

**AGREEMENT FOR PROFESSIONAL SERVICES  
to PROMOTE QUALITY EARLY LEARNING**

THIS AGREEMENT (“Agreement”) is made and entered into this 6th day of April 2023 by and between the First 5 Commission Tuolumne, (“Commission”), and Tuolumne County Superintendent of Schools (“Contractor”) for the Smile Keepers program, pursuant to the following terms and conditions.

**W I T N E S S E T H:**

**1. TERM**

The term of this Agreement shall commence on July 1, 2023 and terminate on June 30, 2027 unless extended as provided by this Agreement.

This Agreement may be extended for two (2) one year extensions by written amendment signed by both parties.

**2. SERVICES**

Contractor shall perform Oral Health Prevention and Education as described in Exhibit A, “Scope of Work,” which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

**3. COMPENSATION**

Contractor shall be compensated for services performed in an amount not to exceed two hundred ninety-seven thousand, nine hundred ninety-seven dollars (\$297,997.00) for fiscal years 2023/2024 through 2026/2027. The Contractor’s rates are listed in Exhibit B, “Cost Proposal.” The Commission shall pay Contractor within thirty (30) days of receipt of an approved invoice.

**4. INSURANCE**

A. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. Coverage shall be at least as broad as:

- i. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- ii. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code

1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

- iii. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the Commission requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Commission.

B. Other Insurance Provisions: The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. Additional Insured Status. The Commission, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).
- ii. Primary Coverage. For any claims related to this contract, the Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Commission, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Commission, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- iii. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Commission.
- iv. Waiver of Subrogation. Contractor hereby grants to Commission a waiver of any right to subrogation which any insurer of said Contractor may acquire against the Commission by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Commission has received a waiver of subrogation endorsement from the insurer.
- v. Self-Insured Retentions. Self-insured retentions must be declared to and approved by the Commission. The Commission may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Commission.

- vi. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Commission.
- vii. Verification of Coverage. Contractor shall furnish the Commission with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Commission before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Commission reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- viii. Special Risks or Circumstances. Commission reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- ix. Failure to Comply: Upon failure to comply with any of these insurance requirements, this Agreement may be forthwith declared suspended or terminated. Failure to obtain and/or maintain any required insurance shall not relieve any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the indemnification obligations.

## **5. HOLD HARMLESS/INDEMNIFICATION**

Contractor shall hold harmless, defend and indemnify Commission and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Commission.

If such indemnification becomes necessary, the County Counsel for the Commission shall have the absolute right and discretion to approve or disapprove of any and all counsel employed to defend the Commission. This indemnification clause shall survive the termination or expiration of this Agreement.

## **6. INDEPENDENT CONTRACTOR**

It is understood that Contractor, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the Commission. Contractor shall obtain no rights to retirement benefits or other benefits which accrue to Commission's employees, and Contractor hereby expressly waives any claim it may have to any such rights. All employees, agents, contractors, subcontractors hired or retained by the Contractor are performing in that capacity for and on behalf of the Contractor and not the Commission. The Commission shall not be obligated in any way to pay any wage claims or other claims made against the Contractor by any such employee, agent,

contractor or subcontractor, or any other person resulting from the performance of this Agreement.

**7. ASSIGNMENT**

This Agreement is for the professional services of the Contractor and it shall not assign, subcontract, or sublet any part of this Agreement without the express prior written consent of Commission. Any assignment without the express prior written consent of the Commission is VOID.

**8. NOTICE**

Any and all notices, reports or other communications to be given to Commission or Contractor shall be given to the persons representing the respective parties at the following addresses:

**CONTRACTOR:**

Tuolumne County Superintendent  
of Schools  
175 Fairview Lane  
Sonora, CA 95370  
Phone: (209)536-2000

**COMMISSION:**

First 5 Tuolumne  
75 Fairview Lane  
Sonora, CA 95370  
Phone: (209) 536-2070

**9. COMPLIANCE**

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

**10. PUBLIC RECORDS ACT**

Contractor is aware that this Agreement and any documents provided to the Commission may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the Commission agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

**11. ENTIRE AGREEMENT AND MODIFICATION**

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the

subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties, however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and the First 5 Commission. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

## **12. ENFORCEABILITY AND SEVERABILITY**

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

## **13. TERMINATION AND RIGHTS UPON TERMINATION**

- A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.
- B. Either party may terminate this Agreement for convenience upon 30 calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.
- C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, Commission, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of Commission property, dishonesty, or theft.

## **14. NO WAIVER**

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

## **15. DISPUTES**

Should it become necessary for a party to this Agreement to enforce any of the provisions hereof, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Tuolumne, State of California.

## **16. CAPTIONS**

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

## **17. NUMBER AND GENDER**

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms, or associations, wherever the context so requires.

## **18. MANDATORY AND PERMISSIVE**

"Shall" is mandatory. "May" is permissive.

## **19. SUCCESSORS AND ASSIGNS**

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

## **20. COUNTERPARTS/ELECTRONIC, FACSIMILE, AND PDF SIGNATURES**

This agreement may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each Party of this agreement agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act ("CUETA") Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this agreement. The Parties further agree that the electronic signatures of the Parties included in this agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature for transactions and contracts among Parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature and shall be reasonably relied upon by the Parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code. Facsimile signatures or signatures transmitted via pdf document shall be treated as originals for all purposes.

## **21. OTHER DOCUMENTS**

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

## **22. CONTROLLING LAW**

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

## **23. AUTHORITY**

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

## **24. NEGOTIATED AGREEMENT**

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

## **25. NO RELIANCE ON REPRESENTATIONS**

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

## **26. WARRANTY**

Commission has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by Commission shall not operate as a waiver or release.

## **27. FUNDING AVAILABILITY**

It is mutually agreed that if the Commission budget of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the Commission shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's assumption of risk of possible non-appropriation

is part of the consideration for this Agreement. Commission budget decisions are subject to the discretion of the First 5 Tuolumne Commission.

If funding for any fiscal year is reduced or deleted by the Commission budget for purposes of this program, the Commission shall have the option to either cancel this Agreement with no liability occurring to the Commission, or offer an Agreement amendment to Contractor to reflect the reduced amount.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

FIRST 5 COMMISSION	CONTRACTOR
By: Cathy Parker, Chair First 5 Commission	By: Zack Abernathy, Superintendent Tuolumne County Superintendent of Schools
APPROVED AS TO LEGAL FORM:	
By: Maria Sullivan, Deputy County Counsel	



**Exhibit A**  
**SCOPE OF WORK**

**Service Description - Benchmarks - Documentation & Reporting - Evaluation**

**SERVICE DESCRIPTION**

**Tuolumne County Superintendent of Schools Smile Keepers Program**

Services

Smile Keepers will provide twice yearly dental education, screening, and fluoride varnish application for approximately 500 children (age birth – 5) per year at area preschools and service sites, including services to special education preschool classrooms. Children will receive services in accordance with parent permission slips. Services will be provided by a Registered Dental Assistant or a Registered Dental Hygienist (required by Head Start). All screening results will be sent home with children. Dental referrals will be provided for children with moderate to urgent dental needs, with follow up phone calls to families as necessary.

Smile Keepers will also provide preventive dental education kits for families in prenatal classes at Sonora Regional Medical Center, serving up to 500 parents per year. Parents will be provided with take home kits for good oral hygiene habits for baby and new parents. Follow up post cards will be sent to families at baby's 6 month and 1 year birthday with reminders to begin fluoride drops, daily oral care and visiting the dentist at 1 year of age.

Smile Keepers will provide at least 100 parents with education on oral health at kindergarten registration days.

Smile Keepers will provide trainings to 20 educators and health care providers on oral health care.

Smile Keepers will identify children in need of the First 5 Dental Help Fund and will facilitate families' applications, and coordinate treatment with local dentists.

Smile Keepers will provide outreach on dental prevention and treatment at the ICES Children's Fair, kindergarten registrations, and Give Kids a Smile with Safari Smiles Dental.

Evidence-Based or Promising Practice: First Smiles

Funding Sources: First 5 Tuolumne County for 0-5 program; the larger Smile Keepers program infrastructure is supported by Denti-Cal billing and other funding for children ages 6-18 (Sonora Area Foundation and local donations).

## **BENCHMARKS**

**The following benchmarks shall be demonstrated each quarter:**

1. Grantee will demonstrate steady progress in scheduling and performing dental screenings, dental treatment and parent education, and will report on activities quarterly.
2. The grantee shall demonstrate a good faith effort to provide the following service levels. The numbers below may be duplicated between the years.
  - a. 500 children receive at least one First 5 screening and fluoride treatment annually
  - b. All service sites receive two visits/year, with a goal for 50% of screened children to receive two First 5 screenings and fluoride treatments annually
  - c. 100 parents participate in prevention education annually.
  - d. 300 oral health kits will be provided to parents at the Birth Center.
  - e. 20 educators and health care providers will receive training in oral health care.
3. At least one staff member with decision making authority will attend a minimum of 4 Grantee Joint Service Planning meetings in FY 23-24.
4. There is a system in place for collecting data for the evaluation which is due in September of each year.

The benchmarks may be renegotiated with the mutual consent of both parties at the annual review, without requiring an amendment to this contract.

## **DOCUMENTATION AND REPORTING**

The Contractor shall provide quarterly service data and demographic data on children up to age five and their caregivers served. This data shall include individual client data if available, where clients are identified with unique identifiers. The Contractor shall ensure that agency confidentiality protocols shall allow for the sharing of this non-identifiable data. The Contractor shall report on each individual's prevention services, dental status, and whether there has been a referral for treatment.

The Commission shall provide quarterly benchmark reporting forms to the Contractor prior to the due date of the reports.

There will be four benchmark reports due each contract year (to be submitted with the financial reports) as follows:

	For period:	Report Due:
Quarter 1	Jul 1-Sep 30	Oct 31
Quarter 2	Oct 1 – Dec 31	Jan 31
Quarter 3	Jan 1 – Mar 31	Apr 30
Quarter 4	Apr 1 – Jun 30	Jul 31

## EVALUATION

The Contractor shall collect data to measure its progress toward the desired outcomes. Annual evaluation data and data summaries shall be provided to the Commission by **September 1<sup>st</sup> following each contract year**. Individual client evaluation data shall be made available upon request. The Commission shall provide evaluation reporting forms to the Contractor no later than one month prior to the due date of the report.

The evaluation plan may be renegotiated with the mutual consent of both parties without requiring an amendment to this contract.

### **Desired Outcomes and Indicators**

- 1. Children will have the supports and resources they need to develop in a healthy fashion and to enter kindergarten ready to learn.**

Standards of Practice: Services provided by the following professionals, licensed and in good standing in the State of California: (1) Registered Dental Assistant; (2) Registered Dental Hygienist Alternate Practice; (3) a local dentist (DDS), who serves in an advisory capacity.

Indicators and Data Collection:

<b>1.1 Children receive oral health screenings and fluoride treatments as early as possible, practice good hygiene, get treatment.</b>
Data: a) Comprehensive data, reported quarterly, on oral health education, screenings and fluoride treatments, including: number of children 0-5 served, the sites and dates where the services were provided, and information on the status of children's oral health and referrals. (Goal: 500 children) b) Annual description of service elements that provide children with a positive early dental care experience and help children learn and practice prevention techniques such as tooth brushing. c) Ongoing communication regarding Dental Help Fund referrals, facilitation, and child treatment.
<b>1.2 Caregivers learn about and have access to preventative oral care, dental treatment for children 0-5.</b>
Data: a) Quarterly report on the number of parents who participate in oral health prevention education, and the sites where the services were provided. (Goal: 100/year from kindergarten registration) b) 300 or more oral health kits will be distributed to parents at the Birth Center. c) Parents report new information and skills that they learned as a result of participating in the classes (1 class/year assessed with a questionnaire). d) Annual description of service elements that assist parents in accessing dental care for their children when tooth decay is present.
<b>1.3 Educators and Health Care providers will have access to oral health care</b>

education.

Data:

- a) Quarterly reports on number of providers who participate in oral health prevention education and the sites where the services were provided.  
(Goal: 20/year)

## Exhibit B

### BUDGET

Tuolumne County Superintendent of Schools  
Smile Keepers Dental Program

Proposed_Maintain .51 FTE_ Four Year Budget - Smile Keepers/First 5					
	FY 23-24	FY 24-25	FY 25-26	FY 26-27	TOTAL
<b>Personnel</b>					
.51 FTE Coordinator Salary	41,900.04	43,355.83	44,001.58	44,657.01	173,914.47
Benefits	19,960.42	21,233.11	21,758.62	22,162.60	85,114.76
<b>Subtotal Personnel:</b>	<b>61,860.46</b>	<b>64,588.95</b>	<b>65,760.20</b>	<b>66,819.62</b>	<b>259,029.23</b>
<b>Operating/Other Costs</b>					
Dental Supplies	3,000.00	3,000.00	3,000.00	3,000.00	12,000.00
<b>Subtotal Operating/Other:</b>	<b>3,000.00</b>	<b>3,000.00</b>	<b>3,000.00</b>	<b>3,000.00</b>	<b>12,000.00</b>
<b>Grand Subtotal</b>	<b>64,860.46</b>	<b>67,588.95</b>	<b>68,760.20</b>	<b>69,819.62</b>	<b>271,029.23</b>
<b>Administrative/ Indirect</b>	6,453.62	6,725.10	6,841.64	6,947.05	26,967.41
<b>Subtotal Admin/Indirect:</b>	<b>6,453.62</b>	<b>6,725.10</b>	<b>6,841.64</b>	<b>6,947.05</b>	<b>26,967.41</b>
<b>TOTAL:</b>	<b>71,314.08</b>	<b>74,314.05</b>	<b>75,601.85</b>	<b>76,766.67</b>	<b>297,996.64</b>
<b>Grant Revenue Request</b>	<b>71,314.08</b>	<b>74,314.05</b>	<b>75,601.85</b>	<b>76,766.67</b>	<b>297,996.64</b>
23/24 calculated 9.95% Indirect rate used for all 4 years					

**EXHIBIT C.**  
**CHECKLIST FOR ANNUAL FUNDING REVIEW**

**This checklist shall be used for the annual review of benchmarks, annual budgets, and determination on carry-over funds.**

- 1. The Commission commits to allowing the carry-over of unspent funds from this Fiscal Year \_\_\_ to the next (FY \_\_\_), if all of the following conditions are met:**
  - a) The benchmarks for the period July – March have been met or, if they have not been met, a satisfactory explanation has been provided to the Commission and a plan for improvement and/or for new benchmarks has been received and approved by the Commission.
  - b) The Contractor is making progress on the evaluation plan as follows:
    - a. The quarterly reports indicate that evaluation data has been collected during the months July – March.
    - b. The previous year’s evaluation report, due in September, has demonstrated that positive outcomes are being measured for children, families, and/or service providers, as appropriate to the evaluation plan.
  - c) The Contractor has provided a written explanation to the Commission as to the reason the budget was under-spent, and has provided a proposed budget for the following fiscal year, and this explanation and proposed budget do not raise questions regarding supplantation, fund mismanagement, inappropriate budget requests or other areas of concern.
  
- 2. A budget amendment has been submitted for FY \_\_\_\_\_. Or Not Applicable \_\_\_\_\_**
  
- 3. Proposed changes to the annual benchmarks and/or evaluation plan have been submitted for FY \_\_\_\_\_. Or Not Applicable \_\_\_\_\_**