

TULARE COUNTY AGREEMENT NO. _____

COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY

THIS AGREEMENT ("Agreement") is entered into as of July 1, 2020, between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"), and the **FIRST 5 TULARE COUNTY** ("FIRST 5"). COUNTY and FIRST 5 are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. On November 3, 1998, the people of California voted to approve Proposition 10, The Children and Families First Act. (the "Act"); and
- B. The provisions of that Act are embodied in California Constitution Article XIII B, Section 13, Health and Safety Code sections 130100 through 130158 and Revenue and Taxation Code sections 30131 through 30131.6; and
- C. The Tulare County Board of Supervisors, pursuant to that Act, adopted a resolution committing to participation in this program, established the requisite FIRST 5, and subsequently provided that the FIRST 5 so established would be autonomous; and
- D. Pursuant to Health and Code section 130140.1(b)(2)(A) a County Commission established pursuant to the Act has the authority to enter into contracts as necessary or appropriate to carry out its purposes; and
- E. As a result, COUNTY and FIRST 5 entered into agreement No. 21234 on June 18, 2002 wherein the COUNTY agreed to provide certain services to FIRST 5; and
- F. Whereas, COUNTY and FIRST 5 entered into the following amendments to said agreement No. 21234:
 - a. On July 1, 2003, COUNTY and FIRST 5 amended the Agreement by changing the date and revised the estimated rate for services provided. Notably, the claims processing rate was modified from \$2.50 to \$7.58 per claim.
 - b. On June 15, 2004, COUNTY and FIRST 5 amended the Agreement by changing the date.
 - c. On June 14, 2005, COUNTY and FIRST 5 amended the Agreement by changing the date and revised the estimated rate for services provided. Notably, the general accounting rate was modified from \$640 to \$648 per year and the claims processing rate was modified from \$7.58 to \$9.76 per claim.
 - d. On June 6, 2006, COUNTY and FIRST 5 amended the Agreement by extending the term.
 - e. On June 5, 2007, COUNTY and FIRST 5 amended the Agreement by changing the date and revising the estimate rate for services provided. Notably, the general accounting rate was modified from \$684 to \$700 per year and the claims processing rate was modified from \$9.76 to \$2.50 per claim.
 - f. On June 17, 2008, COUNTY and FIRST 5 amended the agreement by extending the term and revising the estimated rate provided. Notably, the general accounting rate was modified from \$684 to \$812.69 and a warrant processing fee of \$3.39 per warrant was introduced.

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

- g. On June 2, 2009, COUNTY and FIRST 5 amended the Agreement by extending the term of the Agreement and also revised the estimate rate for services provided. Notably, the general accounting rate was modified from \$812.69 per year to \$553 per year and the claims processing rate was modified from \$2.50 to \$3.38 per claim.
- h. On June 15, 2010, COUNTY and FIRST 5 amended the Agreement by extending the term. In addition, the general accounting rate was modified from \$553 per year to \$658 per year. In addition, the claims processing rate was modified from \$3.38 per claim to \$4.48 per claim.
- i. On May 24, 2011, COUNTY and FIRST 5 amended the Agreement by extending the term and also revised the estimated rate for services provided. Notably, the general accounting rate was modified from \$658 to \$1,410 per year and the claims processing rate was modified from \$4.48 to \$2.50 per claim.
- j. On June 5, 2012, COUNTY and FIRST 5 amended the Agreement by extending the term.
- k. On July 23, 2013, COUNTY and FIRST 5 amended the Agreement by extending the term.
- l. On June 17, 2014, COUNTY and FIRST 5 amended the Agreement by extending the term and revising the estimated rate for services provided. Notably, the general accounting rate was modified from \$1,410 to \$1,461 per year.
- m. On June 2, 2015, COUNTY and FIRST 5 amended the Agreement by extending the term.
- n. On June 28, 2016, COUNTY and FIRST 5 amended the Agreement by extending the term.
- o. On January 9, 2018 COUNTY and FIRST 5 amended the Agreement by extending the term from July 1 to June 30, 2018.
- p. On July 31, 2018 COUNTY and FIRST 5 amended the Agreement by extending the term.
- q. On July 23, 2019 COUNTY and FIRST 5 amended the Agreement by extending the term; and

G. The Parties desire to enter into a new Agreement where COUNTY shall provide specified services upon the terms and conditions of this agreement.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. TERM: This Agreement becomes effective as of July 1, 2020 and expires at 11:59 PM on June 30, 2021 unless earlier terminated as provided below, or unless the Parties extend the term by a written amendment to this Agreement.

2. SERVICES: Subject to the terms and conditions herein, COUNTY, through its departments and agencies and their respective employees, shall provide services to FIRST 5 as described in **Exhibit A**.

a. **Exhibit A** shall be referred to as a "service exhibit." Any additional, decreased, or modified services which FIRST 5 requests and which COUNTY agrees to provide shall be documented by a duly executed amendment to this Agreement, which shall include attachment of an additional or modified service exhibit pertaining to the individual department or agency which is to provide such services, and the costs therefor to be paid by FIRST 5.

b. Unless otherwise specifically set forth in this Agreement or other service exhibit, it is intended that all services are to be provided by COUNTY pursuant to COUNTY's existing policies, protocols, and time-

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

lines, and limited by the same. It is understood that FIRST 5 shall have neither a lesser nor a greater entitlement to services than other COUNTY departments and agencies. Notwithstanding, however, the COUNTY, and each department identified in a service exhibit, reserves the right to prioritize its services based on exigencies as may be presented from time to time, and retains substantial discretion regarding the management of its business.

c. FIRST 5 may request services in addition to those set forth in the service exhibit, and may request that services be provided in manners other than pursuant to existing COUNTY policies, protocols, and timelines, provided, however, that such request must be submitted in writing to the County Administrative Officer and the department identified in any service exhibit, and the County Administrative Officer reserves the right to agree to, or decline, or modify such request.

d. FIRST 5 will provide COUNTY with all records and information, in the form required by COUNTY, which COUNTY deems necessary to perform the services required under this Agreement. Any services required or requested may be withheld or delayed if the FIRST 5 does not reasonably or timely provide the necessary information to COUNTY.

3. PAYMENT FOR SERVICES: FIRST 5 shall pay the amounts listed in the attached **Exhibit B** for services rendered in the attached **Exhibit A**.

4. ADDITIONAL EXHIBITS: COUNTY shall comply with the terms and conditions of the Exhibits listed below and identified with a checked box, which are by this reference made a part of this Agreement.

<input type="checkbox"/>	Exhibit D	Additional terms and conditions for federally-funded contracts. This Exhibit can be viewed at http://tularecountycounsel.org/default/index.cfm/public-information/
--------------------------	------------------	---

5. NOTICES: (a) Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission or sent by first class mail, postage pre-paid and addressed as follows:

COUNTY:
CASS COOK, AUDITOR-CONTROLLER
221 S. Mooney Blvd., #101E
Visalia, CA 93291
Phone No.: (559) 636-5200
Fax No.: (559) 730-2547

With a Copy to:
COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291
Phone No.: 559-636-5005
Fax No.: 559- 733-6318

FIRST 5 TULARE COUNTY:
MICHELE MORROW-EATON, EXECUTIVE DIRECTOR
200 N. Santa Fe St.
Visalia, CA 93292
Phone No.: (559) 622-8650
Fax No.: (559) 622-8651

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail will be deemed received on the fifth calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

6. AUTHORITY: FIRST 5 represents and warrants to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind FIRST 5 to its terms. FIRST 5 acknowledges that COUNTY has relied upon this representation and warranty in entering into this Agreement.

5. 7. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document. The counterparts of this Amendment may be executed and delivered by facsimile or other electronic signature (including portable document format) by the Parties and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received.

8. DISALLOWANCE: If COUNTY requests or receives payment from FIRST 5 for services hereunder, reimbursement for which is later disallowed by the State of California or United States Government, COUNTY shall promptly refund the disallowed amount to FIRST 5 upon FIRST 5's request. At its option, FIRST 5 may offset the amount disallowed from any payment due or to become due to COUNTY under this Agreement or any other Agreement between FIRST 5 and COUNTY. COUNTY's obligations under this section 2 will survive the expiration or termination of this Agreement.

9. LIABILITY OF COUNTY: FIRST 5's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 3, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

10. QUALIFIED PERSONNEL: COUNTY shall utilize only competent personnel under the supervision of, and in the employment of, COUNTY PERSONNEL to perform the services. COUNTY will comply with FIRST 5's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at FIRST 5's request, must be supervised by COUNTY.

11. INDEPENDENT CONTRACTOR STATUS: The Parties enter into this Agreement with the express understanding that COUNTY will perform all services required under this Agreement as an independent contractor. The Parties agree that the COUNTY and any of its agents, employees, or officers cannot be considered agents, employees, or officers of FIRST 5.

COUNTY agrees to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of FIRST 5. Subject to any performance criteria contained in this Agreement, COUNTY will be solely responsible for determining the means and methods of performing the specified services and FIRST 5 will have no right to control or exercise any supervision over COUNTY as to how the FIRST 5 will perform the services. As COUNTY is not FIRST 5's employee, COUNTY is responsible for paying all required state and federal taxes. In particular, FIRST 5 will not:

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

- (1) Withhold FICA (Social Security) from COUNTY's payments.
- (2) Make state or federal unemployment insurance contributions on COUNTY's behalf.
- (3) Withhold state or federal income tax from payments to COUNTY's.
- (4) Make disability insurance contributions on behalf of COUNTY's.
- (5) Obtain unemployment compensation insurance on behalf of COUNTY.

Notwithstanding this independent contractor relationship, FIRST 5 will have the right to monitor and evaluate the performance of COUNTY to assure compliance with this Agreement.

12. COMPLIANCE WITH LAW: COUNTY must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to COUNTY's employees, COUNTY must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

13. LICENSES AND PERMITS: COUNTY represents and warrants that it possesses and will maintain during the term of this Agreement all licenses and permits required for its performance of the services required under this Agreement.

14. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

15. RECORDS AND AUDIT: COUNTY must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, COUNTY must maintain complete and accurate records with respect to any payments to employees or subcontractors. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, COUNTY must make the records available within Tulare County to FIRST 5 and its agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

16. CONFLICT OF INTEREST:

(a) At all times during the performance of this Agreement, COUNTY must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated by the California Fair Political Practices. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including COUNTY for this purpose, from making any decision on behalf of FIRST 5 in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any FIRST 5 decision that has the potential to confer any pecuniary benefit on COUNTY or any business firm in which COUNTY has an interest, with certain narrow exceptions.

(b) COUNTY agrees that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform FIRST 5 and provide all information needed for resolution of this question.

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

17. INSURANCE: FIRST 5 acknowledges and agrees that COUNTY is a self-insured entity, and waives any requirement that COUNTY procure and/or maintain insurance of any kind.

18. INDEMNIFICATION AND DEFENSE:

(a) To the fullest extent permitted by law, FIRST 5 must indemnify, defend (at FIRST 5's sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of COUNTY with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of COUNTY, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). FIRST 5's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then FIRST 5's indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from FIRST 5's duty to indemnify. FIRST 5 shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to COUNTY of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to COUNTY by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than COUNTY are responsible for the Claim does not relieve FIRST 5 from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if FIRST 5 asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. FIRST 5's indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. FIRST 5's liability for indemnification under this Agreement is in addition to any liability FIRST 5 may have to COUNTY for a breach of any of the provisions of this Agreement.

(c) FIRST 5 must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

19. TERMINATION:

(a) **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to FIRST 5 of its intention to terminate under this provision, specifying the date of termination. FIRST 5 will pay to COUNTY the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. FIRST 5 will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of all plans, specifications and estimates, and other documents prepared by COUNTY in accordance with this Agreement. FIRST 5 will not impose sanctions on COUNTY under these circumstances.

(b) **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by FIRST 5 or anyone acting on FIRST 5's behalf, as to any matter related in any way to FIRST 5's retention of COUNTY, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of COUNTY to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If FIRST 5 fails to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to FIRST 5.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within 5 days of written notice specifying the breach. If the breach is not remedied within that 5-day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a 5-day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

FIRST 5 will pay to COUNTY the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from COUNTY of all plans, specifications and estimates, and other documents prepared by COUNTY by the date of termination in accordance with this Agreement. FIRST 5 will not pay lost anticipated profits or other economic loss, nor will FIRST 5 pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If FIRST 5 terminates this Agreement for cause and the expense of finishing COUNTY's scope of work exceeds the unpaid balance of the Agreement, then FIRST 5 must pay the difference to COUNTY.

(c) **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the FIRST 5 department or agency for which COUNTY's services are to be performed, may immediately suspend performance by COUNTY, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by COUNTY to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

20. WORK PRODUCT: All work product, equipment, or materials created for FIRST 5 or purchased by FIRST 5 under this Agreement belong to FIRST 5 and COUNTY must immediately deliver them to FIRST 5 at FIRST 5's request upon termination or completion of this Agreement.

21. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

22. CONFIDENTIALITY: COUNTY may not use or disclose any information it receives from FIRST 5 under this Agreement that FIRST 5 has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by FIRST 5. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from FIRST 5 that FIRST 5 has previously identified as confidential. If FIRST 5 determines that it must disclose any information that COUNTY previously identified as confidential, then it shall promptly give COUNTY written notice of its intention to disclose such information and the authority for such disclosure. FIRST 5 shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with FIRST 5 in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from FIRST 5, or FIRST 5 has notified COUNTY that it will not seek such an order, or FIRST 5 has sought and a court has declined to issue a protective order for such information. The duty of COUNTY and FIRST 5 to maintain confidentiality of information under this section continues beyond the term of this Agreement.

23. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, FIRST 5 is relying on the personal skill, expertise, training and experience of COUNTY and COUNTY's employees and no part of this Agreement may be assigned or subcontracted by COUNTY without the prior written consent of FIRST 5, which consent from FIRST 5 will not be unreasonably withheld.

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

24. DISPUTES AND DISPUTE RESOLUTION:

(a) Informal Negotiations. The Parties shall make their best efforts to informally resolve disputes that arise out of or relate to this Contract. To foster a spirit of cooperation and efficiency in the administration of this Contract, disputes between the Parties shall first be subjected to a good faith negotiations process as follows:

(1) The aggrieved Party shall give the other Party, as soon as possible after the event giving rise to the concern, written notice setting forth, with specificity, the issues to be resolved. Notice shall be provided consistent with the terms of the Contract. Said notice shall suggest a date, time and place for the negotiations session. The Parties may jointly decide to meet at another time and place; provided, however, the Parties agree that such negotiations session shall commence within fifteen (15) calendar days after the date that the original notice was given to the applicable Party, unless the Parties agree that there is good cause to extend this time limit.

(2) The Parties agree that the negotiations session(s), including proceedings or discussions concerning the proposed negotiations session(s), are to be considered confidential settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during a negotiations session by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including mediation and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or otherwise admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the negotiations session(s).

(3) Absent mutual consent of the Parties, if a noticed negotiations session fails to commence within the fifteen (15) calendar day period, or if a reasonable attempt to schedule or reschedule the negotiations session has not been made within those fifteen (15) calendar days, then the negotiations obligation imposed under this Section shall be deemed to have been satisfied and the Parties shall be free to pursue their rights and remedies under this Section 22, unless the reason for such failure to convene a negotiations session is the refusal of the Party asserting a claim to participate in the negotiations session, in which event said claim will be deemed to have been waived.

(4) If the dispute is not resolved to the satisfaction of the Parties within thirty (30) calendar days after the first negotiations session, then upon the written request of either Party (a "Mediation Request"), the dispute may be submitted to non-binding mediation in accordance with this Article.

(b) Mediation. If a dispute arising out of or relating to this Contract is not resolved through the above-described negotiations process, then within thirty (30) days after notice is provided through a Mediation Request, the Parties shall participate in non-binding mediation administered by a mediator to help mediate and settle the dispute as soon as practicable. The mediation shall proceed as follows:

(1) The mediation shall be held at a mutually agreeable location within Tulare County, California.

(2) The Parties shall mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party.

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

(3) The mediator shall meet with and hear presentations by the Parties as soon as practicable after appointment.

(4) Mediation will be conducted consistent with California Evidence Code Sections 1115-1128. The mediator shall owe a professional duty to both Parties, and shall be barred from testifying in any litigation concerning any information obtained or disclosed in the course of the mediation.

(5) Each side shall bear its own costs and attorneys' fees, and one-half of all fees and expenses of the mediator.

(6) Unless otherwise agreed upon by the Parties in writing, the mediation shall be completed within thirty (30) days of the selection of the mediator.

(7) The Parties agree that the mediation, including proceedings or discussions concerning the mediation, is to be considered a confidential settlement negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. All conduct, statements, promises, offers, views and opinions, oral or written, made during the mediation by any Party or a Party's agent, employee, or attorney shall be deemed to be confidential and shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding, including and non-binding arbitration, involving the Parties; provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission into evidence simply as a result of it having been used in connection with the mediation.

(8) The mediator's decision shall not be binding on or admissible against either Party. If mediation fails to resolve the dispute, then either Party may pursue litigation to resolve the dispute.

The Parties shall continue with their responsibilities under this Agreement during any dispute.

25. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

26. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

27. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

28. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

29. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

30. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these "General Agreement Terms and Conditions") and any Exhibit, Schedule, or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

31. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

32. ENTIRE AGREEMENT: This Agreement represents the entire agreement between FIRST 5 and COUNTY as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of both Parties.

33. ASSURANCES OF NON-DISCRIMINATION: Neither FIRST 5 nor COUNTY shall discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that both FIRST 5 and COUNTY have the responsibility to protect their employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, COUNTY agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. FIRST 5, in its sole discretion, has the right to require COUNTY to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where FIRST 5 is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. FIRST 5's right to require replacement of employees under this section does not preclude FIRST 5 from terminating this Agreement with or without cause as provided for under this Agreement.

34. DRUG-FREE WORKPLACE POLICY: COUNTY acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on FIRST 5 premises. COUNTY agrees that any violation of this prohibition by COUNTY, its employees, agents, or assigns will be deemed a material breach of this Agreement.

35. RECYCLED PAPER CONTENT: To the extent COUNTY's services under this Agreement include printing services, pursuant to Public Contract Code section 22153 COUNTY shall use paper that meets the recycled content requirements of Public Contract Code section 12209.

[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

SERVICE EXHIBIT B

County Agency/Department: Treasury

E. Services to be provided:

- a. Accept Commission Funds from State
- b. Manage Commission Funds in a designated Trust Fund
- c. Pool Commission Funds for investment purposes
- d. Account for investment income earned on Commission Funds based on the average daily balance maintained in the Commission Trust Fund

F. Deviation from County policies, protocols and timelines (if any):

None

G. Modification of costs of services basis (if any):

None

H. Estimated rate for services provided:

- a. The Treasury expenses are reimbursed by the Treasury Investment Pool. Quarterly earnings are distributed net of expenses (fees).
-

**COUNTY OF TULARE
SERVICES AGREEMENT
FIRST 5 TULARE COUNTY**

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

FIRST 5 TULARE COUNTY

Date: 6-10-2020

By Michele Eaton

Print Name MICHELE EATON

Title EXECUTIVE DIRECTOR

Date: 6/10/2020

By 

Print Name Susy Geja

Title Executive Assistant

[Pursuant to Corporations Code section 313, County policy requires that contracts with a **Corporation** be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a **Limited Liability Company** be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

COUNTY OF TULARE

Date: _____

By _____
Chair, Board of Supervisors

ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

Date: _____

By _____
Deputy Clerk

Approved as to Form
County Counsel

Date: _____

By _____
Deputy
Matter # 2020578