

CONSULTANT AGREEMENT NO. C-264

BETWEEN

CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY

AND

PACIFIC STRATEGIES

This **CONSULTANT AGREEMENT** (“Agreement”) entered into as of the 3rd day of June, 2009 (“Date of Agreement”), which date is enumerated for purposes of reference only and corresponds to the date of action on and approval of funding for this Agreement by COMMISSION, is by and between the **CHILDREN AND FAMILIES COMMISSION OF ORANGE COUNTY**, a public body and legal public entity (“COMMISSION”) and **PACIFIC STRATEGIES**, a sole proprietorship (“CONSULTANT”). This Agreement shall be administered by the Executive Director of COMMISSION or his/her authorized designee (“ADMINISTRATOR”).

RECITALS

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

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

C. CONSULTANT is a sole proprietorship.

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

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

1. TERM OF AGREEMENT. The term of this Agreement shall commence on July 1, 2009 and terminate on June 30, 2010, unless earlier terminated pursuant to the provisions of Paragraph 18 of this Agreement. CONSULTANT and ADMINISTRATOR may mutually agree in writing to extend the term of this Agreement, provided that COMMISSION’s Maximum Payment Obligation in this Agreement does not increase as a result.

2. ALTERATION OF TERMS

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

3. STATUS OF CONSULTANT - INDEPENDENT CONSULTANT

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

4. CONSULTANT DELEGATION AND ASSIGNMENT

CONSULTANT shall not delegate its duties nor assign its rights for this Agreement, either in whole or in part, without the prior written consent of ADMINISTRATOR. Any request by CONSULTANT for right to delegate and/or assign shall be in writing with a full explanation of such request and conditioned on the requirement that consent, if any, provided by ADMINISTRATOR shall be in writing and at the sole and absolute discretion of ADMINISTRATOR to approve or deny such request for delegation or assignment. Further, any consent granted by ADMINISTRATOR,

may be conditioned upon, and subject to, certain actions by CONSULTANT, as determined by ADMINISTRATOR. Any attempted assignment or delegation in derogation of this paragraph shall be deemed void.

CONSULTANT may utilize subcontractors to perform administrative functions necessary to carry out CONSULTANT's services under this Agreement that do not require the personal judgment or discretion of CONSULTANT in its performance. CONSULTANT shall receive no additional compensation from COMMISSION for the use of such subcontractors and shall be solely responsible for any compensation due to such subcontractors. Prior to such utilization CONSULTANT shall provide written notice of hiring administrative subcontractors to ADMINISTRATOR.

5. INDEMNIFICATION

5.1 CONSULTANT Indemnification of COMMISSION. CONSULTANT agrees to and shall indemnify, defend, hold harmless, and pay COMMISSION and its Commissioners, officers, agents, and employees from and against all liability, claims, losses and demands, damages to property or injuries to or death of any person or persons, including property of officers, employees, or agents of COMMISSION and including defense costs ("Claims"), whether resulting from court action or otherwise, resulting from, related in any manner to, or arising out of the intentional, malicious, negligent, or other acts, inactions, errors or omissions of CONSULTANT, its officers, employees, agents, and/or subcontractors in the performance of this Agreement.

5.1.1 With regard to the foregoing indemnity clause, COMMISSION acknowledges CONSULTANT does not assume responsibility for payment of Claims to the extent a court of competent jurisdiction determines CONSULTANT was not responsible for all or a part of the Claim(s), i.e., liability did not result from intentional, malicious, negligent, or other acts, inactions, errors or omissions of CONSULTANT, its officers, employees, agents, and/or subcontractors in the performance of this Agreement, but were the result of the sole negligent or intentional act or omission of COMMISSION or its Commissioners, officers, agents or employees. CONSULTANT agrees the foregoing does not limit or affect its obligation to accept tender of defense and indemnification for a Claim from COMMISSION or ADMINISTRATOR. Provided however, if COMMISSION or its officers or employees are found liable for all or a part of such Claim by a court of competent jurisdiction due to negligent or intentional act or omission of COMMISSION or its Commissioners, officers, agents or employees, then COMMISSION shall be responsible to pay the part of Claim it is determined responsible for and CONSULTANT may recover costs of defense directly attributable to such part of Claim.

5.1.2 Without limiting CONSULTANT's indemnification, it is agreed that CONSULTANT shall maintain in force at all times during the term of this Agreement, the policy or policies of insurance covering its operations and performance under this Agreement in the form and amounts set forth in Paragraph 6, which insurance obligations shall apply independently of the indemnification provided for this Agreement.

5.2 COMMISSION Indemnification of CONSULTANT. COMMISSION agrees to indemnify and hold harmless CONSULTANT from all liability, claims, losses and demands, including defense costs, whether resulting from court action or otherwise, arising out of the sole intentional or grossly negligent acts or omissions of COMMISSION and its officers, agents or employees in the performance of this Agreement.

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

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

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

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

6. INSURANCE

6.1 Policies of Insurance. Without limiting CONSULTANT’s liability for indemnification as set forth in Paragraph 5 above, it is agreed that CONSULTANT shall maintain in force at all times during the performance of this Agreement the following policy or policies of insurance covering its operations:

6.1.1 Qualified Insurer. CONSULTANT shall maintain insurance acceptable to COMMISSION in full force and effect throughout the term of this Agreement. If the CONSULTANT fails to maintain insurance acceptable to COMMISSION for the full term of this Agreement, COMMISSION may terminate this Agreement. The policy or policies of insurance must be issued by an insurer licensed to do business in the State of California (California Admitted Carrier). Minimum insurance company ratings as determined by the most current edition of the Best’s Key Rating Guide/Property-Casualty/United States shall be A- (Secure Best’s Rating) and VIII (Financial Size Category). CONSULTANT shall file with COMMISSION, prior to the commencement of performance of services under this Agreement, an original Certificate of Insurance and all required endorsements evidencing that coverage required by this Agreement is in effect. If the carrier is a non-admitted carrier in the State of California, COMMISSION retains the right to approve or reject carrier after a review of the company’s performance and financial ratings.

Coverage	Minimum Limits	
	Per Occurrence	Annual Aggregate
Comprehensive Auto Liability (covering owned, non-owned, and hired)	\$1,000,000	\$1,000,000
Comprehensive General Liability	\$1,000,000	\$1,000,000

6.2 Endorsements. All insurance policies shall contain the following endorsements:

(a) Insurance afforded by this policy shall also apply to the Children and Families Commission of Orange County, the members of its Commission Board, its officers agents and employees, and the County of Orange, the members of its Board of Supervisors and its officers, agents, and employees individually and collectively, as additional insured.

(b) It is agreed that any insurance maintained by the Children and Families Commission of Orange County and the County of Orange shall apply in excess of and not contribute with insurance provided by this policy.

6.2.1 Proof of insurance satisfactory to ADMINISTRATOR evidencing the coverage required by this paragraph and the required clauses set forth above shall be filed with the Children and Families Commission of Orange County, 17320 Redhill, Suite 200, Irvine, CA 92614. Such proof shall include the Certificate of Insurance, and Endorsements. ADMINISTRATOR, in his sole discretion, may require a copy of the full policy.

6.3 Reservation of Rights re Review of and Obligations to Provide Insurance. COMMISSION shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby. If, in the opinion of COMMISSION, the insurance provisions in this Agreement do not provide adequate protection for COMMISSION, COMMISSION may require CONSULTANT to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. COMMISSION's requirements shall be reasonable and shall be designed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required.

6.4 Notification of Any Changes in Insurance Requirements. COMMISSION shall notify CONSULTANT in writing of changes in the insurance requirements. If CONSULTANT does not deposit copies of acceptable certificates of insurance and endorsements with COMMISSION incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in default without further notice to CONSULTANT, and COMMISSION shall be entitled to all remedies available at law or equity.

6.5 Obligation for Insurance Independent of Indemnification. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability for this Agreement or to fulfill the indemnification provisions and requirements of this Agreement.

7. RESPONSIBILITIES OF CONSULTANT

7.1 Scope of Services. As an independent contractor to COMMISSION, CONSULTANT shall provide the specific professional and/or consulting services set forth and described in the Scope of Services, Exhibit B, attached and fully incorporated by this reference.

7.2 Compliance with Law. CONSULTANT shall provide all services rendered for this Agreement in accordance with all applicable federal, state, and local ordinances, resolutions, regulations, statutes, and laws.

7.3 Licenses, Permits, Fees, and Assessments. Prior to commencement of work and provision of the services described in the Scope of Services, Exhibit B, and as an additional condition precedent to commencing performance for this Agreement and COMMISSION's obligation to make any payment due for this Agreement, CONSULTANT shall obtain at its sole cost and expense any and all licenses, permits, and approvals as may be required by law for the performance of the services required by this Agreement. CONSULTANT shall have the sole obligation to pay for any fees assessments, and taxes, plus applicable penalties, and interest, which may be imposed by law and arise from or are necessary for the performance of the services required by this Agreement.

7.4 Familiarity with Work. By executing this Agreement, CONSULTANT warrants: (a) it has thoroughly investigated and considered the work to be performed as described in the Scope of Services, Exhibit B, (b) it has carefully considered how such services should be provided and performed, and (c) it fully understands the facilities, difficulties, and restrictions, attending performance of the services it will provide under this Agreement. Should CONSULTANT discover any latent or unknown conditions materially differing from those inherent in the work or as represented by COMMISSION, it shall immediately inform COMMISSION of such fact and shall not proceed except at CONSULTANT's risk until written instructions are received from ADMINISTRATOR.

7.5 Care of Work. CONSULTANT shall adopt reasonable methods during the term of this Agreement to furnish continuous protection to the work, work product, records, and the equipment, materials, papers and other components to prevent losses or damages, and shall be responsible for all losses or damages, to persons or property (including real property, personal property, both tangible and intangible) until acceptance of the work and/or services performed by COMMISSION, except such losses or damages as may be caused by COMMISSION's sole negligence or intentional misconduct. The performance of services by CONSULTANT shall not relieve CONSULTANT from any obligation to correct any incomplete, inaccurate, or defective work at no further cost to COMMISSION, when such inaccuracies are due to the negligence, action, inaction, or intentional misconduct of CONSULTANT.

7.6 Technical Requirements for PCs and Software Used by CONSULTANT for all Recordkeeping and Reporting for the Services and Agreement. CONSULTANT agrees to obtain and maintain all computer hardware and software necessary to meet the requirements of Paragraph 22 in its entirety with respect to Outcomes Collection, Evaluation, and Reporting Services ("OCERS"). CONSULTANT is required to contact COMMISSION's database carrier prior to the commencement of work pursuant to this Agreement to ensure that CONSULTANT's computer hardware and software is capable of meeting CONSULTANT's OCERS obligations. In the event that CONSULTANT's existing equipment does not meet the necessary standards, CONSULTANT is required to obtain all requisite hardware and software to ensure its compliance with Paragraph 22 of this Agreement.

7.7 Care and usage of COMMISSION Equipment and Property. CONSULTANT assumes and hereby accepts full responsibility for the physical safety and proper maintenance of any and all COMMISSION equipment and/or property received by CONSULTANT from COMMISSION. Equipment and/or property shall include but is not limited to Laptops or mobile computers, Presentation Materials and/or accessories and Software, Fob Tokens, other computer accessories, and other office equipment that is received by CONSULTANT from COMMISSION for the sole purpose of using such equipment to perform work for COMMISSION. By receiving possession of any equipment, CONSULTANT shall also be responsible for any damage or repairs not covered under manufacturer's warranty. In case of theft or destruction of COMMISSION equipment, CONSULTANT shall reimburse COMMISSION for the then current market value of the equipment. During the term of use by CONSULTANT of any COMMISSION equipment, all equipment shall be used in accordance with COMMISSION's standards. At the request of COMMISSION, or upon completion of work that was to be performed by CONSULTANT for COMMISSION, any and all equipment or property of COMMISSION must be returned to COMMISSION within 24 hours. Additionally the parties hereby mutually understand and agree to the following:

- (a) COMMISSION is the sole Licensee for the software installed on the computer at the time of issuance to CONSULTANT. Any copying, modification, merging or deletion of the software is prohibited.
- (b) CONSULTANT agrees to honor the terms of the software license agreement as written by the manufacturing/licensor and will be solely responsible for any violations. CONSULTANT further agrees to indemnify COMMISSION for any losses sustained by COMMISSION due to software license violations by CONSULTANT.
- (c) CONSULTANT agrees to abide by the terms and conditions of the hardware manufacturer's warranty. In no case shall repairs and /or upgrades be performed by anyone other than COMMISSION authorized technical personnel. CONSULTANT shall not disassemble the equipment for any reason.
- (d) The equipment is not for CONSULTANT's personal business and may not be lent to or left in the custody of any other persons.
- (e) CONSULTANT may not use the equipment for any unlawful or improper purpose.

7.8 Implementing Plans. As directed by ADMINISTRATOR during the term of this Agreement CONSULTANT will be required to prepare and submit to ADMINISTRATOR certain planning and implementing documents regarding the Services for this Agreement aimed toward achieving the outcomes set forth in Exhibit A-1. Such planning and implementing documents may include, but not be limited to, service plan(s), and/or business plan(s), and shall include work plan(s) ("Implementing Plan"), each of which may clarify and/or further describe and define the Services required for this Agreement and date(s) required for performance of certain tasks which comprise the Services. As each Implementing Plan is prepared by CONSULTANT and submitted to, reviewed by, and approved by ADMINISTRATOR, it shall become and be deemed to be an attachment to and fully incorporated as a part of this Agreement and deemed to be an amendment to this Agreement. CONSULTANT shall perform and meet the tasks and requirements set forth in each Implementing Plan as a performance obligation of this Agreement.

7.9 MediCal Related Administrative Activities. As directed by ADMINISTRATOR during the term of this Agreement CONSULTANT may be required to represent COMMISSION priorities on community health access projects and program planning and policy development including developing strategies to increase MediCal system capacity and close MediCal service gaps, analyzing MediCal data related to a specific program or group, or preparing proposals for expansion of MediCal services as related to COMMISSION funded programs. As appropriate, CONSULTANT shall:

7.9.1 Assist in the identification and design of health screening and assessment tools and prepare required documentation and reports, including MediCal data reports, conducting needs assessments and preparing proposals for expansion of health services, including MediCal covered health care services.

7.9.2 Provide technical assistance and training to COMMISSION grantees and other countywide community agencies for program development including training related to MediCal outreach such as campaigns, programs and activities directed toward bringing high-risk populations into health care services covered by MediCal.

7.9.3 Develop strategies with COMMISSION grantees and other countywide community agencies to increase awareness of the MediCal program, increase access with the intent

of enrolling children and families in health insurance programs including MediCal and increase delivery of MediCal covered services.

7.9.4 Assist in the orientation and training of COMMISSION grantees and other countywide community agencies to include: screening/assessment, reviewing health records, evaluating immunizations, providing health/nutrition education, making referrals linking families with health and social services including MediCal services; following-up with families by bringing potentially eligible clients into the MediCal system to determine eligibility and assist them in obtaining MediCal services.

7.9.5 Develop and monitor COMMISSION grantees providing medical services, health access, and community clinics and assist with interagency coordination and integration to improve accessibility and delivery of MediCal covered services and access to health care services.

7.9.6 Assist with the preparation of interagency and collaborative agreements and memoranda including proposals for expanding the availability of MediCal covered services.

7.9.7 Participate in and/or provide training related to MediCal Administrative Activities (MAA) and Target Case Management (TCM) and assist in implementation of the MAA and or TCM programs.

8. COMPENSATION

8.1 Maximum Payment Obligation. The maximum payment obligation of COMMISSION to CONSULTANT for any and all services provided under this Agreement shall be **\$185,000** ("Maximum Payment Obligation".) The Schedule of Compensation, Exhibit C, attached and fully incorporated by this reference, sets forth the schedule of compensation for the professional and/or consulting services to be provided by CONSULTANT as an independent contractor to COMMISSION for this Agreement, including without limitation the schedule of compensation for any of CONSULTANT's employees, subcontractors, or other personnel under the control or direction of CONSULTANT and permitted to provide any of CONSULTANT's services for this Agreement. All payment invoices shall evidence compliance with this Schedule of Compensation, Exhibit C.

8.2 Payments through Claims/Invoices. Claims for payment for services provided by CONSULTANT within the Scope of Services, Exhibit B, and within the Schedule of Compensation, Exhibit C, may be submitted by monthly invoice for services rendered under this Agreement during the prior month. Each invoice requesting payment for services shall be submitted by CONSULTANT to ADMINISTRATOR on an invoice form approved by ADMINISTRATOR describing the services and performance tasks completed pursuant to the Scope of Services, Exhibit B for the applicable invoice period. Subject to submittal of a complete invoice by CONSULTANT, payment on each monthly invoice will be made by COMMISSION within a reasonable time period estimated at not more than thirty (30) days after receipt of an itemized and complete invoice form, including any supporting documentation that may be reasonably requested or required by ADMINISTRATOR.

9. OVERPAYMENTS

Any payment(s) made by COMMISSION to CONSULTANT in excess of that to which CONSULTANT is entitled under this Agreement shall be immediately due to COMMISSION and

repaid by CONSULTANT. CONSULTANT shall make repayment on any overpayment within thirty (30) days after the date COMMISSION requests such repayment. CONSULTANT agrees to pay all fees and costs, including attorneys fees, incurred by COMMISSION necessary to enforce the provisions set forth in this paragraph.

10. CONFIDENTIALITY

10.1 CONSULTANT Obligation.

CONSULTANT agrees to maintain the confidentiality of any confidential records or information or program participant or service recipient records made available pursuant to this Agreement in accordance with applicable federal and state laws and regulations and in accordance with the Confidentiality and Data Sharing Protocol as adopted by COMMISSION as each currently exist or may hereafter be amended. CONSULTANT agrees to cause each and all of its employees, subcontractors, or agents rendering services on behalf of CONSULTANT to maintain the confidentiality of any confidential records in accordance with applicable federal and state laws and regulations and in accordance with the Confidentiality and Data Sharing Protocol as adopted by COMMISSION as each currently exist or may hereafter be amended.

CONSULTANT and COMMISSION shall maintain the confidentiality of all records, including any hard copies, and/or electronic or computer based data, and/or audio and/or video recordings, in accordance with all applicable state and federal codes and regulations relating to privacy and confidentiality, as each now exists or may hereafter be amended.

All records and information concerning any and all persons referred to CONSULTANT by COMMISSION or COMMISSION's designee shall be considered and kept confidential by CONSULTANT, CONSULTANT's employees, subcontractors, agents, and volunteers.

CONSULTANT shall require its employees, subcontractors, agents, and volunteers to sign an agreement which certifies that they will keep the identities and any information with respect to any and all service recipients of CONSULTANT related to services authorized under this Agreement confidential except as may be required to provide Services under this Agreement to comply with any reporting and auditing requirements specified in this Agreement, and any other information required by COMMISSION in the administration of this Agreement, and as otherwise permitted by law.

CONSULTANT agrees that any and all approved subcontracts entered into shall be subject to the confidentiality requirements of this Agreement.

CONSULTANT shall inform all of its employees, subcontractors, agents, volunteers, and partners of this provision that any person knowingly and intentionally violating the provisions of federal, state or local confidentiality laws may be guilty of a crime and/or subject to civil action.

11. POLITICAL ACTIVITY

CONSULTANT agrees the compensation paid for services provided for this Agreement shall not be used to promote, directly or indirectly, any political party, political candidate or political activity, except as permitted by law.

12. INSPECTION AND ACCESS TO RECORDS

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

13. COPYRIGHT ACCESS

COMMISSION, the County of Orange, and the California Children and Families Commission aka "First Five California" shall have a royalty-free, nonexclusive, and irrevocable license to publish, translate, or use, now and hereafter, all material and work product (both tangible and intangible) developed under this Agreement including those materials covered by copyright.

14. RECORDS

CONSULTANT shall prepare and maintain accurate and complete financial records of its business operations and in particular all records related to or arising out of the services and performance tasks provided under this Agreement. Financial records shall be retained by CONSULTANT for a minimum of three (3) years from the date of payment on the final invoice submitted by CONSULTANT to ADMINISTRATOR under this Agreement or three (3) years after all pending audits are completed, whichever is later.

15. OWNERSHIP OF DOCUMENTS

Originals of all drawings, specifications, reports, records, documents and other materials, whether in hard copy or electronic form, which are prepared by CONSULTANT, its employees, subcontractors, agents, or volunteers in the performance of this Agreement, or submitted to CONSULTANT by COMMISSION contractors, or funded by COMMISSION pursuant to this Agreement, shall be and remain the property of COMMISSION and shall be delivered to COMMISSION upon the termination of this Agreement or upon the earlier request of the ADMINISTRATOR. In this regard, CONSULTANT shall have no claim for further retention of consulting services or additional compensation as a result of the exercise by COMMISSION of its full rights of ownership of the documents and materials for this Agreement. CONSULTANT may retain copies of such documents for its own use, but no part of any such document may be reproduced without the express written consent of COMMISSION. CONSULTANT shall have the right to use the concepts created by it under this Agreement. CONSULTANT shall cause, as a part of any subcontract permitted for this Agreement, all subcontractors to assign irrevocably to COMMISSION any documents or materials prepared by them, whether in hard copy or electronic form, and in the event CONSULTANT fails to secure such assignment, CONSULTANT shall indemnify COMMISSION for all damages suffered thereby.

The drawings, specifications, reports, records, documents and other materials prepared by CONSULTANT, or funded by COMMISSION pursuant to this Agreement, in the performance of services under this Agreement shall not be released publicly without the prior written approval of the ADMINISTRATOR or as required by law. CONSULTANT shall not disclose to any other private

entity or person any information regarding the activities of COMMISSION, except as required by law or as authorized by COMMISSION.

16. OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

16.1 Non-liability of Officers and Employees. No Commissioner, officer or employee of COMMISSION shall be personally liable to CONSULTANT, or any successor in interest, in the event of any default or breach by COMMISSION or for any amount that may become due to CONSULTANT or to its successor, or for breach of any obligation of the terms of this Agreement. No officer or employee of CONSULTANT shall be personally liable to COMMISSION, or any successor in interest, in the event of any default or breach by CONSULTANT or for any amount, which may become due to COMMISSION or to its successor, or for breach of any obligation of the terms of this Agreement.

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

16.3 Covenant against Discrimination. CONSULTANT covenants that, by and or itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the performance of this Agreement.

17. NOTICES

All notices, claims, correspondence, reports, and/or statements authorized or required by this Agreement shall be addressed as follows:

COMMISSION: Children and Families Commission of Orange County
Contract Services
17320 Redhill, Suite 200
Irvine, CA 92614

CONSULTANT: Pacific Strategies
435 E. Riverview Avenue, Suite C
Orange, CA 92865

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

18. RIGHTS OF TERMINATION

18.1 Termination without Cause by Either Party Prior to Expiration of Term. This subparagraph 18.1 shall govern termination of this Agreement by either party without cause. Termination for cause shall be governed by paragraph 18.2 and the default provisions of this Agreement.

18.1.1 COMMISSION and CONSULTANT each reserve the right to terminate this Agreement at any time, without cause, upon fifteen (15) days' written notice to the other party. Upon receipt of a notice of termination without cause, CONSULTANT shall immediately cease all services for this Agreement except such as may be specifically approved by ADMINISTRATOR. CONSULTANT shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the ADMINISTRATOR thereafter in accordance with the compensation provisions of this Agreement and the Schedule of Compensation, Exhibit C or such other arrangement for compensation as may be approved by the ADMINISTRATOR in writing.

18.2 Termination for Default of CONSULTANT. COMMISSION reserves the express right to terminate this Agreement for cause due to the default by CONSULTANT in its performance obligations under this Agreement. COMMISSION may, after compliance and in connection with the notice of default provisions in this Agreement, elect to terminate this Agreement. The notice of default from COMMISSION shall advise CONSULTANT if COMMISSION elects to terminate this Agreement and in such event, CONSULTANT shall immediately cease provision of services for this Agreement. In such event of termination, COMMISSION may, but is not required, to take over the work and prosecute the same to completion by contract or otherwise. Also, in such event of termination, CONSULTANT shall be liable to the extent that the total cost for completion of the Scope of Services, Exhibit B, required for this Agreement exceeds the Schedule of Compensation, Exhibit C, (provided that COMMISSION shall use reasonable efforts to mitigate such damages), and COMMISSION may withhold any payments to CONSULTANT for the purpose of set off or partial payment of the amounts owed COMMISSION as previously set forth in this Agreement.

19. DEFAULT; BREACH OF AGREEMENT

19.1 Default by CONSULTANT. Failure by CONSULTANT to perform and/or comply with any provision, covenant, or condition of this Agreement shall be a default and material breach of this Agreement. In such event ADMINISTRATOR, in his sole discretion and in addition to immediate termination, as set forth above in Paragraph 18.2, and any other remedies available at law, in equity, or otherwise specified in this Agreement, may elect any of the following:

- (a) Afford CONSULTANT a time period of fifteen (15) days from the date notice is mailed to cure the default, or to commence to cure such breach and diligently pursue to completion the cure of such breach within thirty (30) days of date notice is mailed; and/or
- (b) Discontinue payment to CONSULTANT for and during the period in which CONSULTANT is in breach, which payment may not be entitled to later recovery; and/or
- (c) Offset against any monies billed by CONSULTANT but yet unpaid by COMMISSION those monies disallowed pursuant to the above paragraph; and/or

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

19.2 Notice of Default. ADMINISTRATOR shall give CONSULTANT written notice of an alleged default and action taken pursuant to this paragraph, which notice shall be deemed served on the date of mailing.

20. ENFORCEMENT OF AGREEMENT

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

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

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

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

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

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

22. CONSULTANT OBLIGATION TO PROVIDE DATA FOR COMMISSION'S OUTCOMES COLLECTION AND REPORTING SERVICE. CONSULTANT acknowledges and agrees the Services funded by COMMISSION through this Agreement are part of a larger

Strategic Plan which has as its primary focus and objective to ensure the overall physical, social, emotional, and intellectual health of children from the prenatal stage to age five. CONSULTANT acknowledges that COMMISSION has retained the services of a qualified information technology contractor to create, operate, and maintain a data collection, reporting, and outcomes system relating to the programs and services provided by each and all of COMMISSION's funding recipients/service providers in order to gather and analyze data and create a reporting and outcomes system about all COMMISSION activities, programs and services provided by and through COMMISSION to the target population of prenatal to age five children in Orange County.

22.1 Outcomes Collection, Evaluation, and Reporting Service (OCERS). COMMISSION projects and all services funded by COMMISSION, including the Services under this Agreement, will collectively track service data related to client outcomes about Orange County children from prenatal to age five in furtherance of the goals and objectives of COMMISSION's Strategic Plan adopted pursuant to the Act. The process by which data is gathered and shared shall be through COMMISSION's internet-based Outcomes Collection, Evaluation, and Reporting Service ("OCERS"). At the Date of Agreement, COMMISSION's designated CONTRACTOR/consultant for the OCERS is Corporation for Standards and Outcomes, a Pennsylvania corporation ("CS&O"). Pursuant to an agreement between CS&O and COMMISSION, CS&O acts as an Application Service Provider ("ASP") on behalf of COMMISSION and its contractors/funding recipients, including CONSULTANT, with respect to all Services-related data (and all other COMMISSION funded projects.) Through this separate contract, CS&O has created and operates, and will continue to operate and maintain, the OCERS data collection, reporting, and outcomes system relating to all COMMISSION projects.

22.1.1 CONSULTANT acknowledges and agrees that as a part of the integrated data structure of OCERS in its performance under this Agreement (and the performance of all other COMMISSION contractors/funding recipients under separate agreements) there may be individual client shared core data elements. It is the responsibility of each funding recipient, including CONSULTANT, to participate in OCERS using confidentiality and consent protocols approved by COMMISSION. CONSULTANT agrees it shall cooperate with COMMISSION, ADMINISTRATOR, and CS&O (or other information technology contractors); it shall provide data to CS&O; and it shall utilize the OCERS system (or other data system, as elected by COMMISSION and its ADMINISTRATOR in their sole discretion) for reporting data related to or created by the Services provided under this Agreement in order for COMMISSION to track, analyze, and evaluate all services provided by CONSULTANT and each and all of COMMISSION's funding recipients. The level of participation with OCERS required by CONSULTANT shall be determined by ADMINISTRATOR.

22.1.2 CONSULTANT acknowledges and agrees that as a part of the integrated data structure of OCERS in its performance under this Agreement (and the performance of all other COMMISSION contractors/funding recipients under separate agreements) there shall be project level reporting to COMMISSION with respect to CONSULTANT's work plan through OCERS' Administrative Management Module ("OCAMM"), and in some instances also through OCERS' Core Data Outcomes Module ("CDOM"), as set forth in the Work Plan, Exhibit A-1. CONSULTANT agrees to participate in OCAMM, and if applicable to the Services to CDOM, and to cooperate with COMMISSION, ADMINISTRATOR, and CS&O (or other information technology CONSULTANT(s)); and provide data to CS&O, utilize the OCAMM, , and if applicable to the Services to CDOM, for reporting data related to or created by the Services provided under this

Agreement in order for COMMISSION to track, analyze, and evaluate all Services provided by CONSULTANT and each and all of COMMISSION's funding recipients.

22.1.3 Confidentiality. Nothing in the above provisions relating to collection and reporting to OCERS shall require CONSULTANT to release or disclose confidential health data or other patient identification which is expressly protected from disclosure by applicable Federal and State laws; provided however, any applicable exception set forth in applicable Federal or State laws which permits disclosure by CONSULTANT to COMMISSION (through ADMINISTRATOR) of health or other data shall require disclosure by CONSULTANT to COMMISSION and ADMINISTRATOR in order to input to the OCERS. COMMISSION advises CONSULTANT that by the separate agreement between CS&O and COMMISSION, CS&O is required to, and shall, maintain the confidentiality of all OCERS data in accordance with all applicable California and Federal codes and regulations relating to confidentiality, privacy, and/or security standards of patient records and other health care information, as they now exist or may be enacted or be amended after the Date of Agreement.

[Signature blocks for Agreement on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement in the County of Orange, California.

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

By: _____
Chair

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

By: _____
DARLENE J. BLOOM
Clerk of COMMISSION

Dated: _____

CONSULTANT: Pacific Strategies, a sole proprietorship

By: _____
Matthew Cunningham, Principal

Date: _____

EXHIBIT A

ACKNOWLEDGMENT OF INDEPENDENT CONSULTANT STATUS

This **Acknowledgment of Independent Contractor Status** (“Acknowledgment”) is an exhibit and fully incorporated into that certain “Agreement for Provision of Professional/Consulting Services” (“Agreement”) dated July 1, 2009 by and between **Children and Families Commission of Orange County** (“COMMISSION”) and **Pacific Strategies**, a sole proprietorship (“CONSULTANT”). This Acknowledgment is intended to define and affirm the relationship between COMMISSION and Consultant as set forth in the Agreement. Consultant has been fully informed, has had the opportunity to be advised or has been advised by counsel of its choosing, and knowingly and willingly acknowledges and agrees as follows:

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

Exhibit A
Page 1 of 2

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

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

CONSULTANT: Pacific Strategies, a sole proprietorship

By: _____
Matthew Cunningham, Principal

Date: _____

EXHIBIT B

SCOPE OF SERVICES

CONSULTANT shall perform the services as described in this Exhibit B (Scope of Services). The Parties agree that some of the services described in Exhibit B to this Agreement will be provided through a subcontract between CONSULTANT and the organization known to both parties as Porter Novelli. CONSULTANT shall receive no additional compensation from COMMISSION for the use of any subcontractor(s) and shall be solely responsible for any compensation due to such subcontractors. CONSULTANT shall notify ADMINISTRATOR of additional subcontractors engaged to provide services under this Agreement prior to such engagement.

1. **Web Site** Contribute to the creation of new COMMISSION Web site.
 - 1.1 Provide input and recommendations on the branding, graphic design and architecture of new Web site as needed.
 - 1.2 Research and draft content for Web site.
 - 1.3 Post content to the Web site as needed.
2. **E-newsletter** Monthly e-newsletter highlighting new COMMISSION grants, updates on COMMISSION grantee program outcomes, regular reports from COMMISSION meetings, and other topics as deemed appropriate.
 - 2.1 Oversee the development of the branding and graphic design of the e-newsletter.
 - 2.2 Research, develop and draft content for the monthly e-newsletter as needed.
 - 2.3 Contribute to e-newsletter database development.
3. **E-mail Campaign** Regular e-mail alerts that may include information about COMMISSION grantees and other topics as deemed appropriate.
 - 3.1 Oversee development of branding and graphic design of the e-mail template.
 - 3.2 Research, develop and draft content for the e-mail campaign as needed.
 - 3.3 Contribute to e-mail campaign database development.
4. **Monthly Meeting Highlights** Summary of monthly COMMISSION meetings.
 - 4.1 Draft monthly meeting highlight report prior to monthly meetings as needed.
5. **Media Relations/Press Materials** Develop and execute a local, regional, and state-wide media strategy (in partnership with Sacramento office) that supports the priorities of the COMMISSION.

- 5.1 Draft press releases, fact sheets, and backgrounders as needed for media opportunities identified in media strategy as well as for the support of community events and partnerships as appropriate.
 - 5.2 Draft opinion articles and/or letters to the editor responding to topical issues and news stories that COMMISSION priorities.
 - 5.3 Provide strategic counsel and coordinating media placements in targeted media markets as requested by the COMMISSION.
 - 5.4 Leverage media coverage by e-mailing news clips to the COMMISSION's consultant team for distribution to elected officials, opinion leaders and other stakeholders, and inclusion of article links in e-newsletter and e-mail campaign updates.
6. **Social Media** Explore and recommend opportunities to use social media programs to raise awareness of COMMISSION grantees, grantee programs, and other issues deemed a priority by the COMMISSION.
- 6.1 Execute recommended social media programs as needed.
7. **Friends** Explore and recommend approach for "Friends of First Five" concept.
8. Other activities, as assigned by the COMMISSION.

EXHIBIT C
SCHEDULE OF COMPENSATION

1. Payment

CONSULTANT shall bill COMMISSION for services provided under this Agreement up to a Maximum Payment Obligation of **\$185,000**. Services shall be billed monthly by invoice for performance tasks described in the Scope of Services, Exhibit B, and completed pursuant to the following compensation schedule:

1.1 CONSULTANT's hourly rates are as follows:

Project Lead staff: \$200; and
Administrative/Support staff: \$100.

1.2 Porter Novelli's hourly rates are as follows:

Level 1 (Staff Support/Intern)	\$70
Level 2 (Account Coordinator)	\$120
Level 3 (Assistant Account Executive)	\$140
Level 4 (Account Executive)	\$160
Level 5 (Senior Account Executive)	\$185
Level 6 (Account Supervisor)	\$210
Level 7 (Account Manager)	\$225
Level 8 (Vice President)	\$250
Level 9 (Senior Vice President)	\$300
Level 10 (Executive Vice President/Partner)	\$350

2. General

- CONSULTANT shall submit receipts for all expenses included in invoices to receive reimbursement. ADMINISTRATOR may, at his/her sole discretion, request original receipts from CONSULTANT.

- Alcoholic beverages, tips, movies, and the cost of toll roads are not reimbursable.
- The cost of meeting rooms, materials necessary for meetings, and food during meetings may be reimbursed subject to the prior approval of ADMINISTRATOR.
- The cost for out of pocket expenses incurred for photocopying from Kinko's or other such service may be reimbursed subject to the prior approval of ADMINISTRATOR.

3. Reimbursement for Expenses

a. MILEAGE

- CONSULTANT shall neither be paid for the time spent traveling nor reimbursed for mileage **from or to** CONSULTANT's place of business (or home) **to or from** COMMISSION offices in order to perform work under this Agreement. The parties agree that the round-trip mileage between CONSULTANT's place of business (or home) and COMMISSION offices is 14 miles.

- For each day that mileage is claimed, 14 miles shall be deducted from the total miles claimed. After the deduction, mileage shall be reimbursed at the rate(s) per mile established by the Internal Revenue Service during the term of this Agreement.

b. TRAVEL

- CONSULTANT shall not be paid for the time spent traveling to perform work under this Agreement except for time spent actually working while traveling; e.g., time spent using cell phones or computers, unless approved in writing and in advance by ADMINISTRATOR.

- CONSULTANT shall submit travel requests on a form provided by ADMINISTRATOR. Requests must be approved, in advance, by ADMINISTRATOR. If ADMINISTRATOR requests that CONSULTANT attend and/or participate in a Seminar or similar type meeting and CONSULTANT's only travel cost is mileage and/or registration fees as appropriate, ADMINISTRATOR's authorization may be verbal or via e-mail.

- If approved in advance by ADMINISTRATOR, CONSULTANT may bill COMMISSION for the actual cost of coach airfare, train or other public transportation; the reasonable and necessary cost of car rental; the actual cost of meals not to exceed \$45 per day for all meals; and, the actual cost of lodging not to exceed \$130 per day. CONSULTANT may bill COMMISSION for necessary parking costs in addition to the hourly rate specified. In the event that a personal vehicle is utilized, mileage shall be reimbursed at the rate(s) per mile established by the Internal Revenue Service during the term of this Agreement.