of VIII or better according to the current Best's Key Rating Guide/Property-Casualty/United States; or

(b) A company of equal financial stability that is approved by ADMINISTRATOR or his/her Risk Management designee; and

(c) Admitted in the State of California.

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

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

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

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

7.1.9 Occurrence Versus Claims Made Coverage. It is the intent of COMMISSION to secure “occurrence” rather than “claims made” coverage whenever possible. If coverage is written on a “claims made” basis, the Certificate of Insurance shall clearly so state. In addition to coverage requirements above, each policy shall provide that:

(a) Policy retroactive date coincides with or precedes PROFESSIONAL’s start of work (including subsequent policies purchased as renewals or replacements).

(b) PROFESSIONAL will make every effort to maintain similar insurance during the required extended period of coverage following completion of the Professional Services, including the requirement of adding all additional insureds.

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

7.2 Types of Insurance Policies/Coverages Required. PROFESSIONAL shall provide insurance through a policy or policies with the following types and coverages, subject to the requirements of Paragraph 7.1 above.

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

(a) The coverage shall include:

(i) Premises and Operations

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

(iii) Contractual Liability expressly including liability assumed under this Agreement, excepting the requirement does not apply for service contracts.

(iv) Personal Injury Liability.

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

7.2.3 Workers’ Compensation Insurance. Workers’ Compensation Insurance shall be maintained. Statutory California Workers’ Compensation coverage shall include a broad form all-states endorsement and waiver of subrogation.

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

7.2.5 Professional Liability. Coverage for professional liability/errors and omissions is required in an amount not less than One Million Dollars (\$1,000,000) per claims made and One Million Dollars (\$1,000,000) aggregate.

7.3 Duration of Insurance. PROFESSIONAL shall maintain all coverage and insurance for the entire Term and for any extended period agreed upon within this Agreement.

7.4 Maintain Records re Insurance Coverage. PROFESSIONAL shall maintain records regarding all coverage and insurance for the Term of this Agreement and for any extended period agreed upon within this Agreement.

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

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

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

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

7.6.3 Immediately and without further cause terminate this Agreement.

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

8. RESPONSIBILITIES OF PROFESSIONAL.

8.1 Scope of Professional Services. As an independent contractor to COMMISSION PROFESSIONAL shall provide the Professional Services set forth and described in the Professional Services Summary, Exhibit B.

8.1.1 The Professional Services shall include the PROFESSIONAL's proposal or bid, if any, incorporated in this Agreement by this reference. In the event of any inconsistency between the terms of the proposal and this Agreement, the terms of this Agreement shall govern.

8.2 Compliance with the Law. PROFESSIONAL shall provide all Services in accordance with all applicable federal and state laws, statutes and regulations and local ordinances and resolutions. PROFESSIONAL shall comply with the Act, and all laws, rules or regulations applicable to the Professional Services provided under this Agreement, as any may now exist or may be changed or added after the Date of Agreement.

8.3 Technical Requirements for PCs and Software Used by PROFESSIONAL for all Recordkeeping and Reporting for the Services and Agreement. The following minimum standards shall be met by PROFESSIONAL for any and all computer hardware and software used for any and all recordkeeping and reporting to the COMMISSION or ADMINISTRATOR or COMMISSION'S designated PROFESSIONAL during the term of this Agreement. These minimum standards shall also apply to any and all computer hardware or software purchased with COMMISSION funds.

8.3.1 Hardware.

- (a) Processor: Intel Pentium(r) II or higher
- (b) Memory: 64 MB or greater
- (c) Display: Color monitor that supports a screen resolution of 1026 x 768 pixels

8.3.2 Software.

- (a) Operating System: Windows 98, Windows NT4.0, Windows 2000, Windows XP Professional
- (b) Application Suite: Microsoft Office 2000, Microsoft Office XP, Microsoft Office 2003
- (c) Internet Browser: Microsoft Internet Explorer 5.5 or greater with 128-bit encryption
- (d) Anti-Virus Software Protection comparable to Symantec Norton

8.3.3 Internet Connection. Dedicated connection via LAN, Cable Modem, DSL, Frame Relay, or T1. Note: The 128-bit encryption pack for Internet Explorer 5.5 may be downloaded at no cost from the Microsoft Windows Update website <http://windowsupdate.microsoft.com>. Full installations and up-to-date service packs may be necessary for all operating systems and application suites.

9. GENERAL TERMS AND CONDITIONS.

9.1 California Law. This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any default, dispute, interpretation, declaration of rights, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in the county, and PROFESSIONAL covenants and agrees to submit to the personal jurisdiction of the court in the event of the action.

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

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

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

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

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

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

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

9.9 Conflict of Interest. No officer or employee of COMMISSION shall have any personal interest, direct or indirect, in this Agreement nor shall any officer or employee participate in any decision relating to the Agreement which effects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. PROFESSIONAL warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

9.10 Representations and Warranties of PROFESSIONAL. PROFESSIONAL makes the following representations and warranties to COMMISSION. These representations and warranties are ongoing and PROFESSIONAL shall advise ADMINISTRATOR in writing if there is any change pertaining to any matters set forth or referenced in the following items Subparagraphs 9.11.1 through 9.11.6, inclusive.

9.10.1 No Conflict. To the best of PROFESSIONAL's knowledge, PROFESSIONAL's negotiation, consideration and action on this Agreement and PROFESSIONAL's execution, delivery and performance of its Professional Services under this Agreement will not constitute a default or a breach under any contract, agreement or order to which PROFESSIONAL is a party or by which it is bound.

(a) PROFESSIONAL agrees that no Commissioner, officer, employee, agent or assignee of COMMISSION having direct or indirect control of any monies allocated by COMMISSION, inclusive of the monies paid under this Agreement, shall serve as an officer or director of PROFESSIONAL without the express written acknowledgement of COMMISSION and subject to legal requirements, including Government Code Paragraph 1090, *et seq.*

(b) Further, any conflict or potential conflict of interest of any officer or director of PROFESSIONAL, if any, shall be fully disclosed in writing prior to the execution of this Agreement and shall be attached to and become a part of this Agreement.

9.10.2 No Bankruptcy. PROFESSIONAL is not the subject of any current or threatened bankruptcy.

9.10.3 No Pending Legal Proceedings. PROFESSIONAL is not the subject of a current or threatened litigation that would or may materially affect PROFESSIONAL's ability to perform and provide Professional Services under this Agreement.

9.10.4 Proposal Veracity. All provisions of and information provided in PROFESSIONAL's proposal to provide Professional Services, if any, submitted to COMMISSION including exhibits are true and correct in all material respects.

9.10.5 No Pending Investigation. PROFESSIONAL is not aware that it is the subject of any current or threatened criminal or civil action investigation by any public agency, including without limitation a police agency or prosecuting authority, related to it or its provision of Professional Services.

9.10.6 Licenses and Standards; Compliance with Laws. PROFESSIONAL warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, County of Orange, any local jurisdiction in which it may do business and/or provide Services, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of this Agreement. Further, PROFESSIONAL shall only utilize the services of and/or enter into a subcontract with another person, entity, or contractor with the prior written approval of ADMINISTRATOR in his sole discretion, and, if approved, such persons shall be duly licensed, insured, and qualified to provide Professional Services. Further, PROFESSIONAL warrants that its employees and agents (and any pre-approved subcontractor) shall conduct themselves in compliance with the laws and licensure requirements including, without limitation, compliance with laws applicable to non-discrimination, sexual harassment, and ethical behavior.

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

10. COMPENSATION. The Schedule of Compensation, Exhibit C, sets forth the schedule of compensation for the Professional Services to be provided by PROFESSIONAL as an independent contractor to COMMISSION under this Agreement, including without limitation the schedule of compensation for any of PROFESSIONAL's employees, agents, or other personnel (and any approved subcontractor) under the control or direction of PROFESSIONAL and permitted to provide any of the Professional Services under this Agreement. All payment invoices shall evidence compliance with this Schedule of Compensation, Exhibit C. **[As applicable, add: The maximum payment obligation of COMMISSION to PROFESSIONAL for any and all Services provided under this Agreement shall be \$ _____ ("Maximum Payment Obligation").]**

10.1 Payments through Invoices. Requests for payment for Services provided by PROFESSIONAL within the Professional Services Summary, Exhibit B, and within the Schedule of Compensation, Exhibit C, may be submitted by monthly invoice for Services rendered under this Agreement during the prior month. Each invoice requesting payment for Professional Services shall be submitted by PROFESSIONAL to ADMINISTRATOR on an invoice form approved by ADMINISTRATOR describing the Professional Services and performance tasks completed pursuant to the Professional Services Summary, Exhibit B for the applicable invoice period. Subject to submittal of a complete invoice by PROFESSIONAL, payment on each monthly invoice will be made by COMMISSION within a reasonable time period estimated at not more than thirty (30) days

after receipt of an itemized and complete invoice form, including any supporting documentation that may be reasonably requested or required by ADMINISTRATOR.

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

11. CONFIDENTIALITY.

11.1 PROFESSIONAL Obligation. PROFESSIONAL agrees to maintain the confidentiality of any confidential records in accordance with applicable federal and state laws and regulations and in accordance with the Confidentiality and Data Sharing Protocol as adopted by COMMISSION as each currently exist or may be amended after the Date of Agreement. PROFESSIONAL agrees to cause each and all of its employees and agents (and any pre-approved subcontractor) rendering Services on behalf of PROFESSIONAL to maintain the confidentiality of any confidential records in accordance with applicable federal and state laws and regulations and in accordance with the Confidentiality and Data Sharing Protocol as adopted by COMMISSION as each currently exist or may be amended after the Date of Agreement.

12. RECORDS.

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

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

13. OWNERSHIP OF DOCUMENTS. Originals of all drawings, specifications, reports, records, documents and other materials, whether in hard copy or electronic form, which are prepared by PROFESSIONAL, its employees or agents (or any pre-approved subcontractor) in the performance of this Agreement, or submitted to PROFESSIONAL by COMMISSION contractors, shall be and remain the property of COMMISSION and shall be delivered to COMMISSION upon the termination of this Agreement or upon the earlier request of ADMINISTRATOR. In this regard, PROFESSIONAL shall have no right for further retention of any documents prepared or obtained through funding provided by this Agreement and no right for additional compensation as a result of the exercise by COMMISSION of its full rights of ownership of the documents and materials under this Agreement. PROFESSIONAL may retain copies of the documents for its own use, but no part of any of the document may be reproduced without the express written consent of COMMISSION.

PROFESSIONAL shall have the right to use the concepts created by it under this Agreement. PROFESSIONAL shall cause, as a part of any pre-approved subcontract, each subcontractor to assign irrevocably to COMMISSION any documents or materials prepared by it, whether in hard copy or electronic form. In the event PROFESSIONAL fails to secure the assignment from an approved subcontractor, PROFESSIONAL shall indemnify COMMISSION for all damages suffered as a result.

The drawings, specifications, reports, records, documents and other materials prepared by PROFESSIONAL in the performance of Services under this Agreement shall not be released publicly without the prior written approval of the ADMINISTRATOR or as required by law. PROFESSIONAL shall not disclose to any other private entity or person any information regarding the activities of COMMISSION, except as required by law or as authorized by COMMISSION.

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

15. METHOD AND FORM OF NOTICES. Unless otherwise specified, all formal notices, invoices, Claims, correspondence, or reports shall be addressed as follows:

COMMISSION: CHILDREN AND FAMILIES COMMISSION OF
ORANGE COUNTY
Director of Contract Administration
17320 Redhill, Suite 200
Irvine, CA 92614

PROFESSIONAL: See Exhibit B

All notices shall be deemed effective when in writing and personally delivered or deposited in the United States mail, express, priority, or first class, postage prepaid and addressed as above. Any notices addressed in any other fashion shall be deemed not given. ADMINISTRATOR and PROFESSIONAL may mutually agree in writing to change the addresses to which notices are sent.

16. RIGHTS OF TERMINATION.

16.1 Termination without Cause by Either Party Prior to Expiration of Term. COMMISSION and PROFESSIONAL each reserve the right to terminate this Agreement at any time, without cause, upon fifteen (15) days' written notice to the other party. Upon receipt of a notice of termination without cause, PROFESSIONAL shall immediately cease all Services under this Agreement except as may be specifically approved and delineated by ADMINISTRATOR. PROFESSIONAL shall be entitled to compensation for all Services rendered prior to receipt of the notice of termination and for any Services authorized by the ADMINISTRATOR after the notice in accordance with the compensation provisions of this Agreement and Schedule of Compensation, Exhibit C, or another arrangement for compensation as may be approved by the ADMINISTRATOR in writing.

16.2 Termination for Cause Due to Default of PROFESSIONAL. COMMISSION reserves the express right to terminate this Agreement for cause due to the default (as defined in Paragraph 17 below) by PROFESSIONAL in its performance obligations under this Agreement. COMMISSION may in any notice of default advise PROFESSIONAL it also intends to terminate the Agreement for cause. The notice of default from COMMISSION shall advise PROFESSIONAL if COMMISSION intends to elect to terminate the Agreement and in the event PROFESSIONAL shall

immediately cease performance and provision of Services under this Agreement as of the date the notice of default is received or deemed received, whichever is earlier. In the event of termination, COMMISSION may, but is not required, to take over the work and prosecute the same to completion by contract or otherwise. Also, in the event of termination for cause, PROFESSIONAL shall be liable to the extent that the total cost for completion of the Professional Services required under this Agreement exceeds the compensation stipulated in this Agreement (provided that the COMMISSION shall use reasonable efforts to mitigate damages), and COMMISSION expressly reserves the right to withhold any outstanding payments to the PROFESSIONAL for the purpose of set off or partial payment of the amounts owed the COMMISSION as previously set forth in this Agreement.

17. DEFAULT BY PROFESSIONAL. Failure by PROFESSIONAL to perform and/or comply with any provision, covenant, or condition of this Agreement shall be a default and material breach of this Agreement. In the event of default ADMINISTRATOR, in his/her sole discretion, may avail on behalf of the COMMISSION (or the COMMISSION may avail itself) of any remedies available at law, in equity, or otherwise specified in this Agreement (including immediate termination for cause as set forth above) and may elect any of the following:

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

(b) Discontinue payment and eligibility for payment to PROFESSIONAL for and during the period in which PROFESSIONAL is in breach, which payment may not be entitled to later recovery; and/or

(c) Offset against any funds invoiced by PROFESSIONAL but yet unpaid by COMMISSION those monies disallowed pursuant Paragraph 17(b) above; and/or

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

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS, COMMISSION and PROFESSIONAL have executed this Professional Services Agreement in the County of Orange, State of California.

COMMISSION

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

Dated: _____ By: _____
Chair

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

By: _____
DARLENE J. BLOOM
Clerk of COMMISSION

Dated: _____

[Signature block for PROFESSIONAL on next page.]

[Signature block continued from previous page.]

PROFESSIONAL

a _____

Dated: _____

By: _____

[Name]

Its: [Title] _____

[OPTIONAL, BASED ON ORGANIZATION]

Dated: _____

By: _____

[Name]

Its: [Title] _____

EXHIBIT A

ACKNOWLEDGMENT OF INDEPENDENT PROFESSIONAL STATUS

This **Acknowledgment of Independent Contractor Status** (“Acknowledgment”) is an exhibit and fully incorporated into that certain “Agreement for Provision of Professional/Consulting Services” (“Agreement”) dated _____, 20__ by and between **CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY** (“COMMISSION”) and _____, a[n] _____ (“PROFESSIONAL”). This Acknowledgment is intended to define and affirm the relationship between COMMISSION and PROFESSIONAL as set forth in the Agreement. PROFESSIONAL has been fully informed, has had the opportunity to be advised or has been advised by counsel of its choosing, and knowingly and willingly acknowledges and agrees as follows:

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

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

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

PROFESSIONAL

_____ ,

a _____

By: _____

EXHIBIT B

PROFESSIONAL SERVICES SUMMARY

Professional Services Agreement # PS-_____
Term: _____ through _____
[to be prepared and attached]

1. **PROFESSIONAL**

[insert]

Contact: [insert]

Signatories: _____

2. **SCOPE OF WORK**

3. **STAFFING/PERSONNEL**

4. [insert]

5. [insert]

6. **WAIVER/AMENDMENTS TO AGREEMENT.** _____

EXHIBIT C

COMPENSATION SCHEDULE RATES FOR PROFESSIONAL SERVICES

1. Compensation Schedule and Rates for Professional Services

[to be prepared and inserted]

2. Reimbursement for Travel Expenses

- All travel must be approved in advance by ADMINISTRATOR.
- PROFESSIONAL shall submit travel requests upon a form provided by ADMINISTRATOR.
- If ADMINISTRATOR requests that PROFESSIONAL attend and/or participate in a Seminar or similar type meeting and PROFESSIONAL's only travel cost is mileage and/or registration fees as appropriate, ADMINISTRATOR's authorization may be verbal or via e-mail.
- PROFESSIONAL shall submit receipts for all expenses included in invoices to receive reimbursement. ADMINISTRATOR may, at his/her sole discretion, request original receipts from PROFESSIONAL.
- Alcoholic beverages, tips, movies, and the cost of toll roads are not reimbursable.
- The cost of meeting rooms, materials necessary for meetings, and food during meetings may be reimbursed subject to the prior approval of ADMINISTRATOR.
- As approved in advance by ADMINISTRATOR or authorized designee, PROFESSIONAL may bill for reimbursement of incurred out of pocket costs incurred for photocopying, as necessary, from Kinko's or other similar service.

2.1 Travel within Orange County

PROFESSIONAL shall neither be paid for the time spent traveling nor reimbursed for mileage from or to PROFESSIONAL's place of business or home to or from COMMISSION offices, PROFESSIONAL locations or other meetings within Orange County in order to perform work under this Agreement. PROFESSIONAL shall be paid for the time spent traveling and shall be reimbursed for mileage between COMMISSION Offices and PROFESSIONAL locations, between PROFESSIONAL locations, and between meetings to perform work under this Agreement within Orange County.

2.2 Travel to Orange County from contiguous counties

PROFESSIONAL shall not be paid for the time spent traveling to perform work under this Agreement except for time spent actually working while traveling; e.g., time spent using cell phones or lap tops. PROFESSIONAL shall not be reimbursed for the cost of travel by air, train, or the cost of a rental car. In the event that a personal vehicle is utilized, PROFESSIONAL shall not be reimbursed for mileage or the cost of toll roads when traveling to COMMISSION's office or other location(s) within Orange County to perform work under this Agreement. PROFESSIONAL may bill COMMISSION for necessary parking costs. PROFESSIONAL shall be reimbursed the actual cost of meals not to exceed \$45 per day for all meals; and, the actual cost of lodging not to exceed

\$130 per day in addition to the hourly rate specified provided that the expenses are approved, in advance, by ADMINISTRATOR.

2.3 Travel from Orange County to contiguous counties and travel between counties contiguous to Orange County

PROFESSIONAL shall not be paid for the time spent traveling to perform work under this Agreement except for time spent actually working while traveling; e.g., time spent using cell phones or lap tops. PROFESSIONAL shall not be reimbursed for the cost of travel by air or the cost of a rental car. In the event that a personal vehicle is utilized, mileage shall be reimbursed at the rate(s) per mile established as an allowable deduction by the Internal Revenue Service during the term of this Agreement. PROFESSIONAL may bill COMMISSION for necessary parking costs. PROFESSIONAL shall be reimbursed the actual cost of travel by train, meals not to exceed \$45 per day for all meals; and, the actual cost of lodging not to exceed \$130 per day provided that the expenses are approved, in advance, by ADMINISTRATOR.

2.4 Travel to and from counties not contiguous to Orange County and travel to and from Orange County to and from other states

PROFESSIONAL shall not be paid for the time spent traveling to perform work under this Agreement except for time spent actually working while traveling; e.g., time spent using cell phones or lap tops. PROFESSIONAL may bill COMMISSION for the actual cost of coach airfare or train; the reasonable and necessary cost of car rental; the actual cost of meals not to exceed \$45 per day for all meals; and, the actual cost of lodging not to exceed \$130 per day. PROFESSIONAL may bill COMMISSION for necessary parking costs in addition to the hourly rate specified. In the event that a personal vehicle is utilized, mileage shall be reimbursed at the rate(s) per mile established as an allowable deduction by the Internal Revenue Service during the term of this Agreement. All travel to and from Orange County to and from counties not contiguous to Orange County, and travel to and from Orange County to and from other states, must be approved, in advance, by ADMINISTRATOR.

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