

Board Office Use: <b>Legislative File Info.</b>	
File ID Number	23-1517
Introduction Date	6/28/23
Enactment Number	23-1314
Enactment Date	6/28/2023 CJH



# Board Cover Memorandum

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Sondra Aguilera, Chief Academic Officer  
Christie Herrera, Executive Director, Early Learning

**Meeting Date** June 28, 2023

**Subject** Agreement - Measure AA Funds for OUSD Early Learning

**Ask of the Board** Approve the \$6,026,000.00 contract for services from First Five of Alameda County and Measure AA funds for Kaiser Early Childhood Center Playground, Family Navigator Supports and Quality improvements for Early Learning.

**Background** The Oakland Children’s Initiative (Measure AA) is a parcel tax, driven to the ballot by community advocacy, is a 2018 Charter Amendment passed by the citizens of Oakland to deepen the early investment in children and support them through college graduation, by dramatically expanding access to high quality preschool and providing college access, mentorship, and scholarship support services for students to obtain 4-year or 2-year college or technical degrees. The City of Oakland projects it will leverage +\$30 million in annual revenue to dramatically expand access to and the quality of preschool, as well as significantly increase college enrollment and college graduation rates.

**Discussion** **Measure AA Outlines the following for use of funds:**

1. Make available free or affordable and high-quality early education and/or preschool for four-year old children from low-income families, such as those who make less than eighty-five-percent (85%) of the state median income, with a priority on serving the children of families with the lowest incomes and/or those who are in high need, while also supporting such families who need family, friend, and neighbor care.
2. Increase the availability of free or affordable and high-quality early education and/or preschool for three-year-old children from low-income families, with a priority on serving the children of families with the lowest incomes or those who are in high need, while also supporting such families who need family, friend, and neighbor care.
3. Provide high quality classrooms, play spaces, materials and PD for all Early Learning Staff and Families.

**Fiscal Impact**

Allowable uses of the funds are specified in the voter-approved Charter amendment. Additionally, contracts awarded to Implementation Partners will be performed from contract execution date through 2027. The contract can be extended for additional term of up to five (5) years, provided the Implementation Partner(s) remains in good standing and continues to carry out requirements as specified in Oakland Children's Initiative and is not terminated prior to the expiration of its term.

**Attachment(s)**

- Agreement with First Five of Alameda County
- Oakland, California - Code of Ordinances / The Charter of the City of Oakland - ARTICLE XVI – The Children's Initiative of 2018

## ARTICLE XVI THE CHILDREN'S INITIATIVE OF 2018

### Section 1600. Definitions.

- (a) "Act" shall mean the Children's Initiative of 2018.
- (b) "Citizens' Oversight Commission" shall mean the Children's Initiative Citizens' Oversight Commission created by Section 1601 of this Act.
- (c) "College" shall mean a not-for-profit post-secondary educational institution, including two-year, four-year accredited career technical educational degrees, and/or certificates.
- (d) "Early Education Fund" shall mean the Oakland Early Education Fund established by Section 1604 of this Act.
- (e) "Early Education Implementation Partner" shall mean the body selected to implement the early education program, either directly or through subcontracts, pursuant to Section 1605 of this Act.
- (f) "First 5 Alameda County" shall mean the independent county agency established by the County of Alameda pursuant to Section 130140 of the California Health and Safety Code.
- (g) "Guidelines" shall mean strategic guidelines developed by the accountability officer and adopted by the Citizens' Oversight Commission every five (5) years for the Early Education and Oakland Promise Funds to outline the priorities for programs supported by the Funds in support of the Purpose and Intent and consistent with the Act.
- (h) "High need" shall mean a child experiencing homelessness, or other criteria as recommended by the accountability officer and approved by the Citizens' Oversight Commission, such as homelessness as broadly defined by the McKinney Vento Homeless Assistance Act, child abuse or neglect, trauma, interaction with the foster care system, interaction with the criminal-justice system including incarceration or deportation, linguistic isolation, domestic violence, a child or family with disabilities or special needs, or children living in areas of high concentrated poverty, or children facing other similar challenges.
- (i) "Preschool" shall mean a developmentally-appropriate and evidence-based educational program for children prior to kindergarten.
- (j) "Oakland Promise Fund" shall mean the Oakland Promise Fund established by Section 1607 of this Act.
- (k) "Oakland Promise Implementation Partner" shall mean the body selected to implement the Oakland Promise program, either directly or through subcontracts, pursuant to Section 1608 of this Act.
- (l) "Oakland Public School" shall mean a K-12 educational institution in Oakland that is supported with public funds and that is authorized by action of and operated under the oversight of a publicly constituted local or state educational agency.
- (m) "Oversight, Accountability, and Evaluation Fund" shall mean the Oversight, Accountability and Evaluation Fund established by Section 1603 of this Act.
- (n) "Proceeds of the parcel tax" shall mean all revenue derived from the parcel tax imposed by this Act net of Alameda County's cost of collection.

(Added by: Stats. November 2018)

### The Children's Initiative Oversight and Accountability.

**Section 1601. The Children's Initiative Citizens' Oversight Commission.**

- (a) Establishment. There is hereby established the Children's Initiative Citizens' Oversight Commission.
- (b) Membership; Appointment Process; Qualifications. The Citizens' Oversight Commission shall be composed of nine (9) to fifteen (15) members. Members of the Citizens' Oversight Commission shall be appointed by the Mayor and confirmed by the Council pursuant to Section 601 of the Charter. The Mayor shall request recommendations from members of the City Council and the Oakland Unified School District Board of Education and Superintendent at least fourteen (14) days prior to submitting any appointments for confirmation. The composition of the Commission should be reflective of the diversity of Oakland and shall include the following members:
  - (1) At least one (1) member with professional expertise in early childhood education policy;
  - (2) At least one (1) member with professional expertise in, or who is a provider of, early childhood care or education;
  - (3) At least one (1) member with at least two (2) years of experience teaching in early childhood education;
  - (4) At least one (1) member with at least two (2) years of experience teaching TK-12, or who has professional expertise in TK-12 education or college access;
  - (5) At least one (1) member with professional expertise in college completion, college or university leadership, or support for traditionally underrepresented college students;
  - (6) At least one (1) member with experience in budgeting, auditing, finance, or early asset building;
  - (7) At least one (1) member of a union or labor advocacy group who is employed by the City of Oakland Head Start, the Oakland Unified School District, or a participating early care and education provider;
  - (8) At least one (1) homeowner who is subject to the parcel tax imposed by Section 5 of the Act;
  - (9) At least one (1) parent, who presently has, or has had within five (5) years from the time of appointment, a child of preschool age who attended a preschool program benefiting from public subsidy, or who was on a waitlist for such a program; and
  - (10) At least one (1) member who is, or who within five (5) years from the time of appointment was, enrolled in an Oakland public school, or who has graduated from an Oakland public school and enrolled in college within five (5) years from the time of appointment, or who is the first in their immediate family to graduate from College.
- (c) Qualifications; Conflicts. A majority of the members of the Commission shall be residents of Oakland. The members in paragraphs (7) through (10) must be residents of Oakland. The members set forth in paragraphs (1) through (6) must reside and/or work in Oakland. At least one (1) member in paragraphs (1) or (2) must be an employee of the Oakland Unified School District. One member may satisfy more than one of the requirements set forth in paragraphs (1) through (10) of subdivision (b). Members may not receive income from or serve as an officer, director, or employee of an Implementation Partner.
- (d) Terms. A member shall serve no more than four (4) full, consecutive terms. A member may be removed for cause pursuant to Section 601 of the Charter, or for the failure to attend three (3) consecutive meetings of the Citizens' Oversight Commission or more than fifty percent (50%) of the meetings in a twelve-month period. For the initial nine (9) appointments only, one-third (1/3) of the members shall be appointed to serve for four (4) years, one-third (1/3) shall be appointed to serve for three (3) years,

- and one-third (1/3) shall be appointed to serve for two (2) years. Subsequently, all terms shall be for three (3) years.
- (e) Quorum. A majority of the appointed members of the Commission shall constitute a quorum, but in no case shall a quorum be fewer than five (5) members.
  - (f) Compensation. Members shall serve without compensation, provided that members may request and receive reimbursement for actual transportation and childcare expenses, not to exceed five hundred dollars (\$500) annually.
  - (g) Responsibilities. It shall be the responsibility of the Citizens' Oversight Commission to:
    - (1) Approve subsequent five-year Guidelines for the Early Education and Oakland Promise Funds after the expiration of the initial five-year Guidelines, which are set forth in Sections 1606 and 1609 of this Act;
    - (2) Review the analysis and recommendations of the accountability officer for the selection of Implementation Partners, approve or reject the recommendation for the selection of Implementation Partners for the Early Education and Oakland Promise Funds, ensure that the selection is consistent with the Act, and once approved, submit the final selection to the Oakland City Council for its adoption without amendment;
    - (3) After considering the recommendation of the accountability officer, approve any extensions of the term of an Implementation Partner, by a majority vote, or any termination of an Implementation Partner for reasons as specified in Sections 1605 and 1608, by a two-thirds (2/3) vote, if extension or termination would further the purposes of the Act;
    - (4) Review and approve the results of annual independent financial audits of each of the Funds;
    - (5) Review the performance appraisals of the implementation of the Early Education and Oakland Promise programs presented by the accountability officer;
    - (6) Review the external evaluations of the implementation of the Early Education and Oakland Promise programs presented by the accountability officer; and
    - (7) Perform such other functions and duties as may be prescribed by the City Administrator.

(Added by: Stats. November 2018)

**Section 1602. The Children's Initiative Accountability Officer.**

- (a) Establishment. A position that serves as accountability officer for the Children's Initiative is hereby established at a classification and at a salary scale commensurate with the duties of the position, as determined by the City Administrator. The City Administrator or his/her designee shall hire for the position, in consultation with the Superintendent of the Oakland Unified School District and shall oversee the work of the accountability officer for the Children's Initiative. The City Administrator may appoint an interim Children's Initiative accountability officer to carry out the duties set forth in subdivision (b) until such time as a permanent appointment is made or if the position is vacant.
- (b) Responsibilities. The accountability officer shall be responsible for:
  - (1) Overseeing the Early Education and Oakland Promise programs and ensuring that the programs further the Purpose and Intent of the Act, supporting and providing recommendations to the Citizens' Oversight Commission, and bringing any required items to City Council;

- (2) Preparing subsequent five-year Guidelines for the Early Education and Oakland Promise Funds after the expiration of the initial five-year Guidelines set forth in Sections 1606 and 1609. The subsequent five-year Guidelines shall be created through an assessment of the local context and needs, as well as national evidence-based best practices in the field, and shall identify metrics for each program to assess the achievement of outcomes central to the identified goals in support of the statement of Purpose and Intent and consistent with the Act;
- (3) Leading the selection process and contracting for the Early Education and Oakland Promise Implementation Partners, consistent with the Act, making a recommendation to the Citizens' Oversight Commission for the selection of the Implementation Partners, and developing the scope of services, including performance standards and mechanisms for monitoring and reporting progress to the Citizens' Oversight Commission at least every two (2) years;
- (4) Ensuring that independent financial audits of expenditures from the Funds for the implementation of the Early Education and Oakland Promise programs are conducted, and presenting the audits to the Citizens' Oversight Commission;
- (5) Monitoring the performance of the Implementation Partners through a formal performance appraisal, consistent with the metrics established in the five-year Guidelines and scope of services for the Implementation Partners, and reporting at least once every two (2) years regarding the Implementation Partners' performance to the Citizens' Oversight Commission;
- (6) Overseeing a rigorous and reliable external evaluation or evaluations of the Implementation Partners' performance, including the selection of external evaluation partners or the utilization of existing external evaluations as applicable, and presenting the results of such evaluations to the Citizens' Oversight Commission;
- (7) Carrying out such other duties as may be delegated by the City Administrator; and
- (8) Providing or coordinating training for members of the Citizens' Oversight Commission.

(Added by: Stats. November 2018)

**Section 1603. Funding for Oversight, Accountability, and Evaluation.**

- (a) The Fund. There is hereby established the Oakland Children's Initiative Oversight, Accountability, and Evaluation Fund.
- (b) Revenue. For each fiscal year, seven percent (7%) of the proceeds of the parcel tax imposed pursuant to Section 5 of this Act shall be deposited in the Children's Initiative Oversight, Accountability, and Evaluation Fund, and shall be appropriated, together with any interest that accrues thereon, for the purposes specified in subdivision (c) of this Section.
- (c) Eligible Uses. Moneys in the Children's Initiative Oversight, Accountability and Evaluation Fund shall be used to support the oversight and accountability costs of the Citizens' Oversight Commission, including but not limited to the costs of Commission and accountability staff, operations and meetings, financial management, audits, strategic and implementation planning, and communications and outreach. At least one-third (1/3) of the moneys deposited in the Oversight, Accountability and Evaluation Fund shall be appropriated for independent third-party evaluations.
- (d) Transfer to Program Funds. To the extent that at the end of each two-year (2) budget period, any unspent and unencumbered or undesignated funds remain in the Oversight, Accountability, and Evaluation Fund, fifty percent (50%) of the funds remaining shall be transferred to the Early Education Fund and shall be available for appropriation to achieve the goals of the Early Education Fund, twenty-

five percent (25%) shall be transferred to the Oakland Promise Fund and shall be available for appropriation to achieve the goals of the Oakland Promise Fund, and twenty-five percent (25%) shall remain in the Oversight, Accountability and Evaluation Fund as a reserve for the eligible uses set forth in subdivision (c) of this Section.

(Added by: Stats. November 2018)

**The Oakland Early Education Program.**

**Section 1604. Early Education Fund.**

- (a) The Account. There is hereby established the Oakland Early Education Fund.
- (b) Revenue. For each fiscal year, sixty-two percent (62%) of the proceeds of the parcel tax imposed pursuant to Section 5 of this Act shall be deposited in the Early Education Fund, and shall be appropriated, together with any interest that accrues thereon, for the purposes specified in subdivision (c) of this Section.
- (c) Eligible Uses. Moneys in the Early Education Fund shall be used to support programs to expand access to, or to enhance the quality of, early care and education and preschool for children who reside in Oakland or whose parents resided in Oakland at the time of their enrollment in such programs, including the collection and maintenance of data to enable evaluation over time and family support services, in order to increase educational outcomes, such as kinder-readiness, and to reduce educational inequality, such as by disparities related to income and wealth or for children traditionally underrepresented in higher education, as further specified in the five-year Guidelines.
- (d) Non-Supplantation.
  - (1) Moneys in the Early Education Fund shall only be used to expand access to, or enhance the quality of, early care and education, provided, however, that if federal, state, non-City, or restricted Oakland Unified School District funding was committed for the purpose of providing such services and subsequently ceases to be provided and is not replaced by other federal, state, non-City, or restricted Oakland Unified School District funding committed for that same purpose, then moneys in the Early Education Fund may be expended to the extent necessary for such services to continue.
  - (2) Moneys in the Early Education Fund shall not be used for K-12 school day services except for the purpose of expanding transitional kindergarten eligibility to additional four-year old children.

(Added by: Stats. November 2018)

**Section 1605. Early Education Implementation Partner.**

- (a) Selection. The Early Education Implementation Partner shall be selected pursuant to paragraph (1) of subdivision (b) of Section 1606, and pursuant to subdivision (b) of this Section or through a request for proposals. If the requirement in paragraph (1) of subdivision (b) of Section 1606 is deemed not to apply pursuant to subdivision (c) of Section 1606, then the accountability officer shall recommend, and the Citizens' Oversight Commission shall select an Early Education Implementation Partner pursuant to a request for proposals or pursuant to subdivision (b) of this Section. The Early Education Implementation Partner shall meet the following minimum criteria:
  - (1) The Implementation Partner must have a mission consistent with the purposes of the Early Education Fund and the capability to implement all of the Guidelines of the Early Education Fund, through direct provision or through partnership agreements;

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- (2) The Implementation Partner must have expertise in early education or a record of successfully implementing programs or services for children age zero to five; and
  - (3) At the time of application and while acting as Early Education Implementation Partner, the Implementation Partner must not be a private preschool provider in the City of Oakland.
- (b) Alternative Selection Process.
- (1) The accountability officer may recommend First 5 Alameda County as the Early Education Implementation Partner to the Citizens' Oversight Commission, without issuing a request for proposals, provided that:
    - (A) The voters of Alameda County have approved a tax to fund child care and early education in June 2018 and that First 5 Alameda County is the entity selected to implement the child care and early education programs; and
    - (B) First 5 Alameda County is willing, and has the capacity, to serve as the Early Education Implementation Partner.
  - (2) The accountability officer may recommend administering the program through a City of Oakland department, which shall serve as the Early Education Implementation Partner, without issuing a request for proposals.
- (c) Term of the Early Education Implementation Partner.
- (1) The initial Early Education Implementation Partner shall act as the Early Education Implementation Partner for a period of five (5) years with an opportunity for renewal for additional terms of up to five (5) years, provided that it remains in good standing and continues to carry out the requirements specified in this Act and is not terminated prior to the expiration of its term pursuant to paragraph (2).
  - (2) The accountability officer may recommend, and the Citizens' Oversight Commission may approve, by a vote of two-thirds (2/3) of its members, the termination of the Early Education Implementation Partner before the expiration of the Early Education Implementation Partner's term, if the Early Education Implementation Partner breaches its agreement with the City, is unwilling or unable to carry out the purposes of this Act, or engages in gross negligence, fraud, or unlawful activity. In the event of termination, the accountability officer shall recommend an Early Education Implementation Partner in accordance with this Section to serve until the expiration of the then-current five-year Guidelines.
  - (3) At the expiration of the first five-year period, the accountability officer may recommend, based on the Early Education Implementation Partner's performance, that the Citizens' Oversight Commission renew the contract for an additional term of up to five (5) years, issue a request for proposals for an Early Education Implementation Partner, or if the requirement in paragraph (1) of subdivision (b) of Section 1606 is deemed not to apply, select an Early Education Implementation Partner in accordance with subdivision (a) or (b) of this Section for a period of up to five years. The terms of the Early Education Implementation Partner shall be aligned with the five-year Guidelines and there shall be no limit on the number of years an Implementation Partner may serve.
- (d) Requirements for the Early Education Implementation Partner. The City Administrator shall have the authority to enter into a contract with the Implementation Partner that includes legally required terms and terms deemed to be in furtherance of the Purpose and Intent of this Act, such as but not limited to the following:

- (1) Performance metrics and benchmarks;
- (2) Plans for consultation or engagement with experts, community members, and program beneficiaries;
- (3) Annual independent financial audits;
- (4) Data sharing agreements including disaggregation by race and income of program beneficiaries; and
- (5) Accounting practices that securely segregate Fund revenues and expenditures in order to ensure appropriate accounting of receipts and expenditures.

(Added by: Stats. November 2018)

**Section 1606. The First Five Years of the Early Education Fund.**

- (a) Early Education Guidelines for the First Five Years. For the first five (5) years following the appointment of a quorum of the Citizens' Oversight Commission, in order to expedite implementation and ensure the people of Oakland begin to feel the benefit of the approval of the Act, the Guidelines for the Early Education Fund, which are based upon an assessment of the local context and needs and national evidence-based best practices in the field, shall be as follows and shall not be amended:
  - (1) Increase overall attainment and reduce socioeconomic and/or other demographic disparities, in child educational outcomes, such as kinder-readiness, and provide family support services, to achieve the following outcomes prioritized as follows, such that plans to fund a lower priority outcome may only be implemented if the Early Education Implementation Partner has determined that the next highest priority goal is reasonably achievable within the five-year period:
    - (A) Make available free or affordable and high-quality early education and/or preschool for four-year old children from low-income families, such as those who make less than eighty-five-percent (85%) of the state median income, with a priority on serving the children of families with the lowest incomes and/or those who are in high need, while also supporting such families who need family, friend, and neighbor care.
    - (B) Increase the availability of free or affordable and high-quality early education and/or preschool for three-year-old children from low-income families, with a priority on serving the children of families with the lowest incomes or those who are in high need, while also supporting such families who need family, friend, and neighbor care.
    - (C) Increase the affordability and/or quality of preschool for all four-year-old children, with a priority on serving the children of families with the lowest incomes or those in highest need, while also supporting such families who need family, friend and neighbor care.
    - (D) Increase the affordability and/or quality of preschool for three-year-old children, with a priority on serving the children of families with the lowest incomes or those in highest need, while also supporting such families who need family, friend and neighbor care.
    - (E) Increase the availability and/or quality of child development support services for children and families from low-income backgrounds with children from birth through age three, while also supporting such families who need family, friend, and neighbor care.
  - (2) Provide for a rigorous external evaluation of the impact of the early education programs, such as on child outcomes data including kindergarten-readiness, that will facilitate assessment of

- whether the early education programs are achieving the goals of the Act and provide information on how to mitigate disparities, such as those by wealth and income or for children in high-need.
- (3) Ensure that professional development and coaching are generally available for educators, and that participating center-based preschool programs generally are able to do the following within a reasonable timeframe:
    - (A) Achieve a baseline rating of at least three (3) or higher on the regional Quality Rating and Improvement System (QRIS), or a successor system;
    - (B) Utilize a developmentally-appropriate curriculum aligned with California Department of Education standards, and in addition that is also evidence-based and/or has demonstrated success in improving preparation for kindergarten;
    - (C) Conduct formative assessments to shape instruction; and
    - (D) Participate in valid, regular, and reliable assessments of early education quality in order to foster continuous improvement and to reduce disparities, such as those by income and wealth, in child outcomes.
  - (4) Ensure that funding streams from federal, state and local sources, including Head Start, are coordinated to reduce the administrative burden of program beneficiaries in accessing services, and to ensure that existing high-quality early education programs are not made financially unviable.
  - (5) Give priority consideration to expanding higher quality programs and/or facilities for children who are in the highest need, from the lowest-income backgrounds, live in areas of high unmet early education need, and/or who are traditionally underserved, as resources allow, which could include enhanced services, such as bilingual or dual-language instruction, supports to enhance cultural competency, or a higher rating on the QRIS or a successor system.
- (b) Additional Requirements for the Early Education Fund for the First Five Years.
- (1) Administration by a Public Agency. The Alameda County Children and Families First Commission, known as First 5 Alameda County, or another public entity, will be selected by the Citizens' Oversight Commission to be the Early Education Implementation Partner and to administer the program.
  - (2) Expanding Existing Public Services. First funding priority shall be given to public agencies to expand public programs in all areas of the City that meet a baseline quality level and can accommodate more children using empty classrooms and/or filling vacancies, particularly programs at Oakland Unified School District and City of Oakland Head Start. This could include converting part-day OUSD preschool to full-day OUSD preschool at OUSD sites, hiring additional OUSD staff, or expanding the hours of service to better meet the needs of working families, subject to capacity limitations determined by OUSD and City of Oakland Head Start in consultation with the Implementation Partner. After OUSD and Head Start sites have reached agreement with the Implementation Partner on ensuring funding to reach capacity as outlined above, the Early Education Fund may contract with private nonprofit agencies that show a commitment to and interest in serving low income children, and adhere to the privatization requirements set forth in paragraphs (3) and (4) of this subdivision.
  - (3) Private Contractor Requirements.
    - (A) Maintenance of Wage Standards: All contracted nonprofit agencies receiving Fund dollars must pay all employees at least fifteen dollars (\$15) per hour, to be adjusted annually by

the San Francisco-Oakland-San Jose Consumer Price Index (CPI). This is the minimum wage irrespective of whether the contracted nonprofit agency offers benefits and no reduction in total compensation that existed prior to the contract should occur.

- (B) All contracted agencies must present as a part of the contracting process: (i) a list of current employees with employee names and job classifications, on a biannual basis. The contractor will also provide length of continuous employment of those employees provided that employer tracks length of employment; (ii) the annual rate of current staff turnover for early educators and teaching assistants; (iii) the number of hours of training planned for each employee in subject matters directly related to providing services to state residents and clients; (iv) a self-certification which requires the contractor report whether the contractor has or has not violated any applicable federal, state or local rules, regulations or laws, including laws governing employee safety and health, labor relations and other employment requirements, and any citations, court findings or administrative findings for violations of such federal, state or local rules, regulations or laws. In the case where a contractor has violated aforementioned laws or regulations, contractor must disclose the date, enforcement agency, the rule, law or regulation involved and any additional information the contractor may wish to submit; and (v) any collective bargaining agreements or personnel policies covering the employees who provide services.
- (C) (i) Union Neutrality: Moneys from the Early Education Fund shall not be used to support or oppose unionization, including but not limited to, preparation and distribution of materials which advocate for or against unionization; hiring or consulting legal counsel or other consultants to advise the contractor about how to assist, promote or deter union organizing or how to impede a union which represents the contractor's employees from fulfilling its representational responsibilities; holding meetings to influence employees about unionization; planning or conducting activities by supervisors to assist, promote, or deter union activities; or defending against unfair labor practice charges brought by federal or state enforcement agencies.
  - (ii) Contractors are prohibited from retaliating against early educators for participating in or contributing to a professional organization. Violation of this provision shall constitute an immediate breach of contract.
- (4) Worker Organization and Payroll Deduction.
  - (A) The Early Education Implementation Partner will regularly convene organizations representing parents and/or early educators, as appropriate, to receive input on program development and implementation. They will collaborate with parent and early educator organizations and providers and other stakeholders to disseminate information in public meetings or other means, such as pamphlets, to families, child care providers and early educators and others about initiative-funded programs and to support robust involvement in Guideline components.
  - (B) Funding agreements with participating child care and early education programs paid for with Early Education Fund dollars will require these programs to honor their early educator employees' written, voluntary requests to contribute part of their pay via payroll deduction to a professional organization of their choosing. Funding agreements will require the participating child care and early education program operators to notify early educators about the programs' contractual obligation to honor their written request to contribute.

- (C) Early educators will be informed about their rights under this program during an orientation. The Early Education Implementation Partner or a contracted third party will convene regular in-person orientation sessions for family child care center providers and their assistants, family, friend and neighbor providers, and center early educator employees who work in programs receiving funding from the initiative. These staff at participating programs will be required to attend an informational orientation session within a certain period of time after programs are contracted to participate in initiative funded components. For agencies who are unable to document full participation of staff, information may be shared in alternative formats on a case-by-case-basis. Effort will be made to ensure that this information will include program overview, quality and other guidelines, and information on other city-related resources and programs will not deter participation in these initiative-funded activities. These information sessions shall also include presentations by qualified professional early childhood education organizations and other stakeholders with goals, missions, or resources related to the initiative's goals, including training and professional development at which qualified professional organizations will be invited to participate. Attendance sheets for orientation sessions and qualifying staff rosters will be made available twice per year upon request in order to allow professional organizations to monitor participation.
  - (D) Professional organizations will be required to meet minimum criteria, including nonprofit status, connecting early educators to professional development and training opportunities, and improving the ability of early educators to advocate for improvement to the child care system.
- (c) Applicability of Requirements After Five Years.
- (1) The requirements set forth in subdivision (b) of this Section shall remain in effect for a minimum of five (5) years, and shall remain in effect thereafter unless the Citizens' Oversight Commission recommends, and the City Council approves, deeming that any of the requirements set forth in subdivision (b) shall not apply.
  - (2) Prior to the Citizens' Oversight Commission's consideration of funding guidelines for each five-year period, the Early Education Implementation Partner shall convene a meeting of stakeholders, including organizations representing parents and early educators, to assess whether the requirements set forth in subdivision (b) are serving the purposes of the Act and to consider whether the requirements should be deemed not to apply for the purposes of the next five-year funding period. The Early Education Implementation Partner shall present any recommendations that the requirements should be deemed not to apply that it considers necessary to further the purposes of the Act to the Citizens' Oversight Commission for its consideration, and if the Citizens' Oversight Commission recommends adoption of any recommendations, the recommendations shall be presented to the City Council for approval so that the changes are in place for the next five-year period. In addition, upon a finding of a fiscal emergency by the Citizens' Oversight Commission, the Early Education Implementation Partner shall follow the process outlined above and present any recommendations that the requirements should be deemed not to apply that it considers necessary to address the fiscal crisis to the Citizens' Oversight Commission for its consideration, and if the Citizens' Oversight Commission recommends adoption of any recommendations, they shall be presented to the City Council for approval.
  - (3) Notwithstanding paragraph (1) of this subdivision, the requirement in subparagraph (A) of paragraph (3) of subdivision (b) of this Section that all contracted nonprofit agencies receiving

Fund dollars pay all employees at least fifteen dollars (\$15) per hour may not be amended. In addition, if, in any fiscal year, the percentage increase in the San Francisco-Oakland-San Jose Consumer Price Index (CPI) is greater than the percentage increase in the proceeds of the parcel tax, or if the proceeds of the parcel tax decline, the requirements in subparagraph (A) of paragraph (3) of subdivision (b) of this Section that the minimum wage be adjusted annually by the San Francisco-Oakland-San Jose Consumer Price Index (CPI) and that no reduction in total compensation occur shall not apply for that fiscal year.

- (4) When considering whether the requirement set forth in paragraph (2) of subdivision (b) of this Section should be deemed not to apply, the Citizens' Oversight Commission and the City Council shall consider the ability and the capacity of public agencies to serve the early care and education needs of children age three and below in determining whether the funding priority is consistent with achieving the purposes and intent of the Act.

(Added by: Stats. November 2018)

### **The Oakland Promise Program.**

#### **Section 1607. The Oakland Promise Fund.**

- (a) The Account. There is hereby established the Oakland Promise Fund.
- (b) Revenue. For each fiscal year, thirty-one percent (31%) of the proceeds of the parcel tax imposed pursuant to Section 5 of this Act shall be deposited in the Oakland Promise Fund, and shall be appropriated, together with any interest that accrues thereon, for the purposes specified in subdivision (c) of this Section.
- (c) Eligible Uses. Moneys in the Oakland Promise Fund shall be used exclusively to achieve the following public purposes for Oakland residents and children who attend Oakland Public Schools, as further specified by the five-year Guidelines, and including the collection and maintenance of data to enable evaluation over time:
  - (1) Increase early college awareness and expectations in children and their families, such as by instilling a college-bound identity in students and college-going culture in schools;
  - (2) Increase college savings and/or family economic well-being starting early in a child's life;
  - (3) Increase college- and/or career-access, such as by increasing awareness, preparedness, planning, and/or eligibility;
  - (4) Increase college enrollment rates, and application and/or admission rates;
  - (5) Increase college affordability, such as by expanding access to public and private student financial aid, and direct scholarships to students for tuition, room and board, and/or other college expenses;
  - (6) Increase college persistence and graduation rates, such as by expanding access to mentoring; and
  - (7) Reduce disparities in post-secondary education outcomes for students traditionally underrepresented in post-secondary education.

(Added by: Stats. November 2018)

#### **Section 1608. Oakland Promise Implementation Partner.**

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- (a) Selection. The accountability officer shall recommend and the Citizens' Oversight Commission shall approve the Oakland Promise Implementation Partner pursuant to a request for proposals. The Implementation Partner must meet the following minimum criteria:
- (1) The Implementation Partner must be an Oakland-based non-profit organization in good standing or a government agency, or an entity, project, or program within such a body;
  - (2) The Implementation Partner must be a non-profit organization, government agency, or an entity, project or program within such a body, with a mission consistent with the purposes of the Oakland Promise Fund and the capability to implement all of the Guidelines, including the initial Guidelines set forth in Section 1609, and the eligible uses of the Oakland Promise Fund, as set forth in paragraphs (1) through (7) of subdivision (c) of Section 1607, through direct provision or through partnership agreements;
  - (3) The Implementation Partner must have the capability to successfully implement, either directly or through subcontracts, evidence-based programs or services for children from birth through college graduation and experience serving populations reflective of the diversity of Oakland, in service of all Oakland Promise Fund eligible uses as set forth in paragraphs (1) through (7) of subdivision (c) of Section 1607;
  - (4) The Implementation Partner must have the ability to leverage other funding sources, such as private philanthropy, grants, and/or an endowment or quasi-endowment, to achieve the purposes of the Oakland Promise Fund; and
  - (5) The Implementation Partner must have the ability to enable the external evaluation of programs, demonstrated through means such as having an existing data-evaluation system or an existing relationship with a credible external evaluator.
- (b) Term of the Oakland Promise Implementation Partner.
- (1) The initial Oakland Promise Implementation Partner shall act as the Oakland Promise Implementation Partner for a period of five (5) years with opportunity for renewal for additional terms of up to five (5) years, provided that it remains in good standing and continues to carry out the requirements specified in this Act and is not terminated prior to the expiration of its term pursuant to paragraph (2) of this subdivision.
  - (2) The accountability officer may recommend, and Citizens' Oversight Commission may approve, by a vote of two-thirds (2/3) of its members, the termination of the Oakland Promise Implementation Partner before the expiration of the Oakland Promise Implementation Partner's term, if the Oakland Promise Implementation Partner breaches its agreement with the City, is unwilling or unable to carry out the purposes of this Act, or engages in gross negligence, fraud, or unlawful activity. In the event of termination, the accountability officer shall recommend a new Oakland Promise Implementation Partner in accordance with subdivision (a) of this Section to serve until the expiration of the then-current five-year Guidelines.
  - (3) At the expiration of the first five-year period, the accountability officer may recommend, based on the Oakland Promise Implementation Partner's performance, that the Citizens' Oversight Commission renew the contract for additional terms of up to five (5) years, without issuing a request for proposals. In the event an existing contract is not extended, the Oakland Promise Implementation Partner shall be selected in accordance with subdivision (a) of this Section for a period of up to five years. The terms of the Oakland Promise Implementation Partner shall be aligned with the five-year Guidelines and there shall be no limit on the number of years an implementation partner may serve. In any event, the Oakland Promise Implementation Partner

must be selected pursuant to a request for proposals at least once every ten (10) years, and the Oakland Promise Implementation Partner selected pursuant to the decennial request for proposals shall act as the Oakland Promise Implementation Partner for a period of five years, unless terminated pursuant to paragraph (2) of this subdivision.

- (c) Requirements for the Oakland Promise Implementation Partner. The City Administrator shall have the authority to enter into a contract with the Implementation Partner that includes legally required terms and terms deemed to be in furtherance of the purposes of this Act, such as but not limited to the following:
- (1) Performance metrics and benchmarks;
  - (2) Plans for consultation or engagement with experts, community members, and program beneficiaries;
  - (3) Annual independent financial audits;
  - (4) Data sharing agreements including disaggregation by race and income of program beneficiaries;
  - (5) Accounting practices that securely segregate Fund revenues and expenditures in order to ensure appropriate accounting of receipts and expenditures; and
  - (6) Ensuring that students who receive a financial benefit through a program funded by the initiative are not deprived of that financial benefit for as long as they are eligible to participate in the program, even if the program is discontinued.

(Added by: Stats. November 2018)

**Section 1609. Oakland Promise Guidelines for the First Five Years.** For the first five (5) years following the appointment of a quorum of the Oversight Commission, in order to expedite implementation and ensure the people of Oakland begin to feel the benefit of the approval of the Act, the Guidelines for programs supported by the Oakland Promise Fund, which are based upon an assessment of the local context and needs and national evidence-based best practices in the field, shall be, consistent with the public purposes expressed in the Act, as follows and shall not be amended:

- (a) Reduce socioeconomic and/or demographic disparities, such as those related to wealth and income, for children from an early age, in College readiness, access, affordability, applications, enrollment, retention and completion, particularly for students in high-need or who are traditionally underrepresented in post-secondary education.
- (b) Increase early College savings and asset building for families with children ranging in age from zero to grade five, such as through the creation and seeding of college savings accounts and the provision of financial coaching and supports to families.
- (c) Increase the expectations and resources to attend College among children and families of all socioeconomic backgrounds in Oakland public schools, with a priority for students from low-income backgrounds and/or traditionally underrepresented in College, through strategies, such as increasing school-based programming that builds the college-bound identity of students and a college-going culture in elementary, middle, and high schools.
- (d) Increase College awareness, application, and eligibility, as measured by increases in completing courses required for College enrollment, such as those required by the University of California, and in College acceptance rates of Oakland Public School students, through means such as providing College access services that are integrated into schools.

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- (e) Increase College affordability, including by expanding access to public and private student financial aid, such as by increasing FAFSA or Dream Act Application completion rates, increasing the direct provision of College scholarships including multi-year last dollar scholarships, and partnering with educational institutions in order to provide institution-specific scholarships and to reduce tuition, room and board, and/or other college expenses.
- (f) Increase College admission, matriculation, and enrollment rates, such as increasing the percent of students who enroll in College in the fall directly following high school graduation through a focus on the above strategies.
- (g) Increase full-time College persistence rates for students enrolled in College, especially persistence between their first and second year of enrollment, through means such as mentoring, peer advising, and on-campus supports.
- (h) Increase the number of Oakland students graduating from College within six (6) years of high school graduation.

(Added by: Stats. November 2018)

# FIRST 5



## CONTRACT FOR SERVICES

**CONTRACT NUMBER:** PS-CHI-2223-186  
**CONTRACT TERM:** JANUARY 1, 2023 – JUNE 30, 2023  
**CONTRACT AMOUNT:** NOT TO EXCEED \$6,026,000.00  
**CONTRACTOR:** OAKLAND UNIFIED SCHOOL DISTRICT  
**CONTACT PERSON:** CHRISTIE HERRERA  
**CONTACT TITLE:** EXECUTIVE DIRECTOR OF EARLY LEARNING  
**TELEPHONE:** 510-879-1388  
**EMAIL:** CHRISTIE.HERRERA@OUSD.ORG  
**CONTRACTOR ADDRESS:** 1000 BROADWAY, SUITE 150, OAKLAND 94607

THIS CONTRACT, is hereby made and entered into on this 1st day of January, 2023 by and between First 5 Alameda County ("First 5"), an independent public agency of the State of California, and Oakland Unified School District ("Contractor").

IT IS HEREBY MUTUALLY AGREED that both parties will adhere to the provisions of this Agreement including Exhibit A (Program Description and Requirements), Exhibit B (Terms and Conditions of Payment and Accountability Requirements) and Exhibit C (Insurance Requirements).

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date first mentioned above.

Kristin Spanos, CEO  
First 5 Alameda County

Mike Hutchinson, President, Board of Education  
Oakland Unified School District

6/22/23

Date

6/29/2023

Date

Name: Kyla Johnson-Trammell  
Position: Superintendent & Secretary, Board of Education

Sign:

Date: 6/29/2023

Approve As To Form:

Joshua R. Daniels  
Chief Governance Officer

Date: 06/22/2023

## **Agreement**

Recitals:

WHEREAS, First 5, is authorized by the California Children and Families First Act of 1998 (“Act”) to expend moneys allocated to it for the purposes authorized by the Act and by the First 5 Strategic Plan for the support and improvement of early childhood development within Alameda County; and

WHEREAS, First 5 is desirous of securing the provision of certain services and deliverables outside the scope of First 5’s ordinary business in furtherance of its Strategic Plan; and

WHEREAS, Contractor is independently engaged in the business of providing services similar to those described in this Agreement and is willing and able to perform duties and render services and deliverables, without supervision, which are determined by First 5 to be necessary or appropriate for the support and improvement of early childhood development within Alameda County; and

WHEREAS, First 5 desires that such duties and services be provided by Contractor, and Contractor agrees to perform such duties and render such services, as set forth below:

### **I. TERM OF AGREEMENT**

The Term of this Agreement begins on the 1st day of January, 2023 and shall continue, provided funding is available and allocated by First 5, until terminated in accordance with this Agreement. This Agreement shall supersede any previous agreement between Contractor and First 5 for the same services and the same time period.

Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Agreement will be purchased by First 5 from Contractor under a new Agreement following expiration or termination of this Agreement. Contractor waives all rights or claims to notice or hearing respecting any failure by First 5 to continue to purchase all or any such service from Contractor following the expiration or termination of this Agreement.

### **II. PROGRAM DESCRIPTION AND REQUIREMENTS -- EXHIBIT A**

This Agreement shall be accompanied by Exhibit A, which is incorporated herein by this reference, and which includes a description of the duties and services to be performed for First 5 by Contractor. Contractor agrees to comply with all provisions, to perform all work, and to provide all such duties and services set forth in Exhibit A in a professional and diligent manner. Contractor shall obtain First 5’s approval of all reports, requests, and other services and responsibilities, as required under this Agreement.

### **III. TERMS AND CONDITIONS OF PAYMENT AND ACCOUNTABILITY REQUIREMENTS-- EXHIBIT B**

The total amount to be paid to Contractor under this Agreement shall not exceed the sum of \$6,026,000.00 and First 5 shall, under no circumstances, be required to pay in excess of that amount. Payment shall be made pursuant to the terms and conditions set forth in Exhibit B, attached hereto and by this reference made a part hereof. Sums not so paid shall be retained by First 5.

Unless it is otherwise provided in Exhibit B to this Agreement, Contractor shall submit all claims for reimbursement under the Agreement within ninety (90) days after the ending date of the Agreement. All

claims submitted after ninety (90) days following the ending date of the Agreement will not be subject to reimbursement by First 5. Any "obligations incurred" included in claims for reimbursements and paid by First 5 which remain unpaid by the Contractor after ninety (90) days following the ending date of the agreement will be disallowed under audit by First 5 and shall be repaid to First 5.

Contractor agrees to comply with all requirements which are now, or may hereafter be, imposed by First 5, or any successor, with respect to the receipt and disbursement of the funds referred to in Exhibit B, as well as such requirements as may be imposed by First 5.

#### **IV. INSURANCE -- EXHIBIT C**

Unless a written waiver is obtained from the City of Oakland's Risk Manager, Contractor must acquire and maintain for the duration of this Agreement, the policies of insurance identified in the City of Oakland's Schedule Q, Insurance Requirements, attached hereto and incorporated herein. Contractor must submit proof of insurance, which shall be attached hereto and incorporated herein. Contractor shall provide First 5 and/or the City with copies of all insurance policies. Both First 5 and the City of Oakland ("City") shall be named as additional insured under the Contractor's General Liability policy, as further described in Schedule Q. First 5 and the City reserve the right to perform an insurance audit during the course of the project to verify compliance with requirements.

Contractor shall provide Workers' Compensation insurance at Contractor's own cost and expense, and neither Contractor nor its carrier shall be entitled to recover from First 5 any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

#### **V. ADDITIONAL FISCAL PROVISIONS**

Contractor shall not claim reimbursement from First 5 for (or apply sums received from First 5 with respect to) that portion of its obligations which has been paid by another source of revenue. Sums received as a result of services provided to other public or private organizations shall be considered such revenue insofar as such sums are or can be applied to the work to be performed by Contractor pursuant to this Agreement.

If Contractor is a non-profit corporation, unrestricted or undesignated private charitable donations and contributions shall not be considered revenue applicable to this Agreement; Contractor has total freedom in planning for the usage of such resources in expanding and enriching programs, or in providing for such other operating contingencies as it may desire. Nothing herein shall be deemed to prohibit Contractor from contracting with more than one entity to perform additional work similar to or the same as that herein contracted for.

#### **VI. RECORDS**

A. Contractor shall maintain on a current basis complete financial records including, but not necessarily limited to, books of original entry, source documents in support of accounting transactions, a general ledger, personnel and payroll records, cancelled checks, and related documents in accordance with generally accepted accounting principles and procedures and any specific requirements of the applicable funding source.

B. Contractor shall maintain on a current basis complete records pertaining to the provision of services and eligibility, including, but not limited to, medical records, client files, participant records, patient logs or other service related documentation in accordance with instructions provided by First 5.

C. Contractor shall maintain on a current basis complete records pertaining to Contractor's organizational structure and activities, including, but not limited to, bylaws, articles of incorporation, documentation of tax exempt status, if applicable, Board of Directors roster, minutes of meetings of the Board of Directors and committees, administrative program policies and procedures and any other documents required by First 5 or the State or federal government or the applicable funding source.

Contractor will cooperate with First 5 in the preparation of, and will furnish any and all information required for, reports to be prepared by First 5 and/or Contractor as may be required by the rules, regulations, or requirements of the County of Alameda, First 5 or of any other governmental entity. First 5 shall specify in detail the cooperation required.

Records shall be retained by Contractor, and shall be made available for auditing and inspection, for no less than five (5) years following the provision of any services pursuant to this Agreement, or for a longer period as required by the applicable funding source. If Contractor enters into any First 5-approved agreement with any related organization to provide services such agreement shall contain a clause to the effect that the related records of that organization shall be retained, and shall be made available for auditing and inspection, for no less than five (5) years following the last fiscal year during which First 5 paid an invoice to Contractor under this Agreement.

First 5 reserves the right to issue further instructions regarding the extent of records required to be kept, the format to be used, and record retention and access requirements as is necessary to perform audits and to otherwise comply with requirements set forth by applicable funding sources.

## **VII. AUDITS**

Contractor's records, as defined in Section VI of this Agreement, shall be accessible to First 5 for audit and inspection to assure proper accounting of funds, and to certify the nature of, and evaluate Contractor's performance of its obligations as set forth in this Agreement. First 5 shall be entitled to access onto Contractor's premises to observe operations, inspect records or otherwise evaluate performance at all reasonable times and without advance notice. First 5 shall conduct inspections and manage information in a manner consistent with applicable laws relating to confidentiality of records and in a manner that will minimize disruption of Contractor's work.

Funds provided by First 5 shall be accounted for separately in the Contractor's books and records. A systematic accounting record shall be kept by the Contractor of the receipt and disbursement of funds. The Contractor shall retain original substantiating documents related to contract expenditures and make these records available for First 5's review upon request. Contractor will be responsible for maintaining adequate financial records of this contract. First 5 may request general ledger documentation in support of the Contractor's expense report.

Separate and apart from the audit and inspection provisions set forth immediately above, Contractor's records will be subject to audits as required by Federal and/or State agencies and/or other funding sources, including the City of Oakland ("City"). These audits include those performed pursuant to applicable OMB Uniform Guidance or audits otherwise authorized by Federal, State or local law.

## VIII. LIMITATION ON LIABILITY; INDEMNIFICATION

The liabilities or obligations of First 5 with respect to its performance, non-performance or obligations pursuant to this Agreement shall be the liabilities or obligations of First 5 and its Trust Fund, and shall not become the liabilities or obligations of the County. Contractor shall not look to the County for satisfaction of obligations or liabilities.

Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at First 5's request, defend) First 5, the individual members thereof, and all First 5 officers, agents, employees and volunteers, and the County of Alameda, its officers, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
- (ii) Act or failure to act in the course of performance by Contractor under this Agreement;
- (iii) Negligent or willful acts or omissions in the course of performance by Contractor under this Agreement;
- (iv) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
- (v) Unauthorized use or disclosure by Contractor of Confidential Information as provided in the Confidentiality section below; and
- (vi) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trademark, or service mark or other proprietary or intellectual property rights of any third party, unless the claim arises from any materials provided by First 5 to Contractor, in which case First 5 shall indemnify Contractor.

For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

First 5 shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with First 5's interests and/or the interests of the County of Alameda.

Notwithstanding the foregoing, First 5 shall have the right if Contractor fails or refuses to defend Indemnitees with Counsel acceptable to First 5 to engage its own counsel for the purposes of participating in the defense. In addition, First 5 shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs plus additional reasonable amounts as security for Contractor's obligations under this Section. In no event shall Contractor agree to the settlement of any claim described herein without the prior written consent of First 5.

Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which potentially falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by First 5 and continues at all times thereafter, without regard to any alleged or actual contributory negligence of any Indemnitee. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.

All of Contractor's obligations under this Section are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

Contractor's indemnification obligations set forth above shall not be limited by First 5's insurance requirements contained in Exhibit C hereof, nor by any other provision of this Agreement.

#### **IX. SUBCONTRACTING**

None of the work to be performed by Contractor shall be subcontracted without the prior written consent of First 5. Contractor shall be as fully responsible to First 5 for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by Contractor. First 5-approved contracts between Contractor and any subcontractor shall contain language providing that Contractor shall be as fully responsible to First 5 for the acts and omissions of any subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by Contractor.

Each subcontractor must agree to abide by the applicable terms and conditions of this Agreement. Subcontracts are subject to compliance with all applicable laws (to the extent applicable to the type and scope of services to be provided by the subcontractor), including the applicable requirements described in this Agreement. Subcontractors must obtain and keep current a valid Oakland Business Tax Certificate for the term of their work.

#### **X. ASSIGNMENT**

Contractor shall not transfer any interest in this Agreement (whether by assignment or novation) without prior written approval of First 5. However, Contractor may assign its rights to receive compensation from First 5 for performance of the Agreement to financial institutions for the purpose of securing financial resources, provided that written consent from First 5 shall have first been obtained. No party shall, on the basis of this Agreement, in any way contract on behalf of, or in the name of, the other party to the Agreement, and any attempted violation of the provisions of this sentence shall confer no rights, and shall be void.

## **XI. INDEPENDENT CONTRACTOR STATUS**

Neither the Contractor nor any of its employees shall by virtue of this Agreement be an employee of First 5 for any purpose whatsoever, nor shall it or they be entitled to any of the rights, privileges, or benefits of First 5 employees. Contractor shall be deemed at all times an independent contractor and shall be wholly responsible for the manner in which it performs the services required of it by the terms of this Agreement. Contractor assumes exclusively the responsibility for the acts of its employees and subcontractors as they relate to the services to be provided during the course and scope of their employment or service. Contractor will not represent itself (or any of its employees) as an employee or agent of First 5. First 5 will not treat Contractor as an employee of First 5 for purposes of federal or state income tax withholding, FICA withholding, or any other taxation purpose of law, including the Internal Revenue Code of 1986, as amended.

No partnership, employment, or agency has been or is intended to be formed by this Agreement. Accordingly, Contractor understands that First 5 is not required to provide Contractor with worker's compensation, and Contractor acknowledges and understands that Contractor is solely responsible for payment of federal and state income tax, social security, and unemployment and disability taxes, if any.

## **XII. CONFIDENTIALITY**

Pursuant to Health and Safety Code 130140.1(e), any individually identifiable information collected by First 5 must be protected from disclosure to unauthorized entities unless written consent was obtained from the client, parent or legal guardian. Contractor agrees to maintain the confidentiality of any patient information which may be obtained as a result of work performed pursuant to this Agreement unless required by law. Patients are defined as children and families who receive services by First 5 or children and families who receive services from the Contractor as outlined in Exhibit A to this Agreement. First 5 shall respect, to the extent permitted by law, the confidentiality of information furnished by Contractor to First 5 as specified in Exhibit A.

Confidential information includes all information disclosed to Contractor which relates to First 5's past, present and future activities, as well as activities under this Agreement. Contractor further understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City of Oakland and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all confidential information received from First 5 or the City, or collected on behalf of First 5 or the City, including personal identifying data, shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information, and all confidential information, as a reasonably prudent contractor would use to protect its own proprietary data. Contractor avers and covenants to take all technical and organizational measures necessary to protect the information technology systems and data used in connection with the performance of this Agreement.

If any private or confidential information are subject to any order, subpoena, discovery request, or other form of compulsory process in any legal or administrative action or proceeding, arbitration or alternative dispute resolution mechanism, or to a request under the California Public Records Act or Oakland Sunshine Ordinance (collectively a "Request"), the Party receiving the Request (a) shall immediately notify the other Party in writing of the request so that the Parties may take actions deemed appropriate to preserve and

assert all applicable privileges and protections; (b) shall cooperate with the Party in preserving and asserting these privileges and protections; and (c) if requested by a Party, and as permissible under applicable law, shall refrain from disclosing the information pending a determination regarding disclosure by a court or other tribunal of competent jurisdiction. Information shared under California Public Records Acts refers only to agencies, organizations or partners, not individuals or patients who are recipients of child health or family services.

Upon cancellation or expiration of this Agreement, Contractor will, at First 5's sole discretion, return to First 5 or destroy all written or descriptive matter which contain any such confidential information.

### **XIII. TERMINATION PROVISIONS**

Termination for Cause – If First 5 determines that Contractor has failed, or will fail, through any cause, to fulfill in a timely and proper manner its obligations under the Agreement, or if First 5 determines that Contractor has violated or will violate any of the covenants, agreements, provisions, or stipulations of the Agreement, First 5 shall thereupon have the right to terminate the Agreement by giving written notice to Contractor of such termination and specifying the effective date of such termination.

Without prejudice to the foregoing, Contractor agrees that if prior to or subsequent to the termination or expiration of the Agreement upon any final or interim audit by First 5, Contractor shall have failed in any way to comply with any requirements of this Agreement, then Contractor shall pay to First 5 forthwith whatever sums are so disclosed to be due to First 5 (or shall, at First 5's election, permit First 5 to deduct such sums from whatever amounts remain undisbursed by First 5 to Contractor pursuant to this Agreement or from whatever remains due Contractor by First 5 from any other contract between Contractor and First 5).

In the event that the funding allocation or the funds available to First 5 changes, First 5 may determine, in its sole discretion, that it is necessary to reduce, eliminate or otherwise modify the funding to Contractor under this Agreement due to the unavailability of funds or First 5's assessment of its funding priorities. If First 5 elects to reduce or eliminate funding pursuant this provision, it will provide 30 days advance written notice to Contractor.

Termination Without Cause – Either party may terminate this Agreement upon 30 days advance written notice to the other party. In the event of termination, Contractor shall return any unspent funds and shall not be entitled to any further funds under this Agreement.

Termination By Mutual Agreement – First 5 and Contractor may otherwise agree in writing to terminate this Agreement in a manner consistent with mutually agreed upon specific terms and conditions.

### **XIV. COMPLIANCE WITH LAWS**

Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies, having jurisdiction over the scope of services or any part hereof, including Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), all provisions of the Occupational Safety and Health Act of 1970 and all amendments thereto, and all applicable federal, state, municipal and local health and safety regulations, including but not limited to directives pertaining to the COVID-19 pandemic. All services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor warrants that the Contractor,

and the Contractor's employees and sub-consultants are properly licensed, registered, and/or certified as may be required under any applicable federal, state and local laws, statutes, ordinances, rules and regulations relating to Contractor's performance of services under this Agreement. Contractor shall indemnify and save First 5, the individual members thereof, and all First 5 officers, agents, employees and volunteers, and the County of Alameda, its officers, agents, and employees harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations. A violation of such laws, ordinances, codes and regulations shall constitute a material breach of this Agreement and may serve as a basis for termination of this Agreement under Article XIII ("Termination for Cause") and the initiation of appropriate legal proceedings by First 5.

**XV. COMPLIANCE WITH LAWS (CONTRACTS WITH A VALUE OF \$100,000 OR MORE)\***

By signing this Agreement, Contractor certifies, under penalty of perjury, that at the time of entering into this Agreement all of the following are true:

- (a) That Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code).
- (b) That Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).
- (c) (1) That any policy that Contractor has against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, is not used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).
- (2) Any policy adopted by Contractor or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

\*Not applicable to contracts with a value of less than \$100,000

**XVI. ACCIDENT REPORTING**

If a death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, Contractor shall immediately notify First 5 by telephone. Contractor shall promptly submit a written report, in such form as may be required by First 5, of all accidents which occur in connection with this Agreement. This report must include the following information: 1. name and address of the injured or deceased person(s); 2. name and address of Contractor's subcontractor, if any; 3. name and address of Contractor's liability insurance carrier; 4. a detailed description of the circumstances surrounding the accident, whether any of First 5's equipment, tools or materials were involved and the extent of the damage to First 5 and/or other property; 5. Whether any clients or recipients of services or other persons were witnesses to the accident; and 6. determination of what effect, if any, the accident will have upon Contractor's ability to perform services.

## **XVII. NON-DISCRIMINATION**

Contractor assures that it will comply with applicable state and federal laws and regulations that govern discrimination, including, but not limited to, the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, mental or physical disability (including but not limited to Acquired-Immune Deficiency Syndrome (AIDS), and AIDS-Related Complex (ARC)), military or military veteran status, or any other legally-protected class. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, promotion or failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, mental or physical disability (including but not limited to AIDS, and ARC), military or military veteran status, or any other legally-protected class.
- c. Contractor further agrees that no person shall, on the grounds of age, marital status, religion, gender, sexual orientation, gender identity, race, creed, color, national origin, mental or physical disability (including but not limited to AIDS, and ARC), military or military veteran status, or any other legally-protected class, be excluded from participation in, be denied associated benefits, or be otherwise subjected to discrimination under activities covered in this Agreement.

## **XVIII. GOVERNING BOARD LIMITATIONS; CONFLICT OF INTEREST**

Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies regarding conflicts of interest.

Contractor shall not make governmental decisions, as defined in section 18700(c)(4) of Title 2 of the California Code of Regulations, and Contractor's work shall be subject to intervening substantive review by staff of First 5.

If Contractor has entered into this Agreement as a not-for-profit organization as defined by state and federal law, and is in receipt of funds from First 5 based on such status, Contractor shall at all times conduct its business in a manner consistent with that required of a not-for-profit organization by applicable laws.

Furthermore, Contractor shall comply with the following protections against conflict of interest:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City of Oakland or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect

to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement, or in its proceeds during his/her tenure or for one year thereafter.

iii. Contractor shall immediately notify First 5 and the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.

iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of the Early Education Implementation Partner Agreement between the City and First 5, or who is a member of a City board or commission which has been involved in the making of the Agreement between the City and First 5 whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in that Agreement in violation of the rules contained in California Government Code Section 1090 et seq., pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.

v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to First 5 and the City, that (1) no public official of City who has participated in decision-making concerning the Agreement between the City and First 5 or has used his or her official position to influence decisions regarding that Agreement, has an economic interest in Contractor or that Agreement, and (2) that Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor agrees to promptly disclose to First 5 and the City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.).

vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.

vii. Contractor represents and warrants to the best of its present knowledge, that in addition to the State statutes, regulations, local ordinances, municipal code and Charter provisions referenced in this section, Contractor has read and is aware of the City of Oakland Government Ethics Act (Oakland Municipal Code Chapter 2.25), including, without limitation, the provisions prohibiting Conflicts of Interest and Personal Gain set forth at OMC 2.25.040, and those prohibiting (a) the influencing of contracts with former employers and (b) nepotism, as set forth in OMC 2.25.070. Contractor agrees and acknowledges that

Contractor shall adhere to the City of Oakland Government Ethics Act, to the extent Contractor is deemed a Public Servant thereunder.

viii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein.

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation.

**XIX. DRUG-FREE WORKPLACE**

Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code Section 812, including marijuana, heroin, cocaine, and amphetamines, at any First 5 or County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring within Alameda County, the Contractor, within five days thereafter, shall notify First 5. Violation of this provision shall constitute a material breach of this Agreement subject to termination by First 5 under Article XIII ("Termination for Cause") of this Agreement.

**XX. MODIFICATIONS TO AGREEMENT**

First 5 shall assign a liaison to Contractor with respect to the performance of this Agreement. Unless otherwise provided in Exhibit A and/or B to this Agreement, any adjustments requested by the Contractor to line items of a budget or to the program description included as an Exhibit to this Agreement shall not alter (1) services or other performance to be provided under this Agreement, (2) the time of performance of any act hereunder, or (3) the total amount of money allocated hereunder. Only one budget revision is allowed per year and may be granted or denied per the assessment of First 5 staff. For all budget line item adjustments over 10%, a written justification for each line item should be submitted for approval. Budget line item adjustments under 10% are not subject to a formal revision and may be shifted at the Contractor's discretion once per year. This Agreement can be amended only by written agreement of the parties hereto.

**XXI. OWNERSHIP OF WORK PRODUCT / INTELLECTUAL PROPERTY**

Any work product developed by Contractor in performance of this Agreement shall be considered the work product of First 5, and/or the City, and upon termination of the Agreement, Contractor shall provide those materials to First 5 to the extent requested. In addition, it is the express intention of the parties that First 5 shall at all times be and shall remain the sole and exclusive owner of all rights of any kind whatsoever in and to the results and proceeds of First 5's and/or Contractor's services hereunder (the "Results"), except to the extent that First 5 determines that the owner of such rights is or shall be the City. The Contractor shall, however, retain any rights to materials used in the performance of this Agreement to the extent the Contractor possessed, owned, or developed such materials prior to entering into this Agreement.

Contractor warrants that, to the best of its knowledge and control, the Results are and will be original with Contractor in all respects (except to the extent based on material supplied by First 5), have not

been and will not be exploited in any manner and/or medium, and do not or will not infringe upon the copyright, patent or any other right of any person or entity and properly attribute the use of any other sources from any person or entity. Contractor agrees to execute any and all other documents consistent herewith, which may be required to effectuate the purpose and intent of this Agreement, and agrees that First 5 shall have the sole and exclusive right to register in its own name the copyrights and any other rights in and to the Results, except to the extent that First 5 determines that the copyrights and any other rights in and to the Results will be registered in the name of the City. In addition, or alternatively, Contractor hereby irrevocably appoints First 5 as Contractor's attorney-in-fact to take such actions and make, sign, execute, acknowledge, and deliver all such documents as may from time to time be necessary to convey to First 5, its successors and assigns, all rights granted in this section. This provision is of the essence of this Agreement and shall survive termination of this Agreement.

Any academic research and/or publications regarding educational programs or services made possible by use of results from this project will make reference to the contribution of the City in making the project possible. Any public disclosure of collected contract metrics, data, expenditures, or results pursuant to this Section must be conveyed to First 5 to obtain approval from the City, unless such information has already been made public by the City.

## **XXII. PUBLIC EMPLOYEES' PENSION REFORM ACT**

First 5 as a Participating Employer in ACERA (the Alameda County Employees' Retirement Association) is restricted by law in retaining the services of a Contractor who has retired previously under ACERA (unless the Contractor reinstates in the ACERA system). If Contractor has not previously retired under ACERA, the law does not affect his/her ability to provide services to First 5 Alameda County. If Contractor has previously retired under ACERA, the law permits the ACERA retiree to provide services to First 5 Alameda County without reinstatement from retirement under limited circumstances. Applicable Contractors will be required to complete and submit a self-certification form of ACERA retirement status prior to execution of contract.

## **XXIII. PREVAILING WAGE; PUBLIC WORK CONTRACTOR REQUIREMENTS**

Contractor is aware of the requirements of California Labor Code Sections 1720, et seq. and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., and the City's prevailing wage policy set forth in City of Oakland Resolution No. 57103 C.M.S. ("Prevailing Wage Laws"), which when applicable, require compliance with both City and State prevailing wage rates, registration of contractors, certified payroll record requirements, hours of work requirements, apprenticeship standards and the performance of other requirements on "public works" projects ("Public Works Projects"). Contractor certifies and agrees that it will comply with the requirements as set forth in the Prevailing Wage Laws, to the extent applicable, as to be determined by Contractor.

First 5 or the City may request documentation to certify that Contractor has paid its contractors, subcontractors, or employees at the appropriate and applicable prevailing wage rate. This provision in no way creates any contractual or third party beneficiary relationship between any of Contractor's subcontractors or employees and First 5 or the City, nor does it create any liability or duty on First 5 or the City for Contractor's failure to make timely or appropriate payments to its subcontractors or employees, on behalf of its subcontractors or employees.

Contractor and Subcontractors shall require selected vendors for Public Works Projects to meet the contractor requirements described in the City of Oakland's Attachment C, attached hereto and incorporated herein. Contractor shall enter into a construction contract with the selected contractor, who shall be licensed by the State of California and maintain such license throughout the Term of this Agreement and at all times during the performance of the Work.

Neither First 5 nor the City shall be a party to any contract for the Public Works Projects, and shall not be responsible or liable for the actions of any contractors, subcontractors, vendors or their respective agents or employees. Neither First 5 nor the City undertakes or assumes any responsibility or duty to the Contractor (except as provided for herein) or any third party with respect to the Public Works Projects.

#### **XXIV. PROMPT PAYMENT ORDINANCE**

This Contract is subject to the City's Prompt Payment Ordinance, Title 2, Chapter 2.06 of the Oakland Municipal Code. The Ordinance requires that, unless specific exemptions apply, the Contractor and its subcontractors shall pay undisputed invoices of their subcontractors for goods and/or services within twenty (20) business days of submission of invoices unless the Contractor or its subcontractors notify the City of Oakland Liaison within the Department of Workplace and Employment Standards ("Liaison") in writing within five (5) business days that there is a bona fide dispute between the Contractor or its subcontractor and claimant, in which case the Contractor or its subcontractor may withhold the disputed amount but shall pay the undisputed amount.

Disputed payments are subject to investigation by the Liaison upon the filing of a complaint. Contractor or its subcontractors opposing payment shall provide security in the form of cash, certified check or bond to cover the disputed amount and penalty during the investigation. The failure or refusal to deposit security may result in withholdings from the next Contractor progress payment. The City, upon a determination that an undisputed invoice or payment is late, will release security deposits or withholds directly to claimants for valid claims.

Contractor and its subcontractors shall not be allowed to retain monies from subcontractor payments for goods as project retention, and are required to release subcontractor project retention in proportion to the subcontractor services rendered, for which payment is due and undisputed, within five (5) business days of payment. Contractor and its subcontractors shall be required to pass on to and pay subcontractors mobilization fees within five (5) business days of being paid such fees by the City. For the purpose of posting on the City's website, Contractor and its subcontractors, are required to file notice with the City of release of retention and payment of mobilization fees, within five (5) business days of such payment or release; and, Contractor is required to file an affidavit, under penalty of perjury, that Contractor has paid all subcontractors, within five (5) business days following receipt of payment from the City. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

If any amount due by a prime contractor or subcontractor to any claimant for goods and/or services rendered in connection with a purchase contract is not timely paid in accordance with the Prompt Payment ordinance, the prime Contractor or subcontractor shall owe and pay to the claimant interest penalty in the amount of ten percent (10%) of the improperly withheld amount per year for every month that payment is not made, provided the claimant agrees to release the prime contractor or subcontractor from any and all further interest penalty that may be claimed or collected on the amount

paid. Claimants that receive interest payments for late payment under the Prompt Payment Ordinance may not seek further interest penalties on the same late payment in law or equity.

Contractor and its subcontractors shall include the same or similar provisions as those set forth above in this section in any contract with another contractor or subcontractor that delivers goods and/or services pursuant to or in connection with this Agreement.

Prompt Payment invoice and claim forms are available at the following City of Oakland website: <https://www.oaklandca.gov/resources/prompt-payment-forms> or in the Department of Workplace and Employment Standards, 250 Frank H. Ogawa Plaza, Suite 3341, Oakland, CA 94612. Invoice and claim inquiries should be directed to Vivian Inman, City of Oakland Prompt Payment Liaison, 510-238-6261 or email [vinman@oaklandca.gov](mailto:vinman@oaklandca.gov).

## **XXV. ARIZONA AND ARIZONA-BASED BUSINESSES**

Contractor agrees that in accordance with City of Oakland Resolution No. 82727 C.M.S., neither it nor any of its subsidiaries, affiliates or agents that provide services under this Agreement is currently headquartered in the State of Arizona, and shall not establish an Arizona business headquarters for the duration of this Agreement or until Arizona rescinds SB 1070.

Contractor acknowledges its duty to notify First 5 if Contractor or any of its subsidiaries, affiliates or agents subsequently relocates its headquarters to the State of Arizona. Such relocation shall be a basis for termination of this Agreement.

## **XXVI. LIVING WAGE ORDINANCE**

Contractor must, and agrees that it will, comply with the Oakland Living Wage Ordinance, Title 2, Chapter 2.28 of the Oakland Municipal Code. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to, among others, employees of service contractors (consultants) of the City. Oakland employers are also subject to the City of Oakland Minimum Wage law (see next section), and must pay employees wages and provide benefits consistent with the Minimum Wage law or Oakland Living Wage Ordinance, whichever are greater.

Unless specific exemptions apply or a waiver is granted, Contractor must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$16.14 with health benefits or \$18.53 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Effective July 1st of each year, Contractor shall pay adjusted Living Wage rates.
- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$2.39 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the Contract.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated

days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.

d. Federal Earned Income Credit - To inform employees that he or she may be eligible for Earned Income Credit ("EIC") and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist Contractor. Web sites include but are not limited to: <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service.

e. Contractor shall provide to all employees and to the Division of Contracts and Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information as well as any additional information specified in OMC Section 2.28.110.D.

f. Contractor shall provide all of the above required written notices and forms in English, Spanish or other languages spoken by a significant number of employees within 30 days of each employee's start of work under or related to this Agreement.

g. Reporting – Contractor shall provide a copy of its posted notice to the City. Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Division of Contracts and Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in a penalty of five hundred dollars (\$500.00) for each day that the list remains outstanding (OMC Section 2.28.110.C). Contractor shall maintain employee payroll and related records for a period of three (3) years after expiration of the compliance period.

h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with all of the foregoing Living Wage provisions. Contractor shall include the above-referenced provisions in its subcontracts and by signature confirm subcontractor compliance. This contract is also subject to City Charter Section 1606, including maintenance of wage standards for subcontracted nonprofit agencies (see section 27 below). Subcontracted nonprofit agencies must pay employees wages and benefits consistent with the City's Living Wage Ordinance, the City's Minimum Wage Law, and/or Measure AA Private Contractor Wage Requirements, whichever are greater.

## **XXVII. MINIMUM WAGE ORDINANCE**

Oakland employers are subject to Oakland's Minimum Wage Law, Chapter 5.92 of the Oakland Municipal Code, whereby Oakland employees must be paid the City's current Minimum Wage rate. Employers must notify employees of the annually adjusted rates by each December 15th and prominently display notices at the job site. The law also requires paid sick leave for employees and payment of service charges collected for their services. This contract is also subject to Oakland's Living Wage Ordinance (see previous section), and must pay employees wages and provide benefits consistent

with the City's Living Wage Ordinance or the Minimum Wage Law, whichever are greater. For further information, please visit the following website: <https://www.oaklandca.gov/topics/minimum-wage-paid-leave-service-charges>

### **XXVIII. PRIVATE CONTRACTOR WAGE REQUIREMENTS**

If the Contractor is a nonprofit agency, the agency must adhere to the privatization requirements set forth in Oakland City Charter Section 1606(b)(3)&(4), including maintenance of wage standards. All contracted nonprofit agencies receiving Measure AA fund dollars must pay all employees at least fifteen dollars (\$15) per hour, to be adjusted annually by the San Francisco-Oakland-San Jose Consumer Price Index (CPI). This is the minimum wage irrespective of whether the contracted nonprofit agency offers benefits and no reduction in total compensation that existed prior to the contract should occur.

In addition, pursuant to Charter Section 1606(c)(3), if, in any fiscal year, the percentage increase in the San Francisco-Oakland-San Jose Consumer Price Index (CPI) is greater than the percentage increase in the proceeds of the parcel tax, or if the proceeds of the parcel tax decline, the requirements that the minimum wage be adjusted annually by the San Francisco-Oakland-San Jose Consumer Price Index (CPI) and that no reduction in total compensation occur shall not apply for that fiscal year. For more information, please visit the following website for applicable private contractor wage requirements: <https://www.oaklandca.gov/boards-commissions/childrens-initiative-oversight-commission>.

Finally, all contracted agencies must adhere to the privatization requirements set forth in paragraphs (3) and (4) of Charter Section 1606(b) which are hereby incorporated by reference into this Agreement.

### **XXIX. POLITICAL AND RELIGIOUS PROHIBITIONS**

Subject to applicable State and Federal laws, Contractor agrees that moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

Contractor further understands and agrees that there shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of this Agreement.

### **XXX. SANCTUARY CITY CONTRACTING AND INVESTMENT ORDINANCE**

Ordinance No. 13540 C.M.S., adopted by the Oakland City Council on June 4th, 2019, prohibits the City from contracting with any person or entity that provides the United States Immigration and Customs Enforcement (ICE) services or goods for data collection or with the United States Customs and Border Protection (CBP) Customs and Border Protection (CBP), or the Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) to support immigration detention facilities. These contractors are not to be used unless the City Council makes a specific determination that no reasonable alternative exists. The Ordinance also prohibits the City from investing in any of these companies and requires the City to include notice of these prohibitions in any Requests for Proposals (RFPs), Requests for Qualifications (RFQs), and any construction or other contracting bids. The Ordinance also requires that the City provide an annual report to the Privacy Advisory Commission on its enforcement.

Contractor must complete and submit Schedule I, Sanctuary City Contracting and Investment Ordinance, which shall be attached hereto and incorporated herein.

**XXXI. BORDER WALL ORDINANCE**

This Contract is subject to the Border Wall Ordinance, Title 2, Chapter 2.22 of the Oakland Municipal Code. The purpose of the ordinance is to mandate and direct the City Administrator - in instances where there is no significant additional cost, to be defined in regulations, or conflict with law - to refrain from entering into new or amended contracts to purchase professional, technical, scientific or financial services, goods, construction labor and materials or other services, or supplies from businesses that enter into contracts to provide such services, goods, materials or supplies to build the U.S.-Mexico border wall.

The City is prohibited from entering into any contractual agreement for the purchase of services, goods, equipment, cyber network or cloud computing, internet, or cloud-based computer technology or services with any "BORDER WALL ENTITY" (as defined by Section 2.22.020 of the Oakland Municipal Code), individual, firm, or financial institution who provides any services, goods, equipment or information technology or cloud-based technology or services, to construction of the a wall along any part of the United States - Mexico border.

Contractor must complete and submit Schedule W, Border Wall Prohibition, which shall be attached hereto and incorporated herein.

**XXXII. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of California.

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## EXHIBIT A

### PROGRAM DESCRIPTION AND REQUIREMENTS

#### 1. Background and Program Description

The California Children and Families First Act of 1998 (Proposition 10) created a program in the state for the purposes of promoting, supporting, and improving the early development of children from the prenatal stage to five years of age. The intent of this act is to enable counties to create and implement an integrated, comprehensive and collaborative system of information and services to enhance optimal early childhood development.

The Oakland Children's Initiative ("Measure AA" or "the Act"), driven to the ballot by community advocacy, is a 2018 Charter Amendment passed by the citizens of Oakland to deepen the early investment in children and support them through college graduation, by dramatically expanding access to high quality preschool and providing college access, mentorship, and scholarship support services for students to obtain 4-year or 2-year college or technical degrees.

Measure AA established an Early Education Fund to support programs to expand access to, or to enhance the quality of, early care and education and preschool for children who reside in Oakland or whose parents resided in Oakland at the time of their enrollment in such programs, including the collection and maintenance of data to enable evaluation over time and family support services, in order to increase educational outcomes, such as kinder-readiness, and to reduce educational inequality, such as by disparities related to income and wealth or for children traditionally underrepresented in higher education.

First 5 Alameda County serves as the Early Education Implementation Partner and is charged with implementing the Early Education program, as further defined in the Early Education Guidelines set forth in Measure AA, directly or through subcontracts.

Measure AA requires that funding priority be given to public agencies to expand public programs in all areas of the City that meet a baseline quality level and can accommodate more children using empty classrooms and/or filling vacancies, particularly programs at Oakland Unified School District and City of Oakland Head Start (called Priority Partners), including converting part-day Priority Partner preschool to full-day Priority Partner preschool at sites, hiring additional staff, or expanding the hours of service to better meet the needs of working families, subject to capacity limitations determined by Priority Partners in consultation with the Implementation Partner.

Contractor is a public agency that that meets a baseline quality level and can accommodate more children using empty classrooms and/or filling vacancies in order to serve children in the City of Oakland.

- A. The Early Education Guidelines for the First Five Years are to increase overall attainment and reduce socioeconomic and/or other demographic disparities, in child educational outcomes, such as kinder-readiness, and provide family support services, to achieve the following outcomes prioritized as follows, such that plans to fund a lower priority outcome may only be implemented if the Early Education Implementation Partner has determined that the next highest priority goal is reasonably achievable within the five-year period

- i. Make available free or affordable and high-quality early education and/or preschool for four-year old children from low-income families, such as those who make less than eighty-five percent (85%) of the state median income, with a priority on serving the children of families with the lowest incomes and/or those who are in high need, while also supporting such families who need family, friend, and neighbor care.
- ii. Increase the availability of free or affordable and high-quality early education and/or preschool for three-year-old children from low-income families, with a priority on serving the children of families with the lowest incomes or those who are in high need, while also supporting such families who need family, friend, and neighbor care.
- iii. Increase the affordability and/or quality of preschool for all four-year-old children, with a priority on serving the children of families with the lowest incomes or those in highest need, while also supporting such families who need family, friend, and neighbor care.
- iv. Increase the affordability and/or quality of preschool for three-year-old children, with a priority on serving the children of families with the lowest incomes or those in highest need, while also supporting such families who need family, friend, and neighbor care.
- v. Increase the availability and/or quality of child development support services for children and families from low-income backgrounds with children from birth through age three, while also supporting such families who need family, friend, and neighbor care.

First 5 has approved a Strategic Plan for a comprehensive system of early intervention services for children birth to 5 years of age and families in Alameda County. A key component of the First 5 Strategic Plan is the Children’s Health Initiative Strategy, which supplements and builds upon existing programs deployed for early learning and care in the City of Oakland funded by Measure AA Oakland Children’s Initiative parcel tax funding (2022-2027 Strategic Plan, page 37). The services of the Contractor have been retained to support facility improvements, provide enhanced family supports to expand higher quality programs and enhance cultural competency, professional development and the purchase of curriculum, materials, and resources to enhance the quality of programs.

## 2. Prohibition on Supplantation

By law, First 5 funding may not be used to supplant other funds. First 5 funding may only be used to expand or enhance existing programs or to initiate new services or programs benefiting children prenatal to age five.

## 3. Performance Requirements

Contractor’s approved performance requirements are included as Attachment 2.1: Service Accountability Plan.

## 4. Partnership Requirements

### I. General

- A. To achieve these goals, Contractor is committed to doing the following:
  - i. Ensuring that Measure AA funding is used only to expand access to, or enhance the quality of, early care and education, rather than to replace existing funds, provided, however, that if federal, state, non-City, or restricted Oakland Unified School District funding was committed for the purpose of providing such services and subsequently ceases to be

- provided and is not replaced by other federal, state, non-City, or restricted Oakland Unified School District funding committed for that same purpose, then moneys in the Early Education Fund may be expended to the extent necessary for such services to continue;
- ii. Ensuring that Measure AA funding is not used for K-12 school day services except for the purpose of expanding transitional kindergarten eligibility to additional four-year old children;
  - iii. Striving to achieve a baseline rating of at least three (3) or higher on the regional Quality Rating and Improvement System (QRIS), or a successor system;
  - iv. Utilizing a developmentally appropriate curriculum aligned with California Department of Education standards, and in addition that is also evidence-based and/or has demonstrated success in improving preparation for kindergarten;
  - v. Conducting formative assessments to shape instruction; and
  - vi. Participating in valid, regular, and reliable assessments of early education quality in order to foster continuous improvement and to reduce disparities, such as those by income and wealth, in child outcomes.
  - vii. Providing a staff liaison to act as the central point of contact for logistical, process and programmatic issues.

B. To achieve these goals, First 5 is committed to doing the following:

- viii. Providing for a rigorous external evaluation, such as Result Based Accountability, of the impact of the early education programs, such as on child outcomes data including kindergarten-readiness, that will facilitate assessment of whether the early education programs are achieving the goals of Measure AA; and
- ix. Ensuring that professional development and coaching are generally available for educators;
- x. Providing program criteria, outcome indicators, data collection and reporting guidelines; and
- xi. Providing a staff liaison to act as the central point of contact for logistical, process and programmatic issues.

II. Data Sharing and Reporting

A. To support the data sharing planning, compliance, and reporting requirement efforts related to the Oakland Children’s Initiative, Contractor is committed to doing the following:

- i. Engage in a data development process related to the detailed data files for transmission between Priority Partner and Implementation Partner, including but not limited to data elements, periodicity of transmission, reporting frequencies, secure electronic transmission and storage process, and compliance with state and federal privacy laws (I.e., Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), etc.);
- ii. Identify a staff lead familiar with Priority Partner data management systems and who is authorized to engage in the data development process;
- iii. Engage in ongoing maintenance of data in external systems, including but not limited to, the Early Care and Education Workforce Registry;
- iv. Continue participation in or use of the Quality Rating and Improvement System (QRIS) or successor system, Desired Results Developmental Profile (DRDP), CLASS, Ages and Stages Questionnaire (ASQ), and Early Childhood Environmental Rating Scale (ECERS/ITERS);
- v. Provide detailed child, staff, site, training and assessment data retroactively from January 2023 upon completion of data development process and related Data Sharing Agreements.

vi. Completion of final report due on July 15, 2023.

B. To achieve these goals, First 5 is committed to doing the following:

- vii. Engage in a data development process related to the detailed data files for transmission between Priority Partner and Implementation Partner, including but not limited to data elements, periodicity of transmission, reporting frequencies, secure electronic transmission and storage process, and compliance with state and federal privacy laws (I.e., Family Educational Rights and Privacy Act (FERPA), Health Insurance Portability and Accountability Act (HIPAA), etc.);
- viii. Identify a lead staff familiar with Implementation Partner data management system and who is authorized to engage in the data development process.

### III. Data Use

A. To achieve these goals, First 5 is committed to doing the following:

- i. De-identify data for purposes outlined under this agreement (e.g., addresses of sites will be used to map activities used and to inform location of ongoing services);
- ii. Share de-identified/aggregate data for ordinance-aligned and planning purposes with Oakland Children’s Initiative Accountability Officer, First 5 Alameda County Commission, and other planning bodies;
- iii. Develop data dashboards, reports, and/or maps where data may be made public.

B. Contractor agrees to

- iv. Provide First 5 staff with support for alternative or additional reporting efforts in order to meet the goals of this agreement.

### IV. Meeting Coordination

A. Coordination

- i. First 5 is responsible for scheduling and hosting implementation and leadership meetings to support the planning, administration, implementation, evaluation, and monitoring of Oakland Children’s Initiative Early Education Fund related efforts.
- ii. Contractor is responsible for attendance, collaboration, engagement, and production of work products as agreed to in advance of and during meetings.

B. Frequency of Meetings and Attendees

- iii. Kickoff Meetings are expected to include preparation and information sharing sessions to complete Oakland Children’s Initiative Early Education annual program plan and budget.
- iv. Implementation Meetings will, at a minimum, be held monthly, or as required by Implementation Partners, to share information, coordinate, and advance program planning, program implementation, budget considerations, data sharing and reporting, and communications.
  - 1. Contractor’s attendees will include, but are not limited to, program, finance, budget, data, and legal staff designated by Contractor’s leadership to work with Implementation Partner on Oakland Children’s Initiative Early Education Fund efforts.
- v. Leadership Meetings will, at a minimum, be held quarterly or as required by First 5, to share information, monitor progress, and advance Oakland Children’s Initiative Early Education Fund efforts.

1. Contractor's attendees will include, but are not limited to: City of Oakland City Administrator, Oakland Children's Initiative Accountability Officer, City of Oakland Director of Human Services Department (or successor agency and/or department), City of Oakland Human Services Manager for Early Childhood and Family Services & Head Start Program Director, OUSD Superintendent, OUSD Chief of Staff, OUSD Chief Academic Officer, and OUSD Executive Director of Early Learning.
- vi. Additional meetings may be held to ensure ongoing compliance, budget and monitoring activities.

## 5. Reporting Requirements

Contractor will submit program progress reports, expense reports and a final report as outlined on the payment schedule in Exhibit B: Terms and Conditions of Payment and Accountability Requirements. Contractor may be required to collect and report on specific measures as identified in the First 5 2022-2027 Strategic Plan.

Contractor will complete Contractor Leadership Demographic Survey(s) as requested by First 5. Final payment on contract may be withheld until Contractor Leadership Demographic Survey(s) is completed.

## 6. Fiscal Requirements

Contractor's approved budget is included as Attachment 1: Budget.

Contractor will be required to submit general ledger expense reports, quotes, receipts and salaries and benefits documentation supporting expenses to be reimbursed during the funded term. First 5 will identify which reporting period(s) Contractor will be required to submit this information and provide prior notice to the Contractor.

## 7. ECChange, HIGH5, ECC Online, Pathways or other Database System Requirements

Contractor will report using HIGH5 or other data sharing system (e.g., Excel, CSV, etc.) as identified.

## 8. Budget and/or Scope Revisions

Contractor may submit one budget and/or scope revision per year no later than April 15<sup>th</sup> of the fiscal year and may be granted or denied per the review and assessment of First 5 staff. For all budget line item adjustments over 10%, a written justification for each line item should be submitted for approval. Budget line item adjustments under 10% are not subject to a formal revision and may be shifted to existing line items (not including administrative/indirect fees) at the Contractor's discretion once per year. All significant revisions to approved scope must be submitted in writing and may be granted or denied per the review and assessment of First 5 staff. Ineligible and previously unapproved contract expenses may be disallowed per First 5 review and assessment.

## 9. Federal Office of Management & Budget (OMB) Circular Requirements

Contractor is required to comply with all current OMB Uniform Guidance requirements during the funded term, including but not limited to conflict of interest, internal controls, procurement and subcontractor monitoring if applicable. First 5 reserves the right to audit and collect from Contractor

documentation demonstrating allowable activities and costs, eligibility, reporting, subcontractor monitoring and other special tests as identified.

#### 10. Tuberculosis Testing

The Contractor shall require and ensure that staff who have direct and consistent contact with children through the First 5 funded activities undergo standard tuberculosis testing. Contractor will maintain records and documentation of current tuberculosis clearance and retest as appropriate.

#### 11. Filing reports with Child Protective Services (CPS) / Child Care Licensing (CCL)

If a First 5 Contractor has knowledge of or observes a child who they suspect has been the victim of child abuse or neglect within the course of First 5 funded work, it is expected that they will file a report of the situation to CPS. In accordance with CPS guidelines, the report should be filed by phone within 24 hours of the incident, and in writing within 36 hours of the incident. If the abuse or neglect occurs in a licensed child care facility, it is expected that the Contractor will also file a report immediately to CCL.

Reporting suspected child abuse or neglect to First 5 or other persons is not a substitute for making a report to CPS or CCL. Reporting duties are individual and cannot be delegated to another person.

If First 5 staff become aware of suspected child abuse or neglect while providing consultation and/or contract support, and a report is not filed within the legal timeframe by the contractor, First 5 staff will file a report by phone and in writing within 24 hours.

Failing to report abuse or neglect to the appropriate agencies is not consistent with the mandates of First 5 Alameda County to improve health and development of children ages 0-5. Failure to report shall constitute a material breach of this Agreement subject to termination by First 5 under Article XIII ("Termination for Cause") of this Agreement. .

#### 12. Cultural Access Services Requirements

- A. Contractor shall make a good faith effort to ensure that clients receive from all staff members effective, understandable, and respectful care that is provided in a manner compatible with their cultural health beliefs and practices, and preferred language.
- B. Contractor shall make a good faith effort to ensure that communication among staff and with the clients/population served promotes cultural responsiveness and respect of difference.
- C. Contractor shall make a good faith effort to implement strategies to recruit, retain, and promote at all levels of the organization a diverse, culturally responsive staff and leadership that are representative of the demographic characteristics of the service area.
- D. Contractor shall make a good faith effort to ensure that staff at ALL levels and across all disciplines receive ongoing education and training in culturally and linguistically appropriate service delivery.

- E. Contractor shall make a good faith effort to have a clearly articulated written policy on cultural responsiveness.
- F. Contractor shall make a good faith effort to allocate resources to ensure the delivery of culturally responsive services.

### 13. Tobacco Control and Education Requirements

The 1998 passage of Proposition 10 added a 50-cent-per-pack increase in the state surtax on cigarettes and tobacco products to fund anti-smoking and early childhood programs. In addition, the 2016 passage of Proposition 56 increased the cigarette tax by \$2.00 per pack, with equivalent increases on tobacco products and electronic cigarettes containing nicotine. In September 2000, the Commission adopted a Comprehensive Tobacco Control Policy to reinforce the message that tobacco products and involvement with the tobacco industry in any manner constitutes a serious health hazard for young children, their families, and the community. Based on this policy, all contractors are expected to make a good faith effort to:

- A. Create and/or maintain a comprehensive smoke-free environment; including adherence to applicable secondhand smoke laws and ordinances
- B. Disclose and divest from tobacco related investments
- C. Educate clients and staff about the harmful effects of secondhand smoke on children as appropriate
- D. Provide smoking cessation resources to staff and clients as appropriate

### 14. Acknowledgement of Funds

The Contractor shall acknowledge the funds received in statements or printed materials as outlined in the guidelines listed below.

- A. The Contractor will announce funding awards *only after* 1) the contract has been signed and returned and 2) after any announcement strategies are discussed with First 5 staff. If the award announcement is made in the form of a press release, Contractor will invite First 5 leadership to provide a quote and include designated boilerplate language.
- B. The Contractor agrees to use official attribution tools and logos provided by First 5 for promotional materials, public awareness campaigns or special events connected with funding. The Contractor will follow First 5 logo guidelines as determined by the agency's visual style guide.
- C. First 5 funding will be acknowledged in all materials produced for the purpose of public education and outreach regarding the Contractor's funded project. These materials would include, but are not limited to brochures, flyers, media ads or public service announcements, presentations and handouts and outdoor ads. All printed materials and promotional products will include the following language:

***Supported by the Oakland Children's Initiative***

- D. Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland and the Oakland's Children Initiative (Measure AA) in making the project possible. The words "supported by the Oakland's Children Initiative (Measure AA)" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.
  
- E. Materials produced with First 5 funding may be reproduced only if no changes are made to the content or design of the material, it contains the appropriate acknowledgement of funding from First 5, and the Contractor will not be additionally reimbursed for use or reproduction.

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## EXHIBIT B

### TERMS AND CONDITIONS OF PAYMENT AND ACCOUNTABILITY REQUIREMENTS

- 1. Contractor Name:** Oakland Unified School District
- 2. Term of Contract:** January 1, 2023 – June 30, 2023
- 3. Terms and Conditions of Payment**

Contractor will adhere to the following payment and reporting schedule:

Requirement Due	Due Date	Amount
1. Contractor Leadership Demographic Survey	Upon execution of contract	N/A
2. Contractor will submit invoice for 50% of total contract amount upon full execution of the contract.	Before June 30, 2023	Not to exceed \$3,013,000.00
3. For the period (January 1, 2023 - June 30, 2023), Contractor will submit: <ul style="list-style-type: none"><li>• 2<sup>nd</sup> Invoice</li><li>• Expense Report</li><li>• Program and Data Reports</li><li>• Results Based Accountability (RBA) Report</li><li>• Other specific report/requirement</li></ul>	July 15, 2023	Based on actual expenses and not to exceed total contract amount of \$6,026,000.00

Invoices should be accompanied by an expense report. Additional supporting documentation for expenses may be requested per First 5's policies and other applicable requirements (funder requirements, federal laws, state regulations, and/or OMB Uniform Guidance standards).

Invoices are subject to review and approval by First 5 staff before payment is issued. Payment is contingent on receipt and approval of all required reports and supporting financial and program documentation as identified. First 5 reserves the right to withhold Contractor payment until required reporting documentation is received. Total payments during the contract term will not exceed \$6,026,000.00.

#### 4. Invoicing Procedures

Submit invoices to Christine Hom via email to [christine.hom@first5alameda.org](mailto:christine.hom@first5alameda.org)

Invoices with original, scanned, or electronic signature on contractor's agency letterhead are required. Invoice template is provided separately.

First 5 will remit payment to:

Oakland Unified School District  
1000 Broadway, Suite 150  
Oakland, CA 94607

Or via First 5 Alameda EFT (Electronic Fund Transfer)\*

*\*EFT form will be sent separately F5AC Finance staff.*

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## EXHIBIT C

### INSURANCE REQUIREMENTS

As a condition of this contract, Contractor must provide proof of insurance at the levels indicated for the following:

a. General Liability, Automobile, Workers' Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to First 5. If requested, Contractor shall provide First 5 with copies of all insurance policies. The insurance shall at a minimum include:

- i. **Commercial General Liability** insurance shall cover bodily injury, property damage and personal injury liability for premises operations, independent contractors, products-completed operations personal & advertising injury and contractual liability. Coverage shall be on an occurrence basis and at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)

Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

- i. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance for bodily injury and property damage liability with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non owned autos). Coverage shall be at least as broad as Insurance Services Office Form Number CA 0001.
- ii. **Workers' Compensation insurance** as required by the laws of the State of California, with statutory limits, and statutory coverage may include Employers' Liability coverage, with limits not less than \$1,000,000 each accident, \$1,000,000 policy limit bodily injury by disease, and \$1,000,000 each employee bodily injury by disease. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
- iii. **Professional Liability/ Errors and Omissions insurance**, appropriate to the Contractor's profession with limits not less than \$2,000,000 each claim and \$2,000,000 aggregate. If the professional liability/errors and omissions insurance is written on a claims made form:
  - a. The retroactive date must be shown and must be before the date of the contract or the beginning of work.

- b. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
- c. If coverage is cancelled or non-renewed and not replaced with another claims made policy form with a retroactive date prior to the contract effective date, the contractor must purchase extended period coverage for a minimum of three (3) years after completion of work.
- iv. Contractor's Pollution Liability Insurance: If the Contractor is engaged in: environmental remediation, emergency response, hazmat cleanup or pickup, liquid waste remediation, tank and pump cleaning, repair or installation, fire or water restoration or fuel storage dispensing, then for small jobs (projects less than \$500,000), the Contractor must maintain Contractor's Pollution Liability Insurance of at least \$500,000 for each occurrence and in the aggregate. If the Contractor is engaged in environmental sampling or underground testing, then Contractor must also maintain Errors and Omissions (Professional Liability) of \$500,000 per occurrence and in the aggregate.
- v. Sexual/Abuse insurance. If Contractor will have contact with persons under the age of 18 years, or provides services to persons with Alzheimer's or Dementia, or provides Case Management services, or provides Housing services to vulnerable groups (i.e., homeless persons) Contractor shall maintain sexual/molestation/abuse insurance with a limit of not less than \$1,000,000 each occurrence and \$1,000,000 in the aggregate. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
- vi. Technology Professional Liability (Errors and Omissions) OR Cyber Liability Insurance. Contractor shall maintain, appropriate to the profession, limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines.
- vii. Commercial Crime Insurance, shall cover loss due to employee dishonesty, computer and funds transfer fraud, forgery or alteration, money and securities, and theft of a client's property. Coverage shall be on an occurrence basis with limits not less than \$1,000,000 each occurrence.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

- i. Insured Status (Additional Insured): Contractor shall provide insured status naming All Insurance Certificates showing proof of insurance must include a 30-day notice of Cancellation. First 5 reserves the right to withhold Contractor payment until required insurance documentation is received.
- ii. Additional Insured Endorsement shall name First 5 Alameda County, the individual members thereof, and all First 5 officers, agents, employees and volunteers, and Alameda County, its

Board of Supervisors, officers, agents and employees, and the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as additional insureds with respect to services being provided.

- iii. General Liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 (11/85) or both CG 20 10 and CG 20 37 forms, if later revisions used). If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on an ISO form CG 20 10 (or equivalent).
- iv. Cancellation Notice: Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the Entity.
- v. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the First 5 for all work performed by the contractor, its employees, agents and subcontractors.
- vi. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement.
- vii. Insurer shall carry insurance from admitted companies with an A.M. Best Rating of A VII, or better.

All Insurance Certificates showing proof of insurance must include a 30-day notice of Cancellation. First 5 reserves the right to withhold Contractor payment until required insurance documentation is received.

Please have Additional Insured Endorsements sent to First 5 Alameda County, 1115 Atlantic Avenue, Alameda, CA 94501, Attention: Contracts.

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**ATTACHMENT 1: BUDGET**

**Contractor Name:** Oakland Unified School District  
**Contract #** PS-CHI-2223-186  
**Contract Term:** January 1, 2023 – June 30, 2023

BUDGET LINE ITEMS	Total Approved Budget	Justification of Expense
<b>PERSONNEL EXPENSES</b> * for positions greater than 5% FTE		
<i>List position, FTE % on project, rate</i>		<i>Brief description of job responsibilities</i>
Family Navigator, 6 FTE (Goal 5, Strategy 1)	\$400,163.00	Salaries and benefits for 6 FTE Family Navigators. Family Navigator personnel will provide enhanced family supports to provide a family-friendly enrollment process to preschool in collaboration with the principal/CDC Site Administrators, educators, families, parent organizations, business/community partners, and other staff.
<b>Total Salaries</b>	<b>\$400,163.00</b>	
Personnel Benefits	\$286,837.00	
<b>PERSONNEL EXPENSES SUBTOTAL</b>	<b>\$687,000.00</b>	
<b>GENERAL EXPENSES</b>		
Program Materials (Goal 1c., Strategy 1)	\$432,000.00	Purchase 90 cloud subscriptions (\$4,800/4YO classroom), provide lead teachers in 4 YO classrooms with access to Teaching Strategies' curriculum resources, planning documents, curriculum differentiation tools, and professional development modules.
Program Materials (Goal 1c., Strategy 1)	\$107,000.00	Purchase additional Creative Curriculum materials (\$2,550/TK classroom) to offer additional learning experiences and increase quality in 4 YO classrooms.
<b>GENERAL EXPENSES SUBTOTAL</b>	<b>\$539,000.00</b>	
<b>OTHER EXPENSES</b> Additional line items exceeding \$5,000		
Kaiser site location facility enhancements (Goal 1a., Strategy 1)	\$3,360,000.00	The renovations of all spaces at Kaiser CDC will enable the creation of 4 ECE-appropriate classrooms (two 4-year-old classrooms, two 3-year-old classrooms), staff room, outdoor play yards, administrator office, and shared kitchen. Anticipated work includes renovating the outdoor play yard, creating ADA-compliant access throughout the campus, plumbing, electrical, restructuring of walls, roofing, appliances, door/windows, and HVAC. The construction budget

		item includes all relevant planning, permitting, and inspections.
Kaiser site location facility enhancements (Goal 1b., Strategy 1)	\$1,440,000.00	The renovations of all spaces at Kaiser CDC will enable the creation of 4 ECE-appropriate classrooms (two 4-year-old classrooms, two 3-year-old classrooms), staff room, outdoor play yards, administrator office, and shared kitchen. Anticipated work includes renovating the outdoor play yard, creating ADA-compliant access throughout the campus, plumbing, electrical, restructuring of walls, roofing, appliances, door/windows, and HVAC. The construction budget item includes all relevant planning, permitting, and inspections.
<b>OTHER EXPENSES SUBTOTAL</b>	<b>\$4,800,000.00</b>	
<b>SUBTOTAL OF DIRECT EXPENSES</b>		
Sum of totals for Personnel, General and Other	<b>\$6,026,000.00</b>	
<b>TOTAL BUDGET</b>	<b>\$6,026,000.00</b>	



**ATTACHMENT 2.1**

**SERVICE ACCOUNTABILITY PLAN**

**Contractor: Oakland Unified School District**

**Contract Term: January 1, 2023 – June 30, 2023**

*Program: Children’s Health Initiative*

<p><b>Funded Activity 1</b>          Infrastructure improvements to increase access and quality for 4-year-olds from low-income families and those who are in high need (Improvements and renovations to the Kaiser site location)</p>	<p><b>By When</b>          June 30, 2023</p>	<p><b>Additional Comments</b>          Based on proposal submitted by Contractor on 5/17/2023, in alignment with Goal 1a, Strategy 1</p>
<p><b>Funded Activity 2</b>          Infrastructure improvements to increase access and quality for 3-year-olds from low-income families and those who are in high need (Improvements and renovations to the Kaiser site location)</p>	<p><b>By When</b>          June 30, 2023</p>	<p><b>Additional Comments</b>          Based on proposal submitted by Contractor on 5/17/2023, in alignment with Goal 1b, Strategy 1</p>
<p><b>Funded Activity 3</b>          Provide materials, curriculum, and resources to support additional access and improved quality for 4-year-olds from low-income families</p> <p>Purchase curriculum and 90 cloud subscriptions to provide educators of 4-year-old children with access to curriculum resources, planning documents, curriculum differentiation tools, and professional development modules</p> <p>Purchase Creative Curriculum materials to provide educators of 4-year-old children with access to curriculum resources, planning documents,</p>	<p><b>By When</b>          June 30, 2023</p>	<p><b>Additional Comments</b>          Based on proposal submitted by Contractor on 5/17/2023, in alignment with Goal 1c, Strategy 1</p>

curriculum differentiation tools, and professional development modules		
<p><b>Funded Activity 4</b> Staffing to provide enhanced services and support additional access and improved quality for 3- and 4-year-olds from low-income families</p> <p>6 Family Navigators will provide enhanced family supports including a family-friendly enrollment process to preschool and elementary in collaboration with the Principal/CDC Site Administrators, educators, families, parent organizations, business/community partners, and other staff</p>	<p><b>By When</b> June 30, 2023</p>	<p><b>Additional Comments</b> Based on proposal submitted by Contractor on 5/17/2023, in alignment with Goal 5, Strategy 1</p>