



AGENDA _____ September 28, 2021

Lori A. Cox
Agency Director

1111 Jackson Street, 1st Floor
Oakland, California 94607
510-271-9100 / Fax: 510-271-9108
ssadirector@acgov.org
<http://alamedasocialservices.org>

September 13, 2021

The Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT: APPROVE THE FISCAL YEAR 2021-2022 CALIFORNIA ALTERNATIVE PAYMENT PROGRAM CONTRACT FOR CHILD DEVELOPMENT PROGRAMS AND THE FOUR ASSOCIATED STANDARD SERVICES AGREEMENTS

RECOMMENDATIONS:

- A. Authorize the Board President to execute the California Alternative Payment Program Contract No. CAPP-1000-00, General Fund, Project No. 01-2401-00-1, with the California Department of Social Services to reimburse the County of Alameda for Child Development Programs for the contract term of 7/1/21 - 6/30/22, in the amount of \$1,985,514;
- B. Approve four new Standard Services Agreements to provide child care and developmental services to eligible families residing in the Southern Alameda County cities of San Leandro, San Lorenzo, Castro Valley, Hayward, Union City, Newark, and Fremont, for the contract term of 7/1/21 - 6/30/22, in the amount of \$1,925,949:
 - i. Procurement Contract No. 22836 with Community Child Care Council (4Cs) of Alameda County (Principal: Renee Herzfeld; Location: Hayward), in the contract amount of \$456,668;
 - ii. Procurement Contract No. 22837 with Bananas, Inc. (Principal: Kim Johnson; Location: Oakland), in the contract amount of \$992,757;
 - iii. Procurement Contract No. 22838 with Hively (Principal: Kelly O'Lague Dulka; Location: Pleasanton), in the contract amount of \$317,682;
 - iv. Procurement Contract No. 22839 with Davis Street Community Center (Principal: Rose Padilla Johnson; Location: San Leandro), in the contract amount of \$158,841; and

- C. Adopt a Resolution authorizing the waiving of the County's competitive bidding requirements for 4Cs, Bananas, Inc., Hively, and Davis Street Community Center, with respect to these contracts.

SUMMARY/DISCUSSION:

This letter requests action by your Board to approve the County's Fiscal Year (FY) 2021-22 California Alternative Payment Program (CAPP) agreement with the California Department of Social Services (CDSS) administered by the Alameda County Social Services Agency (SSA). The CAPP contract provides State funding to support and provide child care subsidies to low-income families under the guidelines set forth by the CDSS. This funding will be contracted out in alignment with the County's Alternative Payment agencies who continue to service existing families. Contractor shall accomplish the goal of providing subsidies under the California Child Care Alternative Payment Program for child care in a location of the parents' choice while the parent or parents are working, seeking employment, in vocational training, seeking permanent housing, and/or are incapacitated.

Target Population:

Contractor shall provide services to the following populations:

1. First Priority for services through the program is given to children who are receiving child protective services through local County Welfare Department or identified by a medical, social service agency, or emergency shelter as abused, neglected, or exploited, or at risk of abuse, neglect, or exploitation.
2. Second Priority: All children and families who are not within the first priority for admission shall be admitted in accordance with family income, with the lowest per capita income admitted first. For purposes of determining the order of admission, public assistance grants are counted as income. If two or more families have comparable per capita income, the family that has been on the waiting list the longest shall be admitted first.

On August 4, 2020 (File No. 30520, Item No. 4), your Board approved the FY 2020-21 CAPP contract with CDE in the amount of \$1,745,627 along with Standard Services Agreements for four agencies that contract with the County to provide CAPP child care and development services. Three of the four agencies—Bananas, Inc., 4Cs, and Hively, Inc. provide Resource and Referral (R&R) services to families seeking child care. The fourth agency, Davis Street Community Center, is an Alternative Payment (AP) contractor that provides direct services to families.

On November 24, 2020 (File No. 30554, Item No. 2), your Board approved the Amendments No. 1 and 2 to add supplemental CAPP funds in the amount of \$482,653 to the County's existing CAPP contract amount of \$1,745,627, bringing the revised CAPP contract amount to \$2,228,280. In addition, your Board approved amendments to the following community-based organization (CBO) service agreements to provide additional child care and developmental services with no

change in the contract period of 7/1/20 – 6/30/21, which increased the total contract amounts by \$482,653: increased the 4Cs contract amount from \$349,125 to \$518,054 (\$168,929 increase), increased the Bananas, Inc. contract amount from \$960,095 to \$1,201,421 (\$241,326 increase), and increased the Hively, Inc. contract amount from \$279,300 to \$351,698 (\$72,398 increase).

On January 26, 2021 (File No. 30601, Item No. 5), your Board approved Amendment No. 3, which provided additional child care and developmental services and increased the contract amount by \$406,617 from \$2,228,280 to \$2,634,897). In addition, your Board approved amendments to the following Standard Services Agreements to provide additional child care and developmental services with no change in the contract term of 7/1/20 – 6/30/21, increasing the total contract amounts by \$406,617: increased the 4Cs contract amount from \$518,054 to \$659,820 (\$141,766 increase), increased the Bananas, Inc. contract amount from \$1,201,421 to \$1,403,945 (\$202,524 increase), and increased the Hively, Inc. contract amount from \$351,698 to \$414,025 (\$62,327 increase).

On June 29, 2021 (File No. 30656, Item No. 7), your Board approved Amendment No. 4 to the CAPP Contract for child care and development services, which extended the contract term of 7/1/20 - 6/30/21 by an additional year through 6/30/22, and increased the total contract amount from \$2,634,897 to \$3,114,333 (\$479,436 increase). In addition, your Board approved amendments to the following CBO service agreements to provide additional child care and developmental services, which extended the contract term of 7/1/20 - 6/30/21 by an additional year through 6/30/22 and increased the total contract amounts by \$479,436: increased the 4Cs contract amount from \$659,820 to \$814,438 (\$154,618 increase), increased the Bananas, Inc. contract amount from \$1,403,945 to \$1,643,663 (\$239,718 increase), and increased the Hively, Inc. contract amount from \$414,025 to \$485,940 (\$71,915 increase), and increased the Davis Street Community Center contract amount from \$104,738 to \$117,922 (\$13,184 increase).

In FY 2020-2021, approximately 2,132 subsidies were provided for child care services throughout Alameda County. The CAPP contractors will use the supplemental awards to expand their capacity to provide child care to low-income and essential worker families under the guidelines set forth by the former CDE CAPP program. There will be no change to the nature of the services provided. However, contractors will be able to continue to assist families in being able to access child care services. Priority for services through this program are given to children receiving child protective services through SSA and children who reside in the County of Alameda and are identified by legal, medical, or emergency shelter authorities as abused, neglected, exploited, or at risk of abuse, neglect, or exploitation.

SELECTION/CRITERIA PROCESS:

To qualify as a Child Care R&R agency, providers must be willing to accept the State's Regional Market Rates and recruit local providers who will accept those rates. These specific child care R&R agencies (Hively, 4Cs, Bananas, Inc. and Davis Street Community Center) have been certified as eligible R&R agencies for decades. Since Hively, 4Cs, Bananas, Inc. and Davis Street Community Center are the only State certified R&R and AP contractors in Alameda County, we are requesting your Board to adopt a Resolution to waive the County's competitive bid process.

On June 29, 2021 (File No. 30656, Item No. 7), your Board approved amendments to Hively, 4Cs, Bananas, Inc. and Davis Street Community Center for FY 2020-22 CAPP awards.

On June 28, 2021, the Office of Contract Compliance & Reporting (OCCR) issued Small, Local and Emerging Business (SLEB) waivers for the Davis Street Community Center (Waiver No. 1913, expires 6/30/22), Bananas, Inc. (Waiver No. 1796-A1, expires 6/30/22), 4Cs (Waiver No. 1796-B1, expires 6/28/22), and Hively (Waiver No. 1796-C1, expires 6/28/22).

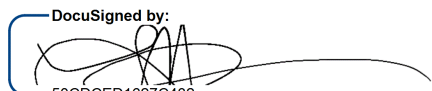
FINANCING:

Funding for these CAPP Child Development Programs contracts is provided by the CDSS and included in the SSA FY 2021-22 Approved Budget. There will be no increase in net County cost.

VISION 2026 GOAL:

Child Development Programs for low-income families with priority for children receiving child protective services in the County of Alameda meet the 10X goal pathway of **Eliminating Poverty and Hunger** in support of our Shared Visions of **Thriving and Resilient Population** and **Prosperous and Vibrant Economy**.

Sincerely,

DocuSigned by:

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Lori A. Cox
Agency Director

Attachments:

- 3) CDSS FY 2021-22 CAPP Contract for Board President signature
- 4) Resolution authorizing the waiver of the County's purchasing procedures for Child Development Programs



CAPP-1000 CC
signed.pdf



Resolution CAPP
1000-00.pdf

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of July 1, 2021, is by and between the County of Alameda, hereinafter referred to as the “County”, and Community Child Care Council of Alameda County (4Cs), hereinafter referred to as the “Contractor”.

WITNESSETH

Whereas, County desires to obtain California Alternative Payment Program, Child Development Programs, which are more fully described in Exhibit A hereto (“Child Development Programs”); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Child Development Programs, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Attachment A	Client Grievance Policy
Attachment B	Language Access Requirements for Contractors
Attachment C	Confidentiality – Contract Provisions
Exhibit B	Payment Terms
Exhibit B-1	Program Budget
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements
Exhibit F	Audit Requirements
Exhibit G	HIPAA Business Associate Agreement (Intentionally Omitted)
Exhibit H	Additional Contract Provisions - Federal Provisions
Exhibit H-1	Certification Regarding Lobbying
Exhibit I	California Department of Social Services Funding Terms and Conditions

The term of this Agreement shall be from July 1, 2021 through June 30, 2022.

The compensation payable to Contractor hereunder shall not exceed *four hundred and fifty-six thousand, six hundred and sixty-eight dollars (\$456,668)* for the term of this Agreement.

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

COUNTY OF ALAMEDA

CONTRACTOR

By: _____
Signature

By:  _____
Signature

Name: Keith Carson
(Printed)

Name: Renee Herzfeld
(Printed)


Title: President of the Board of Supervisors

Title: Executive Director

Date: _____

Date: 9/20/2021

Approved as to Form:

By:  _____
County Counsel Signature

Date: 9/21/2021

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two weeks' notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to

injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the

Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
- b. Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
- c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;

- (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of

such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. **Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. **Telex or facsimile transmission:** When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA

Office of Policy, Evaluation and Planning
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Jennifer Caban
Email: Jennifer.Caban@acgov.org

Contracts Office
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Michelle Manor
Email: michelle.manor@acgov.org

To Contractor: Community Child Care Council of Alameda County (4Cs)
22351 City Center Drive, Suite 100
Hayward, CA 94541
Attn: Renee Herzfeld
Email: reneeh@4calameda.org

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees

because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

- c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as

evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Child Development Programs shall not exceed \$456,668 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor

shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

- 22. FIRST SOURCE PROGRAM: For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.
- 24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for an additional two years by mutual agreement of the County and the Contractor.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on

this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Community Child Care Council of Alameda County (4Cs)
Type of Services	Resource and Referral Contractor under CAPP-0000

I. OVERVIEW

Program Name: California Alternative Payment Program – Child Development Programs

Contractor shall provide quality Child Development Programs to a target population of families who meet Eligibility and Need Criteria as specified in the CDSS Program Requirements for Alternative Payment Programs, available on the California Department of Social Services (CDSS) website.

II. PROJECT PLAN

A. Program Goals:

Contractor shall accomplish the goal of providing subsidies under the California Child Care Alternative Payment Program for child care in a location of the parents' choice while the parent or parents are working, seeking employment, in vocational training, seeking permanent housing, and/or are incapacitated.

B. Target Population:

Contractor shall provide services to the following populations:

1. First Priority for services through the program is given to children who are receiving child protective services through local County Welfare Department or identified by a medical, social service agency, or emergency shelter as abused, neglected, or exploited, or at risk of abuse, neglect, or exploitation.
2. Second Priority: All children and families who are not within the first priority for admission shall be admitted in accordance with family income, with the lowest per capita income admitted first. For purposes of determining the order of admission, public assistance grants are counted as income. If two or more families have comparable per capita income, the family that has been on the waiting list the longest shall be admitted first.

C. Program Requirements:

1. Service Criteria: The California Department of Social Services, Child Care and Development Programs, subsidizes child care services for eligible families through its Alternative Payment Program.
2. Alameda County is permitted to subcontract its Alternative Payment Program (AP) funding to local Child Care Resource and Referral (R&R) agencies and AP agencies currently contracting with the California Department of Social Services, Child Care and Development Programs.
3. Services will be provided in accordance with the California Department of Social Services, Child Care and Development Programs Requirements for Alternative Payment Programs as posted on cdss.ca.gov.
4. This subcontract with Contractor ensures Contractor's continuance of the County AP Program with the County.
5. Hours and Days of Operation: Monday through Thursday, from 9:00 a.m. to 5:00 p.m.
6. Service Area: Contractor will serve eligible families residing in the Southern Alameda County cities of San Leandro, San Lorenzo, Castro Valley, Hayward, Union City, Newark, and Fremont. Precise boundaries of the Contractor's service area will be determined by SSA Program staff and are subject to change, based on community needs, as determined by SSA.
7. Service Delivery Sites:
 - Administrative Office: 22351 City Center Dr., Ste. 200, Hayward, CA 94541
 - Fremont Office: 39155 Liberty St., Ste. D410, Fremont, CA 94538

D. Minimum Staffing Qualifications:

Contractor shall have and maintain current job descriptions on file with the Department for all personnel whose salaries, wages, and benefits are reimbursable in whole or in part under this agreement. Job descriptions shall specify the minimum qualifications for services to be performed and shall meet the requirements of the Department. Contractor shall submit revised job descriptions meeting the approval of the Department prior to implementing any changes or employing persons who do not meet the minimum qualifications on file with the Department.

E. CDSS Evaluation and Performance Requirements

Contractor will comply with all of the California Department of Social Services, Child Care and Development Programs' Funding Terms and Conditions for the AP Program including family certifications, parent counseling on child care choices, administering provider contracts and payments, ensuring provider eligibility for payment, collection and accounting of parenting fees, and ensuring confidentiality of family and provider files.

F. Monitoring, Records, and Data Collection Monitoring:

1. SSA Contracts Office Liaison or a member of the SSA Government and Community Relations (GCR) team may at any time, upon one week's notice, monitor and conduct an evaluation of operations, which may include site visits and reviews of Contractor's financial records and other records and materials to determine progress in the achievement of program goals and objectives and service criteria and requirements as specified within this Agreement.
 - a. A final report will be prepared by the Contracts Office Liaison to provide feedback on areas of compliance and/or non-compliance. Contractor shall submit a written corrective action plan to the Contracts Office Liaison in response to all findings of non-compliance.
 - b. A follow-up monitoring visit will be conducted to ensure that all corrective action measures have been completed and Contractor is in compliance with contract requirements.
2. Should subcontractors be utilized, the contractor will be responsible for monitoring all subcontractors under this Agreement.

G. Records:

1. Contractor will prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided to eligible SSA clients, and to maintain and preserve said records for at least three years from the date of final payment under the potential Agreement.
2. Pursuant to California Government Code Section 8546.7, all records documents, conditions and activities of Contractor and its subcontractors, related to the services provided, shall be subject to the examinations and audit of the California State Auditor and any other duly authorized local, state and/or federal agencies. Contractor will further agree to allow interviews of any of its employees who might reasonably have information related to such records by County and any authorized local, state and/or federal agencies.
3. Contractor will comply with fiscal or program monitoring/assessment recommendations by the SSA Contracts Office Liaison and execute all written corrective action plans generated thereby.
4. Contractor will maintain individual client case files and make these files available for inspection by SSA staff.

H. Data Collection:

1. On a monthly basis, the Contractor will provide County with:
 - a. Data compiled to complete the CDD 801A reports for the County and submit both reports to the County no later than the 10th of each month.
 - b. A child care monthly report which includes data elements established by SSA GCR staff no later than the 15th of each month.
2. Contractor will maintain complete records on numbers of children serviced in child care centers, family child care homes or licensed-exempt care provided to a client, and the amounts expended for such care.
3. Contractor will advise County of any suspected improper or potentially fraudulent use of CAPP funds, any suspected overpayment made with CAPP Child Care funds, or misinformation provided by a CAPP participant with regard to child care.
4. Contractor will provide additional data reports as needed and requested by County.

I. Contractor Responsibilities – Client Grievance Policy

SSA Contractors are required to have a Client Grievance Policy in place and to disclose the policy to all SSA clients during the Client Intake Process. As evidence that a Client Grievance Policy is in place and all SSA clients provided services by the Contractor have been made aware of its existence, Contractor must obtain the signature of each SSA client on a copy of the policy acknowledging they were made aware of it, understand it, and received a copy of the signed document. Contractor must also place a copy of the signed document in each client's case file and make the files available for review by County staff upon request. See Attachment A for a sample SSA Grievance Policy. An MS Word file of the SSA Grievance Policy Template is available through your SSA Contract Liaison.

J. Language Access Requirement for Contractors

Attachment B provides more information regarding Limited English Proficient (LEP) client language access requirements for contractors with Alameda County.

III. Performance Measures

SSA has adopted Performance Metrics to strengthen and increase data collection and improve contract performance. This framework establishes performance metrics that will allow SSA to track the positive impact and benefits of services for the target population by focusing on three critical questions: How much work was done? How well was it done? and Is anyone better off?

The framework establishes a partnership between the service provider and SSA. The performance metrics and deliverables are outlined below including measures added to the “Data Development Agenda.” The Contractor will continue to actively work with SSA to further develop and refine performance measures and data elements as they relate to child care in the County of Alameda for the purposes of data development and the Agency’s Child Care Monthly Report.

Performance Measures		Frequency	How to Calculate	Contractor Data Source
How Much Did We Do?	# of County CAPP child care subsidies	Monthly	Count of County CAPP child care subsidies administered	○ Monthly Report (see data collection under Section V and VI)
	# of surveys* issued	Annual	Count of County CAPP surveys provided to participants	○ Annual Report
How Well Was It Done?	% of County CAPP participants reporting satisfaction with Contractor services	Annual	<u># of participants reporting satisfaction on survey</u> # of participants completed survey	○ Annual Report
	% of surveys received	Annual	<u># of completed surveys</u> # of surveys issued	○ Annual Report
Is Anyone Better Off?	% of County CAPP families reporting child care made it easier to maintain employment / education goals	Annual	<u># of families reporting County CAPP child care subsidies made it easier to maintain employment / education goals</u> # of families receiving child care subsidies	○ Annual Report
Definitions	*Survey – Contractor will annually conduct a family survey of their choice no later than the end of any given fiscal year.			

DELIVERABLE:

Annual Survey – Contractor will conduct an annual survey of County CAPP clients utilizing the following questions:

Category: How Well Was It Done?

Question: “How satisfied were you with the overall quality of services provided?”

Contractor will use the following Likert Scale:

- Very Unsatisfied
- Unsatisfied
- Neutral
- Satisfied
- Very Satisfied

Category: Is Anyone Better Off?

Question: “My child care subsidy has made it easier to (Check all that apply):”

- Seek employment
- Accept employment
- Keep employment
- Find better employment
- Enroll / Complete school or vocational training
- Other – Please Specify *[open ended]*

DELIVERABLE:

Contractor will provide an annual report with data elements as identified in the Performance Measures chart above. SSA GCR staff will be available to guide format.

Below are additional performance measures on the **Data Development Agenda** which will be developed and incorporated, in partnership with the Contractor and SSA GCR staff, by the end of Fiscal Year 2021 - 2022.

Measures on the Data Development Agenda

Question Type	Performance Measure
How Much Did We Do?	# of referrals received (by Contractor)
How Much Did We Do?	# of referrals issued (from SSA)
How Well Was It Done?	% of subsidies used/started

IV. KEY PERSONNEL

- A. Contractor project team will consist of the following Key Personnel and subcontractors, if applicable, during the contract term:

Position Title	Employee
Program Director	Paulene Prevatt-McCarthy
Finance Director	Jay Perry
Child Care Program Coordinator	Carolina Marquez
Accountant I	Phu Tran
Accounts Payable Specialist	Evelyn Chen

- B. Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

Attachment A

CLIENT GRIEVANCE POLICY

WHAT TO DO IF YOU HAVE A GRIEVANCE

If you have a complaint about the performance of (_____)

INSERT NAME OF CONTRACTOR

staff, and/or you feel you have been treated unfairly, the following are the steps you should take to have your complaint heard:

1. Talk privately to the person with whom you have the problem. We encourage you to try first to work out the problem in an open and informal way.
2. If you do not feel comfortable talking with the person with whom you have the problem, or you do talk with them and are not satisfied with the outcome, you may make an appointment to speak with or submit a written complaint (which may be in your own language) to (_____)'s Executive Director or designee.

INSERT NAME OF CONTRACTOR

If you have good cause to use another medium to communicate your complaint, such as a tape recording, you may do so. The Executive Director or designee shall meet with you or provide you with a written response to your written complaint within ten (10) working days of the meeting or receipt of your written complaint.

3. Or, if you prefer, you may bypass the above steps and immediately contact the funding agency below:

Alameda County Social Services Agency

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Email: ContractsCustomer@acgov.org

I certify that the information in this document was explained to my satisfaction in my own language and a copy of this form was given to me. I understand that by signing below, I hereby

authorize (_____) to release all my information

INSERT NAME OF THE CONTRACTOR

pertaining to my grievance to the Alameda County Social Services Agency.

Client's Name (printed)

Client's Signature

Date

(Revised 9/6/19)

ANEXO A

POLITICA PARA QUEJAS DE CLIENTES

QUÉ HACER SI USTED TIENE UNA QUEJA

Si tiene una queja acerca del desempeño del personal de (_____)
INSERTAR NOMBRE DEL CONTRATISTA
o siente que se le ha tratado injustamente, tendrá que seguir los siguientes pasos para que su queja sea escuchada:

1. Hable en privado con la persona con quien tiene el problema. Le recomendamos que trate de solucionar el problema de una manera abierta e informal.
2. Si no se siente cómodo hablando con la persona con quien tiene el problema, o habla con esa persona y no está satisfecho/a con los resultados, puede hacer una cita para hablar con el director ejecutivo de (_____)
INSERTAR NOMBRE DEL CONTRATISTA
enviarle la queja por escrito (la cual puede ser en su propio idioma). Si tiene una buena razón para utilizar otro medio de comunicar su queja, como una cinta de grabación, lo podrá hacer. El director ejecutivo o el representante se reunirá con usted o le proveerá una respuesta por escrito a su queja en el plazo de diez (10) días hábiles a partir de su cita o de haber recibido su queja por escrito.
3. O, si usted prefiere, puede evitar los pasos previos y contactar, inmediatamente, al siguiente organismo de financiación:

**Agencia de Servicios Sociales del Condado de Alameda
Contracts Office
2000 San Pablo Ave., 4th Floor
Oakland, CA 94612
Correo electrónico: ContractsCustomer@acgov.org**

Certifico que la información en este documento fue explicada para mi entera satisfacción y en mi propio idioma, y que se me dio una copia de este formulario. Comprendo que al firmar abajo autorizo a (_____)
INSERTAR NOMBRE DEL CONTRATISTA
Sociales del Condado de Alameda toda mi información en relación con mi queja.

Nombre del cliente (en letra de imprenta)

Firma del cliente

Fecha

Attachment B
(Revised: 08/31/18)

LANGUAGE ACCESS REQUIREMENTS FOR CONTRACTORS

- I. The Alameda County Social Services Agency (SSA) has developed and adopted a Master Plan on Language Access to ensure its limited-English proficient (LEP) clients are provided with language accessible services and communications. Under the plan's provisions, community-based organizations (CBOs)/contractors whose services are contracted by the SSA:
 - A. Shall clearly disclose language access capabilities in relationship to the population served.
 - B. Shall have a plan in place—available for review upon request by County staff—for referring clients whose language needs the contractor can't accommodate.
 - C. Shall permit County staff to conduct ongoing monitoring of contracted services for compliance with provisions of the County's Language Access Plan.
 - D. Shall provide the County with a list and copies of all printed contract-related marketing/promotional/education-related materials (including languages materials are printed in).
- II. The SSA shall aid contracted CBOs in expanding language interpretation services through:
 - A. Providing CBOs/contractors with training, materials and instruction on how to effectively refer LEP clients to appropriate language resources.
 - B. Including service-marketing plan requirements in requests for proposals (RFPs) and contracts with CBOs that propose to offer language services (including appropriate outreach and notification of programs and services) to the LEP community and customers.
 - C. Developing a monitoring process of contracted services to ensure high-quality, language accessible services are always provided to LEP clients.
 - D. Providing CBOs/contractors with access to **Telephonic Interpreters**, a 24-hours-a-day, 365-days-a-year telephone language interpretation service in over 100+ languages — to supplement on-site language access services.

Attachment C

CONFIDENTIALITY–CONTRACT PROVISIONS

Confidentiality: Contractor agrees to maintain the confidentiality of any information which may be obtained with this work. Contractor shall comply with whatever special requirements in this regard as are described or referred herein as in Exhibit A to this Agreement. Confidential information is defined as all information disclosed to Contractor which relates to County's past, present and future activities, as well as activities under this Agreement. Contractor will hold all such information in trust and confidence. Upon cancellation or expiration of this Agreement, Contractor will return to County all written or descriptive matter which contains any such confidential information. County shall respect the confidentiality of information furnished by Contractor to County as specified in Exhibit A or as otherwise provided by law.

Pursuant to contract provisions to protect confidential client data file records against any and all unauthorized practices as stated heretofore, the Contractor will:

1. Assume responsibility for all personnel having access to the client list in regard to the confidential nature of client information. Safeguard measures are required to protect civil and criminal sanctions for non-compliance as contained in applicable statutes.
2. Restrict access to client information to those authorized employees and officials who require access in the performance of their delivery of services under this contract.
3. Work with the information under the control of authorized personnel in a manner to protect the confidentiality of client data file records and in such a manner to protect against unauthorized retrieval by computer, remote terminals, or any unauthorized means.
4. Use SSA confidential client information provided to contractor for the purposes covered under the terms of this agreement. Any and all disclosure of client data file records, transactions or transmissions will be made only with prior written consent and authorization from the SSA.
5. Return to SSA any and all client confidential information contained in hard copy or computer files/disc generated by this agreement as required for confidential destruction. All such files are the legal sole property of the SSA.
6. Ensure project compliance with written corrective action plans as may be mandated by the County.

EXHIBIT B**PAYMENT TERMS**

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Community Child Care Council of Alameda County (4Cs)
Type of Services	Child Development Programs, CAPP-1000

In addition to all terms of payment described in the General Terms and Conditions and any relevant exhibits and attachments, the parties to this Agreement shall abide by the following terms of payment:

I. Budget

Contractor shall use all payments solely in support of the program budget, set forth as follows:

Funded Program Budget – Exhibit B-1**II. Terms and Conditions of Payment****A. Contract Amount/Maximum:**

Total payment under the terms of this Agreement will not exceed the total amount of \$456,668. This cost includes all taxes and all other charges.

B. Contract Term:

The contract term is July 1, 2021 to June 30, 2022.

C. Budget Revision Procedures:

1. Contractor shall be reimbursed in accordance with the contract budget as detailed in Exhibit B-1. Any budget adjustments, revisions to the service categories and service units within the contract must be approved by SSA Program Department prior to submitting invoices for payment to the County.
2. Contractor must submit a formal written (via e-mail) request to the SSA Contracts Office for any contract budget adjustment with justification for requested expenditure revisions inclusive of specific impacts to current services being delivered. The request will be forwarded to the SSA Program Department for approval.
3. No supplemental billing will be accepted without Contractor's prior notification and approval by SSA Program Department of the need and justification for revisions of the service categories, service units or contract budget (line-items or unit costs).

4. The County Auditor Controller's Office will not pay for unauthorized service categories, service units and budget line-items that are revised or rendered by Contractor that are not approved by SSA Program Department and/or for claimed services that contract program monitoring findings indicate have not been provided.

III. Invoicing Procedures

A. Indirect Costs

For the purpose of the CDSS CAPP contract, **indirect costs** are defined as expenses that cannot be readily assigned to one specific program or one specific line item within a program. Indirect costs are a subset of the category of administrative costs. If indirect costs are included in the program budget, the percentage charged for indirect costs must be indicated on the budget. There is a 15% limit on administrative costs, and the indirect costs must be included within that 15% limit. The limit for indirect costs is strict, and contractors should therefore verify that the costs reported as indirect cannot be allocated to another reporting category. If indirect costs are reported, a cost allocation plan must be on file and available to the contract monitor.

B. Administrative and Support Costs

For the purpose of the CDSS CAPP contract, **administrative costs** include activities and functions that do not provide a direct benefit to the children, parents or providers. Administrative costs are limited to 15% and can include indirect costs (see III.A above).

Support costs include services which, when combined with Child Development Programs, help promote healthy physical, mental, social and emotional growth of children and families.

The **administrative and support allowance combined** cannot exceed 17.5%, with the administrative part of that limit not exceeding 15%, pursuant to California Education Code 8223. Therefore, any combination of administrative and support allowance is acceptable if the total allowance does not exceed 17.5% and the administrative portion does not exceed 15%.

C. Reimbursable Expenses

Reimbursable expenses include the cost of child care paid to child care providers plus administrative and support service cost of the alternative program. The budget line items should include the following:

1000 – Certificated Salaries

2000 – Classified Salaries

3000 – Employee Benefits

4000 – Books and Supplies, including the costs of sales/use tax, freight and handling

5000 – Services and Other Operating Expenses, including:

- a. Expenditures for rentals, leases
- b. Service contracts including janitorial, consultant, auditor, maintenance contracts, etc.
- c. Nutrition expenditures for meals/snacks served to children in the program
- d. Travel, insurance, utilities, legal, and other operating expenditures

D. Submitting Invoices

Contractor shall submit monthly invoices no later than the 10th of each month. Invoices are to be sent electronically to SSA GCR Program Liaison, Jennifer Cabán, at Jennifer.Caban@acgov.org who will review and forward them to the SSA Payables Unit at SSAInvoices@acgov.org. In addition, please copy the Financial Specialist, Johnny Cua, at Johnny.Cua@acgov.org, on all invoices.

The invoice packet must include a form #CDNFS-9500-AP (CDSS's fiscal report for alternative payment program) and a copy of State report CDD 801A.

The SSA Finance Department has established a centralized Payments Unit that will be the CONTRACTOR'S contact for all payment and invoicing matters. For additional assistance, contact the Financial Services Officer, Beverly Warren, at brwarren@acgov.org.

Invoices must contain the following elements:

1. Printed on company letterhead that includes name, address, and contact information
2. For Community Based Organizations, must be signed by head of the organization, i.e., Executive Director, CEO, etc.
3. Document must contain the title *Invoice*
4. Date of the invoice
5. Description of services
6. Date range for services provided
7. If needed, itemization of any sales tax and delivery/postage charges
8. Purchase Order (PO) number provided by the County
9. Total amount owed
10. Remittance instructions/address
11. A *cc* indication at the bottom of the invoice with names of people who received courtesy copies
12. CEO or Executive Director must be included in the *cc*, and
13. All other data as required by your contract.

- E. Reporting: Contractor shall provide Performance Measures and Data Collection reports to the OPEP unit of SSA, in accordance with Exhibit A of this Agreement.
- F. A final CDNFS-9500-AP report for the prior fiscal year will be submitted to County no later than July 10, 2021.

- G. Payments to Contractor by County may be contingent upon filing of CDNFS-9500-AP reports due to County.
- H. County will pay Contractor within 30 days, upon successful completion and acceptance of services, and upon receipt of invoice and accompanying reports.
- I. Contractor may bill County monthly in arrears or less frequently at Contractor's option, for payment made to eligible cases under rates and provisions of Exhibit A herein.
- J. As required by CDSS, Contractor will mail an Annual Financial Audit Report of the prior fiscal year, which must include an Audited Fiscal Report (AUD form) by November 10, 2021 to:

California Department of Social Services
Office of Audit Services Branch
Attn: Audit Report Review Bureau
744 P Street, Mailbox 9-13-04
Sacramento, CA 95814

Refer to the CDSS Audit Guidelines at: <https://www.cdss.ca.gov/inforesources/cdss-programs/internal-audits/contracting-agencies-audit-guidelines-and-resources>

- K. Contractor will email the completed Annual Financial Audit Report to the contract liaison of SSA by November 17, 2021 to confirm the report was sent.
- L. In order for the County to meet year end closing deadlines, Contractor must submit the May invoice and any prior late invoices by June 10. The June invoice must be submitted by July 10.

IV. Funding and Reporting Requirements

- A. Failure to submit required reports can delay the processing of invoices for reimbursement.
- B. Funding under this contract shall not duplicate funding from other sources. Should other funding duplicate funding under this contract, the invoices to Alameda County will be reduced accordingly by the amount of duplicate funding.
- C. The contract maximum amount of \$456,668 is based on the estimated amount at the time the contract was executed. This does not affect the total contract amount awarded to the agency. The actual federal expenditure amount, if any, will be available to contractors by October of the following fiscal year and Contractor shall contact SSA Contracts Liaison to receive this information.

Exhibit B-1
Funded Program Budget FY 2021-22
Contractor Name: 4CS OF ALAMEDA COUNTY

	FTE	AMOUNT
PROVIDER PAYMENTS		376,751
PERSONNEL EXPENSES		
Salaries & Wages		
Program Director	0.050	6,100
Finance Director	0.030	4,200
Child Care Services Coordinator	0.700	34,000
Accountant 1	0.050	3,450
Accounts Payable Specialist	0.120	5,400
Subtotal Salaries & Wages	0.950	53,150
Payroll Taxes & Employee Benefits		15,350
TOTAL PERSONNEL EXPENSES (Salaries & Benefits)		68,500
OPERATING EXPENSES		
Professional & Contractual Services		350
Rent		4,900
Office Expenses		770
Facilities		105
Staff Development		75
Utilities		80
Telecommunications		
IT Services		400
Travel/Conferences		250
Bank Charges		
Communications		3,900
Dues/Subscriptions		
Insurance		587
TOTAL OPERATING EXPENSES		11,417
ADMINISTRATIVE & SUPPORT COSTS		79,917
TOTAL CONTRACT		456,668

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: <u>County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives.</u> 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party), or at minimum named as an "Additional Insured" on the other's policies. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured. 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: <u>Contracts Office: 2000 San Pablo Ave., 4th Floor, Oakland, CA 94612</u> 	

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Community Child Care Council of Alameda County (4Cs)

PRINCIPAL: Renee Herzfeld TITLE: Executive Director

SIGNATURE:  DATE: 9/20/2021

EXHIBIT E

AUDIT REQUIREMENTS

The County contracts with various organizations to carry out programs mandated by the Federal and State governments or sponsored by the Board of Supervisors. Under the Single Audit Act Amendments of 1996 (31 U.S.C.A. §§ 7501-7507) and Board policy, the County has the responsibility to determine whether organizations receiving funds through the County have spent them in accordance with applicable laws, regulations, contract terms, and grant agreements. To this end, effective with the first fiscal year beginning on and after December 26, 2014, the following are required.

I. AUDIT REQUIREMENTS

A. Funds from Federal Sources:

1. Non-Federal entities which are determined to be subrecipients by the supervising department according to 2 CFR § 200.330 and which expend annual Federal awards in the amount specified in 2 CFR § 200.501 are required to have a single audit performed in accordance with 2 CFR § 200.514.
2. When a non-Federal entity expends annual Federal awards in the amount specified in 2 CFR § 200.501(a) under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the non-Federal entity may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 (Program Specific Audits).
3. Non-Federal entities which expend annual Federal awards less than the amount specified in 2 CFR § 200.501(d) are exempt from the single audit requirements for that year except that the County may require a limited-scope audit in accordance with 2 CFR § 200.503(c).

B. Funds from All Sources:

Non-Federal entities which expend annual funds from any source (Federal, State, County, etc.) through the County in an amount of:

1. \$100,000 or more must have a financial audit in accordance with the U.S. Comptroller General's Generally Accepted Government Auditing Standards (GAGAS) covering all County programs.
2. Less than \$100,000 are exempt from these audit requirements except as otherwise noted in the contract.

Non-Federal entities that are required to have or choose to do a single audit in accordance with 2 CFR Subpart F, Audit Requirements are not required to have a financial audit in the same year. However, Non-Federal entities that are required to have a financial audit may also be required to have a limited-scope audit in the same year.

C. General Requirements for All Audits:

1. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States (GAGAS).
2. All audits must be conducted annually, except for biennial audits authorized by 2 CFR § 200.504 and where specifically allowed otherwise by laws, regulations, or County policy.
3. The audit report must contain a separate schedule that identifies all funds received from or passed through the County that is covered by the audit. County programs must be identified by contract number, contract amount, contract period, and amount expended during the fiscal year by funding source. An exhibit number must be included when applicable.
4. If a funding source has more stringent and specific audit requirements, these requirements must prevail over those described above.

II. AUDIT REPORTS

A. For Single Audits

1. Within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period, the auditee must electronically submit to the Federal Audit Clearinghouse (FAC) the data collection form described in 2 CFR § 200.512(b) and the reporting package described in 2 CFR § 200.512(c). The auditee and auditors must ensure that the reporting package does not include protected personally identifiable information. The FAC will make the reporting package and the data collection form available on a web site and all Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC. As required by 2 CFR § 200.512(a)(2), unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection.
2. A notice of the audit report issuance along with two copies of the management letter with its corresponding response should be sent to the County supervising department within ten calendar days after it is submitted to the FAC. The County supervising department is responsible for forwarding a copy of the audit report,

management letter, and corresponding responses to the County Auditor within one week of receipt.

B. For Audits other than Single Audits

At least two copies of the audit report package, including all attachments and any management letter with its corresponding response, should be sent to the County supervising department within six months after the end of the audit year, or other time frame as specified by the department. The County supervising department is responsible for forwarding a copy of the audit report package to the County Auditor within one week of receipt.

III. AUDIT RESOLUTION

Within 30 days of issuance of the audit report, the entity must submit to its County supervising department a corrective action plan consistent with 2 CFR § 200.511(c) to address each audit finding included in the current year auditor's report. Questioned costs and disallowed costs must be resolved according to procedures established by the County in the Contract Administration Manual. The County supervising department will follow up on the implementation of the corrective action plan as it pertains to County programs.

IV. ADDITIONAL AUDIT WORK

The County, the State, or Federal agencies may conduct additional audits or reviews to carry out their regulatory responsibilities. To the extent possible, these audits and reviews will rely on the audit work already performed under the audit requirements listed above.

EXHIBIT F

HIPAA BUSINESS ASSOCIATE AGREEMENT

INTENTIONALLY OMITTED

EXHIBIT G
COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS

County project managers will provide a special access code to contractors and subcontractors participating in this contract to allow use of the Elation Systems free of charge.

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

EXHIBIT - H
ADDITIONAL CONTRACT PROVISIONS
FEDERAL PROVISIONS

Funds used for payment of this Contract may be from or subject to reimbursement by state and/or federal funds. Some of these funding sources require additional contractual obligations and County and Contractor hereby agree to the following additional terms and conditions. The parties agree to each of these terms for reasons including, but not limited to, meeting all contracting requirements as set forth in 2 C.R.F. § 200.326 and 2 C.F.R. Part 200, Appendix II. These terms supplement the General Terms and Conditions.

I. General Provisions

(A) Remedies. In the event of a breach by Contractor of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Contractor of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Contractor shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

(B) Termination. The County may suspend, terminate, or abandon the execution of any work by the Contractor under this Contract with or without cause at any time upon giving the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment, but in no event shall Contractor be entitled to more than the not to exceed amount of the Contract, or if applicable, the portion of the Contract being terminated.

(C) Equal Employment Opportunity. During the performance of this contract, Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will

take such action with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

These provisions are included in addition to the Equal Employment Opportunity Practices Provisions in the General Terms and Conditions and Contractor shall abide by both provisions.

(D) Rights to Inventions Made Under a Contract or Agreement. If this Contract is funded in whole or part by a Federal award of funds and the Contract and/or funding meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor (the "recipient or subrecipient") wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and

Cooperative Agreements,” and any implementing regulations issued by the awarding agency. This requirement applies to “funding agreements,” but it does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(E) Clean Air Act and the Federal Water Pollution Control Act. The following provisions apply for all contracts in excess of \$150,000:

(1) Clean Air Act (42 U.S.C. 7401–7671q).

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation of the Clean Air Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Contractor agrees to report each violation of the Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(F) Debarment and Suspension. In addition to the debarment and suspension requirements in the General Terms and Conditions and executed Debarment certificate, the following terms shall apply:

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor’s

principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

(3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered contracts.

(G) Conflict of Interest. By executing this Contract, Contractor certifies that it does not know of any fact which constitutes a violation of Section 66 of County's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the County if it becomes aware of any such fact during the term of this Contract. In addition, Contractor shall be in full compliance with all other conflict of interest requirements, including those contained in 2 C.F.R. § 200.318.

(H) Byrd Anti-Lobbying Amendment. For any contract of \$100,000 or more, Contractor shall complete the required certification (included below) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

(I) Procurement of recovered materials.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the Contract performance schedule;

- b. Meeting Contract performance requirements; or
- c. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(J) Access to Records.

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(K) Changes. The cost of any change, modification, change order, or constructive change must be allowable, allocable, within the scope of a funding grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the Contract by entering a written amendment executed by authorized representatives. The Contract may not be modified except by a written document signed by both parties. It is mutually understood and agreed that no alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

(L) Seal, Logo, And Flags. The Contractor shall not use the Department of Homeland Security, or any other Federal, state or local seals, logos, crests, or reproductions of flags or likenesses of agency officials without specific FEMA or specified agency pre-approval.

(M) Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(N) No Obligation of Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

(O) Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

(P) Local Preferences: To the extent that any local preferences are prohibited by funding, SLEB and other local preferences and policies have already been or are waived.

(Q) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the following provisions, from 29 C.F.R §5.5(b) shall apply:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract

subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(R) Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the contractor and their subcontractor(s), to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(S) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor and their subcontractor(s) are prohibited from obligating or expending funds from this Agreement to (1) procure or obtain (2) extend or renew a contract to procure or obtain or (3) enter into a contract for equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(1) As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (2) See Public Law 115–232, section 889 for additional information. See also 2 CFR § 200.471.

II. Construction and Repair Work. The following provisions apply to construction or repair work:

Compliance with the Davis-Bacon Act and Copeland “Anti-Kickback” Act. For all prime construction contracts in excess of \$2,000 the following terms shall apply:

(1) Davis-Bacon Act

- a. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- c. Additionally, contractors are required to pay wages not less than once a week.

(2) Copeland “Anti-Kickback” Act

- a. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- b. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

EXHIBIT H - 1
Certification for Contracts, Grants, Loans, and Cooperative Agreements
CERTIFICATION REGARDING LOBBYING (APPENDIX A, 44 C.F.R. PART 18)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor, Community Child Care Council of Alameda County (4Cs), certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

<p><small>DocuSigned by:</small>  <small>C2C596724257484...</small></p>	<p>9/20/2021</p>
<p>Signature of Contractor's Authorized Official</p>	<p>Date</p>

Renee Herzfeld
 Name

Executive Director
 Title

EXHIBIT I

**CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND
CONDITIONS (FT&C)**

FT&C For:

CalWORKs Stage 2 (C2AP)

CalWORKs Stage 3 (C3AP)

Alternative Payment Program (CAPP)

General Child Care and Development (CCTR)

Family Child Care Home Education Networks (CFCC)

Programs for Children with Severe Disabilities (CHAN)

Migrant Alternative Payment Program (CMAP)

Migrant Child Care and Development Program (CMIG)

Resource and Referral Program (CRRP)

California State Preschool Program (CSPP)

FISCAL YEAR 2021-22

TABLE OF CONTENTS

<u>CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND CONDITIONS (FT&C)</u>	13
<u>TABLE OF CONTENTS</u>	14
<u>INTRODUCTION</u>	18
<u>I. DEFINITIONS</u>	19
<u>II. GENERAL PROVISIONS</u>	37
A. <u>Notification of Address Change</u>	37
B. <u>Notification of E-mail Contact Changes</u>	37
C. <u>Materials Developed with Contract Funds</u>	37
D. <u>Prohibition Against Religious Instruction or Worship</u>	38
E. <u>Issuance and Use of Checks</u>	38
F. <u>Plan for Provider Reimbursement and Certificates for Alternative Payment Programs</u>	38
G. <u>Prohibition against Loans and Advances</u>	39
H. <u>Contracts with Multiple Service Areas</u>	39
I. <u>Compliance Reviews</u>	40
J. <u>Reviews of Alternative Payment Agencies</u>	40
K. <u>Contractor's Termination for Convenience</u>	40
L. <u>Uniform Complaint Procedures</u>	41
M. <u>Eligibility for Funding</u>	41
N. <u>Review of Contracts for Continued Funding</u>	42
O. <u>Applicability of Corporations Code</u>	43
P. <u>Conflicts of Interest</u>	43
Q. <u>Unlawful Denial of Services</u>	44
R. <u>Computer Software Copyright Compliance</u>	45
S. <u>Recycled Paper Certification</u>	45

T.	<u>Healthy Schools Act</u>	45
III.	<u>FACILITIES AND EQUIPMENT</u>	46
A.	<u>Facilities and Equipment Expenditures</u>	46
B.	<u>Buildings and Improvements</u>	47
C.	<u>Renovation and Repair</u>	47
D.	<u>Depreciation and Use Allowance</u>	47
E.	<u>Preapproval Requirements</u>	48
F.	<u>Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies</u>	49
G.	<u>Obtaining Bids for Equipment Purchases for Public Agencies</u>	50
H.	<u>Asset Management</u>	50
I.	<u>Title, Use, Disposition and Retention</u>	51
IV.	<u>SUBCONTRACTS</u>	52
A.	<u>A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.</u>	52
B.	<u>Subcontracts Excluded from Requirements of this Section</u>	52
C.	<u>Required Subcontract Provisions</u>	52
D.	<u>Private Agencies-Bids for Subcontracts</u>	54
E.	<u>Public Agencies Subcontracts</u>	55
F.	<u>Prior CDE Approval for Subcontracts \$10,000 and Above</u>	55
G.	<u>Audit Requirements for Subcontracts</u>	56
V.	<u>COSTS, EARNINGS AND REIMBURSEMENT</u>	56
A.	<u>Contract Amount Adjustments</u>	56
B.	<u>Reasonable and Necessary Costs</u>	57
C.	<u>Indirect Costs</u>	57
D.	<u>Administrative Costs</u>	57
E.	<u>Service Level Exemption (Start-Up) for New or Expanded Programs</u>	58

F.	<u>Costs for Travel and Per Diem & Restrictions</u>	58
G.	<u>Specific Items of Reimbursable Costs</u>	59
H.	<u>Nonreimbursable Costs</u>	60
I.	<u>Charging of Expenditures</u>	62
J.	<u>Recoupment of Advanced Contract Funds</u>	62
K.	<u>Use of Subsidized Family Fees</u>	62
L.	<u>Determination of Reimbursable Amount</u>	62
M.	<u>Minimum Days of Operation</u>	64
N.	<u>Reduction, Withholding, and Canceling Apportionments to Contractors</u>	64
O.	<u>Order of Expenditure</u>	64
VI.	<u>ACCOUNTING AND REPORTING REQUIREMENTS</u>	65
A.	<u>General Provisions</u>	65
B.	<u>Child Development Fund and Interest Bearing Accounts</u>	65
C.	<u>Enrollment and Attendance Accounting</u>	65
D.	<u>Attendance and Absences</u>	66
E.	<u>Abandonment of Care</u>	67
F.	<u>General Record Keeping Requirements</u>	68
G.	<u>Attendance and Expenditure Reports</u>	68
H.	<u>Alternative Payment and CFCC Expenditure Reports</u>	69
I.	<u>Caseload Reports</u>	70
J.	<u>CRRP Expenditure Reports</u>	71
K.	<u>Service Data Report for Resource and Referral Programs</u>	71
L.	<u>Child Development Data Collection</u>	72
M.	<u>Other Report Data</u>	73
N.	<u>Building a Better Early Care and Education System (BBECES)</u>	73
O.	<u>Annual Financial and Compliance Audits</u>	75

P.	<u>Review of Audit by the CDE Audits and Investigations Division (A&I)</u>	77
Q.	<u>Delinquent Audits and One-Time-Only Extensions</u>	77
R.	<u>California State Auditor</u>	77
S.	<u>Budget and Calendar</u>	77
T.	<u>Reserve Accounts</u>	77
<u>VII.</u>	<u>TECHNICAL ASSISTANCE</u>	79
<u>VIII.</u>	<u>CONTRACT CLASSIFICATIONS</u>	79
A.	<u>Clear Contract</u>	79
B.	<u>Provisional Contract</u>	79
C.	<u>Conditional Contract</u>	79
<u>IX.</u>	<u>APPEALS, TERMINATIONS, AND NON-RENEWALS</u>	80
A.	<u>Resolution of Contract Administration Disputes</u>	80
B.	<u>Independent Appeal Procedures</u>	81
C.	<u>Immediate Termination</u>	81
D.	<u>Non-Immediate Termination</u>	82
E.	<u>Appeals Procedures For Independent Appeals</u>	83
F.	<u>Contractor's Responsibility After Notice of Termination/Nonrenewal</u>	85
<u>X.</u>	<u>CONTRACT STATUS CHANGE PROCEDURES</u>	85
A.	<u>Administrative Review of Changes in Contract Status</u>	85
B.	<u>Conditional Status Imposed During the Contract Period</u>	86
C.	<u>Conditional Status Addendum</u>	87
D.	<u>Duration of Conditional Contract Status</u>	87
E.	<u>Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding</u>	88

INTRODUCTION

These are the Funding Terms and Conditions (FT&C) for early learning and care contracts for fiscal year 2021-2022. Each contractor is required as a condition of its contract (“The Contract”) with the California Department of Education (CDE), to adhere to the following laws and documents, as may be in effect during the 2021-2022 fiscal year:

1. Any applicable Education Code statutes and Welfare and Institutions Code statutes¹
2. The FT&C;
3. The specific Program Requirements;
4. The CDE Audit Guide;
5. The California School Accounting Manual;
6. The procedures and standards set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (2 CFR Part 200 and Title 45 CFR Part 75), hereinafter referred to as Uniform Guidance (UG);
7. Title 5 California Code of Regulations (5 CCR) Division 1, Chapter 19 and 19.5, sections 18000 et seq., including 12-Month Eligibility Implementation Guidance (Implementation Guidance) and CSPP Free or Reduced Price Meal (FRPM) Implementation Guidance (CSPP FRPM Implementation Guidance). NOTE: Guidance documents shall only be in effect until superseding regulations are promulgated in 5 CCR.
8. Title 22 California Code of Regulations, community care facilities license regulations, including child care centers;
9. Any other requirements incorporated into the contract (including any approved pilot plan), in addition to all other applicable laws and regulations, including any applicable

1 Pursuant to The Early Childhood Development Act of 2020 (Chapter 1 of Part 1.7 of Division 9 of the Welfare and Institutions Code), responsibility for the Alternative Payment program, Migrant Alternative Payment program, CalWORKS Stage 2 program, CalWORKS Stage 3 program, General Childcare program, Family Childcare Home Education Network program, Migrant Childcare program, Childcare and Development Services for Children with Severe Disabilities program, and Resource and Referral program, along with other programs enumerated in Section 10203 of Welfare and Institutions, will shift from the California Department of Education to the California Department of Social Services effective July 1, 2021. Some of the Education Code sections cited in the 2021-2022 Funding Terms and Conditions and/or Program Requirements applicable to the programs covered by this contract may be subsequently modified and/or moved from the Education Code to the Welfare and Institutions Code through legislative enactment to be effective on or after July 1, 2021. Contractors will be held to the applicable statutes and regulations in effect during the term of this contract.

law and regulations that may become effective during the term of this contract.

Any non-compliance with The Contract may subject the contractor to termination of the contract. Any variance from The Contract must be authorized in writing by the CDE and signed by the Director of the Early Learning and Care Division (ELCD) or the Director's authorized representative. Unless otherwise noted, these compliance requirements apply to all programs.

Contractors may adopt any reasonable policies relating to the administration of the program so long as such policies are not in conflict with law, regulations, or the terms of this contract, including any contract amendments. Those potentially affected by the policies shall be duly notified, as provided for in statute and regulation, and adhere to any due process requirements, if applicable.

California Education Code (EC) Section 8385(f) requires all early learning and care contracts entered into by the CDE for means-tested early learning and care programs, including, but not limited to, Alternative Payment, General Child Care and Child Care for Recipients of the California Work Opportunities and Responsibility to Kids (CalWORKs) Programs (described in EC 8220, EC 8240 and EC 8350) to implement best practices identified pursuant to subdivision (c) which states, "In developing its recommendations, the CDE shall place priority on prevention of fraud and overpayments, and shall consider existing best practices for doing so."

Early Learning and Care contracts are funded with state general funds, federal funds, or a combination of funds. The funding amounts are listed on the contract encumbrance page.

Contracts may be fully or partially funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99, the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended by the CCDBG Act of 2014, Public Law 1113-186, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 USC 9858.

If the Catalogue of Federal Domestic Assistance (CFDA) number is 93596 (shown as FC# in the funding block), the fund title is Child Care Mandatory and Matching Funds of the Child Care and Development Fund. If the CFDA number is 93575, the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant Act of 1990, the Omnibus Budget Reconciliation Act of 1990, Section 5082, Public Law 101-508, as amended, Section 658J and 658S, and Public Law 102-586.

I. DEFINITIONS

As applicable to each specific program type.

Any terms not defined in this section shall be defined, if applicable, as set forth in the *Education Code* or in Title 5 of the *California Code of Regulations (CCR)*.

"12-Month Eligibility Implementation Guidance" or "Implementation guidance" provides guidance and instruction for implementation of the new requirements in California EC 8263(h), referred to as "12-month eligibility." See *Management Bulletin 17-14*

"Actual and allowable net costs" means the costs which may be reimbursed under a particular child development contract after disallowed costs and restricted income have been subtracted from total expenditures. 5 CCR 18013(a)

"Additional funds" means award of new contracts or expanded contracts that increase the contractor's level of administrative responsibility. Additional funds do not include cost of living adjustments, rate increases and one-time-only supplemental funds or Alternative Payment program contingency funds. 5 CCR 18000

"Adjusted child days of enrollment" means child days of enrollment after special needs adjustment factors specified in *EC 8265.5* have been applied. 5 CCR 18013

"Adjusted monthly income" means total countable income, minus verified child support payments paid by the parent whose child is receiving child development services, excluding the non-countable income listed below: 5 CCR 18078(a)

1. Earnings of a child under age eighteen (18) years;
2. Loans;
3. Grants or scholarships to students for educational purposes other than any balance available for living costs;
4. Food stamps or other food assistance;
5. Earned Income Tax Credit or tax refund;
6. GI Bill entitlements, hardship duty pay, hazardous duty pay, hostile fire pay, or imminent danger pay;
7. Adoption assistance payments received pursuant to Welfare and Institutions (W&I) Code Section 16115 et seq.;
8. Non-cash assistance or gifts;
9. All income of any individual counted in the family size who is collecting federal Supplemental Security Income (SSI) or State Supplemental Program (SSP) benefits;
10. Insurance or court settlements including pain and suffering and excluding lost wages and punitive damages;
11. Reimbursements for work-required expenses such as uniforms, mileage, or per diem expenses for food and lodging;
12. Business expenses for self-employed family members;
13. When there is no cash value to the employee, the portion of medical and/or dental insurance documented as paid by the employer and included in gross pay; and
14. Disaster relief grants or payments, except any portion for rental assistance or

unemployment.

"Administrative costs" means costs incurred for administrative activities where neither the family, the child nor the service providers for Alternative Payment programs and family child care homes directly benefit from the activity. 5 CCR 18013(b)

"Adult" means a person who is at least eighteen (18) years of age. HHS, DSS, CCL, Child Care Center, Division 12, Ch. 1 Section 101152 Definitions

"Agency" or "Contractor" refers to any entity that is authorized to perform early learning and care services pursuant to the Education Code. An agency may be a public agency or private agency.

"Agency Self-Evaluation Annual Report" is a form issued by the CDE for use by contractors to submit a summary of findings of the program self-evaluation. 5 CCR 18270.5 (a) and 18279(c)

"Agricultural work" or "agricultural labor" means all service performed:

1. on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with the production or processing of any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
2. in the employ of the operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane;
3. in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, canning, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity.

The definition of agricultural work shall not be deemed to be applicable with respect to service performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. CFR 34 Part 200

"Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of early learning and care services, and payments that are made by an agency to a parent for the parent's purchase of early learning and care services. EC 8208 (a)

"Alternative payment program" means a local government agency or nonprofit organization that has contracted with the CDE pursuant to EC 8220.1 to provide alternative payments and to provide support services to parents and providers. Types of programs include C2AP, C3AP,

CAPP, and CMAP. *EC 8208 (b)*

"Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private, non-tax exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decision making prerogatives as consistent with the provisions of this chapter. *EC 8208(c)*

"Approved work activity" is an activity contained in the parent's welfare-to-work plan as described and further defined in *W&I 11322.6 et seq.* and may include:

1. Unsubsidized employment;
2. Subsidized private sector employment;
3. Subsidized public sector employment;
4. Work experience;
5. On-the-job training;
6. Grant-based on-the-job training;
7. Supported work or transitional employment;
8. Work-study;
9. Self-employment;
10. Community or vocational education and training;
11. Job search and job readiness assistance;
12. Education directly related to employment;
13. Satisfactory progress in secondary school or in a course of study leading to a General Education Development (GED) certification;
14. Mental health, substance abuse and domestic violence services; or
15. Other activities necessary to assist an individual in obtaining unsubsidized employment.

"Assistance Unit" means a group of related persons living in the same home who have been determined eligible for CalWORKs cash assistance by the county. California-DSS-Manual-EAS Eligibility and Assistance Standards, Chapter 82-800 Assistance Unit.

"At risk of abuse, neglect, or exploitation" refers to children who are so identified in a written referral from a legal, medical, social services agency, or emergency shelter. *EC 8208 (k)*

"Attendance" means the number of children present at an early learning and care facility.

“Attendance,” for purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child. *EC 8208(e)*

“Audit Guide” refers to the most recent *CDE Audit Guide*, which is a resource for audit requirements and guidance applicable to certain state and federal programs operated by private and public organizations under agreements with the CDE. The *Audit Guide* should be used by independent auditors in conducting audits of state and federal early learning and care programs.

"Authorized representative" means, depending upon the specific regulation, either:

1. A person who has been delegated the responsibility to sign a child in and out of a child care program in the absence of the parent; 5 *CCR 18013(f)*
2. A person designated by the contractor to certify eligibility for subsidized services and/or issue a notice of action, application for services or notice of action, recipient of services; 5 *CCR 18082(b), 18083(j)*
3. A person designated by the parent that would be allowed to review the child's data file; or 5 *CCR 18117(b)*
4. A person designated by the parent to represent the parent at a local hearing upon filing an appeal after receipt of a notice of action. 5 *CCR 18120-(e)*

"Benefit to the State" means that the activity will improve knowledge or expertise in areas directly related to subsidized early learning and care services. 5 *CCR 18013(e)*

“California School Accounting Manual” provides accounting policies and procedures, as well as guidance in implementing those policies and procedures.

“California State Preschool Program (CSPP)” means age and developmentally appropriate subsidized early learning and care programs designed to facilitate the transition to kindergarten for eligible three and four-year-old children. Services includes part-day or full-day services designed to meet the needs of working families. The CSPP includes educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. *EC 8235-8239*

“California State Preschool Program (CSPP) Free and Reduced Priced Meal (FRPM) Sites” means a CSPP site that has been verified as operating within the attendance boundaries of a qualified FRPM school. *CSPP FRPM Implementation Guidance 18013*

“CalWORKs cash aid recipient” means an adult or minor teen parent who receives cash aid from the county welfare department for the CalWORKs or Cal-Learn program. *EC 8350-8359.1*

"Ceases operation" means the contractor does not provide subsidized services in accordance with the contractor's program operating calendar submitted to and approved by the CDE for the applicable contract period. 5 *CCR 18013*

“Center-based programs” means all programs providing services directly to children at a licensed

center or family child care home and not through the use of an alternative payment voucher. Types of center-based programs include CCTR, CSPP, CHAN, CMIG and CFCC.

"Child Care Certificate" means a check or other disbursement that is issued by the contractor directly to a parent who may use the certificate only as payment for child care services. Nothing shall preclude the use of the certificate for sectarian child care services if freely chosen by the parent. A child care certificate is assistance to the parent, not assistance to the provider. *45 CFR* Section 98.2

"Child care and development programs" means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also "Early learning and care program". *EC 8208(i)*

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

"Child Development Programs" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, "Early learning and care services". *EC 8208(j)*

"Child care provider" means an adult or agency that provides child care services. *5 CCR 18400(b)*

"Child Days of Enrollment" means the total number of days every child is certified to attend a center-based program, excluding CFCC, regardless of attendance.

"Child development fund" means the restricted fund used by the contractor to account for contract funds and related net reimbursable program costs. *5 CCR 18064, EC 8328*

"Child Protective Services (CPS)" means children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation. *5 CCR 18078*

"Children with exceptional needs" means, as set forth in *EC 8208(1)* either of the following:

1. Infants and toddlers under (3) three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (*Title 14* (commencing with Section 95000) of the *Government Code (GC)*) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the *GC*. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.
2. Children ages three (3) to twenty-one (21) years, inclusive who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of *Title 2*, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of *Title 2*, and Sections 3030 and 3031 of 5 *CCR*. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of *Title 20* of the *United States Code*.

"Co-located programs" are those that share the same facility, but cannot be commingled because they are different types of programs with different program requirements.

"Commingled child care services" means the provision of services to both subsidized and nonsubsidized children in the same classroom at the same time. 5 *CCR* 18013

"Compliance review" means that a team of the CDE staff reviews a contractor's program at the program site to determine compliance with applicable laws, regulations, or contractual provisions. 5 *CCR* 18023(1)

"Contract period" means the time span the contract is in effect as specified in the child development contract. 5 *CCR* 18013

"Co-payment" means any usual and customary provider charges that exceed the maximum subsidy amount. The family shall be responsible for paying the provider the difference between the provider's rate and the maximum subsidy amount. This shall be considered the family's co-payment. The contractor shall not be responsible for collecting the family's co-payment. 5 *CCR* 18220.6

"CSPP eligible four-year-old children" means children who will have their fourth birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool

program. *EC 8208(aj)*

“CSPP eligible three-year-old children” means children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. Children who have their third birthday on or after December 2 of the fiscal year, may be enrolled in a California state preschool program on or after their third birthday. Any child under four years of age shall be served in a California state preschool program facility, licensed in accordance with Title 22 of the California Code of Regulations. *EC 8208(ai)*

“CSPP FRPM Implementation Guidance” provides guidance and instructions to California State Preschool Program (CSPP) contractors about implementing new eligibility criteria pursuant to California *Education Code (EC)* Sections 8236.3 and 8263(a)(2). *See Management Bulletin 20-01*

“Day of Operation” means a day in which the contractor provides service to one or more certified children enrolled in a Center-Based program, excluding CFCCs. For Alternative Payment and CFCC programs, a day of operation means a day the administrative office is open for business.

"Declaration" means a written statement signed by a parent under penalty of perjury attesting that the contents of the statement are true and correct to the best of his or her knowledge. *5 CCR 18078*

"Depreciation" means a cost in the current fiscal year that is based on acquisition costs, less any estimated residual value, computed on a straight line method (based on the normal, estimated useful life expectancy of the asset). *5 CCR 18013*

“Desired Results Parent Survey” is a document issued by the CDE to solicit information from parents regarding the child care program or services that the child and family receive. *5 CCR 18270.5(d)*

"Developmental profile" means a record of a child's physical, cognitive, social, and emotional development that is used to inform teachers and parents about a child's developmental progress in meeting desired results. In center-based programs, teacher and parent observations shall be included as part of the information used to complete the child's developmental profile. In family child care home education networks, the observations of agency staff, in consultation with providers, and parents shall be included as part of the information used to complete the child's developmental profile. *5 CCR 18270.5(b), 18272*

“Desired Results Developmental Profile” is a document issued by the CDE to record the information in the developmental profile defined in subsection 18270.5(b) that is incorporated by reference. *5 CCR 18270.5(c)*

"Disallowed costs" means costs that have been incurred but are not reimbursable because they are not reasonable and/or necessary for the performance of the contract or are otherwise nonreimbursable. *5 CCR 18013*

"Displace families" means to disenroll families in order to reduce service levels due to insufficient funding or inability of a contractor to operate one or more sites because of reasons

stated in *EC* section 8271. 5 *CCR* 18078

“Diversion services” means one-time assistance services provided by the county welfare department, either in cash or in non-cash services, to an otherwise CalWORKs eligible family, when the county welfare department determines that such assistance will help the family avoid becoming a CalWORKs cash aid recipient. 5 *CCR* 18400(d)

“Early learning and care program” means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also “Child care and development programs”. *EC* 8208(i)

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

“Early learning and care services” means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, “Child Development Programs”.

“Education program” for purposes of program quality, 5 *CCR* subchapter 12, means the environment, activities, and services provided to the children.

“Employment agreement” is a formal agreement that specifies the conditions of the relationship between an individual employee and an employer including compensation and expectations. Also referred to as an employment contract.

“English Learner (EL) Students” (Formerly Known as Limited-English-Proficient or LEP) means those students for whom there is a report of a primary language other than English on the state-approved Home Language Survey **and** who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs. *EC* 313 and 5 *CCR* 60810

“Environment rating scale” means an instrument that measures program quality by rating the education program (5 CCR 18272), the staff development program (5 CCR 18273), and parent involvement and education (5 CCR 18273) 5 CCR 18270.5 (f)

Environment rating scales include the CDE most recently used versions of the following:

1. “ECERS” means the document entitled, Early Childhood Environment Rating Scale;
2. “ITERS” means the document entitled, Infant-Toddler Environment Rating Scale;
3. “FDCCERS” means the document entitled, Family Child Care Environment Rating Scale;
4. “SACERS” means the document entitled, School-Age Care Environment Rating Scale; 5 CCR 18270(f)

"Families experiencing homelessness" means parents, children, and youths as individuals who lack a fixed, regular, and adequate nighttime residence. This includes children and youths who:

1. share the housing of other persons due to loss of housing, economic hardship, or a similar reason;
2. live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
3. live in emergency or transitional shelters; or are abandoned in hospitals;
4. have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
5. live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
6. are migratory children who qualify as homeless because the children are living in circumstances described above. (42 U.S.C. Sec. 11301 et seq.)

“Family” means the parents and the children for whom the parents are responsible; who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, “family” shall be considered the child and related siblings. 5 CCR 18078

“Family child care home education network” means an entity organized under law that contracts with the CDE pursuant to EC 8245 to make payments to licensed family child care home providers and to provide education and support services to those providers and to children and families eligible for state-subsidized early learning and care services. A family child care home education network may also be referred to as a family child care home system. EC 8208(p)

“Family Child Care Homes” refers to licensed child care provided in a private home. 22 CCR 102352(f)

“Family fee” means the fee determined from the fee schedule. 5 CCR 18078

“Fee schedule” means the “Family Fee Schedule” issued by the CDE pursuant to EC 8273 and 8447 (e). The “fee schedule” is used by child development contractors to assess fees for families utilizing early learning and care services. 5 CCR 18078

“Family size” for C2AP and C3AP means the number of adults and children related by blood, marriage, or adoption that comprise the household in which the child is living.

1. When an adult living in the household is neither the parent of the child nor the spouse of the parent, the adult and the adult's children if any, shall be excluded from the calculation of family size.
2. When a child is living with adult(s) other than a natural or adoptive parent, the child shall be considered a family of one. In these cases, a need criterion as specified in 5 CCR Section 18406(b) or (c) or 18421(b) or (c) must be met by the caretaker of the child. 5 CCR 18400 (e)

“Family size” for all other programs means the number of people constituting a “family” as determined by documentation supporting the number of children and parents in the family. 5 CCR 18100

“Fishing” means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence. 34 CFR 200.81(b)

“Former CalWORKs cash aid recipient” means an adult individual or minor teen parent who has previously received and is no longer receiving cash aid under the CalWORKs or Cal-Learn programs because of, but not limited to, earnings, other income, or a sanction of the adult imposed by county welfare department. 5 CCR 18400(f)

"FPM/CMR" means Federal Program Monitoring/Contract Monitoring Review (formerly referred to as Coordinated Compliance Review) and is the monitoring and review instrument for child development programs to determine compliance. 5 CCR 18023 (d)(2)

"Full signature" means the legal signature of the individual (e.g., signature normally used on checks and other documents). If the individual is not literate in written English, the individual may sign with an "X" which must be initialed by the contractor's authorized representative (5 CCR 18065). Pursuant to EC 8227.5 and 8262.1, the use of a digital signature shall have the same force and effect as the use of a manual signature, if it meets established program and technology requirements.

“Immediate need” for purposes of TrustLine approval means a situation in which both subdivisions (1) and (2) apply:

1. An eligible parent has a need for child care and is employed, participating in a CalWORKs work activity, is in training as described in 5 CCR 18087, or is incapacitated as defined 5 CCR 18400(g) and 18078
2. The contractor determines that no child care is reasonably available from a licensed, TrustLine registered or TrustLine-exempt provider that meets the parent’s need for care.

5 CCR 18078

"Income fluctuation" means income that varies due to:

1. Migrant, agricultural, or seasonal work;
2. Intermittent earnings or income, bonuses, commissions, lottery winnings, inheritance, back child support payment, or net proceeds from the sale of real property or stock; or
3. Unpredictable days and hours of employment, overtime, or self-employment. 5 CCR 18078(j)

"Indirect costs" are general and administrative costs that benefit the operations of the entire organization, but cannot be identified to specific programs or activities. Examples of indirect costs are described in the federal cost principles codified under the *Uniform Guidance (UG)*, 2 CFR, 200.414. 5 CCR 18013

"Indirect cost allocation plan" means a written approved justification and rationale for assigning the relative share of indirect costs across more than one program or contract. School districts and county offices of education shall use the CDE approved rate if it is less than ten percent (10%). A Nonprofit's Board of Directors will approve the indirect cost allocation plan. 5 CCR 18013

"Initial certification" means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for receipt of subsidized child development services as specified in *EC* sections 8263(a)(1)(A) and 8263 (a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. Implementation Guidance 18078(j)

"Initial Income eligibility" means the definition set forth in *EC* 8263.1(a) Implementation Guidance 18078(h)

"Interactive literacy activities" means activities in which parents or legal guardians actively participate in facilitating the acquisition by their children of pre-reading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development. *EC* 8238(a)

"Legally qualified professional" means a person licensed under applicable laws and regulations of the State of California to perform legal, medical, health or social services for the general public. 5 CCR 18078

"Licensed-exempt provider" means an individual or organization that is not required to be licensed, as specified in *Health and Safety Code (H&SC)* 1596.792, or any other federal law or regulation.

"Licensed provider" means an individual or organization that has obtained a child care license, as specified in 22 CCR 101152. *H&SC* 1596.90

"Limited-English-proficient" and "non-English proficient" means children who are unable to benefit fully from an English only early learning and care program as a result of either of the

following:

1. Having used a language other than English when they first began to speak; or
2. Having a language other than English predominately or exclusively spoken at home. EC 8208(t)

"Local education agency (LEA)" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district. EC 8208(al). Direct fund charter schools that have been funded to operate early learning and care programs are also considered to be LEAs.

"Magnet school" means an entire school with a focus on a special area of study, such as science, the performing arts, or career education, designed to attract pupils from across the school district who may choose to attend the magnet school instead of their local public school. *CSPP FRPM Implementation Guidance* 18013

"Maximum reimbursable amount" means the total dollar amount of a contract. Reimbursement from the State shall not exceed the maximum reimbursable amount. The initial maximum reimbursable amount shall be the approved original version of the annual contract based on the Budget Act as signed by the Governor. 5 CCR 18013 (o)

"Migrant agricultural worker family" means a family that has earned at least fifty percent (50%) of its total gross income from employment in fishing, agriculture or agriculturally-related work during the twelve (12) month period immediately preceding the date of application for early learning and care services. EC 8231

"Monthly attendance record or invoice" means documentation that includes, at a minimum, the name of the child receiving services, the dates and actual times care was provided each day, including the time the child entered and the time the child left care each day, that is signed under penalty of perjury by both the parent or guardian and the child care provider, attesting that the information provided is accurate. EC 8221.5

"Net reimbursable program costs" means the portion of the actual and allowable net costs that are incurred in the provision of early learning and care services for subsidized children. 5 CCR 18013

"New contract" means either:

1. A contract award to applicants who do not currently contract with the CDE for early learning and care services; or
2. A contract award to current contractor that is for a program type as specified in EC 8208(i) that is different than the child development contract(s) currently administered by the applicant. 5 CCR 18000(d)

"Nontraditional hours" refers to evenings and/or weekends for licensed providers when a licensed provider is meeting the certified need for child care that includes hours during the period from 6:00 p.m. to 6:00 a.m., Monday through Friday, or any time on Saturday or Sunday. 5 CCR 18075.1(b).

“Notice of Action, Application for Services” means a written statement of specific information issued by the contractor that informs the applicant of the contractor’s decision to approve or deny early learning and care services. See Program Requirements for a description of the specific information that must be included to have the contractor’s decision reviewed. 5 CCR 18094, 18400(k) and EC 8261, 8263

“Notice of Action, Recipient of Services” means a written statement of specific information issued by the contractor informing the family receiving child care services that a change has been made to their service agreement. These changes may include, but are not limited to, need and eligibility requirements that are no longer being met, or fees have not been paid, or the fee or amount of services provided by the contractor will be modified. 5 CCR 18078, 18095, 18400(l) and EC 8261, 8263

"Ongoing income eligibility" means the definition set forth in EC 8263.1(b) Implementation Guidance 18078.

“Parent” means a biological parent, adoptive parent, stepparent, foster parent, caretaker, relative, legal guardian, or domestic partner of the parent as defined in *Family Code* section 297, or any other adult living with a child who has responsibility for the care and welfare of the child. EC 8208(u)

"Parental Incapacity" means the temporary or permanent inability of the child’s parent(s) to provide care and supervision of the child(ren) for part of the day due to a physical or mental health condition. 5 CCR 18078

“Parent involvement and education” means those activities specifically designed to include parents in the education of their children, help parents participate in the program, and enhance their understanding of child development. EC 8208(u)

“Parent survey” means a questionnaire completed by the parent to assess the child care program or services that the child and family receive. The parent survey asks for information about how the program helps parents support their child’s learning and development and meets the family’s needs. 5 CCR 18270.5(h)

"Private agency" or "Private contractor" means an entity other than a public agency that is tax exempt or non-tax exempt and under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Program self-evaluation process” means those activities and procedures used by the contractor to evaluate its program quality and compliance with applicable laws, regulations, and contractual provisions. 5 CCR 18270.5(i)

“Provisional child care provider” means an individual, exempt from licensure pursuant to *Health and Safety Code (HSC)* sections 1596.792(d) or (f), who provides child care for a child or children of an eligible parent for a period of up to thirty (30) days when there is an immediate need. The provisional child care provider shall have completed a TrustLine application and submitted fingerprints, in accordance with *HSC* sections 1596.603 and 1596.605. 5 CCR 18078

"Public agency" or "Public contractor" means a school district, community college district,

county superintendent of schools, campus of the California State University or the University of California system, county, city or other public entity under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Qualified FRPM school” is a public elementary school, that is not a charter or magnet school, where at least 80% of the enrolled students are eligible for the Free and Reduced Priced Meal program. *CSPP FRPM Implementation Guidance* 18013

"Quality assurance" means activities intended to benefit children and families including, but not limited to, services to parents and providers such as lending libraries, resource libraries, training of parents and providers and monitoring of program quality requirements.

"Reasonable and necessary costs" are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. 45 CFR 75.404

“Recertification” means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for ongoing receipt of services as specified in Education Code sections 8263(a)(1)(A) and 8263(a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. *Implementation Guidance* 18078(q)

"Recipients of service" means families and/or children enrolled in an early learning and care program subsidized by the CDE. 5 CCR 18078

“Regional Market Rate” means the current rate charged for various types of child care services as determined by a survey of providers. *EC* 8357

“Regional market rate ceilings” means the maximum amount calculated by the CDE that providers in different regions of the state may be reimbursed for the same type of child care for the same age child in accordance with statutory ceilings currently in effect. 5 CCR 18074.1(c)

"Restricted income" means income that may only be expended for specific limited purposes that would be reimbursable according to the contract. 5 CCR 18068

"Sectarian organization or sectarian child care provider" means any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. *CFR* 45 Section 98.2

“Self-Certification of Income” means a declaration signed by the parent under penalty of perjury identifying (5 CCR 18078):

1. To the extent known, the employer and date of hire and stating the rate and frequency of pay, total amount of income received for the preceding month(s), the type of work performed, and the hours and days worked, when an employer refuses or fails to provide requested employment information or when a request for documentation would adversely

affect the parent's employment; or

2. The amount and frequency of sources of income for which no documentation is possible. 5 CCR 18084(a)(4)

"Service agreement" is a legal instrument by which the agency purchases services needed to carry out the early learning and care programs. Legal instruments that include services which are clearly incidental to the agreement are not considered service agreements.

"Service delivery area" means the community, geographic area, or political subdivision in which the early learning and care services are to be provided as specified in the Request for Applications. 5 CCR 18000(f)

"Severely disabled children" are children with exceptional needs from birth to twenty-one (21) years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance or severe developmental disability. These children may be assessed by public school special education staff, regional center staff or another appropriately licensed clinical professional. EC 8208 (y)

"Site supervisor" means a person, who, regardless of his or her title, has operational program responsibility for an early learning and care program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of an early learning and care program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented. EC 8208(aa).

For CSPP, a site supervisor may qualify under any of the provisions above, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both EC Sections 8244 and 8360.1 is also qualified under this subdivision.

"Social service agency" means an agency that, in the course of day-to-day business, provides personal counseling, personal or group therapy provided by personnel properly certified or licensed under California law. Examples of such agencies include county welfare departments and county mental health departments.

"Staff development program" means those activities that address the needs, interests, and skills of program staff or service providers to improve program quality. 5 CCR 18270.5(j)

"Stage 1" means the first stage of CalWORKs child care services. Stage 1 child care services are administered by the California Department of Social Services (DSS) through county welfare departments pursuant to EC 8351. Stage 1 child care begins when authorized by the county welfare department. 5 CCR 18400(n)

"Stage 2" means the second stage of CalWORKs child care services. Stage 2 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to EC 8353. Stage 2 child care begins when the county welfare department determines that a CalWORKs family is stable and transfers the family to a Stage 2 child care contractor for

child care services, or a family applies and is found eligible for Stage 2 services. 5 CCR 18400(o)

“Stage 3” means the third stage of CalWORKs child care services. Stage 3 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to *EC 8354*. Stage 3 child care begins when a CalWORKs family receiving Stage 1 or Stage 2 child care services has fully utilized the family’s twenty-four (24) months of eligibility to Stage 1 and Stage 2 child care services following the date the adult stopped receiving cash assistance. 5 CCR 18400(p)

“Standard reimbursement rate” means that rate established by the Superintendent of Public Instruction (SSPI) pursuant to *EC 8265* and *EC 8208(ab)*

"State median income" means the most recent median income for California families as determined by the State Department of Finance (DOF). *EC 8263.1* and 5 CCR 18078(r)

“Subcontract” means a written agreement between the contractor and any entity to perform a service on behalf of the contractor.

“Subcontract for early learning and care services” means a specific type of subcontract where the contractor enters into a written agreement with another entity to carry out all or part of the early learning and care services.

“Subsidized families” means eligible families who are receiving early learning and care services and on whose behalf the CDE or the California Department of Social Services (DSS) is providing a reimbursement, in whole or in part. 5 CCR 18074.1(d)

“Superintendent” unless otherwise noted, refers to the California State Superintendent of Public Instruction (SSPI). *EC 95*

“Support services” means those services which, when combined with early learning and care services, help promote the healthy physical, mental, social and emotional growth of children and families. *EC 8208(ae)*

“Time Out” means that a family receiving CalWORKs Stage 1 or Stage 2 child care services becomes ineligible for Stage 1 or Stage 2 because the adult has been off cash aid for twenty-four (24) months. 5 CCR 18400(r)

“Total contract amount” for the purposes of determining the limit of allowable administrative and program support services for Alternative Payment type programs means either the initial maximum reimbursable amount or the total of direct payments to providers, which includes family fees for certified children and interest earned on advanced contract funds, plus reimbursable administrative and support services costs, whichever is greater. 5 CCR 18013

“Total countable income” means all income of the individuals counted in the family size (5 CCR 18078) including, but not limited to, the following:

1. Gross wages or salary, advances, commissions, overtime, tips, bonuses, gambling or lottery winnings;

2. Wages for migrant, agricultural, or seasonal work;
3. Public cash assistance;
4. Gross income from self-employment less business expenses with the exception of wage draws;
5. Disability or unemployment compensation;
6. Workers compensation;
7. Spousal support, child support received from the former spouse or absent parent, or financial assistance for housing costs or car payments paid as part of or in addition to spousal or child support;
8. Survivor and retirement benefits;
9. Dividends, interest on bonds, income from estates or trusts, net rental income or royalties;
10. Rent for room within the family's residence;
11. Foster care grants, payments or clothing allowance for children placed through child welfare services;
12. Financial assistance received for the care of a child living with an adult who is not the child's biological or adoptive parent;
13. Veterans pensions;
14. Pensions or annuities;
15. Inheritance;
16. Allowances for housing or automobiles provided as part of compensation;
17. Portion of student grants or scholarships not identified for educational purposes as tuition, books, or supplies;
18. Insurance or court settlements for lost wages or punitive damages;
19. Net proceeds from the sale of real property, stocks, or inherited property; or
20. Other enterprise for gain.

"Total expenditures" means all costs for the provision of subsidized services under the contract and any nonsubsidized services which are provided in commingled classrooms. 5 CCR 18013

"Unrestricted income" means income that has no restrictions regarding use by the donor, and income restricted by the donor for purposes that are not reimbursable according to the contract, including income for services to children not subsidized by the contract. 5 CCR 18013

“Unsubsidized” or “nonsubsidized” refers to children or families other than eligible families receiving reimbursement for early learning and care services. 5 CCR 18074.1(e)

"Use allowance" means an alternate method for claiming the use of the contractor's assets as a cost when depreciation methods are not used. 5 CCR 18013

“Welfare-to-work activity” means a county welfare department approved activity, including but not limited to, employment, job search, job training, educational training, or participating as a volunteer in a job-related activity. 5 CCR 18400(s)

II. GENERAL PROVISIONS

Notification of Address Change

(5 CCR 18014)

1. Contractors shall notify the CDE in writing of any change in the mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by:
 - a. Board minutes verifying the change in address; and
 - b. A copy of the notification to the Internal Revenue Service of the address change.
2. Contractors shall notify the CDE in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood, or earthquake.

Notification of E-mail Contact Changes

Contractors shall assure that at all times the e-mail address on file at the CDE is accurate for contacting the following individuals:

1. Executive Officer
2. Program Director

Contractors shall utilize procedures provided by the CDE to electronically add new addresses or delete old addresses, as needed.

Materials Developed with Contract Funds

(5 CCR 18016)

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the early learning and care program.

If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development and development program shall

be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of state general or federal funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

Prohibition Against Religious Instruction or Worship

(5 CCR 18017)

CCTR, CSPP, CHAN, CMIG, and CFCC contractors shall not provide nor be reimbursed for early learning and care services which include religious instruction or worship.

Issuance and Use of Checks

(5 CCR 18018)

Except for external payroll services, private contractors:

1. Shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDE; and
2. Shall require two (2) authorized signatures on all checks unless:
 - a. The contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount.
 - b. The annual audit verifies that appropriate internal controls are maintained.

Plan for Provider Reimbursement and Certificates for Alternative Payment Programs

(EC 8261, 5 CCR 18226, 45 CFR 98.45(l)(1)(ii))

(Applies to C2AP, C3AP, CAPP, CMAP, AND CFCC)

The contractor shall develop and implement a plan for the timely reimbursement to providers. The plan shall include a provision requiring that providers be reimbursed within 21 calendar days of the receipt of a complete record or invoice for services

Procedures shall include measures to ensure security of certificates and prevent fraud and/or abuse and provide for timely redemption of certificates by either parents or providers.

Within two (2) business days of receiving license suspension or revocation notification from the Resource and Referral Program, the contractor shall terminate payment to the affected facility as of the effective date of the suspension or revocation.

Contractors must set up an electronic reimbursement program for licensed and license-exempt providers so that the reimbursement to providers may be electronically

transmitted to the financial institution of their choice.

Contractors may not require the providers to use direct deposit or any other form of electronic reimbursement to receive their reimbursements. However, any contractors which had a policy in place prior to July 1, 2019 which required that providers be reimbursed via direct deposit or other form of electronic reimbursement may continue to require those affected providers receive reimbursement in conformance with such policy. Any new providers starting with such contractors after July 1, 2019, or any contractors without such a policy in place prior to July 1, 2019, must give providers the option of receiving their reimbursements electronically.

When the contractor makes the reimbursement to the early learning and care provider, electronically or otherwise, they must provide a description of the reimbursement to the provider, including the child(ren) served, and the month of service covered by the reimbursement.

Any fees assessed by a provider's financial institution for electronic banking would be incurred by the provider; the fees would not be paid by the contractor.

Prohibition against Loans and Advances

(5 CCR 18019)

1. Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies.
2. Contractors shall not advance unearned salary to employees.
3. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received except for:
 - a. Subcontractors providing early learning and care services; and
 - b. Subcontractors with subcontracts exempt from the provisions of 5 CCR 18026.

Contracts with Multiple Service Areas

1. CCTR, CSPP, CHAN, and CMIG contractors with more than one service delivery area as specified in and funded through a single contract shall maintain service at the same level, plus or minus ten percent (10%) of the contracted child hours or child days of enrollment as applicable, in the individual service area(s) specified in its current contract. 5 CCR 18022
2. The contractor may request approval from the CDE to vary service levels by more than ten percent (10%) if the contractor can demonstrate that the need for services in the designated area(s) has changed.
3. The CDE shall approve or deny the variable service level request within thirty (30) calendar days of receipt of the request.

4. If the variable service level request is denied, the contractor may appeal this decision in accordance with 5 CCR 18308.
5. Non-CalWORKs Alternative Payment program and CFCC contractors with more than one service delivery area, as specified in and funded through a single contract, shall maintain service at the same level in the individual service area(s) as most recently approved by CDE.

Compliance Reviews

(5 CCR 18023(b), (c), (d))

(Applies to all programs)

1. At least once every three (3) years, and as resources permit, the CDE shall conduct reviews at the contractor's office(s) and operating facility(ies) to determine the contractor's compliance with applicable laws, regulations and/or contractual provisions.
2. The compliance reviews shall be conducted according to the provisions of the FPM/CMR.
3. The compliance reviews shall be conducted by consultants, analysts, and/or management staff of the CDE or other State of California representatives.

Reviews of Alternative Payment Agencies

(EC 8385)

Annually, the CDE shall conduct a review of each Alternative Payment agency to determine an error rate in each of the following areas:

1. Family fee determinations;
2. Eligibility;
3. Basis of hours of care; and
4. Provider payments

Contractor's Termination for Convenience

(5 CCR 18024)

1. A contractor may terminate the contract for any reason during the contract term.
2. The contractor shall notify the CDE of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

3. Within fifteen (15) days from the date the contractor notifies the CDE of its intent to terminate the contract, the contractor shall submit:
 - a. A current inventory of equipment purchased in whole or in part with contract funds; and
 - b. The names, addresses and telephone numbers of all families served by the contract and all staff members funded by the contract.
 - c. CFCC and Alternative Payment program contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services funded by the early learning and care contract.
4. Upon receipt of a notice of intent to terminate, the CDE will transfer the program to another agency as soon as practicable.

Uniform Complaint Procedures

(5 CCR 4600-4694)

5 CCR 4610 authorizes the CDE the responsibility for Uniform Complaint Procedures (UCP). Early learning and care programs are covered under the UCP. Contractors shall abide by the applicable procedures set forth in 5 CCR 4600-4694.

For additional general information regarding the UCP, contact the Categorical Program Complaint Management Office, California Department of Education, via telephone (916) 319-0929, or visit the CDE Web site at the following link:

<https://www.cde.ca.gov/re/cp/uc/>

Eligibility for Funding

(5 CCR 18001, 18303, 18304, and 18023)

A current contractor is eligible to apply for new or additional funds except when one or more of the following conditions apply during the Request for Application (RFA) cycle:

1. The contractor is on conditional status because of fiscal or programmatic noncompliance as described in 5 CCR 18303 or 18304; or
2. The CDE has conducted a compliance review pursuant to 5 CCR 18023 and the contractor has failed to cure items of fiscal and programmatic noncompliance identified in the review within twelve (12) months of the issuance of the compliance review report; or
3. The CDE reduced the contractor's current year maximum reimbursement amount due to the contractor's inability to utilize its full contract amount, whether through low enrollment or low expenditures for the same contract type.
4. A current contracting agency may be determined, on a case-by-case basis, to be ineligible to receive expansion funding if:

- The agency was previously awarded expansion funding and has not yet begun to provide services with that funding; or
- The CDE has evidence that the agency has not been able to successfully fulfill current contract requirements by serving children in a quality program and in a fiscally responsible manner.

A current contractor that is applying for additional funds may be awarded less than the full amount requested during negotiations of the award, particularly if it has been determined that they are not fully utilizing their current contract maximum reimbursable amount.

An applicant that is not a current CDE contractor is not eligible to apply for funding if one of the following conditions apply:

1. The contractor had a previous contract with the CDE that was terminated or not continued by the CDE for fiscal or programmatic noncompliance as described in section 18303 or 18304 within three (3) years immediately preceding the date the RFA was posted; or
2. The applicant contractor has an outstanding accounts receivable balance with the CDE; or
3. The applicant contractor has a delinquent audit with the CDE pursuant to 5 CCR 18073.

Review of Contracts for Continued Funding

(5 CCR 18010)

1. Contractors have no vested right to a subsequent contract.
2. Contractors that are not on conditional contract status, but which have evidenced fiscal or programmatic noncompliance with the provisions of this contract, laws, or regulations, shall receive an administrative review to determine whether they will receive an offer for continued funding.
3. Contractors currently on conditional status that do not meet the requirements specified in the Conditional Status Addendum may not be offered a subsequent contract and shall be so notified by the CDE at least ninety (90) calendar days prior to the end of the current contract period.
4. Contractors that intend to accept the offer to continue services in the subsequent contract period shall respond to a continued funding application request from the CDE in accordance with the instructions and timelines specified in the request.
5. Failure to respond within the timelines specified in the continued funding application request shall constitute notification to the CDE of the contractor's intent to discontinue services at the end of the current contract period unless the contractor has received a written extension of the original timeline from the CDE.

Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the *Corporations Code* including standards of conduct and management of the organization.

Conflicts of Interest

(EC 8258)

1. All transactions shall be fair and reasonable and conducted at arm's length where the contractor is a party to a transaction and the other party is one of the following:
 - a. An officer or employee of the contractor or of an organization having financial interest in the contractor; or
 - b. A partner or controlling stockholder or an organization having a financial interest in the contractor; or
 - c. A family member of a person having a financial interest in the contractor.
2. No person employed by the CDE in a policymaking position in the area of early learning and care programs shall serve as a member of the board of directors, advisory council, or advisory committee for any agency receiving funds pursuant to this chapter. The provisions of this subdivision shall not apply to any person appointed prior to January 1, 1985.
3. No retired, dismissed, separated, or formerly employed person of the CDE employed under the State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE. The prohibition contained in this subdivision shall apply to the person only during the two-year period beginning on the date the person left state employment.
4. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 if he or she was employed by the department in a policymaking position in the area of early learning and care programs within the twelve (12) month period prior to his or her retirement, dismissal, or separation.
5. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may be employed by a contractor pursuant to EC Section 8262 if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE.
6. The provisions above shall not apply to any persons who were already in the

situations described by these subdivisions prior to January 1, 1985.

7. Based on corporate law (*Corporations Code* sections 310, 5233-5234, 7233 and 9243 as applicable), the general rules to be followed to ensure that transactions are conducted "at arm's length" include:
 - a. Prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and
 - b. All parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.
8. If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser, licensed by the California Office of Real Estate Appraisers that supports all reimbursable costs under the transaction.
 - a. A new "fair market rental estimate" for each change, adjustment or escalation to any reimbursable costs under a transaction is required.
 - b. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply.
9. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance.
10. Any transaction described in this section shall be disclosed by the auditor in the notes to the financial statement in the annual audit. (*Uniform Guidance*, Subpart F)
11. Rental costs for equipment owned by affiliated organizations, officers, or other key personnel of the contractor or their families are allowable only as depreciation or use allowance.

Unlawful Denial of Services

(GC 11135 and 5 CCR 4900)

As used in this section, "disability" means any mental or physical disability as defined in GC 12926.

1. No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded

directly by the state, or receives any financial assistance from the state.

2. With respect to discrimination on the basis of disability, programs and activities subject to 5 CCR 4900(a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

Recycled Paper Certification

(PCC 12205, 12209, 12320)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in *Public Contract Code (PCC)*, sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the *PCC*, sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

Healthy Schools Act

All early learning and care center-based contractors are subject to the requirements of the Healthy Schools Act (HSA) as specified in *EC* sections 17608 to 17614.

For more information about the requirements of the HSA, contact the Department of Pesticide Regulation (DPR), Integrated Pest Management (IPM) via e-mail at ccipmlist@cdpr.ca.gov or visit the DPR School and Child Care IPM Web site at: <http://www.cdpr.ca.gov/schoolipm/>

To comply with the provisions of the HSA, early learning and care center-based contractors shall, among other requirements:

1. Identify a school designee
 - a. Choose a center employee who will make sure the requirements of the Healthy Schools Act (HSA) are met when pesticides are used at your center.
2. Develop an IPM plan
 - a. Create an IPM plan using the DPR IPM Plan template available on the DPR

School and Child Care IPM website; or get a self-drafted center IPM plan approved by DPR.

3. Provide annual written notification
 - a. Send parents, guardians, and staff a written notification of pesticides you expect to apply at your center during the year.
4. Establish individual notification registry
 - a. Establish a registry for all interested parents, guardians, and staff to sign up and receive notifications of individual pesticide applications.
5. Post warning signs
 - a. Post signs where you will apply pesticides.
6. Keep Records
 - a. Keep records of pesticide applications made by center staff and pest management contractors for at least four years.
7. Send pesticide use reports to DPR
 - a. Send pesticide use reports for pesticide applications made by center employees to DPR at least once per year.
8. Never use prohibited pesticides
 - a. Always check the list of Pesticide Products Prohibited from Use in California Schools and Child Care Facilities prior to using a new pesticide product.
9. Complete Annual IPM Training
 - a. Take a DPR-approved training course before applying pesticides, and renew annually.

III. FACILITIES AND EQUIPMENT

(5 CCR 18034)

A. Facilities and Equipment Expenditures

Facilities and Equipment Expenditures, are subdivided into two categories:

1. Capitalized
 - a. Buildings and Improvements: Sites; renovations and repairs of sites; buildings; renovations and repairs of buildings, building fixtures, services systems; and
 - b. Capitalized Equipment: Tangible personal property (including information

technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or \$5,000. 2 CFR 200.33

2. Non-capitalized

- a. Non-capitalized equipment expenditures are those for tangible personal property with a useful life of more than one year other than those described in Capitalized Equipment above.

B. Buildings and Improvements

1. Buildings are only reimbursable as depreciation or use allowance.
2. To be reimbursable as direct costs, prior written approval by the CDE is required for improvements to land, buildings, or equipment which materially increase their value or useful life. 2 CFR 200.439(b)(3)
3. If the Contractor wishes to share the use of real property among multiple programs, the associated reimbursable capital expenditures shall be prorated among the programs according to the benefits received.
4. Building and improvement expenditures are not reimbursable as indirect costs, except as depreciation or use allowance.

C. Renovation and Repair

(5 CCR 18034)

1. Improvement of sites and adjacent grounds to meet or exceed the 22 CCR, Community Care Licensing Standards are reimbursable for both private and public agencies. Reimbursable improvements are those that:
 - a. Do not unnecessarily increase the value as defined in 18013(v) of a facility; and
 - b. The contractor has obtained prior CDE approval for proposed work for ten thousand dollars (\$10,000) or more.

D. Depreciation and Use Allowance

1. Depreciation and use allowance may be claimed on eligible, appropriate capital assets.
2. Depreciation shall not be claimed on land, donated assets or assets purchased with public funds, on any fully depreciated asset or on idle or excess facilities.
3. A use allowance shall not be claimed on land or assets purchased with contract funds or on assets for which depreciation has been claimed.

4. When depreciation is applied to assets acquired in prior years, the annual charges shall not exceed the amounts that would have resulted had depreciation been claimed from the date of acquisition.
5. The use allowance for buildings and improvements is computed at an annual rate not to exceed two percent (2%) of acquisition costs.
6. The use allowance for equipment is computed at an annual rate not to exceed six and two-thirds percent (6 2/3%) of acquisition costs.
7. To be reimbursable, interest paid on private sector debt for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by contractors providing center-based care must be actual interest paid, not to exceed a fair market rate of interest. This provision does not apply to family child care home facilities.

E. Preapproval Requirements

(5 CCR 18029 and 18040)

1. All equipment and equipment replacement purchases that meet either of the following criteria shall be approved in writing in advance by the CDE. 2 CFR 200.33 and 200.439(b)(1)
 - a. The per-unit acquisition cost equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or five thousand dollars (\$5,000), including tax, shall be approved in writing in advance by the CDE.
 - b. The sum of all items included in the purchase equals ten thousand dollars (\$10,000) or more, including tax, shall be approved in writing in advance by the CDE.
 - i. All expenses associated with a purchase that are necessary for the equipment to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required (e.g., a playground structure includes multiple components, although each component may be purchased separately. When determining pre-approval requirements, all components purchased for the playground should be considered).
 - ii. Subdividing equipment purchases into separate items to avoid the preapproval requirement is prohibited.
2. Proposed renovation and repair work for ten thousand dollars (\$10,000) or more, including the invoiced cost, plus any applicable sales tax, delivery fees, or installation charges, shall be approved in writing in advance by the CDE. 2 CFR 200.439(b)(3)
 - a. All expenses associated with a purchase that are necessary for the improvement to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required.

- b. Subdividing renovation and repair work into separate purchases to avoid the preapproval requirement is prohibited.
 - 3. Approval requests shall be submitted on the Request for Approval of Equipment form.
 - 4. Bids, if applicable, shall be attached to the Request for Approval of Equipment when submitted to the CDE for approval.
 - a. One copy of the request shall be retained by the CDE.
 - b. One copy will be returned to the contractor approved or disapproved within thirty (30) calendar days of receipt.
 - c. If the request for approval of an equipment purchase is disapproved, the contractor may appeal the decision in accordance with instructions specified in 5 CCR 18040(d), 18302.
 - 5. Procurement practices must be in accordance with 5 CCR 18040.
 - 6. Public Agencies shall comply with the applicable sections of the PCC.
 - 7. Lease-purchase agreements are subject to the above requirements.
 - 8. If the work is to be performed through a subcontract, the requirements of the FT&C section titled *Subcontracts* also applies.
 - 9. When private agencies submit proposed subcontracts for renovation and repair for approval, evidence shall be included that the proposed subcontractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract. 5 CCR 18029(d)
- F. Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies
- 1. All equipment purchases, replacements, and improvements not performed by the contractor's staff exceeding five thousand dollars (\$5,000), including tax, must have at least three (3) bids or estimates.
 - a. Each bid or estimate must contain prices for equivalent and comparable items and/or services.
 - b. When available, consolidating procurements to obtain a more economical purchase is required.
 - c. Subdividing equipment purchases into separate items to avoid the competitive bidding requirement is prohibited.
 - 2. If bids or estimates are required, the contractor shall purchase the goods or services from the lowest responsible bidder or estimator. The contractor shall conform to the

materials, terms and conditions of the invitation for bid, and with 5 CCR 18040.

3. If bids or estimates are required, and three (3) bids or estimates cannot be obtained, the contractor shall provide adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., an emergency situation, or the item is only available from a single source).
4. Lease-purchase agreements are subject to the above requirements.

G. Obtaining Bids for Equipment Purchases for Public Agencies

Public Agencies shall comply with the applicable sections of the *Public Contract Code*.

H. Asset Management

1. Asset Control System

(2 CFR 200.313(d)(3))

A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

2. Inventory

(2 CFR 200.313 (d)(1))

- a. An inventory of all equipment and all non-disposable items with an estimated useful life of more than one year, purchased in whole or in part with early learning and care contract funds, shall be maintained. For more guidance refer to *California School Accounting Manual Procedure 770*.
- b. Property records must be maintained that include the following:
 - i. Description;
 - ii. Serial number or other identification number;
 - iii. The source of funding;
 - iv. The acquisition date;
 - v. The cost;
 - vi. The location, use and condition; and
 - vii. Any ultimate disposition date including date of disposal and sale price if applicable.
- c. A physical inventory must be taken at least every two (2) years and reconciled with property records. 2 CFR 200.313(d)(2)

I. Title, Use, Disposition and Retention

1. Buildings and Improvements

- a. Title to real property acquired in whole or part with state early learning and care (ELC) funds shall vest in the contractor subject to the condition that the contractor shall use the real property for the authorized purpose of the ELC program as long as it has a contract with the CDE and shall not encumber the property without the prior written approval of the CDE. 2 *CFR* 200.311(a)
- b. When the real property is no longer needed for the purposes of any CDE program, the Contractor shall request disposition instructions from the CDE, which shall observe one of the following three disposition instructions:
 - i. The CDE may permit the contractor to retain title without further obligation to the CDE after the contractor compensates the CDE or that percentage of the current fair market value of the property, net of reasonable and necessary selling costs, attributable to the CDE's share of the acquisition cost.
 - ii. The contractor may be directed to sell the property under guidelines provided by the CDE and pay the CDE for that percentage of the current fair market value of the property, net of reasonable and necessary selling and fix-up costs, attributable to the CDE's share of the acquisition cost.
 - iii. The contractor may be directed to transfer title to the property to the CDE or to an eligible third party, provided that, in such cases, the contractor shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

2. Equipment

(5 *CCR* 18025)

- a. Title – When equipment is purchased with state funds, title shall vest with the contractor only for such period of time as the contractor has a contract with the CDE.
- b. Retention of Equipment – The CDE may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the state for the state's share of the cost of the equipment. Fair compensation shall be determined by the state using the state's share of original acquisition cost, less depreciation, computed on a straight-line method over the estimated useful life expectancy of the equipment.
- c. Use – When equipment is purchased in whole or in part with state funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs.

- d. Disposition – The contractor may dispose of obsolete equipment and remove the asset at its recorded value. If the sale of equipment originally purchased with state funds occurs, the proceeds from the sale of the equipment must be returned to the program. If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written directions from the CDE.

IV. SUBCONTRACTS

- A. A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.
- B. Subcontracts Excluded from Requirements of this Section

(5 CCR 18026)

The following types of relationships are not subject to the requirements contained in this section:

- 1. Employment agreements;
- 2. Facility rental or lease agreements except as set forth below;
- 3. Payment arrangements with family child care homes and/or providers;
- 4. Medical or dental service agreements;
- 5. Bookkeeping/auditing agreements, except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*; (5 CCR 18027)
- 6. Food services agreements;
- 7. Janitorial and grounds keeping agreements;
- 8. A subcontract with a public agency, except for a subcontract with a public agency to provide early learning and care services; and
- 9. Subcontracts with an individual for less than ten thousand dollars (\$10,000), except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

Contractors are responsible for ensuring financial and compliance audits of all subcontractors.

Required Subcontract Provisions

(5 CCR 18031)

The following provisions apply to all subcontracts unless exempted in Section A above.

Every subcontract shall be in writing and specify:

1. The dates within which the subcontractor is to perform the contract.
2. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the state.
3. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.
4. The service(s) to be provided under the subcontract and the responsibilities of each party under the subcontract.
5. The subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers, employees or agents of the State of California.
6. Modifications of the subcontract shall be in writing, and for subcontracts in excess of ten thousand dollars (\$10,000), prior written CDE approval is required unless the subcontract is otherwise exempt from prior CDE approval.
7. The subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.
8. The remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. The State of California retains title to any equipment or supplies purchased with state funds and the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDE for any unit of equipment that costs in excess of five thousand dollars (\$5,000).
10. The subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's non-represented employees computed in accordance with California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1.
11. The subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.
12. For those subcontracts requiring prior approval, the subcontractor shall maintain

- records for program review, evaluation, audit and/or other purposes and make the records available to agents of the state for a period of five (5) years.
13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in the 2 CCR 11105.
 14. Funding of the subcontract should be made subject to the appropriation and availability of funds from the state.
 15. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
 16. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.
 17. Subcontracts for ten thousand dollars (\$10,000) or more cannot become effective and binding on either the prime contractor or the subcontractor until approved in writing by the CDE, and any work performed by the subcontractor prior to the date of such approval shall not be used as a claim against the state. Modifications to any contracts for \$10,000 or more shall also not be effective until approved in writing by the CDE and any work in performance of such modification prior to the date of approval of the modification shall not be used as a claim against the state. Specific approval requirements are set forth in Section F below.
 18. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.
 19. All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

Private Agencies-Bids for Subcontracts

(5 CCR 18027 & 2 CFR 200.320(f))

1. Private contractors shall obtain at least three (3) bids or estimates for subcontracts exceeding five thousand dollars (\$5,000), prior to cost allocation
2. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents in its records that establish:
 - a. The reasons three (3) bids or estimates could not be obtained; and
 - b. The reasonableness of the proposed expenditure without three (3) bids or estimates.
 - c. Documentation for the single-source vendor or service provider, including the

reason that vendor should be approved, must be submitted for approval in lieu of three (3) bids.

3. The subcontract shall be awarded to the lowest responsible bidder.
4. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Public Agencies Subcontracts

1. Public Agencies shall award subcontracts in accordance with the Public Contract Code.

Prior CDE Approval for Subcontracts \$10,000 and Above

(5 CCR 18028-18030)

1. Contractors shall obtain prior written approval from the CDE for subcontracts of ten thousand dollars (\$10,000) or more, prior to cost allocation, that are otherwise not excluded from the provisions as stated in the FT&C section *Subcontracts Excluded from the Requirements of this Section*.
2. Prior to execution of a subcontract and commencement of work, the contractor shall submit two (2) copies of the proposed subcontract to the CDE for approval, including a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Bids, if applicable, shall be submitted to the CDE when requesting approval. If three (3) bids were not obtained, the contractor shall provide written justification when the subcontract is submitted to the CDE for prior approval. Contractors shall demonstrate that approval of the subcontract is cost effective to the state.
3. For proposed capital outlay subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.
4. Requests for approval of subcontracts for transportation services shall include a Certificate of Insurance of the subcontractor in an amount not less than \$1 million per occurrence (or a greater amount if required by the Public Utilities Commission regulations), listing the contractor and the state as additional named insured.
5. One copy of the subcontract will be retained by the CDE and the other copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt of all required documents.

No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDE approval. A disapproved contract will include a statement of the reason(s) for not approving the subcontract. If the request for approval of a subcontract is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Appeals and Termination, Contract*

Administration Disputes.

6. The CDE does not assume any responsibility for performance of approved subcontracts nor does the CDE assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.
7. Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are not reimbursable.

Audit Requirements for Subcontracts

(5 CCR 18032)

An organization that operates an early learning and care program under a direct service contract with the CDE is called a contractor. The contractor may choose to enter into an agreement with another organization (subcontractor), where the subcontractor operates one (1) or more of the contractor's early learning and care programs. Consequently, an entity may be acting in the dual capacity of contractor and subcontractor for one (1) or more CDE contractors – each having one (1) or more CDE contracts. In some cases, a subcontractor may not have its own CDE contract directly with the CDE.

The organization receiving funds from the state shall be responsible for obtaining the required financial and compliance audits of the organization and any subcontractors, except for subcontracts exempt from CDE review, as agreed to by the Departments of Finance (DOF) and General Services (DGS).

The audit of the subcontract shall be submitted to the CDE as follows:

1. School districts, county offices of education, community colleges, and direct funded charter schools, shall submit the audit of the subcontract by the fifteenth day of the fifth month following the fiscal year in which the subcontracted services were performed;
2. All other contractors shall submit the subcontract audit along with the contractor's audit as specified in 5 CCR 18071.

V. COSTS, EARNINGS AND REIMBURSEMENT

(5 CCR 18033, 18034)

A. Contract Amount Adjustments

(Applies to C2AP, C3AP)

Child Development and Nutrition Fiscal Services (CDNFS) shall conduct monthly analyses of caseloads and expenditures and adjust agency contract maximum reimbursable amounts and allocations as necessary to ensure that funds are distributed in proportion to need. Prior to such action, however, CDNFS will notify the contractor of the proposed action and the contractor will be given an opportunity to provide written

documentation that demonstrates the CDNFS projections are inaccurate. Because of the need to transfer funds to an under-funded agency as quickly as possible, the contractor shall have three (3) working days from the date of notification to respond.

Reasonable and Necessary Costs

(5 CCR 18013(s), 18033, 2 CFR 200.404)

Contractors may be reimbursed for actual costs that are reasonable and necessary to the performance of the contract. Reasonable and necessary costs are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. Consideration must be given to market prices for comparable goods or services for the geographic area.

Indirect Costs

(5 CCR Sections 18013(m), 18013(n))

1. If indirect costs are claimed, an indirect cost allocation plan must be on file with the contractor and available for review by the CDE staff and auditors.
2. The maximum indirect cost rate shall be ten percent (10%) of the modified total direct costs.
3. For any non-federal entity that has a negotiated indirect cost rate, which includes all school districts and county offices of education, the maximum indirect cost rate shall be the lesser of the negotiated indirect cost rate or ten percent (10%).
4. This rate is applied to budget categories 1000-5000 only in determining the maximum amount of indirect costs that are reimbursable under the contract.
5. The amount of cost allocable to this contract shall not exceed the benefits to this contract. The allocation method must quantify this benefit among all similar programs and then distribute the costs accordingly.
6. The indirect cost rate shall not include consideration of any costs otherwise non-reimbursable. If depreciation or use allowance is included in the indirect cost rate, such allowance shall not be claimed on the asset as a direct cost.

Administrative Costs

(EC 8276.7, 5 CCR 18013(c))

Contractors may claim administrative costs, as defined in 5 CCR 18013(c), which are related to the administration of the early learning and care program.

Reimbursement of administrative costs shall not exceed fifteen percent (15%) of the net reimbursable program costs or actual administrative costs, whichever is less.

The fifteen percent (15%) includes any allowance for indirect costs and audits. Contractors shall maintain written documentation of the rationale used in determining direct and administrative costs.

Service Level Exemption (Start-Up) for New or Expanded Programs

(*EC 8275*)

1. Allowable start-up costs will be in an amount not to exceed fifteen percent (15%) of new or expansion funding authorized in the Budget Act for State Early Learning and Care Programs. *EC 8275(a)*
2. Start-up costs must be necessary for the establishment and stability of new early learning and care programs (*EC 8275(c)*) and include:
 - a. Employment and orientation of necessary staff;
 - b. Setting up of the program and facility;
 - c. Finalization of rental agreements and necessary deposits;
 - d. Purchase of a reasonable inventory of materials and supplies; and
 - e. Purchase of an initial premium for insurance.
3. Contractors shall maintain an auditable record of start-up costs which shall be included within the audit at the end of the year.
4. Reimbursable start-up costs shall occur prior to attainment of full enrollment.
5. If all or part of the fifteen percent (15%) allowable start-up costs is needed and spent, that portion will **not** have to be earned through provision of services.
6. If the contractor neither needs nor chooses to claim any of the fifteen percent (15%) start-up costs, the full service requirements shall be earned at the contract rate.
7. Migrant early learning and care agencies operating on a seasonal basis shall be reimbursed up to fifteen percent (15%) of the contract amount annually for approved start-up and close-down costs associated with starting up and closing down agency operations to correspond with periods of service needed by migrant families as specified in *EC 8233(b)*.

Costs for Travel and Per Diem & Restrictions

(*GC 11139.8, EC 8265, 8269, 5 CCR 18031, 18034, and 18041*)

Contractors and subcontractors shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with the California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1, Article 2.

Contractors with collective bargaining agreements allowing higher rates of reimbursement shall not pay the difference out of contract funds.

The CDE shall notify the contractor of a change in expense rates within thirty (30) calendar days after the CDE has received notification of a change in rates from the California Department of Human Resources.

Contractors shall be reimbursed for out-of-state travel expenses only with prior written approval from the CDE. The CDE shall not approve out-of-state travel expenses:

1. For more than one employee, per contract per year.
2. For contractors with delinquent accounts payable which are delinquent more than ninety (90) calendar days after the date of the original invoice.
3. For contractors on conditional status.
4. When there is no clear benefit to the state.
5. When the benefit to the state can be obtained within California.

The CDE shall approve or deny the request for out-of-state travel within thirty (30) calendar days of the receipt of the request. If the request is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Internal Appeal Procedures to Resolve Contract Administration Disputes*.

Out-of-state travel to states identified in California's travel ban will not be considered. Costs associated with traveling to banned states will not be reimbursable.

Specific Items of Reimbursable Costs

(EC 8261, 8269 and 5 CCR 18034)

Reimbursable costs include, but are not limited to, the following:

1. Start-up costs of child development agencies or facilities in an amount not to exceed fifteen percent (15%) of the expansion or increase of each agency's total contract amount.
2. Close down costs for Migrant Programs as specified in EC 8233.
3. Administrative costs not to exceed fifteen percent (15%) of net reimbursable program costs.
4. Employee compensation, including fringe benefits, and personal service contracts.
5. Equipment and equipment replacement with prior CDE approval if required in the FT&C section *Facilities and Equipment*.
6. Supplies purchased in accordance with procurement practices found in 2 CFR

sections 200.317 to 200.326, including bidding requirements for micro-purchases that exceed \$10,000.

7. Improvement of sites and adjacent grounds to meet or continue to meet 22 CCR Community Care Licensing Standards in accordance with the FT&C section *Renovation and Repair*.
8. Taxes, insurance, and maintenance for buildings and/or equipment.
9. Depreciation based on the useful life of an asset in accordance with the FT&C section *Depreciation and Use Allowance*.
10. A use allowance for buildings and improvements in accordance with the FT&C section *Depreciation and Use Allowance*.
11. Travel and per diem expenses, including approved out-of-state travel, in accordance with the FT&C section *Costs for Travel and Per Diem*.
12. An indirect cost rate based on an approved indirect cost plan, in accordance with the FT&C section *Indirect Costs*.
13. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Lease payments or depreciation and interest on loans incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents in the community in which the facility is located in accordance with guidelines issued by the CDE.
14. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Interest on private sector debt financing for purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased for providing center-based care upon demonstration that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
15. Payments to providers made in accordance with applicable state laws and regulations.
16. (Applies to C2AP, C3AP, CAPP, CMAP, CFCC) Support services as specified in the FT&C section *Definitions*.

Nonreimbursable Costs

(EC 8261, 8269 and 5 CCR 18035)

The following costs shall not be reimbursable under the early learning and care contract:

1. Bad debts, including losses arising from uncollectible accounts and any related legal costs. (Uncollected parent fees are not considered to be bad debts if documentation of collection attempts exists.);
2. Contributions;

3. Costs of amusement or entertainment;
4. Costs of fines or penalties;
5. Costs of idle facilities unless those costs are related to a partial year program and the costs of the idle facilities have been approved by the CDE;
6. Costs incurred after the contract has been terminated;
7. Fund raising costs except as specified in 5 CCR 18277;
8. Interest expenses except:
 - a. Interest on borrowed funds when apportionments are withheld because of a delay or error attributable to the state and the amount of interest claimed is approved by the CDE.
 - b. When interest is part of a lease purchase agreement.
 - c. When the interest is part of payments on a loan incurred to acquire, rehabilitate or construct licensable facilities, not to exceed fair market rents existing in the community in which the facility is located.
 - d. When the interest is on private sector debt financing for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by the contractor, and it has been demonstrated that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
9. Investment management costs;
10. Costs of organization of a nonprofit corporation such as incorporation fees or consultant fees;
11. Public relations consultant fees;
12. Costs of legal, consulting and accounting services incurred in prosecution of claims against the state;
13. State and federal income taxes;
14. Costs for the acquisition of sites and buildings except through depreciation;
15. Bonuses, unless part of a collective bargaining agreement;
16. Compensation to the members of the board of directors except for:
 - a. Reimbursement for travel and/or per diem, computed in accordance with Costs for Travel and Per Diem, incurred while the members are conducting business for the

organization

- b. As provided in the California *Corporation Code* Section 5227, et seq.
- 17. Costs of subcontracts, which increase the contractor's cost or subcontracts, which contain a provision for reimbursement for cost-plus-a-percentage-of-costs;
- 18. Costs incurred in prior or future years, with the exception of the cost of an annual independent audit, which may be claimed either in the contract period which was the subject of the audit, or during the contract period in which the audit is completed;
- 19. Costs that are not adequately documented.

Charging of Expenditures

(EC 8261, 8269 and 5 CCR 18037)

Net reimbursable program costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations. However, the cost of the annual independent audit may be claimed either in the contract period which was the subject of the audit or during the contract period in which the audit is completed.

Recoupment of Advanced Contract Funds

(EC 8261, 8265, 8269 and 5 CCR 18038)

The CDE shall recoup any payments made for costs which were not reasonable and necessary. The amount recouped shall be the excess payment over the reasonable or fair market value, or one hundred percent (100%) of the cost, if the cost was not necessary. The CDE may elect to recover any costs associated with recouping advanced contract funds, including collection services or attorney fees.

Use of Subsidized Family Fees

(EC 8235, 8261, 8269, 8273, 8273.1, and 5 CCR 18039)

(Applies to C2AP, C3AP, CAPP, CCTR, CFCC, CHAN, CMAP, CMIG, CSPP) Fees received from subsidized parents are to be expended and earned by the contractor before contract funds shall be claimed for reimbursement.

(Applies to CCTR, CSPP, CHAN, CMIG) Such fees shall be expended on reimbursable costs and earned by providing child days of enrollment. In order to be reimbursed the full contract amount, in addition to the fees received from subsidized parents, the contractor must have additional reimbursable expenditures and provide child days of enrollment beyond the minimum required by the contract. Notwithstanding any other law, commencing with the 2014–15 fiscal year, family fees shall not be assessed for families enrolled in the part-day California preschool program. (EC 8273.1)

Determination of Reimbursable Amount

(EC 8261, 8269 and 5 CCR 18054)

CCTR, CSPP, CHAN, CMIG contractors shall be reimbursed for an audited claim that is the least of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract;
2. The actual and allowable net costs; or
3. Contract service earnings – The adjusted child days/hours of enrollment for certified children, pursuant to EC 8265.5 and 8266.1, times the contract rate per child day/hour of enrollment, times the actual percentage of attendance plus five percent (5%), but in no case to exceed one hundred percent (100%) of enrollment.

C2AP, C3AP, CAPP, CMAP contractors shall be reimbursed for an audited claim that is the least of the following:

The maximum reimbursable amount as stated in the annual early learning and care contract; or

1. The amount earned, which are reimbursable expenditures of:
 - a. Direct payments to providers, (which consist of the rate charged by the provider in accordance with applicable statutory and regulatory provision, not to exceed the Regional Market Rate Ceiling), and which includes family fees for certified children and interest earned on advanced contract funds; and
 - b. Actual administrative and support costs related to early learning and care services provided, which combined cannot exceed seventeen and one half percent (17.5%) of the total contract amount, and no more than fifteen percent (15%) may be for administrative costs alone.

CFCC contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual child development contract; or
2. The amount earned which is defined as net reimbursable program costs, of which at least seventy percent (70%) must be payments for direct services, not more than thirty percent (30%) may be for support services and administrative costs together, and no more than fifteen percent (15%) may be for administrative costs alone.

CRRP contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract; or

2. The actual and allowable net costs.

Minimum Days of Operation

(5 CCR 18055)

If the contractor fails to operate at least ninety-eight percent (98%) of the minimum days of operation required in its contract, ceases operation or the contract is terminated prior to the end of the contract period, the maximum reimbursable amount shall be reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation.

Reduction, Withholding, and Canceling Apportionments to Contractors

(EC 8261, 8269 and 5 CCR 18056)

The CDE shall reduce, withhold or cancel any scheduled apportionment when one (1) or more of the following conditions exist:

1. The contractor has not submitted an acceptable audit for any prior year of operation on or before the date due.
2. The contractor has not submitted the required reports on or before the date due.
3. The contractor will not earn the full contract amount based on the current year projected and the prior year actual net reimbursable program costs as determined by the CDNFS.
4. A creditor of the contractor has placed a lien on the contractor's scheduled apportionments.
5. The contractor has accounts payable which are:
 - a. More than ninety (90) days delinquent to the CDE and
 - b. Not the subject of an appeal
6. If any apportionment is to be reduced, withheld or cancelled, the CDE shall provide the contractor prior written notice of the intended action.

Order of Expenditure

(5 CCR 18057)

Expenditures from the Child Development Fund shall occur in the following order:

1. Fees collected from parents of certified children shall be first in and first out;
2. State or federal contract funds apportioned by the CDE shall be second in and second out; and

3. Interest received on advanced contract funds shall be last in and last out.

VI. ACCOUNTING AND REPORTING REQUIREMENTS

A. General Provisions

(EC 8261 and 5 CCR 18063)

Contractors shall follow the accounting procedures specified in the most recent edition of the *California School Accounting Manual*. Contractors shall report revenue and expenditures on an accrual basis. The School Accounting Manual specifies that under an accrual basis of accounting, revenues are recorded when earned and expenditures are recorded when a liability is incurred, regardless of when the receipt or payment of cash takes place.

Child Development Fund and Interest Bearing Accounts

(5 CCR 18064)

All contractors shall establish a fund to be known as the "Child Development Fund" as specified in EC 8328, except that private contractors shall establish the fund in a federally insured banking institution located in California. Contractors with multiple fund sources shall establish separate program cost accounts for each source of funds pursuant to EC 8261 and 8269; 5 CCR 18064 (a) (b).

If a contractor places advanced contract funds in an interest bearing account, the interest bearing account shall be a separate account within the Child Development Fund. Interest earned shall be retained by the contractor if it is expended on reimbursable costs and earned by providing subsidized child days of enrollment, beyond the minimum required to earn the maximum reimbursable amount, at a rate equal to the lesser of the daily contract rate or the actual program costs, pursuant to EC 8261 and 8269; 5 CCR 18064(c).

Enrollment and Attendance Accounting

(EC 8221.5, 8261, 8269 and 5 CCR 18065)

1. A child shall not be enrolled in more than one program for the same time period on the same day.
2. CCTR, CSPP, CHAN, and CMIG contractors shall use daily sign-in/sign-out sheets as a primary source document for audit and reimbursement purposes.
 - a. On a daily basis, one of the following persons shall enter the time of arrival and departure on a sign-in/sign-out sheet and shall sign the sheet using their full signature for both arrival and departure times:
 - i. The parent or other adult authorized by the parent to drop off/pick up a child; or

- ii. The staff person designated by the contractor as the person responsible for entering the times of arrival and departure if the child is not dropped off/picked up by a parent or other adult authorized by the parent.
 - b. First and last initials of the contractor's authorized representative, along with a notation of the time, are required to be documented when a school-age child departs for and returns from school during the day.
3. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall use the monthly attendance record or invoice as the primary source document for audit and reimbursement purposes.
- a. Child care providers shall submit a monthly attendance record or invoice, for each child who received services, Child care providers shall maintain attendance records or invoices in the original format in which they were created.
 - b. The monthly attendance record or invoices shall include, at a minimum:
 - i. The dates and actual times the child entered and left care each day. This information shall be documented on a daily basis.
 - ii. The signature of the parent or guardian, the name of the child receiving services and signature of the child care provider attesting under penalty of perjury that the information included on the monthly attendance record or invoice is true and accurate.
 - c. Contractors shall reimburse child care providers based on the following criteria:
 - i. The hours of service provided that are broadly consistent with the certified hours of need.
 - ii. For families with variable schedules, the actual days and hours of attendance, up to the maximum certified hours.
 - iii. For license-exempt providers that provide part-time services, the actual days and hours of attendance up to the maximum certified hours.
 - iv. Contractors shall reimburse providers within 21 calendar days of the receipt of a complete invoice for services (CCGDB 98.45(l)(1)).

Attendance and Absences

(5 CCR 18066)

(Applies only to CCTR, CSPP, CHAN, CMIG)

Attendance, for the purposes of reimbursement, includes excused absences because of illness or quarantine of the child, illness or quarantine of their parent, family emergency, court-ordered visitations or a reason which is clearly in the best interest of the child.

If the absence is claimed by the contractor as an excused absence, the attendance accounting records shall contain verification including:

1. The name of the child;
2. The date(s) of absence;
3. The specific reason for the absence; and
4. The signature of the parent or the contractor's authorized representative if verification is made by telephone.

If an excused absence is based on time spent with a parent or other relative as required by a court of law, the family data file shall contain a copy of the Court Order.

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child."

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

Contractors shall not disenroll any family due to excessive absences, except in circumstances of abandonment of care described in the Implementation Guidance section 18066.5.

Abandonment of Care

(Implementation Guidance Section 18066.5)

For purposes of abandonment of care, a "provider" is any person or entity that is contracted or reimbursed to provide subsidized early learning and care services. This may include, but is not limited to, an Alternative Payment Program provider, family childcare home provider, eligible license-exempt provider, or contractor that provides subsidized early learning and care services directly to children.

When the family has not been in communication with the provider for seven (7) consecutive calendar days and has not notified the provider of the reason the family is not using services, the provider shall promptly notify the contractor.

Using the contact information on file, the contractor shall attempt to contact the parent through a variety of communication methods. At least one communication attempt shall be in writing, which may be through electronic methods. The contractor shall keep documentation of all communication attempts, including a copy of all written communication, in the family data file. The contractor shall inform the parent in these communications that failure to communicate with the contractor or provider may result in termination of early learning and care services.

The contractor shall issue a notice of action to disenroll the family on the basis of abandonment of care when there has been no communication with the provider or the

contractor for a total of 30 consecutive calendar days.

General Record Keeping Requirements

(EC 8227.3, 8262.1, 33421 and 5 CCR 18067)

1. Pursuant to EC 33421, all records shall be retained by each contractor at least five (5) years or where an audit has been requested by a state agency, until the date the audit is resolved, whichever is longer. Claims for reimbursement shall not be paid unless there are documents to support the claims. The contractor has the burden of supporting claims for reimbursement.
2. Pursuant to EC 35254, public contractors must ensure that no original records be destroyed prior to the second July 1st succeeding the completion of the audit.
3. All CDE contractors and providers providing early learning and care services to eligible families, may maintain records electronically and are authorized to convert records from a paper format to an electronic format, in compliance with state and federal standards as determined by the CDE (EC 8227.3 and 8262.1).
4. If the contractor has more than one (1) CDE program, then the method used to allocate administrative costs must be documented.
5. Contractors are required to maintain records to support salaries and benefits charged to early learning and care programs in accordance with the *California School Accounting Manual*.
6. State employees or representatives shall be allowed access to all program related or fiscal records during normal work hours. (EC 33421 and 5 CCR 18301(4))

Attendance and Expenditure Reports

(Applies to CCTR, CSPP, CHAN, CMIG) (EC 8261, 8269, 8406.6 and 5 CCR 18068)

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative attendance and fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Days of enrollment, as indicated on the family's Notice of Action, for all children served in the program in the current reporting period and year to date.
2. Days of attendance, per the child's sign in and out records and other accompanying attendance records, for all children served in the program in the current reporting period and year to date.

3. Total days of operation in the current reporting period and year to date.
4. All services, revenues and expenditures for both subsidized and non-subsidized children, if non-subsidized and subsidized children are commingled as defined in Section I above.
5. Amount and sources of all revenues, including restricted and unrestricted income utilized for the child development program, other than advanced contract funds for the current reporting period and the year-to-date.
 - a. Restricted income that is not expended during the contract period remains restricted and shall be considered deferred revenue and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
6. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes, as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 *CCR* Section 18056.

Contractors on conditional status or provisional status shall report monthly.

The report shall include a certification that the information contained in the report is correct and complete and the original signature, or digital signature where applicable, of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the audit submission due date to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Alternative Payment and CFCC Expenditure Reports

(Applies to C2AP, C3AP, CAPP, CMAP, CFCC)

C2AP, C3AP, CMAP, and contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). Multi-year CAPP contractors shall report monthly (due to CDNFS by the 20th of the following month) for the first fiscal year of the contract. CAPP contractors who continue to expend funds in the second year, shall report monthly until funds are fully expended. CFCC contractors on clear status shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. All reports must be submitted strictly through the internet via CDE's official Web site. Reports not received by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract:

1. Amount and sources of all revenues, other than advanced contract funds for the current reporting period and year-to-date, restricted and unrestricted income shall be reported as follows:
 - a. Restricted income expended during the contract period shall be reported as “restricted.” Restricted income that is not expended during the contract period remains restricted and shall be considered “deferred revenue” and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
 - b. All unrestricted income shall be reported as “unrestricted.”
2. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

3. Total Days of Operation

C2AP, C3AP, CAPP, CMAP, CFCC will include the Days of Operation in the current reporting period and year to date.

Caseload Reports

(Applies to C2AP, C3AP, CAPP and CMAP)

1. In addition to submitting a monthly expenditure report, C2AP, C3AP, CAPP and CMAP contractors shall submit an Alternative Payment/CalWORKs Caseload Report(s) on a monthly basis. Caseload reports shall be submitted strictly through the internet via CDE’s official Web site and are due to CDNFS by the 20th of the following month. Caseload reports not received by CDNFS by the 20th of the month, following the end of the contractor’s reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report(s) is received.
 - a. If a contractor provides services in more than one (1) county, the contractor is required to submit a separate CalWORKs Caseload Report for each county in which services are being provided.
 - b. CalWORKs Caseload Reports shall represent actual service and expenditure data for the report month.

- c. Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

CRRP Expenditure Reports

5 CCR 18068

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Total days of operation in the current reporting period and year to date;
2. Amount and sources of all revenues, other than advanced contract funds, for the current reporting period and the year-to-date total;
3. Total expenditures related to the program operation for the current reporting period and the year-to-date total.

The report shall include a certification that the information contained in the report is correct and complete and the original signature of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final fiscal report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Service Data Report for Resource and Referral Programs

(5 CCR 18069) (Applies to CRRP)

Contractors shall submit reports to the CDE which contain the following data at intervals specified above.

1. Number of requests for general child care information and child care referrals;
2. Age categories of child care requests and referrals:
 - a. Infant (birth to eighteen months);
 - b. Toddlers (eighteen months to thirty-six months);
 - c. Preschool (three years to kindergarten enrollment; and

- d. School age (kindergarten enrollment to age 14).
- 3. Time categories of child care referrals:
 - a. Full-time;
 - b. Part-time.
- 4. Number of children needing:
 - a. Before and/or after school;
 - b. Summer only child care;
 - c. Other child care (evening, overnight, weekends, drop-in, etc.).
- 5. Reasons for requesting referrals:
 - a. Employed;
 - b. Looking for work;
 - c. In school/training;
 - d. Other parental needs;
 - e. Child protective services (CPS)/respite referral;
 - f. Alternative/back-up care;
 - g. Mildly ill child;
 - h. Enrichment and/or development.
- 6. Number of:
 - a. Licensed child care centers;
 - b. Licensed family day care homes;
 - c. License-exempt child care centers

Other license-exempt providers (optional). Penalties for delinquent reporting are specified

Child Development Data Collection

(5 CCR 18070)

The contractor shall submit the following:

Monthly Child Care Population Information (CDD-801A) submitted electronically in accordance with instructions from the CDE.

If the contractor is selected and notified by mail to submit sample data, they must complete the Child Development Data Collection Sample Report (CDD-801B) electronically in accordance with the instructions from the CDE.

Contractors shall submit complete, accurate reports to the CDE by the date specified, and in the format specified in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required date, shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Other Report Data

(5 CCR 18070)

Contractors shall submit statistical, cost and program data as requested by the CDE in order for the CDE to prepare various legislatively mandated reports, to meet state and federal reporting requirements and for the effective administration of early learning and care programs.

Contractors submitting data to the CDE will include a certification that the data are correct and complete, and the signature of the person authorized by the contractor to certify the data. The signature may be electronic as specified by the CDE.

Contractors shall submit complete, accurate data to the CDE by the date specified, and as specified, in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required due date shall be considered delinquent. Penalties for delinquent reporting are specified.

Building a Better Early Care and Education System (BBECES)

(Applies to all contract types that provide care through family child care homes and/or through individual licensed-exempt providers)

(EC 8430-8432; Civil Code 1798.17; 42 US 9858c(2)(D) and (U); 45 CFR 98.16(aa), 98.33 and 98.42)

“Family childcare provider” or “provider” for purposes of implementation of Section VI(M) of these Funding Terms and Conditions means a childcare provider who participates in a state-funded early care and education program and is either of the following:

(A) An individual who operates a family daycare home, as defined in Section 1596.78 of the Health and Safety Code, and who is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(B) An individual who provides early care and education in their own home or in the home of the child receiving care and is exempt from licensing requirements pursuant to Section 1596.792 of the Health and Safety Code. *EC 8431 (a)(1)*

1) Submission and Disclosure of Child Care Provider Information

Contractors are required to collect and submit to the CDE, or its designee, as required by law, the following information for all licensed family child care home providers and individual licensed-exempt child care providers providing subsidized child care services and in conformance with the format, timeline and manner prescribed by the CDE, and in accordance with the BBECES:

- a) Name of child care provider (excluding volunteers and assistants)
- b) Mailing address of provider
- c) Home address of provider
- d) County of provider home address
- e) Email Address of provider, if known
- f) Cell, Work and Home phone numbers of provider, if known
- g) Whether provider Is licensed or not, and, if licensed, the license number
- h) The date subsidized care began
- i) The date subsidized care ended, if applicable
- j) Agency, contractor, subcontractor, or political subdivision administering the program

The information collected from family child care providers, as defined, may be re-disclosed by the CDE to provider organizations as defined in law as well as other state agencies as permitted by law for purposes of organizing, representing, and assisting family child care providers, as well as for purposes of emergency response planning and monitoring health and safety requirements to comply with Child Care and Development Block Grant requirements.

Contractors shall not delay or obstruct the collection of the provider information.

Contractors must notify family child care providers in writing of the collection and use of the information in order to comply with applicable laws, including the Information Practices Act.

Upon learning that a family child care provider will no longer receive a subsidized child care payment, contractors shall, as required by law and in conformance with the format, timeline and manner prescribed by the CDE, inform the CDE of the date the provider ended subsidized care.

2) Notices and Communications

Contractors are required to distribute to providers and/or post on their website all notices and communications as may be required by the BBECES or any applicable Memorandum of Understanding.

3) Reimbursement

Contractors are required to deduct from reimbursement any dues as requested by a certified provider organization. The deductions may include membership dues, initiation fees, general assessments, and payment of any other membership benefit program sponsored by the certified provider organization.

If the deductions from a provider's subsidy payments required action by more than one contractor, the certified provider organization shall establish reasonable procedures to ensure that the total amount deducted does not exceed the total dues and other voluntary deductions owned by that provider.

A contractor must rely on a certification from the certified provider organization requesting a deduction that it has and will maintain an authorization, signed by the individual provider from whose subsidy the deduction is to be made. A certified provider organization that certifies that it has and will maintain authorization shall not be required to provide a copy of an individual authorization to the entity unless a dispute arises about the existence or terms of the authorizations.

4) Memorandum of Understanding

Must adhere to any requirements that bind contractors in any applicable memorandum of understanding

5) Interference

Contractors are prohibited from interfering with the right of providers to collectively bargain and further prohibited from deterring or discouraging providers to join the union

6) Training Partnership

Contractors must notify the certified provider organization of orientations, preservice meetings, meetings, and trainings, either in-person or online, and allow representatives from the certified provider organization to present at the orientations and training as permitted under the BBECES or as provided for in any applicable memorandum of understanding.

Annual Financial and Compliance Audits

(5 CCR 18071 and EC 8224)

Contractors shall submit to the CDE, Audits and Investigations Division (A&I), an acceptable annual financial and compliance audit as follows:

1. The audits for school districts and county offices of education for the contract period shall be submitted to the State Controller and the CDE by December 15, in

accordance with EC 41020 and extensions shall only be granted in accordance with EC 41020.2.

2. The audit reports for community colleges are due to CDE by December 31.
3. All other contractors shall submit their annual audit to CDE by the 15th day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by CDE. The audit report must meet the requirements of the Audit Guide, including the requirements for early learning and care specific supplementary information. If a contractor receives less than twenty-five thousand dollars (\$25,000) per year from any state agency, the audit shall be conducted and submitted biennially, unless the CDE deems there is evidence of fraud or other violation of state law in connection with the contract. If the contract is terminated during the contract period, then the audit required under this paragraph shall cover the period from the beginning of the contract through the date of termination.

All audits shall be performed by one of the following:

1. A Certified Public Accountant who possesses a valid license to practice within the State of California;
2. A Public Accountant licensed on or before December 31, 1970 and currently certified and licensed by the State of California;
3. A member of the CDE's staff of auditors.
4. Public contractors may have their audits prepared by in-house auditors or internal audit staff that performs auditing functions and meets the tests of independence found in the Government Auditing Standards, issued by the Comptroller General of the United States.

Any contractor who subcontracts their early learning and care services to another entity (see "Subcontract for early learning and care services" in Definitions) is required to submit an audit report that complies with the *Audit Guide* for their subcontractor(s) as well as for their agency.

Private agencies (including proprietary entities) that expend seven hundred fifty thousand dollars (\$750,000) or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with the *Uniform Guidance* and the *Audit Guide*.

Governmental and other public agencies (excluding school districts, county offices of education and community college districts) must comply with the requirements of the *Uniform Guidance* and the *Audit Guide*. All other agencies (excluding school districts, county offices of education and community colleges) must submit a contractor audit performed in accordance with the *Audit Guide*.

The audits for Alternative Payment Programs (APs) shall include, but not be limited to, a

sampling of the evidence of fees charged to, and paid by, families of non-subsidized children, the daily enrollment of subsidized children, the number of days of service provided to subsidized children, the assessment and collection of parent fees, and the availability of support services to subsidized children and their families as needed pursuant to the terms of the contract.

Review of Audit by the CDE Audits and Investigations Division (A&I)

(5 CCR 18072)

The A&I shall conduct a review of the audit to determine whether the audit is acceptable and to determine the contractor's net reimbursable program costs.

The contractor may appeal the A&I findings according to the procedures specified, if the amount of the demand for remittance meets or exceeds the threshold specified in *EC* 8402(a)(3).

Delinquent Audits and One-Time-Only Extensions

(5 CCR 18073)

If an audit is not received on or before the required due date and an extension has not been granted, the audit shall be considered delinquent and all apportionments shall be withheld.

Except for contractors on conditional status, the A&I may annually grant a contractor a one-time-only, thirty (30) calendar day extension of the audit due date provided the inability of the contractor to submit the audit by the due date was beyond the fault and control of the contractor.

Contractors shall be liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

California State Auditor

(GC 8546.7)

Contractors shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this contract.

Budget and Calendar

Contractors shall submit a revised calendar to the ELCD and CDNFS whenever there are changes to the most recent version submitted. Contractors shall submit revised budgets as requested.

Reserve Accounts

All contractors are encouraged to develop and maintain a reserve within the Child Development Fund. This reserve is derived from earned, but unexpended contract funds.

Reserve account funds are state funds the contractor holds in reserve as deferred revenue until they are properly spent or returned to the CDE.

C2AP, C3AP, CAPP, CMAP, CFCC contractors may retain a reserve balance of up to two percent (2%) of the maximum allowable administration and support costs for the aggregate sum of all alternative payment contracts or one thousand dollars (\$1,000), whichever is greater. *EC 8450 (d)*

CCTR, CHAN, and CMIG contractors may retain a reserve balance equal to five percent (5%) of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. *EC 8450*

CSPP contractors may retain a reserve balance in a center-based reserve account, separate from reserve funds maintained in a resource and referral reserve account or alternative payment reserve account. The reserve account may be equal to fifteen percent (15%) of the sum of the maximum reimbursable amounts of CSPP, CCTR, CMIG, CHAN contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. Of the fifteen percent (15%), ten percent (10%) shall be solely used for the purposes of professional development for CSPP instructional staff. *EC 8450 (b)(2)(B)*

CRRP contractors may retain a reserve balance not to exceed three percent (3%) of the contract maximum reimbursable amount. This reserve is derived from unexpended contract funds. *EC 8450 (c)*

Reserve Account Requirements

The following criteria must be followed when establishing and using any reserve account:

1. Each agency wishing to establish a reserve shall submit a letter of intent no later than July 20 following the close of the fiscal year for which the reserve will be established. The letter of intent must be on the form provided by CDNFS and signed by the executive director (or authorized designee for public agencies).
2. Each reserve must be maintained in an interest-bearing account and the amount of interest earned will be included in the reserve balance.
3. Reserve monies can only be used for expenses that are allowable reimbursable expenses. Transfers from one reserve account type (or category) to another are not allowable. However, transfers to a current-year contract in the same reserve category are allowable and shall be reported as restricted program income on that contract's attendance and fiscal report.
4. Reserve monies are generated from current year contracts, therefore, the transferable amount generated during the contract period will not be available until July 1 of the subsequent fiscal year.
5. Transfers to the reserve will be authorized by CDNFS only once per fiscal year. Upon receipt of the June final report, preliminary reserve amounts will be calculated by

CDNFS and reported to the contractor. If the contractor is an LEA, this may be the official notification provided there are no further amendments. For agencies required to submit an audit to the CDE, the amount will not be final until the audit is closed by the A&I and there are no outstanding billings.

6. Participating agencies must submit a Reserve Account Activity Report with a copy of their supporting General Ledger for each reserve account category type along with their June attendance and fiscal report due July 20. Reports not received in CDNFS by July 20 shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.
7. Upon closure of a reserve account or termination of early learning and care contracts, all monies in any reserve account shall be returned to the CDE.

VII. TECHNICAL ASSISTANCE

(EC 8406.6)

Technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within sixty (60) days of receipt of the request.

VIII. CONTRACT CLASSIFICATIONS

A. Clear Contract

(EC 8406.6)

This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (B) nor a conditional contract, as described in paragraph (C).

Provisional Contract

(EC 8406.6 and 5 CCR 18068)

This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the CDE and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. Contractors on provisional status shall submit monthly fiscal and attendance reports to CDNFS. The contract status shall be reviewed annually.

Conditional Contract

(EC 8406.6, 5 CCR 18001, 18068, and 18306)

This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance.

A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the CDE for all early learning and care program purposes and is subject to any restrictions deemed reasonable to secure compliance.

The conditional contract shall include Conditional Status Addendum that contains a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the agency for clear contract status, and a technical assistance plan.

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in *EC* 8406.7 or 8407, in accordance with Section 8402.

Contractors receiving conditional contracts (stamped on the face sheet of the contract) shall be on conditional status until the CDE issues a contract rider formally clearing the contract.

While on conditional status, the contractor shall submit monthly fiscal and attendance reports to CDNFS. The first monthly report shall include a current inventory of equipment purchased in whole or in part with contract funds.

Contractors on “conditional” status are not eligible to apply for new or additional funds.

Contractors on “conditional” status shall receive technical assistance from the CDE.

IX. APPEALS, TERMINATIONS, AND NON-RENEWALS

(*EC* 8400-8409 and 5 *CCR* 18301, 18302)

A. Resolution of Contract Administration Disputes

(*EC* 8401.5 and 5 *CCR* 18301)

The procedure specified in this Section shall be used to resolve disputes between contractors and the CDE that may arise regarding the interpretation and application of any term or condition of a contract, including, but not limited to, requests for waivers, approval of subcontracts or expenditures requiring approval, requests for reimbursement rate adjustments, or reductions in the total amount of contract reimbursement that are not appealable.

The contractor shall attempt to resolve contract disputes at the lowest staff level within the CDE.

If the dispute is not resolved at the lowest staff level, the contractor may appeal the decision by submitting a written description of the issues and the basis for the dispute to the Regional Administrator of the CDE having jurisdiction over the contractor's service delivery area. The Regional Administrator shall make a determination and shall send a written notification of the decision to the contractor, together with the reasons for the decision, within thirty (30) calendar days of the receipt of the appeal by the Regional

Administrator.

The contractor may appeal the decision of the Regional Administrator to the Associate Director of the ELCD by submitting a written description of the issues in dispute, and a copy of the Regional Administrator's decision. The Associate Director of the ELCD shall send notification of the decision to the contractor and shall specify the reason(s) for the decision within thirty (30) calendar days of the receipt of the appeal by the Associate Director. The decision of the Associate Director of the ELCD shall be the final administrative action afforded the contractor.

B. Independent Appeal Procedures

(EC 8402 and 5 CCR 18301)

Pursuant to the requirements of EC 8400 through 8409, an independent appeal procedure shall be available to any contractor whose contract is terminated, or where the denial of an agency's contracted payment or a demand for remittance of an overpayment is more than twenty-five thousand dollars (\$25,000) or four percent (4%) of a local contracting agency's annual contract, whichever is less.

Such appeals shall be heard by independent hearing officers in accordance with procedures established by the Office of Administrative Hearings (OAH) as specified in California *Code of Regulations, Title 1*, sections 1121 through 1126,

C. Immediate Termination

(EC 8406.7, 8406.9 and 8408)

1. A contracting agency that evidences any of the following acts or omissions may have its contract immediately terminated if there is documented evidence of the acts and omissions, and upon review and recommendation of the general counsel of the CDE for any of the following reasons:
 - a. Fraud, or conspiracy to defraud.
 - b. Misuse or misappropriation of state or federal funds, including a violation of EC 8406.9.
 - c. Embezzlement.
 - d. Threats of bodily or other harm to a state official.
 - e. Bribery or attempted bribery of a state official.
 - f. Unsafe or unhealthy physical environment or facility.
 - g. Substantiated abuse or molestation of children.
 - h. Failure to report suspected child abuse or molestation.

- i. Theft of supplies, equipment or food.
- j. Cessation of operations without the permission of the CDE, or acts or omissions evidencing abandonment of the contract or contracts.
- k. C2AP, C3AP, CAPP, CMAP, and CFCC contractors that fail to fully reimburse a significant number of approved child care providers as determined by the CDE, within fifteen (15) calendar days after the date set in the plan for timely payments to child care providers, adopted by the contracting agency, pursuant to 5 CCR 18226, unless the failure is attributable to a delay in receiving apportionments from the state.
- l. Failure to pay salaries owed to employees, or pay federal payroll tax, for more than fifteen (15) days after the employee salaries, or federal payroll taxes were due, unless the failure is attributable to a delay in receiving apportionments from the state.
- m. Contractors that have in place or who place a person in a position of fiscal responsibility or control who have been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract terminated if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the CDE.
For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal early learning and care funds received pursuant to this section whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

If the agency provides evidence to the CDE, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the CDE shall withdraw the termination action.

2. A contractor whose contract is immediately terminated retains appeal rights.

Contractors that are the subject of an immediate termination shall not continue to operate during the appeal of termination.

Non-Immediate Termination

(EC 8406.7, 8406.9, 8407 and 5 CCR 18301)

1. In addition to the grounds set forth above in *Immediate Termination*, which also may be the basis for a non-immediate termination, termination of a contract during the contract period may occur when:
 - a. A contractor fails to correct items of fiscal or programmatic noncompliance

within six (6) months of receiving a conditional contract which includes a Conditional Status Addendum stating the specific items of noncompliance and the corrective actions necessary to come into compliance; or

- b. A contractor fails or refuses to make available for examination or copying by an authorized employee of the CDE any records or documents that the contractor is required to retain, upon a request by that employee to examine or copy such records or documents; or
 - c. A contractor refuses to permit an authorized employee of the CDE to enter a facility operated by the contractor during the days and/or hours of operation on file with the CDE, for the purpose of reviewing administrative operations of the contractor or for observing early learning and care services provided by the contractor.
2. Any action by the CDE to terminate a contract, other than to terminate a contract on an immediate basis or to take action to deny the contracting agency more than four percent (4%) or twenty-five thousand dollars (\$25,000), (whichever is less), of an agency's contract or to demand remittance of an overpayment of an agency's contract of more than the same amount, as stated in *EC* 8402(a)(1) through (3), shall be preceded by a ninety (90) day notice of the action, stating the specific reasons for the action and describing the contractor's appeal rights. Except for cases of immediate termination, contractors that are terminated shall be allowed to continue to operate during the appeal of termination.

Appeals Procedures For Independent Appeals

(5 *CCR* 18301 and *GC* 11500)

3. Notice of Defense/Appeal Petition

The contractor shall be served notice of the action as set forth in *EC* 8406 and *GC* 1500 et seq. The contractor may contest the noticed action as set forth in *GC* 11506 by filing a notice of defense/appeal petition with the CDE within fifteen (15) days after service of the action, and may request a hearing before the OAH. The notice of defense/appeal petition shall include:

- a. A clear, concise statement of the action being appealed; and
- b. The name, address and telephone number of the contractor's authorized representative for the proceeding.

In addition, the contractor may also, as part of the Notice of defense/appeal petition:

- a. Object to the action upon the grounds that it does not state acts or omissions upon which the contractor may proceed;
- b. Object to the form of the action on the grounds it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;

- c. Admit any of the charges in the action in whole or in part;
 - d. Object to the action upon the grounds that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
2. Failure To Submit A Timely Notice Of Defense Or Appeal Petition Or Proceed With Appeal

If a contractor is served a notice of action and fails to properly file a notice of defense/appeal petition, or files a notice of defense/appeal petition, but fails to appear at the appeal hearing, action may be taken by the CDE (or by the Administrative Law Judge for failure to appear at the hearing) based upon the contractor's express admissions or other evidence and affidavits without any notice to the contractor. Notwithstanding the default, the CDE or the OAH may, before a proposed decision is issued, grant an appeal hearing on reasonable notice to the parties. If the CDE issues a default decision against the contractor, it must serve notice of that decision on the contractor and the contractor has seven (7) days after service to request that the decision be vacated stating the grounds relied on. The CDE, in its discretion, may vacate the decision and grant a hearing on a showing of good cause.

3. Hearing

If the contractor submits a timely request for a hearing, the CDE shall have ten (10) calendar days to request that the OAH schedule a hearing and transmit the following to the OAH:

- a. The notice of defense/appeal petition submitted to the CDE by the contractor;
- b. The original notice of action sent to the contractor; and
- c. The name, address and telephone number of the CDE authorized representative for the proceeding.

The OAH shall schedule a hearing on the appeal filed by a contractor to commence no later than thirty (30) calendar days following the receipt of the petition by the CDE, but at least ten (10) calendar days' written notice will be given of the time and place of the hearing. An OAH hearing officer will hear evidence submitted by the CDE and the contractor during the hearing. The hearing will be recorded. The hearing officer may continue hearings, if deemed necessary.

4. The Decision

The hearing officer shall issue a final decision, in writing, within thirty (30) calendar days after the submission of the case. The decision shall be sent by registered mail or personally served on the representatives of the parties by OAH. The decision shall be the final administrative action afforded the contractor.

5. Settlement between the Parties

The CDE and contractor may, at any time before or after issuance of a notice of action, agree to a settlement of the actions. The settlement terms, as agreed to by both parties, are to be incorporated into a stipulation and waiver decision that is approved by the CDE agency head or his or her designee and issued by the CDE. The decision shall be the final administrative action afforded the contractor.

6. Request for Additional Written Materials on File at CDE

Contractors may request, in writing, any public documents on which the CDE intends to rely from the CDE files at a cost of fifteen cents (\$.15) cents per page, payable in advance. The CDE will mail the material requested not later than ten (10) days from the receipt of the request.

Contractor's Responsibility After Notice of Termination/Nonrenewal

(5 CCR 18302 and 18054)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

The CDE shall only be obligated to compensate the contractor for net reimbursable program costs or earnings, whichever is less, in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The CDE shall offset any monies the contractor owes against any monies CDE owes under this contract.

X. CONTRACT STATUS CHANGE PROCEDURES

(EC 8401.5 and 8406.6)

A. Administrative Review of Changes in Contract Status

(5 CCR 18303)

Contract performance shall be reviewed at least annually by CDE staff who shall determine by April 1 of each year whether to offer continued funding on a clear contract, continued funding on a conditional basis or to make no offer of continued funding.

If the staff recommends conditional status or no offer of continued funding, the contractor

shall be notified in writing of the reasons for the proposed change in contract status by April 7. The notice of proposed action shall be sufficiently specific to allow the contractor to respond to the factual basis for the proposed action.

If the contractor disagrees with the proposed action, the contractor's response shall be received by the CDE within ten (10) calendar days of receipt of the notice of proposed action. The contractor's response shall include any written materials in support of its position and, if the contractor intends to make an oral presentation, the response shall so specify.

If the action is being appealed, the staff recommendation and the contractor's response shall be reviewed by an administrative review panel convened by the Director of the ELCD within seven (7) calendar days of receipt of the contractor's response. The review panel will consist of representatives of ELCD management, CDNFS, CDE's Legal Office, A&I, Contracts Office, and a representative of an early learning and care service provider familiar with the type(s) of program(s) operated by the contractor.

Upon review of the written submissions, the panel will do one of the following:

1. Issue a final decision upholding or modifying the proposed change in status if no oral presentation has been requested;
2. Schedule a time and place for an oral presentation by the contractor; or
3. Issue a final decision to not change the contract status.

If an oral presentation has been requested, the contractor will be notified by telephone of the time and place of the presentation. The oral presentation will be scheduled no later than fourteen (14) calendar days from receipt of the contractor's response.

At the oral presentation, the contractor or the contractor's representative will have an opportunity to explain any material submitted in its response. While the contractor may present any information or arguments that are relevant to the proposed action, the review panel may set reasonable limits on the scope of the presentation.

Within seven (7) calendar days after the oral presentation, the review panel shall issue and mail to the contractor a decision upholding, reversing or modifying the proposed change in contract status. The decision of the review panel shall be the final action of the CDE with regard to that contract.

Conditional Status Imposed During the Contract Period

(5 CCR 18304)

If the contractor demonstrates fiscal or programmatic noncompliance during the contract period, based on such information as an annual audit report, a FPM/CMR, or a change in licensing status, the CDE may place the contract on conditional status for the remainder of the contract period.

The contractor shall receive notice and may request an administrative review of the

proposed action as required by 5 CCR 18303, in the event such a change in contract status is recommended by staff of the CDE.

If the contract is placed on conditional status during the last ninety (90) days of the contract period and the contractor is offered continued funding, the contract for the subsequent contract period will also be on conditional status.

Conditional Status Addendum

(EC 8406.7, 8406.9, 5 CCR 18305)

If the contractor is placed on conditional status during the contract period a Conditional Status Addendum will be issued by the CDE and the Conditional Status Addendum shall be considered a part of the annual child development contract and binding on the contractor.

A Conditional Status Addendum shall contain a bill of particulars as specified in EC 8406.6, which shall detail the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the contractor for clear contract status and a technical assistance plan. The Addendum shall further include all the following:

1. The specific item(s) of noncompliance which the contractor must correct;
2. The specific corrective action(s) which must be taken;
3. The time period within which the contractor must complete the corrections; and
4. Notice that failure to demonstrate substantive progress within six (6) months shall constitute a breach of contract and may result in termination of the contract either through an immediate or ninety (90) day noticed action, or no offer of continued funding.

Duration of Conditional Contract Status

(EC 8406.6(a)(3) and 5 CCR 18307)

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of being on conditional status shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in EC 8406.7 or 8407 in accordance with EC 8402. Regardless of whether the contractor complies with the terms of the Conditional Status Addendum, the contractor's contract may not be renewed the following year pursuant to the procedures set forth in the FT&C section *Appeals and Termination*.

A contractor with a repayment plan shall remain on conditional contract status and not receive any apportionments until full repayment is made.

A contractor on conditional contract status that is not on a repayment plan shall remain in that status until:

1. The CDE issues written notice to the contractor that the conditional status has been cleared;
2. The contractor is issued a clear contract; or
3. The contract terminates according to its terms.

A contractor may request written verification from the CDE that some of the deficiencies have been corrected even if the contractor will not be removed from conditional contract status.

Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding

(5 CCR 18302)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. CFCC contractors and Alternative Payment programs shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of July 1, 2021, is by and between the County of Alameda, hereinafter referred to as the “County”, and Bananas, Inc., hereinafter referred to as the “Contractor”.

WITNESSETH

Whereas, County desires to obtain California Alternative Payment Program, Child Development Programs, which are more fully described in Exhibit A hereto (“Child Development Programs”); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Child Development Programs, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Attachment A	Client Grievance Policy
Attachment B	Language Access Requirements for Contractors
Attachment C	Confidentiality – Contract Provisions
Exhibit B	Payment Terms
Exhibit B-1	Program Budget
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements
Exhibit F	Audit Requirements
Exhibit G	HIPAA Business Associate Agreement (Intentionally Omitted)
Exhibit H	Additional Contract Provisions - Federal Provisions
Exhibit H-1	Certification Regarding Lobbying
Exhibit I	California Department of Education Funding Terms and Conditions

The term of this Agreement shall be from July 1, 2021 through June 30, 2022.

The compensation payable to Contractor hereunder shall not exceed nine hundred and ninety-two thousand, seven hundred and fifty-seven dollars (\$992,757) for the term of this Agreement.

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

COUNTY OF ALAMEDA

CONTRACTOR

By: _____
Signature

By:  _____
Signature

Name: Keith Carson
(Printed)

Name: Kim Johnson
(Printed)

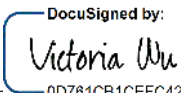
Title: President of the Board of Supervisors

Title: Executive Director

Date: _____

Date: 9/20/2021

Approved as to Form:

By:  _____
County Counsel Signature

Date: 9/20/2021

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two weeks' notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of

federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
- b. Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
- c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended,

declared ineligible, or voluntarily excluded from participation in such transaction.

8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. **Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. **Telex or facsimile transmission:** When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day. Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Office of Policy
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Jennifer Caban
Email: Jennifer.Caban@acgov.org

Contracts Office
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Michelle Manor
Email: michelle.manor@acgov.org

To Contractor: Bananas, Inc.
5232 Claremont Avenue
Oakland, CA 94618
Attn: Kim Johnson
Email: kym@bananasbunch.org

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment

practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

- d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Child Development Programs shall not exceed \$992,757 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.
- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said

requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).

- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

- 22. FIRST SOURCE PROGRAM: For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.
- 24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.
- 26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

27. **ADVERTISING OR PUBLICITY:** Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. **ASSURANCE OF PERFORMANCE:** If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. **SUBCONTRACTING/ASSIGNMENT:** Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.
32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be

affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software (“Contractor Products”) provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, “Losses”) arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County’s prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney’s fees and costs) incurred in relationship with County’s defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. **OTHER AGENCIES:** Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. **EXTENSION:** This agreement may be extended for an additional two years by mutual agreement of the County and the Contractor.
36. **SIGNATORY:** By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Bananas, Inc.
Type of Services	Resource and Referral Contractor under CAPP-1000

I. OVERVIEW

Program Name: California Alternative Payment Program – Child Development Programs

Contractor shall provide quality Child Development Programs to a target population of families who meet Eligibility and Need Criteria as specified in the CDSS Program Requirements for Alternative Payment Programs, available on the California Department of Social Services (CDSS) website.

II. PROJECT PLAN

A. Program Goals:

Contractor shall accomplish the goal of providing subsidies under the California Child Care Alternative Payment Program for child care in a location of the parents' choice while the parent or parents are working, seeking employment, in vocational training, seeking permanent housing, and/or are incapacitated.

B. Target Population:

Contractor shall provide services to the following populations:

1. First Priority for services through the program is given to children who are receiving child protective services through local County Welfare Department or identified by a medical, social service agency, or emergency shelter as abused, neglected, or exploited, or at risk of abuse, neglect, or exploitation.
2. Second Priority: All children and families who are not within the first priority for admission shall be admitted in accordance with family income, with the lowest per capita income admitted first. For purposes of determining the order of admission, public assistance grants are counted as income. If two or more families have comparable per capita income, the family that has been on the waiting list the longest shall be admitted first.

C. Program Requirements:

1. Service Criteria: The California Department of Social Services, Child Care and Development Programs, subsidizes child care services for eligible families through its Alternative Payment Program.

2. Alameda County is permitted to subcontract its Alternative Payment Program (AP) funding to local Child Care Resource and Referral (R&R) agencies and AP agencies currently contracting with the California Department of Social Services, Child Care and Development Programs.
3. Services will be provided in accordance with the California Department of Social Services, Child Care and Development Programs' Requirements for Alternative Payment Programs as posted on cde.ca.gov.
4. This subcontract with Contractor ensures Contractor's continuance of the County AP Program with the County.
5. Hours and Days of Operation: Monday through Thursday, from 9:30 a.m. to 4:30 p.m., and Friday 9:30 a.m. to 12:30 p.m.
6. Service Area: Contractor will serve eligible families residing in Northern Alameda County. Precise boundaries of the Contractor's service area will be determined by SSA Program staff and are subject to change, based on community needs, as determined by SSA.
7. Service Delivery Sites: 5232 Claremont Avenue, Oakland, CA 95618

D. Minimum Staffing Qualifications:

Contractor shall have and maintain current job descriptions on file with the Department for all personnel whose salaries, wages, and benefits are reimbursable in whole or in part under this agreement. Job descriptions shall specify the minimum qualifications for services to be performed and shall meet the requirements of the Department. Contractor shall submit revised job descriptions meeting the approval of the Department prior to implementing any changes or employing persons who do not meet the minimum qualifications on file with the Department.

E. CDSS Evaluation and Performance Requirements

Contractor will comply with all of the California Department of Social Services, Child Care and Development Programs Funding Terms and Conditions for the AP Program including family certifications, parent counseling on child care choices, administering provider contracts and payments, ensuring provider eligibility for payment, collection and accounting of parenting fees, and ensuring confidentiality of family and provider files.

F. Monitoring, Records, and Data Collection Monitoring:

1. SSA Contracts Office Liaison or a member of the SSA, Government and Community Relations (GCR) team may at any time, upon one week's notice,

monitor and conduct an evaluation of operations, which may include site visits and reviews of Contractor's financial records and other records and materials to determine progress in the achievement of program goals and objectives and service criteria and requirements as specified within this Agreement.

- a. A final report will be prepared by the Contracts Office Liaison to provide feedback on areas of compliance and/or non-compliance. Contractor shall submit a written corrective action plan to the Contracts Office Liaison in response to all findings of non-compliance.
 - b. A follow-up monitoring visit will be conducted to ensure that all corrective action measures have been completed and Contractor is in compliance with contract requirements.
2. Should subcontractors be utilized, the contractor will be responsible for monitoring all subcontractors under this Agreement.

G. Records:

1. Contractor will prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided to eligible SSA clients, and to maintain and preserve said records for at least three years from the date of final payment under the potential Agreement.
2. Pursuant to California Government Code Section 8546.7, all records documents, conditions and activities of Contractor and its subcontractors, related to the services provided, shall be subject to the examinations and audit of the California State Auditor and any other duly authorized local, state and/or federal agencies. Contractor will further agree to allow interviews of any of its employees who might reasonably have information related to such records by County and any authorized local, state and/or federal agencies.
3. Contractor will comply with fiscal or program monitoring/assessment recommendations by the SSA Contracts Office Liaison and execute all written corrective action plans generated thereby.
4. Contractor will maintain individual client case files and make these files available for inspection by SSA staff.

H. Data Collection:

1. On a monthly basis, the Contractor will provide County with:

- a. Data compiled to complete the CDD 801A reports for the County and submit both reports to the County no later than the 10th of each month.
 - b. A child care monthly report which includes data elements established by SSA GCR staff no later than the 15th of each month.
2. Contractor will maintain complete records on numbers of children serviced in child care centers, family child care homes or licensed-exempt care provided to a client, and the amounts expended for such care.
3. Contractor will advise County of any suspected improper or potentially fraudulent use of CAPP funds, any suspected overpayment made with CAPP Child Care funds, or misinformation provided by a CAPP participant with regard to child care.
4. Contractor will provide additional data reports as needed and requested by County.

I. Contractor Responsibilities – Client Grievance Policy

SSA Contractors are required to have a Client Grievance Policy in place and to disclose the policy to all SSA clients during the Client Intake Process. As evidence that a Client Grievance Policy is in place and all SSA clients provided services by the Contractor have been made aware of its existence, Contractor must obtain the signature of each SSA client on a copy of the policy acknowledging they were made aware of it, understand it, and received a copy of the signed document. Contractor must also place a copy of the signed document in each client's case file and make the files available for review by County staff upon request. See Attachment A for a sample SSA Grievance Policy. An MS Word file of the SSA Grievance Policy Template is available through your SSA Contract Liaison.

J. Language Access Requirement for Contractors

Attachment B provides more information regarding Limited English Proficient (LEP) client language access requirements for contractors with Alameda County.

III. Performance Measures

SSA has adopted Performance Metrics to strengthen and increase data collection and improve contract performance. This framework establishes performance metrics that will allow SSA to track the positive impact and benefits of services for the target population by focusing on three critical questions: How much work was done? How well was it done? and Is anyone better off?

The framework establishes a partnership between the service provider and SSA. The performance metrics and deliverables are outlined below including measures added to the "Data Development Agenda." The Contractor will continue to actively work with SSA to further develop and refine performance measures and data elements as they relate to child care in the

County of Alameda for the purposes of data development and the Agency's Child Care Monthly Report.

Performance Measures			Frequency	How to Calculate	Contractor Data Source
How Much Did We Do?	# of County CAPP child care subsidies		Monthly	Count of County CAPP child care subsidies administered	○ Monthly Report (see data collection under Section V and VI)
	# of surveys* issued		Annual	Count of County CAPP surveys provided to participants	○ Annual Report
How Well Was It Done?	% of County CAPP participants reporting satisfaction with Contractor services		Annual	$\frac{\text{\# of participants reporting satisfaction on survey}}{\text{\# of participants completed survey}}$	○ Annual Report
	% of surveys received		Annual	$\frac{\text{\# of completed surveys}}{\text{\# of surveys issued}}$	○ Annual Report
Is Anyone Better Off?	% of County CAPP families reporting child care made it easier to maintain employment / education goals		Annual	$\frac{\text{\# of families reporting County CAPP child care subsidies made it easier to maintain employment / education goals}}{\text{\# of families receiving child care subsidies}}$	○ Annual Report
Definitions	*Survey – Contractor will annually conduct a family survey of their choice no later than the end of any given fiscal year.				

DELIVERABLE:

Annual Survey – Contractor will conduct an annual survey of County CAPP clients utilizing the following questions:

Category: How Well Was It Done?

Question: “How satisfied were you with the overall quality of services provided?”

Contractor will use the following Likert Scale:

- Very Unsatisfied
- Unsatisfied
- Neutral
- Satisfied
- Very Satisfied

Category: Is Anyone Better Off?

Question: “My child care subsidy has made it easier to (Check all that apply):”

- Seek employment
- Accept employment
- Keep employment
- Find better employment
- Enroll / Complete school or vocational training
- Other – Please Specify *[open ended]*

DELIVERABLE:

Contractor will provide an annual report with data elements as identified in the Performance Measures chart above. SSA GCR staff will be available to guide format.

Below are additional performance measures on the **Data Development Agenda** which will be developed and incorporated, in partnership with the Contractor and SSA GCR staff, by the end of Fiscal Year 2021 - 2022.

Measures on the Data Development Agenda

Question Type	Performance Measure
How Much Did We Do?	# of referrals received (by Contractor)
How Much Did We Do?	# of referrals issued (from SSA)
How Well Was It Done?	% of subsidies used/started

IV. KEY PERSONNEL

- A. Contractor project team will consist of the following Key Personnel and subcontractors, if applicable, during the contract term:

Position Title	Employee
Director - Client Services and Public Policy	Eric Peterson
Quality Assurance Manager	Ingrid Littlejohn
Quality Assurance Specialists	Susan Retherford, Davida Pugh, Katherine DeLoach, Stephanie Wades
Provider Payment Manager	Marisol Rodriguez
Provider Payment Lead	Maria Hernandez
Provider Payment Analysts	Mulumbet Spence, Shannon Cunningham, Elise Wong, Man Lo
Client Services Manager	Deana Williams
Client Services Counselor	Michelle Luong, Karina Lupian-Kelly

- B. Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

Attachment A

CLIENT GRIEVANCE POLICY

WHAT TO DO IF YOU HAVE A GRIEVANCE

If you have a complaint about the performance of (_____)

INSERT NAME OF CONTRACTOR

staff, and/or you feel you have been treated unfairly, the following are the steps you should take to have your complaint heard:

1. Talk privately to the person with whom you have the problem. We encourage you to try first to work out the problem in an open and informal way.
2. If you do not feel comfortable talking with the person with whom you have the problem, or you do talk with them and are not satisfied with the outcome, you may make an appointment to speak with or submit a written complaint (which may be in your own language) to (_____)'s Executive Director or designee.

INSERT NAME OF CONTRACTOR

If you have good cause to use another medium to communicate your complaint, such as a tape recording, you may do so. The Executive Director or designee shall meet with you or provide you with a written response to your written complaint within ten (10) working days of the meeting or receipt of your written complaint.

3. Or, if you prefer, you may bypass the above steps and immediately contact the funding agency below:

Alameda County Social Services Agency

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Email: ContractsCustomer@acgov.org

I certify that the information in this document was explained to my satisfaction in my own language and a copy of this form was given to me. I understand that by signing below, I hereby

authorize (_____) to release all my information

INSERT NAME OF THE CONTRACTOR

pertaining to my grievance to the Alameda County Social Services Agency.

Client's Name (printed)

Client's Signature

Date

(Revised 9/6/19)

ANEXO A

POLITICA PARA QUEJAS DE CLIENTES

QUÉ HACER SI USTED TIENE UNA QUEJA

Si tiene una queja acerca del desempeño del personal de (_____) o siente que se le ha tratado injustamente, tendrá que seguir los siguientes pasos para que su queja sea escuchada:

INSERTAR NOMBRE DEL CONTRATISTA

1. Hable en privado con la persona con quien tiene el problema. Le recomendamos que trate de solucionar el problema de una manera abierta e informal.
2. Si no se siente cómodo hablando con la persona con quien tiene el problema, o habla con esa persona y no está satisfecho/a con los resultados, puede hacer una cita para hablar con el director ejecutivo de (_____) o su representante, o enviarle la queja por escrito (la cual puede ser en su propio idioma). Si tiene una buena razón para utilizar otro medio de comunicar su queja, como una cinta de grabación, lo podrá hacer. El director ejecutivo o el representante se reunirá con usted o le proveerá una respuesta por escrito a su queja en el plazo de diez (10) días hábiles a partir de su cita o de haber recibido su queja por escrito.
3. O, si usted prefiere, puede evitar los pasos previos y contactar, inmediatamente, al siguiente organismo de financiación:

Agencia de Servicios Sociales del Condado de Alameda

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Correo electrónico: ContractsCustomer@acgov.org

Certifico que la información en este documento fue explicada para mi entera satisfacción y en mi propio idioma, y que se me dio una copia de este formulario. Comprendo que al firmar abajo autorizo a (_____) a que divulgue a la Agencia de Servicios

INSERTAR NOMBRE DEL CONTRATISTA

Sociales del Condado de Alameda toda mi información en relación con mi queja.

Nombre del cliente (en letra de imprenta)

Firma del cliente

Fecha

Attachment B
(Revised: 08/31/18)

LANGUAGE ACCESS REQUIREMENTS FOR CONTRACTORS

- I. The Alameda County Social Services Agency (SSA) has developed and adopted a Master Plan on Language Access to ensure its limited-English proficient (LEP) clients are provided with language accessible services and communications. Under the plan's provisions, community-based organizations (CBOs)/contractors whose services are contracted by the SSA:
 - A. Shall clearly disclose language access capabilities in relationship to the population served.
 - B. Shall have a plan in place—available for review upon request by County staff—for referring clients whose language needs the contractor can't accommodate.
 - C. Shall permit County staff to conduct ongoing monitoring of contracted services for compliance with provisions of the County's Language Access Plan.
 - D. Shall provide the County with a list and copies of all printed contract-related marketing/promotional/education-related materials (including languages materials are printed in).
- II. The SSA shall aid contracted CBOs in expanding language interpretation services through:
 - A. Providing CBOs/contractors with training, materials and instruction on how to effectively refer LEP clients to appropriate language resources.
 - B. Including service-marketing plan requirements in requests for proposals (RFPs) and contracts with CBOs that propose to offer language services (including appropriate outreach and notification of programs and services) to the LEP community and customers.
 - C. Developing a monitoring process of contracted services to ensure high-quality, language accessible services are always provided to LEP clients.
 - D. Providing CBOs/contractors with access to **Telephonic Interpreters**, a 24-hours-a-day, 365-days-a-year telephone language interpretation service in over 100+ languages — to supplement on-site language access services.

Attachment C

CONFIDENTIALITY–CONTRACT PROVISIONS

Confidentiality: Contractor agrees to maintain the confidentiality of any information which may be obtained with this work. Contractor shall comply with whatever special requirements in this regard as are described or referred herein as in Exhibit A to this Agreement. Confidential information is defined as all information disclosed to Contractor which relates to County's past, present and future activities, as well as activities under this Agreement. Contractor will hold all such information in trust and confidence. Upon cancellation or expiration of this Agreement, Contractor will return to County all written or descriptive matter which contains any such confidential information. County shall respect the confidentiality of information furnished by Contractor to County as specified in Exhibit A or as otherwise provided by law.

Pursuant to contract provisions to protect confidential client data file records against any and all unauthorized practices as stated heretofore, the Contractor will:

1. Assume responsibility for all personnel having access to the client list in regard to the confidential nature of client information. Safeguard measures are required to protect civil and criminal sanctions for non-compliance as contained in applicable statutes.
2. Restrict access to client information to those authorized employees and officials who require access in the performance of their delivery of services under this contract.
3. Work with the information under the control of authorized personnel in a manner to protect the confidentiality of client data file records and in such a manner to protect against unauthorized retrieval by computer, remote terminals, or any unauthorized means.
4. Use SSA confidential client information provided to contractor for the purposes covered under the terms of this agreement. Any and all disclosure of client data file records, transactions or transmissions will be made only with prior written consent and authorization from the SSA.
5. Return to SSA any and all client confidential information contained in hard copy or computer files/disc generated by this agreement as required for confidential destruction. All such files are the legal sole property of the SSA.
6. Ensure project compliance with written corrective action plans as may be mandated by the County.

EXHIBIT B**PAYMENT TERMS**

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Bananas, Inc.
Type of Services	Child Development Programs, CAPP-1000

In addition to all terms of payment described in the General Terms and Conditions and any relevant exhibits and attachments, the parties to this Agreement shall abide by the following terms of payment:

I. Budget

Contractor shall use all payments solely in support of the program budget, set forth as in **Exhibit B-1, Program Budget**.

II. Terms and Conditions of Payment**A. Contract Amount/Maximum:**

Total payment under the terms of this Agreement will not exceed the total amount of \$992,757. This cost includes all taxes and all other charges.

B. Contract Term:

The contract term is July 1, 2021 to June 30, 2022.

C. Budget Revision Procedures:

1. Contractor shall be reimbursed in accordance with the contract budget as detailed in Exhibit B-1. Any budget adjustments, revisions to the service categories and service units within the contract must be approved by SSA Program Department prior to submitting invoices for payment to the County.
2. Contractor must submit a formal written (via e-mail) request to the SSA Contracts Office for any contract budget adjustment with justification for requested expenditure revisions inclusive of specific impacts to current services being delivered. The request will be forwarded to the SSA Program Department for approval.
3. No supplemental billing will be accepted without Contractor's prior notification and approval by SSA Program Department of the need and justification for revisions of the service categories, service units or contract budget (line-items or unit costs).
4. The County Auditor Controller's Office will not pay for unauthorized service categories, service units and budget line-items that are revised or rendered by

Contractor that are not approved by SSA Program Department and/or for claimed services that contract program monitoring findings indicate have not been provided.

III. Invoicing Procedures

A. Indirect Costs

For the purpose of the CDSS CAPP contract, **indirect costs** are defined as expenses that cannot be readily assigned to one specific program or one specific line item within a program. Indirect costs are a subset of the category of administrative costs. If indirect costs are included in the program budget, the percentage charged for indirect costs must be indicated on the budget. There is a 15% limit on administrative costs, and the indirect costs must be included within that 15% limit. The limit for indirect costs is strict, and contractors should therefore verify that the costs reported as indirect cannot be allocated to another reporting category. If indirect costs are reported, a cost allocation plan must be on file and available to the contract monitor.

B. Administrative and Support Costs

For the purpose of the CDSS CAPP contract, **administrative costs** include activities and functions that do not provide a direct benefit to the children, parents or providers. Administrative costs are limited to 15% and can include indirect costs (see III.A above).

Support costs include services which, when combined with Child Development Programs, help promote healthy physical, mental, social and emotional growth of children and families.

The **administrative and support allowance combined** cannot exceed 17.5%, with the administrative part of that limit not exceeding 15%, pursuant to California Education Code 8223. Therefore, any combination of administrative and support allowance is acceptable if the total allowance does not exceed 17.5% and the administrative portion does not exceed 15%.

C. Reimbursable Expenses

Reimbursable expenses include the cost of child care paid to child care providers plus administrative and support service cost of the alternative program. The budget line items should include the following:

1000 – Certificated Salaries

2000 – Classified Salaries

3000 – Employee Benefits

4000 – Books and Supplies, including the costs of sales/use tax, freight and handling

5000 – Services and Other Operating Expenses, including:

- a. Expenditures for rentals, leases
- b. Service contracts including janitorial, consultant, auditor, maintenance contracts, etc.
- c. Nutrition expenditures for meals/snacks served to children in the program
- d. Travel, insurance, utilities, legal, and other operating expenditures

D. Submitting Invoices

Contractor shall submit monthly invoices no later than the 10th of each month. Invoices are to be sent electronically to SSA GCR Program Liaison, Jennifer Cabán, at Jennifer.Caban@acgov.org who will review and forward them to the SSA Payables Unit at SSAInvoices@acgov.org. In addition, please copy the Financial Specialist, Johnny Cua, at Johnny.Cua@acgov.org, on all invoices.

The invoice packet must include a form #CDNFS-9500-AP (CDSS's fiscal report for alternative payment program) and a copy of State report CDD 801A.

The SSA Finance Department has established a centralized Payments Unit that will be the CONTRACTOR'S contact for all payment and invoicing matters. For additional assistance, contact the Financial Services Officer, Beverly Warren, at brwarren@acgov.org.

Invoices must contain the following elements:

1. Printed on company letterhead that includes name, address, and contact information
2. For Community Based Organizations, must be signed by head of the organization, i.e., Executive Director, CEO, etc.
3. Document must contain the title *Invoice*
4. Date of the invoice
5. Description of services
6. Date range for services provided
7. If needed, itemization of any sales tax and delivery/postage charges
8. Purchase Order (PO) number provided by the County
9. Total amount owed
10. Remittance instructions/address
11. A *cc* indication at the bottom of the invoice with names of people who received courtesy copies
12. CEO or Executive Director must be included in the *cc*, and
13. All other data as required by your contract.

- E. Reporting: Contractor shall provide Performance Measures and Data Collection reports to the GCR unit of SSA, in accordance with Exhibit A of this Agreement.
- F. A final CDNFS-9500-AP report for the prior fiscal year will be submitted to County no later than July 10, 2021.

- G. Payments to Contractor by County may be contingent upon filing of CDNFS-9500-AP reports due to County.
- H. County will pay Contractor within 30 days, upon successful completion and acceptance of services, and upon receipt of invoice and accompanying reports.
- I. Contractor may bill County monthly in arrears or less frequently at Contractor's option, for payment made to eligible cases under rates and provisions of Exhibit A herein.
- J. As required by CDSS, Contractor will mail an Annual Financial Audit Report of the prior fiscal year, which must include an Audited Fiscal Report (AUD form) by November 10, 2021 to:

California Department of Social Services
Office of Audit Services Branch
Attn: Audit Report Review Bureau
744 P Street, Mailbox 9-13-04
Sacramento, CA 95814

Refer to the CDSS Audit Guidelines at: <https://www.cdss.ca.gov/inforesources/cdss-programs/internal-audits/contracting-agencies-audit-guidelines-and-resources>

- K. Contractor will email the completed Annual Financial Audit Report to the contract liaison of SSA by November 17, 2021 to confirm the report was sent.
- L. In order for the County to meet year end closing deadlines, Contractor must submit the May invoice and any prior late invoices by June 10. The June invoice must be submitted by July 10.

IV. Funding and Reporting Requirements

- A. Failure to submit required reports can delay the processing of invoices for reimbursement.
- B. Funding under this contract shall not duplicate funding from other sources. Should other funding duplicate funding under this contract, the invoices to Alameda County will be reduced accordingly by the amount of duplicate funding.
- C. The contract maximum amount of \$992,757 is based on the estimated amount at the time the contract was executed. This does not affect the total contract amount awarded to the agency. The actual federal expenditure amount, if any, will be available to contractors by October of the following fiscal year and Contractor shall contact SSA Contracts Liaison to receive this information.

EXHIBIT B-1**PROGRAM BUDGET****CAPP 1000-00 Contract Budget**

Provider Payments	819,025
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EXPENSES**Personnel Expenses**

Salaries & Wages	Budget
Director - Client Services and Public Policy	8,341
Quality Assurance Manager	5,115
Quality Assurance Specialists	21,008
Provider Payment Manager	5,020
Provider Payment Lead	4,285
Provider Payment Analysts	17,906
Client Services Manager	3,682
Client Services Counselor	25,326
Subtotal	90,683
Payroll Taxes and Employee Benefits	30,506
Total Personnel Expenses	121,189

Operating Expenses

Professional & Contractual Services	5,248
Rent	4,704
Office Expenses	4,677
Facilities	2,782
Staff Development	722
Utilities	1,607
Telecommunications	938
IT Services	7,492
Travel/Conferences	1,281
Bank Charges	984
Communications	5,476
Dues/Subscriptions	513
Insurance	325
Indirect Admin	15,794
Total Operating Expenses	52,543

TOTAL EXPENSES (Admin. & Support Costs)	173,732
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TOTAL CONTRACT	992,757
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EXHIBIT C INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: <u>County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives.</u> 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party)", or at minimum named as an "Additional Insured" on the other's policies. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: <u>Contracts Office: 2000 San Pablo Ave., 4th Floor, Oakland, CA 94612</u> 	

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Bananas, Inc.

PRINCIPAL: Kim Johnson TITLE: Executive Director

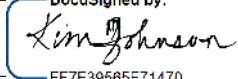
SIGNATURE:  DATE: 9/20/2021

EXHIBIT E

AUDIT REQUIREMENTS

The County contracts with various organizations to carry out programs mandated by the Federal and State governments or sponsored by the Board of Supervisors. Under the Single Audit Act Amendments of 1996 (31 U.S.C.A. §§ 7501-7507) and Board policy, the County has the responsibility to determine whether organizations receiving funds through the County have spent them in accordance with applicable laws, regulations, contract terms, and grant agreements. To this end, effective with the first fiscal year beginning on and after December 26, 2014, the following are required.

I. AUDIT REQUIREMENTS

A. Funds from Federal Sources:

1. Non-Federal entities which are determined to be subrecipients by the supervising department according to 2 CFR § 200.330 and which expend annual Federal awards in the amount specified in 2 CFR § 200.501 are required to have a single audit performed in accordance with 2 CFR § 200.514.
2. When a non-Federal entity expends annual Federal awards in the amount specified in 2 CFR § 200.501(a) under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the non-Federal entity may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 (Program Specific Audits).
3. Non-Federal entities which expend annual Federal awards less than the amount specified in 2 CFR § 200.501(d) are exempt from the single audit requirements for that year except that the County may require a limited-scope audit in accordance with 2 CFR § 200.503(c).

B. Funds from All Sources:

Non-Federal entities which expend annual funds from any source (Federal, State, County, etc.) through the County in an amount of:

1. \$100,000 or more must have a financial audit in accordance with the U.S. Comptroller General's Generally Accepted Government Auditing Standards (GAGAS) covering all County programs.
2. Less than \$100,000 are exempt from these audit requirements except as otherwise noted in the contract.

Non-Federal entities that are required to have or choose to do a single audit in accordance with 2 CFR Subpart F, Audit Requirements are not required to have a financial audit in the same year. However, Non-Federal entities that are required to have a financial audit may also be required to have a limited-scope audit in the same year.

C. General Requirements for All Audits:

1. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States (GAGAS).
2. All audits must be conducted annually, except for biennial audits authorized by 2 CFR § 200.504 and where specifically allowed otherwise by laws, regulations, or County policy.
3. The audit report must contain a separate schedule that identifies all funds received from or passed through the County that is covered by the audit. County programs must be identified by contract number, contract amount, contract period, and amount expended during the fiscal year by funding source. An exhibit number must be included when applicable.
4. If a funding source has more stringent and specific audit requirements, these requirements must prevail over those described above.

II. AUDIT REPORTS

A. For Single Audits

1. Within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period, the auditee must electronically submit to the Federal Audit Clearinghouse (FAC) the data collection form described in 2 CFR § 200.512(b) and the reporting package described in 2 CFR § 200.512(c). The auditee and auditors must ensure that the reporting package does not include protected personally identifiable information. The FAC will make the reporting package and the data collection form available on a web site and all Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC. As required by 2 CFR § 200.512(a)(2), unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection.
2. A notice of the audit report issuance along with two copies of the management letter with its corresponding response should be sent to the County supervising department within ten calendar days after it is submitted to the FAC. The County supervising department is responsible for forwarding a copy of the audit report,

management letter, and corresponding responses to the County Auditor within one week of receipt.

B. For Audits other than Single Audits

At least two copies of the audit report package, including all attachments and any management letter with its corresponding response, should be sent to the County supervising department within six months after the end of the audit year, or other time frame as specified by the department. The County supervising department is responsible for forwarding a copy of the audit report package to the County Auditor within one week of receipt.

III. AUDIT RESOLUTION

Within 30 days of issuance of the audit report, the entity must submit to its County supervising department a corrective action plan consistent with 2 CFR § 200.511(c) to address each audit finding included in the current year auditor's report. Questioned costs and disallowed costs must be resolved according to procedures established by the County in the Contract Administration Manual. The County supervising department will follow up on the implementation of the corrective action plan as it pertains to County programs.

IV. ADDITIONAL AUDIT WORK

The County, the State, or Federal agencies may conduct additional audits or reviews to carry out their regulatory responsibilities. To the extent possible, these audits and reviews will rely on the audit work already performed under the audit requirements listed above.

EXHIBIT F

HIPAA BUSINESS ASSOCIATE AGREEMENT

INTENTIONALLY OMITTED

**EXHIBIT G
COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

County project managers will provide a special access code to contractors and subcontractors participating in this contract to allow use of the Elation Systems free of charge.

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

EXHIBIT - H
ADDITIONAL CONTRACT PROVISIONS
FEDERAL PROVISIONS

Funds used for payment of this Contract may be from or subject to reimbursement by state and/or federal funds. Some of these funding sources require additional contractual obligations and County and Contractor hereby agree to the following additional terms and conditions. The parties agree to each of these terms for reasons including, but not limited to, meeting all contracting requirements as set forth in 2 C.R.F. § 200.326 and 2 C.F.R. Part 200, Appendix II. These terms supplement the General Terms and Conditions.

I. General Provisions

(A) Remedies. In the event of a breach by Contractor of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Contractor of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Contractor shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

(B) Termination. The County may suspend, terminate, or abandon the execution of any work by the Contractor under this Contract with or without cause at any time upon giving the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment, but in no event shall Contractor be entitled to more than the not to exceed amount of the Contract, or if applicable, the portion of the Contract being terminated.

(C) Equal Employment Opportunity. During the performance of this contract, Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will

take such action with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

These provisions are included in addition to the Equal Employment Opportunity Practices Provisions in the General Terms and Conditions and Contractor shall abide by both provisions.

(D) Rights to Inventions Made Under a Contract or Agreement. If this Contract is funded in whole or part by a Federal award of funds and the Contract and/or funding meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor (the "recipient or subrecipient") wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and

Cooperative Agreements,” and any implementing regulations issued by the awarding agency. This requirement applies to “funding agreements,” but it does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(E) Clean Air Act and the Federal Water Pollution Control Act. The following provisions apply for all contracts in excess of \$150,000:

(1) Clean Air Act (42 U.S.C. 7401–7671q).

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation of the Clean Air Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Contractor agrees to report each violation of the Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(F) Debarment and Suspension. In addition to the debarment and suspension requirements in the General Terms and Conditions and executed Debarment certificate, the following terms shall apply:

(1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

(3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered contracts.

(G) Conflict of Interest. By executing this Contract, Contractor certifies that it does not know of any fact which constitutes a violation of Section 66 of County's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the County if it becomes aware of any such fact during the term of this Contract. In addition, Contractor shall be in full compliance with all other conflict of interest requirements, including those contained in 2 C.F.R. § 200.318.

(H) Byrd Anti-Lobbying Amendment. For any contract of \$100,000 or more, Contractor shall complete the required certification (included below) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

(I) Procurement of recovered materials.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- b. Meeting Contract performance requirements; or
- c. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(J) Access to Records.

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(K) Changes. The cost of any change, modification, change order, or constructive change must be allowable, allocable, within the scope of a funding grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the Contract by entering a written amendment executed by authorized representatives. The Contract may not be modified except by a written document signed by both parties. It is mutually understood and agreed that no alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

(L) Seal, Logo, And Flags. The Contractor shall not use the Department of Homeland Security, or any other Federal, state or local seals, logos, crests, or reproductions of flags or likenesses of agency officials without specific FEMA or specified agency pre-approval.

(M) Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(N) No Obligation of Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

(O) Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

(P) Local Preferences: To the extent that any local preferences are prohibited by funding, SLEB and other local preferences and policies have already been or are waived.

(Q) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the following provisions, from 29 C.F.R §5.5(b) shall apply:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of

Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(R) Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the contractor and their subcontractor(s), to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(S) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor and their subcontractor(s) are prohibited from obligating or expending funds from this Agreement to (1) procure or obtain (2) extend or renew a contract to procure or obtain or (3) enter into a contract for equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(1) As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation

with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (2) See Public Law 115–232, section 889 for additional information. See also 2 CFR § 200.471.

II. Construction and Repair Work. The following provisions apply to construction or repair work:

Compliance with the Davis-Bacon Act and Copeland “Anti-Kickback” Act. For all prime construction contracts in excess of \$2,000 the following terms shall apply:

(1) Davis-Bacon Act

a. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

(2) Copeland “Anti-Kickback” Act

a. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

EXHIBIT H - 1
Certification for Contracts, Grants, Loans, and Cooperative Agreements
CERTIFICATION REGARDING LOBBYING (APPENDIX A, 44 C.F.R. PART 18)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor, Bananas, Inc., certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

<div data-bbox="181 1526 885 1650" data-label="Text"><p><small>DocuSigned by:</small>  <small>FF7F39565F71470...</small> _____ Signature of Contractor's Authorized Official</p></div>	<div data-bbox="941 1564 1393 1650" data-label="Text"><p>_____ 9/20/2021 _____ Date</p></div>
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Kim Johnson
Name

Executive Director
Title

EXHIBIT I

California Department of Education

2021–22 Funding Terms and Conditions (FT&C) Summary of Changes

The changes for 2021–22 are as follows:

Entire document

- Dates throughout the document have been revised
- Grammar and formatting issues have been corrected throughout the document
- Citations were revised throughout
- References to “child care and development” have been updated to “early learning and care”
- Formatting changes to align document with Section 508 compliance

Table of Contents (pages 2-6)

- Revised accordingly

Introduction

- Updated citations and dates

Section I. Definitions (pages 8-26)

- Clarified definition for “Authorized representative” (page 11)
- Revised definition of “Nontraditional hours” (page 20)
- Added definition of “Service Agreement” (page 23)

Section III. Facilities and Equipment (pages 38-44)

- Article E Preapproval Requirements (page 40)

Section IV. Subcontracts (pages 44-48)

- Article A (page 44)
- Article D Private Agencies-Bids for Subcontracts (page 48)

Section V. Costs, Earnings and Reimbursement (pages 49-57)

- Article C Indirect Costs (page 49)
- Article H Nonreimbursable Costs (page 54)

Section VI. Accounting and Reporting Requirements (pages 58-)

- Article D Attendance and Absences (page 59)
- Article E Abandonment of Care (page 60)
- Article G Attendance and Expenditure Reports (page 62)
- Article H Alternative Payment and CFCC Expenditure Reports (page 63)
- Article I Caseload Reports (page 64)
- Article N Building a Better Early Care and Education System (page 68)
- Article O Annual Financial and Compliance Audits (page 69)

EXHIBIT J

**CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND
CONDITIONS (FT&C)**

FT&C For:

CalWORKs Stage 2 (C2AP)

CalWORKs Stage 3 (C3AP)

Alternative Payment Program (CAPP)

General Child Care and Development (CCTR)

Family Child Care Home Education Networks (CFCC)

Programs for Children with Severe Disabilities (CHAN)

Migrant Alternative Payment Program (CMAP)

Migrant Child Care and Development Program (CMIG)

Resource and Referral Program (CRRP)

California State Preschool Program (CSPP)

FISCAL YEAR 2021-22

TABLE OF CONTENTS

<u>CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND CONDITIONS (FT&C)</u>	14
<u>TABLE OF CONTENTS</u>	15
<u>INTRODUCTION</u>	19
<u>I. DEFINITIONS</u>	20
<u>II. GENERAL PROVISIONS</u>	38
A. <u>Notification of Address Change</u>	38
B. <u>Notification of E-mail Contact Changes</u>	38
C. <u>Materials Developed with Contract Funds</u>	38
D. <u>Prohibition Against Religious Instruction or Worship</u>	39
E. <u>Issuance and Use of Checks</u>	39
F. <u>Plan for Provider Reimbursement and Certificates for Alternative Payment Programs</u>	39
G. <u>Prohibition against Loans and Advances</u>	40
H. <u>Contracts with Multiple Service Areas</u>	40
I. <u>Compliance Reviews</u>	41
J. <u>Reviews of Alternative Payment Agencies</u>	41
K. <u>Contractor's Termination for Convenience</u>	41
L. <u>Uniform Complaint Procedures</u>	42
M. <u>Eligibility for Funding</u>	42
N. <u>Review of Contracts for Continued Funding</u>	43
O. <u>Applicability of Corporations Code</u>	44
P. <u>Conflicts of Interest</u>	44
Q. <u>Unlawful Denial of Services</u>	45
R. <u>Computer Software Copyright Compliance</u>	46
S. <u>Recycled Paper Certification</u>	46

T. <u>Healthy Schools Act</u>	46
III. <u>FACILITIES AND EQUIPMENT</u>	47
A. <u>Facilities and Equipment Expenditures</u>	47
B. <u>Buildings and Improvements</u>	48
C. <u>Renovation and Repair</u>	48
D. <u>Depreciation and Use Allowance</u>	48
E. <u>Preapproval Requirements</u>	49
F. <u>Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies</u>	50
G. <u>Obtaining Bids for Equipment Purchases for Public Agencies</u>	51
H. <u>Asset Management</u>	51
I. <u>Title, Use, Disposition and Retention</u>	52
IV. <u>SUBCONTRACTS</u>	53
A. <u>A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.</u>	53
B. <u>Subcontracts Excluded from Requirements of this Section</u>	53
C. <u>Required Subcontract Provisions</u>	53
D. <u>Private Agencies-Bids for Subcontracts</u>	55
E. <u>Public Agencies Subcontracts</u>	56
F. <u>Prior CDE Approval for Subcontracts \$10,000 and Above</u>	56
G. <u>Audit Requirements for Subcontracts</u>	57
V. <u>COSTS, EARNINGS AND REIMBURSEMENT</u>	57
A. <u>Contract Amount Adjustments</u>	57
B. <u>Reasonable and Necessary Costs</u>	58
C. <u>Indirect Costs</u>	58
D. <u>Administrative Costs</u>	58
E. <u>Service Level Exemption (Start-Up) for New or Expanded Programs</u>	59

F.	<u>Costs for Travel and Per Diem & Restrictions</u>	59
G.	<u>Specific Items of Reimbursable Costs</u>	60
H.	<u>Nonreimbursable Costs</u>	61
I.	<u>Charging of Expenditures</u>	63
J.	<u>Recoupment of Advanced Contract Funds</u>	63
K.	<u>Use of Subsidized Family Fees</u>	63
L.	<u>Determination of Reimbursable Amount</u>	63
M.	<u>Minimum Days of Operation</u>	65
N.	<u>Reduction, Withholding, and Canceling Apportionments to Contractors</u>	65
O.	<u>Order of Expenditure</u>	65
VI.	<u>ACCOUNTING AND REPORTING REQUIREMENTS</u>	66
A.	<u>General Provisions</u>	66
B.	<u>Child Development Fund and Interest Bearing Accounts</u>	66
C.	<u>Enrollment and Attendance Accounting</u>	66
D.	<u>Attendance and Absences</u>	67
E.	<u>Abandonment of Care</u>	68
F.	<u>General Record Keeping Requirements</u>	69
G.	<u>Attendance and Expenditure Reports</u>	69
H.	<u>Alternative Payment and CFCC Expenditure Reports</u>	70
I.	<u>Caseload Reports</u>	71
J.	<u>CRRP Expenditure Reports</u>	72
K.	<u>Service Data Report for Resource and Referral Programs</u>	72
L.	<u>Child Development Data Collection</u>	73
M.	<u>Other Report Data</u>	74
N.	<u>Building a Better Early Care and Education System (BBECES)</u>	74
O.	<u>Annual Financial and Compliance Audits</u>	76

P.	<u>Review of Audit by the CDE Audits and Investigations Division (A&I)</u>	78
Q.	<u>Delinquent Audits and One-Time-Only Extensions</u>	78
R.	<u>California State Auditor</u>	78
S.	<u>Budget and Calendar</u>	78
T.	<u>Reserve Accounts</u>	78
<u>VII.</u>	<u>TECHNICAL ASSISTANCE</u>	80
<u>VIII.</u>	<u>CONTRACT CLASSIFICATIONS</u>	80
A.	<u>Clear Contract</u>	80
B.	<u>Provisional Contract</u>	80
C.	<u>Conditional Contract</u>	80
<u>IX.</u>	<u>APPEALS, TERMINATIONS, AND NON-RENEWALS</u>	81
A.	<u>Resolution of Contract Administration Disputes</u>	81
B.	<u>Independent Appeal Procedures</u>	82
C.	<u>Immediate Termination</u>	82
D.	<u>Non-Immediate Termination</u>	83
E.	<u>Appeals Procedures For Independent Appeals</u>	84
F.	<u>Contractor's Responsibility After Notice of Termination/Nonrenewal</u>	86
<u>X.</u>	<u>CONTRACT STATUS CHANGE PROCEDURES</u>	86
A.	<u>Administrative Review of Changes in Contract Status</u>	86
B.	<u>Conditional Status Imposed During the Contract Period</u>	87
C.	<u>Conditional Status Addendum</u>	88
D.	<u>Duration of Conditional Contract Status</u>	88
E.	<u>Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding</u>	89

INTRODUCTION

These are the Funding Terms and Conditions (FT&C) for early learning and care contracts for fiscal year 2021-2022. Each contractor is required as a condition of its contract (“The Contract”) with the California Department of Education (CDE), to adhere to the following laws and documents, as may be in effect during the 2021-2022 fiscal year:

1. Any applicable Education Code statutes and Welfare and Institutions Code statutes¹
2. The FT&C;
3. The specific Program Requirements;
4. The CDE Audit Guide;
5. The California School Accounting Manual;
6. The procedures and standards set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (2 CFR Part 200 and Title 45 CFR Part 75), hereinafter referred to as Uniform Guidance (UG);
7. Title 5 California Code of Regulations (5 CCR) Division 1, Chapter 19 and 19.5, sections 18000 et seq., including 12-Month Eligibility Implementation Guidance (Implementation Guidance) and CSPP Free or Reduced Price Meal (FRPM) Implementation Guidance (CSPP FRPM Implementation Guidance). NOTE: Guidance documents shall only be in effect until superseding regulations are promulgated in 5 CCR.
8. Title 22 California Code of Regulations, community care facilities license regulations, including child care centers;
9. Any other requirements incorporated into the contract (including any approved pilot plan), in addition to all other applicable laws and regulations, including any applicable law and regulations that may become effective during the term of this contract.

1 Pursuant to The Early Childhood Development Act of 2020 (Chapter 1 of Part 1.7 of Division 9 of the Welfare and Institutions Code), responsibility for the Alternative Payment program, Migrant Alternative Payment program, CalWORKS Stage 2 program, CalWORKS Stage 3 program, General Childcare program, Family Childcare Home Education Network program, Migrant Childcare program, Childcare and Development Services for Children with Severe Disabilities program, and Resource and Referral program, along with other programs enumerated in Section 10203 of Welfare and Institutions, will shift from the California Department of Education to the California Department of Social Services effective July 1, 2021. Some of the Education Code sections cited in the 2021-2022 Funding Terms and Conditions and/or Program Requirements applicable to the programs covered by this contract may be subsequently modified and/or moved from the Education Code to the Welfare and Institutions Code through legislative enactment to be effective on or after July 1, 2021. Contractors will be held to the applicable statutes and regulations in effect during the term of this contract.

Any non-compliance with The Contract may subject the contractor to termination of the contract. Any variance from The Contract must be authorized in writing by the CDE and signed by the Director of the Early Learning and Care Division (ELCD) or the Director's authorized representative. Unless otherwise noted, these compliance requirements apply to all programs.

Contractors may adopt any reasonable policies relating to the administration of the program so long as such policies are not in conflict with law, regulations, or the terms of this contract, including any contract amendments. Those potentially affected by the policies shall be duly notified, as provided for in statute and regulation, and adhere to any due process requirements, if applicable.

California Education Code (EC) Section 8385(f) requires all early learning and care contracts entered into by the CDE for means-tested early learning and care programs, including, but not limited to, Alternative Payment, General Child Care and Child Care for Recipients of the California Work Opportunities and Responsibility to Kids (CalWORKs) Programs (described in EC 8220, EC 8240 and EC 8350) to implement best practices identified pursuant to subdivision (c) which states, "In developing its recommendations, the CDE shall place priority on prevention of fraud and overpayments, and shall consider existing best practices for doing so."

Early Learning and Care contracts are funded with state general funds, federal funds, or a combination of funds. The funding amounts are listed on the contract encumbrance page.

Contracts may be fully or partially funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99, the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended by the CCDBG Act of 2014, Public Law 1113-186, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 USC 9858.

If the Catalogue of Federal Domestic Assistance (CFDA) number is 93596 (shown as FC# in the funding block), the fund title is Child Care Mandatory and Matching Funds of the Child Care and Development Fund. If the CFDA number is 93575, the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant Act of 1990, the Omnibus Budget Reconciliation Act of 1990, Section 5082, Public Law 101-508, as amended, Section 658J and 658S, and Public Law 102-586.

I. DEFINITIONS

As applicable to each specific program type.

Any terms not defined in this section shall be defined, if applicable, as set forth in the *Education Code* or in Title 5 of the *California Code of Regulations (CCR)*.

"12-Month Eligibility Implementation Guidance" or "Implementation guidance" provides guidance and instruction for implementation of the new requirements in California EC 8263(h), referred to as "12-month eligibility." *See Management Bulletin 17-14*

"Actual and allowable net costs" means the costs which may be reimbursed under a particular child development contract after disallowed costs and restricted income have been subtracted

from total expenditures. 5 CCR 18013(a)

"Additional funds" means award of new contracts or expanded contracts that increase the contractor's level of administrative responsibility. Additional funds do not include cost of living adjustments, rate increases and one-time-only supplemental funds or Alternative Payment program contingency funds. 5 CCR 18000

"Adjusted child days of enrollment" means child days of enrollment after special needs adjustment factors specified in EC 8265.5 have been applied. 5 CCR 18013

"Adjusted monthly income" means total countable income, minus verified child support payments paid by the parent whose child is receiving child development services, excluding the non-countable income listed below: 5 CCR 18078(a)

1. Earnings of a child under age eighteen (18) years;
2. Loans;
3. Grants or scholarships to students for educational purposes other than any balance available for living costs;
4. Food stamps or other food assistance;
5. Earned Income Tax Credit or tax refund;
6. GI Bill entitlements, hardship duty pay, hazardous duty pay, hostile fire pay, or imminent danger pay;
7. Adoption assistance payments received pursuant to Welfare and Institutions (W&I) Code Section 16115 et seq.;
8. Non-cash assistance or gifts;
9. All income of any individual counted in the family size who is collecting federal Supplemental Security Income (SSI) or State Supplemental Program (SSP) benefits;
10. Insurance or court settlements including pain and suffering and excluding lost wages and punitive damages;
11. Reimbursements for work-required expenses such as uniforms, mileage, or per diem expenses for food and lodging;
12. Business expenses for self-employed family members;
13. When there is no cash value to the employee, the portion of medical and/or dental insurance documented as paid by the employer and included in gross pay; and
14. Disaster relief grants or payments, except any portion for rental assistance or unemployment.

"Administrative costs" means costs incurred for administrative activities where neither the family, the child nor the service providers for Alternative Payment programs and family child care homes directly benefit from the activity. 5 CCR 18013(b)

"Adult" means a person who is at least eighteen (18) years of age. HHS, DSS, CCL, Child Care Center, Division 12, Ch. 1 Section 101152 Definitions

"Agency" or "Contractor" refers to any entity that is authorized to perform early learning and care services pursuant to the Education Code. An agency may be a public agency or private agency.

"Agency Self-Evaluation Annual Report" is a form issued by the CDE for use by contractors to submit a summary of findings of the program self-evaluation. 5 CCR 18270.5 (a) and 18279(c)

"Agricultural work" or "agricultural labor" means all service performed:

1. on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with the production or processing of any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
2. in the employ of the operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane;
3. in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, canning, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity.

The definition of agricultural work shall not be deemed to be applicable with respect to service performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. *CFR 34 Part 200*

"Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of early learning and care services, and payments that are made by an agency to a parent for the parent's purchase of early learning and care services. *EC 8208 (a)*

"Alternative payment program" means a local government agency or nonprofit organization that has contracted with the CDE pursuant to *EC 8220.1* to provide alternative payments and to provide support services to parents and providers. Types of programs include C2AP, C3AP, CAPP, and CMAP. *EC 8208 (b)*

"Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private, non-tax exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decision making prerogatives as consistent with the provisions of this chapter. *EC 8208(c)*

"Approved work activity" is an activity contained in the parent's welfare-to-work plan as described and further defined in *W&I 11322.6 et seq.* and may include:

1. Unsubsidized employment;
2. Subsidized private sector employment;
3. Subsidized public sector employment;
4. Work experience;
5. On-the-job training;
6. Grant-based on-the-job training;
7. Supported work or transitional employment;
8. Work-study;
9. Self-employment;
10. Community or vocational education and training;
11. Job search and job readiness assistance;
12. Education directly related to employment;
13. Satisfactory progress in secondary school or in a course of study leading to a General Education Development (GED) certification;
14. Mental health, substance abuse and domestic violence services; or
15. Other activities necessary to assist an individual in obtaining unsubsidized employment.

"Assistance Unit" means a group of related persons living in the same home who have been determined eligible for CalWORKs cash assistance by the county. California-DSS-Manual-EAS Eligibility and Assistance Standards, Chapter 82-800 Assistance Unit.

"At risk of abuse, neglect, or exploitation" refers to children who are so identified in a written referral from a legal, medical, social services agency, or emergency shelter. *EC 8208 (k)*

"Attendance" means the number of children present at an early learning and care facility.

"Attendance," for purposes of reimbursement, includes excused absences by children because of

illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child. *EC 8208(e)*

“Audit Guide” refers to the most recent *CDE Audit Guide*, which is a resource for audit requirements and guidance applicable to certain state and federal programs operated by private and public organizations under agreements with the CDE. The *Audit Guide* should be used by independent auditors in conducting audits of state and federal early learning and care programs.

"Authorized representative" means, depending upon the specific regulation, either:

1. A person who has been delegated the responsibility to sign a child in and out of a child care program in the absence of the parent; 5 *CCR 18013(f)*
2. A person designated by the contractor to certify eligibility for subsidized services and/or issue a notice of action, application for services or notice of action, recipient of services; 5 *CCR 18082(b), 18083(j)*
3. A person designated by the parent that would be allowed to review the child's data file; or 5 *CCR 18117(b)*
4. A person designated by the parent to represent the parent at a local hearing upon filing an appeal after receipt of a notice of action. 5 *CCR 18120-(e)*

"Benefit to the State" means that the activity will improve knowledge or expertise in areas directly related to subsidized early learning and care services. 5 *CCR 18013(e)*

“California School Accounting Manual” provides accounting policies and procedures, as well as guidance in implementing those policies and procedures.

“California State Preschool Program (CSPP)” means age and developmentally appropriate subsidized early learning and care programs designed to facilitate the transition to kindergarten for eligible three and four-year-old children. Services includes part-day or full-day services designed to meet the needs of working families. The CSPP includes educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. *EC 8235-8239*

“California State Preschool Program (CSPP) Free and Reduced Priced Meal (FRPM) Sites” means a CSPP site that has been verified as operating within the attendance boundaries of a qualified FRPM school. *CSPP FRPM Implementation Guidance 18013*

“CalWORKs cash aid recipient” means an adult or minor teen parent who receives cash aid from the county welfare department for the CalWORKs or Cal-Learn program. *EC 8350-8359.1*

"Ceases operation" means the contractor does not provide subsidized services in accordance with the contractor's program operating calendar submitted to and approved by the CDE for the applicable contract period. 5 *CCR 18013*

“Center-based programs” means all programs providing services directly to children at a licensed center or family child care home and not through the use of an alternative payment voucher.

Types of center-based programs include CCTR, CSPP, CHAN, CMIG and CFCC.

"Child Care Certificate" means a check or other disbursement that is issued by the contractor directly to a parent who may use the certificate only as payment for child care services. Nothing shall preclude the use of the certificate for sectarian child care services if freely chosen by the parent. A child care certificate is assistance to the parent, not assistance to the provider. *45 CFR* Section 98.2

"Child care and development programs" means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also "Early learning and care program". *EC 8208(i)*

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

"Child Development Programs" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, "Early learning and care services". *EC 8208(j)*

"Child care provider" means an adult or agency that provides child care services. *5 CCR 18400(b)*

"Child Days of Enrollment" means the total number of days every child is certified to attend a center-based program, excluding CFCC, regardless of attendance.

"Child development fund" means the restricted fund used by the contractor to account for contract funds and related net reimbursable program costs. *5 CCR 18064, EC 8328*

"Child Protective Services (CPS)" means children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation. *5 CCR 18078*

"Children with exceptional needs" means, as set forth in *EC 8208(1)* either of the following:

1. Infants and toddlers under (3) three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (*Title 14* (commencing with Section 95000) of the *Government Code (GC)*) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the *GC*. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.
2. Children ages three (3) to twenty-one (21) years, inclusive who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of *Title 2*, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of *Title 2*, and Sections 3030 and 3031 of 5 *CCR*. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of *Title 20* of the *United States Code*.

"Co-located programs" are those that share the same facility, but cannot be commingled because they are different types of programs with different program requirements.

"Commingled child care services" means the provision of services to both subsidized and nonsubsidized children in the same classroom at the same time. 5 *CCR* 18013

"Compliance review" means that a team of the CDE staff reviews a contractor's program at the program site to determine compliance with applicable laws, regulations, or contractual provisions. 5 *CCR* 18023(1)

"Contract period" means the time span the contract is in effect as specified in the child development contract. 5 *CCR* 18013

"Co-payment" means any usual and customary provider charges that exceed the maximum subsidy amount. The family shall be responsible for paying the provider the difference between the provider's rate and the maximum subsidy amount. This shall be considered the family's co-payment. The contractor shall not be responsible for collecting the family's co-payment. 5 *CCR* 18220.6

"CSPP eligible four-year-old children" means children who will have their fourth birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool

program. *EC 8208(aj)*

“CSPP eligible three-year-old children” means children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. Children who have their third birthday on or after December 2 of the fiscal year, may be enrolled in a California state preschool program on or after their third birthday. Any child under four years of age shall be served in a California state preschool program facility, licensed in accordance with Title 22 of the California Code of Regulations. *EC 8208(ai)*

“CSPP FRPM Implementation Guidance” provides guidance and instructions to California State Preschool Program (CSPP) contractors about implementing new eligibility criteria pursuant to California *Education Code (EC)* Sections 8236.3 and 8263(a)(2). *See Management Bulletin 20-01*

“Day of Operation” means a day in which the contractor provides service to one or more certified children enrolled in a Center-Based program, excluding CFCCs. For Alternative Payment and CFCC programs, a day of operation means a day the administrative office is open for business.

"Declaration" means a written statement signed by a parent under penalty of perjury attesting that the contents of the statement are true and correct to the best of his or her knowledge. *5 CCR 18078*

"Depreciation" means a cost in the current fiscal year that is based on acquisition costs, less any estimated residual value, computed on a straight line method (based on the normal, estimated useful life expectancy of the asset). *5 CCR 18013*

“Desired Results Parent Survey” is a document issued by the CDE to solicit information from parents regarding the child care program or services that the child and family receive. *5 CCR 18270.5(d)*

"Developmental profile" means a record of a child's physical, cognitive, social, and emotional development that is used to inform teachers and parents about a child's developmental progress in meeting desired results. In center-based programs, teacher and parent observations shall be included as part of the information used to complete the child's developmental profile. In family child care home education networks, the observations of agency staff, in consultation with providers, and parents shall be included as part of the information used to complete the child's developmental profile. *5 CCR 18270.5(b), 18272*

“Desired Results Developmental Profile” is a document issued by the CDE to record the information in the developmental profile defined in subsection 18270.5(b) that is incorporated by reference. *5 CCR 18270.5(c)*

"Disallowed costs" means costs that have been incurred but are not reimbursable because they are not reasonable and/or necessary for the performance of the contract or are otherwise nonreimbursable. *5 CCR 18013*

"Displace families" means to disenroll families in order to reduce service levels due to insufficient funding or inability of a contractor to operate one or more sites because of reasons

stated in *EC* section 8271. 5 *CCR* 18078

“Diversion services” means one-time assistance services provided by the county welfare department, either in cash or in non-cash services, to an otherwise CalWORKs eligible family, when the county welfare department determines that such assistance will help the family avoid becoming a CalWORKs cash aid recipient. 5 *CCR* 18400(d)

“Early learning and care program” means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also “Child care and development programs”. *EC* 8208(i)

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

“Early learning and care services” means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, “Child Development Programs”.

“Education program” for purposes of program quality, 5 *CCR* subchapter 12, means the environment, activities, and services provided to the children.

“Employment agreement” is a formal agreement that specifies the conditions of the relationship between an individual employee and an employer including compensation and expectations. Also referred to as an employment contract.

“English Learner (EL) Students” (Formerly Known as Limited-English-Proficient or LEP) means those students for whom there is a report of a primary language other than English on the state-approved Home Language Survey **and** who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs. *EC* 313 and 5 *CCR* 60810

“Environment rating scale” means an instrument that measures program quality by rating the education program (5 CCR 18272), the staff development program (5 CCR 18273), and parent involvement and education (5 CCR 18273) 5 CCR 18270.5 (f)

Environment rating scales include the CDE most recently used versions of the following:

1. “ECERS” means the document entitled, Early Childhood Environment Rating Scale;
2. “ITERS” means the document entitled, Infant-Toddler Environment Rating Scale;
3. “FDCCERS” means the document entitled, Family Child Care Environment Rating Scale;
4. “SACERS” means the document entitled, School-Age Care Environment Rating Scale; 5 CCR 18270(f)

"Families experiencing homelessness" means parents, children, and youths as individuals who lack a fixed, regular, and adequate nighttime residence. This includes children and youths who:

1. share the housing of other persons due to loss of housing, economic hardship, or a similar reason;
2. live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
3. live in emergency or transitional shelters; or are abandoned in hospitals;
4. have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
5. live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
6. are migratory children who qualify as homeless because the children are living in circumstances described above. (42 U.S.C. Sec. 11301 et seq.)

“Family” means the parents and the children for whom the parents are responsible; who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, “family” shall be considered the child and related siblings. 5 CCR 18078

“Family child care home education network” means an entity organized under law that contracts with the CDE pursuant to EC 8245 to make payments to licensed family child care home providers and to provide education and support services to those providers and to children and families eligible for state-subsidized early learning and care services. A family child care home education network may also be referred to as a family child care home system. EC 8208(p)

“Family Child Care Homes” refers to licensed child care provided in a private home. 22 CCR 102352(f)

“Family fee” means the fee determined from the fee schedule. 5 CCR 18078

“Fee schedule” means the “Family Fee Schedule” issued by the CDE pursuant to EC 8273 and 8447 (e). The “fee schedule” is used by child development contractors to assess fees for families utilizing early learning and care services. 5 CCR 18078

“Family size” for C2AP and C3AP means the number of adults and children related by blood, marriage, or adoption that comprise the household in which the child is living.

1. When an adult living in the household is neither the parent of the child nor the spouse of the parent, the adult and the adult's children if any, shall be excluded from the calculation of family size.
2. When a child is living with adult(s) other than a natural or adoptive parent, the child shall be considered a family of one. In these cases, a need criterion as specified in 5 CCR Section 18406(b) or (c) or 18421(b) or (c) must be met by the caretaker of the child. 5 CCR 18400 (e)

“Family size” for all other programs means the number of people constituting a “family” as determined by documentation supporting the number of children and parents in the family. 5 CCR 18100

“Fishing” means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence. 34 CFR 200.81(b)

“Former CalWORKs cash aid recipient” means an adult individual or minor teen parent who has previously received and is no longer receiving cash aid under the CalWORKs or Cal-Learn programs because of, but not limited to, earnings, other income, or a sanction of the adult imposed by county welfare department. 5 CCR 18400(f)

"FPM/CMR" means Federal Program Monitoring/Contract Monitoring Review (formerly referred to as Coordinated Compliance Review) and is the monitoring and review instrument for child development programs to determine compliance. 5 CCR 18023 (d)(2)

"Full signature" means the legal signature of the individual (e.g., signature normally used on checks and other documents). If the individual is not literate in written English, the individual may sign with an "X" which must be initialed by the contractor's authorized representative (5 CCR 18065). Pursuant to EC 8227.5 and 8262.1, the use of a digital signature shall have the same force and effect as the use of a manual signature, if it meets established program and technology requirements.

“Immediate need” for purposes of TrustLine approval means a situation in which both subdivisions (1) and (2) apply:

1. An eligible parent has a need for child care and is employed, participating in a CalWORKs work activity, is in training as described in 5 CCR 18087, or is incapacitated as defined 5 CCR 18400(g) and 18078
2. The contractor determines that no child care is reasonably available from a licensed, TrustLine registered or TrustLine-exempt provider that meets the parent’s need for care.

5 CCR 18078

"Income fluctuation" means income that varies due to:

1. Migrant, agricultural, or seasonal work;
2. Intermittent earnings or income, bonuses, commissions, lottery winnings, inheritance, back child support payment, or net proceeds from the sale of real property or stock; or
3. Unpredictable days and hours of employment, overtime, or self-employment. 5 CCR 18078(j)

"Indirect costs" are general and administrative costs that benefit the operations of the entire organization, but cannot be identified to specific programs or activities. Examples of indirect costs are described in the federal cost principles codified under the *Uniform Guidance (UG)*, 2 CFR, 200.414. 5 CCR 18013

"Indirect cost allocation plan" means a written approved justification and rationale for assigning the relative share of indirect costs across more than one program or contract. School districts and county offices of education shall use the CDE approved rate if it is less than ten percent (10%). A Nonprofit's Board of Directors will approve the indirect cost allocation plan. 5 CCR 18013

"Initial certification" means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for receipt of subsidized child development services as specified in *EC* sections 8263(a)(1)(A) and 8263 (a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. Implementation Guidance 18078(j)

"Initial Income eligibility" means the definition set forth in *EC* 8263.1(a) Implementation Guidance 18078(h)

"Interactive literacy activities" means activities in which parents or legal guardians actively participate in facilitating the acquisition by their children of pre-reading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development. *EC* 8238(a)

"Legally qualified professional" means a person licensed under applicable laws and regulations of the State of California to perform legal, medical, health or social services for the general public. 5 CCR 18078

"Licensed-exempt provider" means an individual or organization that is not required to be licensed, as specified in *Health and Safety Code (H&SC)* 1596.792, or any other federal law or regulation.

"Licensed provider" means an individual or organization that has obtained a child care license, as specified in 22 CCR 101152. *H&SC* 1596.90

"Limited-English-proficient" and "non-English proficient" means children who are unable to benefit fully from an English only early learning and care program as a result of either of the

following:

1. Having used a language other than English when they first began to speak; or
2. Having a language other than English predominately or exclusively spoken at home. EC 8208(t)

"Local education agency (LEA)" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district. EC 8208(al). Direct fund charter schools that have been funded to operate early learning and care programs are also considered to be LEAs.

"Magnet school" means an entire school with a focus on a special area of study, such as science, the performing arts, or career education, designed to attract pupils from across the school district who may choose to attend the magnet school instead of their local public school. *CSPP FRPM Implementation Guidance* 18013

"Maximum reimbursable amount" means the total dollar amount of a contract. Reimbursement from the State shall not exceed the maximum reimbursable amount. The initial maximum reimbursable amount shall be the approved original version of the annual contract based on the Budget Act as signed by the Governor. 5 CCR 18013 (o)

"Migrant agricultural worker family" means a family that has earned at least fifty percent (50%) of its total gross income from employment in fishing, agriculture or agriculturally-related work during the twelve (12) month period immediately preceding the date of application for early learning and care services. EC 8231

"Monthly attendance record or invoice" means documentation that includes, at a minimum, the name of the child receiving services, the dates and actual times care was provided each day, including the time the child entered and the time the child left care each day, that is signed under penalty of perjury by both the parent or guardian and the child care provider, attesting that the information provided is accurate. EC 8221.5

"Net reimbursable program costs" means the portion of the actual and allowable net costs that are incurred in the provision of early learning and care services for subsidized children. 5 CCR 18013

"New contract" means either:

1. A contract award to applicants who do not currently contract with the CDE for early learning and care services; or
2. A contract award to current contractor that is for a program type as specified in EC 8208(i) that is different than the child development contract(s) currently administered by the applicant. 5 CCR 18000(d)

"Nontraditional hours" refers to evenings and/or weekends for licensed providers when a licensed provider is meeting the certified need for child care that includes hours during the period from 6:00 p.m. to 6:00 a.m., Monday through Friday, or any time on Saturday or Sunday. 5 CCR 18075.1(b).

“Notice of Action, Application for Services” means a written statement of specific information issued by the contractor that informs the applicant of the contractor’s decision to approve or deny early learning and care services. See Program Requirements for a description of the specific information that must be included to have the contractor’s decision reviewed. 5 CCR 18094, 18400(k) and EC 8261, 8263

“Notice of Action, Recipient of Services” means a written statement of specific information issued by the contractor informing the family receiving child care services that a change has been made to their service agreement. These changes may include, but are not limited to, need and eligibility requirements that are no longer being met, or fees have not been paid, or the fee or amount of services provided by the contractor will be modified. 5 CCR 18078, 18095, 18400(l) and EC 8261, 8263

"Ongoing income eligibility" means the definition set forth in EC 8263.1(b) Implementation Guidance 18078.

“Parent” means a biological parent, adoptive parent, stepparent, foster parent, caretaker, relative, legal guardian, or domestic partner of the parent as defined in *Family Code* section 297, or any other adult living with a child who has responsibility for the care and welfare of the child. EC 8208(u)

"Parental Incapacity" means the temporary or permanent inability of the child’s parent(s) to provide care and supervision of the child(ren) for part of the day due to a physical or mental health condition. 5 CCR 18078

“Parent involvement and education” means those activities specifically designed to include parents in the education of their children, help parents participate in the program, and enhance their understanding of child development. EC 8208(u)

“Parent survey” means a questionnaire completed by the parent to assess the child care program or services that the child and family receive. The parent survey asks for information about how the program helps parents support their child’s learning and development and meets the family’s needs. 5 CCR 18270.5(h)

"Private agency" or "Private contractor" means an entity other than a public agency that is tax exempt or non-tax exempt and under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Program self-evaluation process” means those activities and procedures used by the contractor to evaluate its program quality and compliance with applicable laws, regulations, and contractual provisions. 5 CCR 18270.5(i)

“Provisional child care provider” means an individual, exempt from licensure pursuant to *Health and Safety Code (HSC)* sections 1596.792(d) or (f), who provides child care for a child or children of an eligible parent for a period of up to thirty (30) days when there is an immediate need. The provisional child care provider shall have completed a TrustLine application and submitted fingerprints, in accordance with *HSC* sections 1596.603 and 1596.605. 5 CCR 18078

"Public agency" or "Public contractor" means a school district, community college district,

county superintendent of schools, campus of the California State University or the University of California system, county, city or other public entity under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Qualified FRPM school” is a public elementary school, that is not a charter or magnet school, where at least 80% of the enrolled students are eligible for the Free and Reduced Priced Meal program. *CSPP FRPM Implementation Guidance* 18013

"Quality assurance" means activities intended to benefit children and families including, but not limited to, services to parents and providers such as lending libraries, resource libraries, training of parents and providers and monitoring of program quality requirements.

"Reasonable and necessary costs" are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. 45 CFR 75.404

“Recertification” means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for ongoing receipt of services as specified in Education Code sections 8263(a)(1)(A) and 8263(a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. *Implementation Guidance* 18078(q)

"Recipients of service" means families and/or children enrolled in an early learning and care program subsidized by the CDE. 5 CCR 18078

“Regional Market Rate” means the current rate charged for various types of child care services as determined by a survey of providers. *EC* 8357

“Regional market rate ceilings” means the maximum amount calculated by the CDE that providers in different regions of the state may be reimbursed for the same type of child care for the same age child in accordance with statutory ceilings currently in effect. 5 CCR 18074.1(c)

"Restricted income" means income that may only be expended for specific limited purposes that would be reimbursable according to the contract. 5 CCR 18068

"Sectarian organization or sectarian child care provider" means any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. *CFR* 45 Section 98.2

“Self-Certification of Income” means a declaration signed by the parent under penalty of perjury identifying (5 CCR 18078):

1. To the extent known, the employer and date of hire and stating the rate and frequency of pay, total amount of income received for the preceding month(s), the type of work performed, and the hours and days worked, when an employer refuses or fails to provide requested employment information or when a request for documentation would adversely

affect the parent's employment; or

2. The amount and frequency of sources of income for which no documentation is possible. 5 CCR 18084(a)(4)

"Service agreement" is a legal instrument by which the agency purchases services needed to carry out the early learning and care programs. Legal instruments that include services which are clearly incidental to the agreement are not considered service agreements.

"Service delivery area" means the community, geographic area, or political subdivision in which the early learning and care services are to be provided as specified in the Request for Applications. 5 CCR 18000(f)

"Severely disabled children" are children with exceptional needs from birth to twenty-one (21) years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance or severe developmental disability. These children may be assessed by public school special education staff, regional center staff or another appropriately licensed clinical professional. EC 8208 (y)

"Site supervisor" means a person, who, regardless of his or her title, has operational program responsibility for an early learning and care program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of an early learning and care program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented. EC 8208(aa).

For CSPP, a site supervisor may qualify under any of the provisions above, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both EC Sections 8244 and 8360.1 is also qualified under this subdivision.

"Social service agency" means an agency that, in the course of day-to-day business, provides personal counseling, personal or group therapy provided by personnel properly certified or licensed under California law. Examples of such agencies include county welfare departments and county mental health departments.

"Staff development program" means those activities that address the needs, interests, and skills of program staff or service providers to improve program quality. 5 CCR 18270.5(j)

"Stage 1" means the first stage of CalWORKs child care services. Stage 1 child care services are administered by the California Department of Social Services (DSS) through county welfare departments pursuant to EC 8351. Stage 1 child care begins when authorized by the county welfare department. 5 CCR 18400(n)

"Stage 2" means the second stage of CalWORKs child care services. Stage 2 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to EC 8353. Stage 2 child care begins when the county welfare department determines that a CalWORKs family is stable and transfers the family to a Stage 2 child care contractor for

child care services, or a family applies and is found eligible for Stage 2 services. 5 CCR 18400(o)

“Stage 3” means the third stage of CalWORKs child care services. Stage 3 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to *EC 8354*. Stage 3 child care begins when a CalWORKs family receiving Stage 1 or Stage 2 child care services has fully utilized the family’s twenty-four (24) months of eligibility to Stage 1 and Stage 2 child care services following the date the adult stopped receiving cash assistance. 5 CCR 18400(p)

“Standard reimbursement rate” means that rate established by the Superintendent of Public Instruction (SSPI) pursuant to *EC 8265* and *EC 8208(ab)*

"State median income" means the most recent median income for California families as determined by the State Department of Finance (DOF). *EC 8263.1* and 5 CCR 18078(r)

“Subcontract” means a written agreement between the contractor and any entity to perform a service on behalf of the contractor.

“Subcontract for early learning and care services” means a specific type of subcontract where the contractor enters into a written agreement with another entity to carry out all or part of the early learning and care services.

“Subsidized families” means eligible families who are receiving early learning and care services and on whose behalf the CDE or the California Department of Social Services (DSS) is providing a reimbursement, in whole or in part. 5 CCR 18074.1(d)

“Superintendent” unless otherwise noted, refers to the California State Superintendent of Public Instruction (SSPI). *EC 95*

“Support services” means those services which, when combined with early learning and care services, help promote the healthy physical, mental, social and emotional growth of children and families. *EC 8208(ae)*

“Time Out” means that a family receiving CalWORKs Stage 1 or Stage 2 child care services becomes ineligible for Stage 1 or Stage 2 because the adult has been off cash aid for twenty-four (24) months. 5 CCR 18400(r)

“Total contract amount” for the purposes of determining the limit of allowable administrative and program support services for Alternative Payment type programs means either the initial maximum reimbursable amount or the total of direct payments to providers, which includes family fees for certified children and interest earned on advanced contract funds, plus reimbursable administrative and support services costs, whichever is greater. 5 CCR 18013

“Total countable income” means all income of the individuals counted in the family size (5 CCR 18078) including, but not limited to, the following:

1. Gross wages or salary, advances, commissions, overtime, tips, bonuses, gambling or lottery winnings;

2. Wages for migrant, agricultural, or seasonal work;
3. Public cash assistance;
4. Gross income from self-employment less business expenses with the exception of wage draws;
5. Disability or unemployment compensation;
6. Workers compensation;
7. Spousal support, child support received from the former spouse or absent parent, or financial assistance for housing costs or car payments paid as part of or in addition to spousal or child support;
8. Survivor and retirement benefits;
9. Dividends, interest on bonds, income from estates or trusts, net rental income or royalties;
10. Rent for room within the family's residence;
11. Foster care grants, payments or clothing allowance for children placed through child welfare services;
12. Financial assistance received for the care of a child living with an adult who is not the child's biological or adoptive parent;
13. Veterans pensions;
14. Pensions or annuities;
15. Inheritance;
16. Allowances for housing or automobiles provided as part of compensation;
17. Portion of student grants or scholarships not identified for educational purposes as tuition, books, or supplies;
18. Insurance or court settlements for lost wages or punitive damages;
19. Net proceeds from the sale of real property, stocks, or inherited property; or
20. Other enterprise for gain.

"Total expenditures" means all costs for the provision of subsidized services under the contract and any nonsubsidized services which are provided in commingled classrooms. 5 CCR 18013

"Unrestricted income" means income that has no restrictions regarding use by the donor, and income restricted by the donor for purposes that are not reimbursable according to the contract, including income for services to children not subsidized by the contract. 5 CCR 18013

“Unsubsidized” or “nonsubsidized” refers to children or families other than eligible families receiving reimbursement for early learning and care services. 5 CCR 18074.1(e)

"Use allowance" means an alternate method for claiming the use of the contractor's assets as a cost when depreciation methods are not used. 5 CCR 18013

“Welfare-to-work activity” means a county welfare department approved activity, including but not limited to, employment, job search, job training, educational training, or participating as a volunteer in a job-related activity. 5 CCR 18400(s)

II. GENERAL PROVISIONS

Notification of Address Change

(5 CCR 18014)

1. Contractors shall notify the CDE in writing of any change in the mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by:
 - a. Board minutes verifying the change in address; and
 - b. A copy of the notification to the Internal Revenue Service of the address change.
2. Contractors shall notify the CDE in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood, or earthquake.

Notification of E-mail Contact Changes

Contractors shall assure that at all times the e-mail address on file at the CDE is accurate for contacting the following individuals:

1. Executive Officer
2. Program Director

Contractors shall utilize procedures provided by the CDE to electronically add new addresses or delete old addresses, as needed.

Materials Developed with Contract Funds

(5 CCR 18016)

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the early learning and care program.

If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development and development program shall

be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of state general or federal funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

Prohibition Against Religious Instruction or Worship

(5 CCR 18017)

CCTR, CSPP, CHAN, CMIG, and CFCC contractors shall not provide nor be reimbursed for early learning and care services which include religious instruction or worship.

Issuance and Use of Checks

(5 CCR 18018)

Except for external payroll services, private contractors:

1. Shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDE; and
2. Shall require two (2) authorized signatures on all checks unless:
 - a. The contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount.
 - b. The annual audit verifies that appropriate internal controls are maintained.

Plan for Provider Reimbursement and Certificates for Alternative Payment Programs

(EC 8261, 5 CCR 18226, 45 CFR 98.45(l)(1)(ii))

(Applies to C2AP, C3AP, CAPP, CMAP, AND CFCC)

The contractor shall develop and implement a plan for the timely reimbursement to providers. The plan shall include a provision requiring that providers be reimbursed within 21 calendar days of the receipt of a complete record or invoice for services

Procedures shall include measures to ensure security of certificates and prevent fraud and/or abuse and provide for timely redemption of certificates by either parents or providers.

Within two (2) business days of receiving license suspension or revocation notification from the Resource and Referral Program, the contractor shall terminate payment to the affected facility as of the effective date of the suspension or revocation.

Contractors must set up an electronic reimbursement program for licensed and license-exempt providers so that the reimbursement to providers may be electronically

transmitted to the financial institution of their choice.

Contractors may not require the providers to use direct deposit or any other form of electronic reimbursement to receive their reimbursements. However, any contractors which had a policy in place prior to July 1, 2019 which required that providers be reimbursed via direct deposit or other form of electronic reimbursement may continue to require those affected providers receive reimbursement in conformance with such policy. Any new providers starting with such contractors after July 1, 2019, or any contractors without such a policy in place prior to July 1, 2019, must give providers the option of receiving their reimbursements electronically.

When the contractor makes the reimbursement to the early learning and care provider, electronically or otherwise, they must provide a description of the reimbursement to the provider, including the child(ren) served, and the month of service covered by the reimbursement.

Any fees assessed by a provider's financial institution for electronic banking would be incurred by the provider; the fees would not be paid by the contractor.

Prohibition against Loans and Advances

(5 CCR 18019)

1. Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies.
2. Contractors shall not advance unearned salary to employees.
3. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received except for:
 - a. Subcontractors providing early learning and care services; and
 - b. Subcontractors with subcontracts exempt from the provisions of 5 CCR 18026.

Contracts with Multiple Service Areas

1. CCTR, CSPP, CHAN, and CMIG contractors with more than one service delivery area as specified in and funded through a single contract shall maintain service at the same level, plus or minus ten percent (10%) of the contracted child hours or child days of enrollment as applicable, in the individual service area(s) specified in its current contract. 5 CCR 18022
2. The contractor may request approval from the CDE to vary service levels by more than ten percent (10%) if the contractor can demonstrate that the need for services in the designated area(s) has changed.
3. The CDE shall approve or deny the variable service level request within thirty (30) calendar days of receipt of the request.

4. If the variable service level request is denied, the contractor may appeal this decision in accordance with 5 CCR 18308.
5. Non-CalWORKs Alternative Payment program and CFCC contractors with more than one service delivery area, as specified in and funded through a single contract, shall maintain service at the same level in the individual service area(s) as most recently approved by CDE.

Compliance Reviews

(5 CCR 18023(b), (c), (d))

(Applies to all programs)

1. At least once every three (3) years, and as resources permit, the CDE shall conduct reviews at the contractor's office(s) and operating facility(ies) to determine the contractor's compliance with applicable laws, regulations and/or contractual provisions.
2. The compliance reviews shall be conducted according to the provisions of the FPM/CMR.
3. The compliance reviews shall be conducted by consultants, analysts, and/or management staff of the CDE or other State of California representatives.

Reviews of Alternative Payment Agencies

(EC 8385)

Annually, the CDE shall conduct a review of each Alternative Payment agency to determine an error rate in each of the following areas:

1. Family fee determinations;
2. Eligibility;
3. Basis of hours of care; and
4. Provider payments

Contractor's Termination for Convenience

(5 CCR 18024)

1. A contractor may terminate the contract for any reason during the contract term.
2. The contractor shall notify the CDE of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

3. Within fifteen (15) days from the date the contractor notifies the CDE of its intent to terminate the contract, the contractor shall submit:
 - a. A current inventory of equipment purchased in whole or in part with contract funds; and
 - b. The names, addresses and telephone numbers of all families served by the contract and all staff members funded by the contract.
 - c. CFCC and Alternative Payment program contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services funded by the early learning and care contract.
4. Upon receipt of a notice of intent to terminate, the CDE will transfer the program to another agency as soon as practicable.

Uniform Complaint Procedures

(5 CCR 4600-4694)

5 CCR 4610 authorizes the CDE the responsibility for Uniform Complaint Procedures (UCP). Early learning and care programs are covered under the UCP. Contractors shall abide by the applicable procedures set forth in 5 CCR 4600-4694.

For additional general information regarding the UCP, contact the Categorical Program Complaint Management Office, California Department of Education, via telephone (916) 319-0929, or visit the CDE Web site at the following link:

<https://www.cde.ca.gov/re/cp/uc/>

Eligibility for Funding

(5 CCR 18001, 18303, 18304, and 18023)

A current contractor is eligible to apply for new or additional funds except when one or more of the following conditions apply during the Request for Application (RFA) cycle:

1. The contractor is on conditional status because of fiscal or programmatic noncompliance as described in 5 CCR 18303 or 18304; or
2. The CDE has conducted a compliance review pursuant to 5 CCR 18023 and the contractor has failed to cure items of fiscal and programmatic noncompliance identified in the review within twelve (12) months of the issuance of the compliance review report; or
3. The CDE reduced the contractor's current year maximum reimbursement amount due to the contractor's inability to utilize its full contract amount, whether through low enrollment or low expenditures for the same contract type.
4. A current contracting agency may be determined, on a case-by-case basis, to be ineligible to receive expansion funding if:

- The agency was previously awarded expansion funding and has not yet begun to provide services with that funding; or
- The CDE has evidence that the agency has not been able to successfully fulfill current contract requirements by serving children in a quality program and in a fiscally responsible manner.

A current contractor that is applying for additional funds may be awarded less than the full amount requested during negotiations of the award, particularly if it has been determined that they are not fully utilizing their current contract maximum reimbursable amount.

An applicant that is not a current CDE contractor is not eligible to apply for funding if one of the following conditions apply:

1. The contractor had a previous contract with the CDE that was terminated or not continued by the CDE for fiscal or programmatic noncompliance as described in section 18303 or 18304 within three (3) years immediately preceding the date the RFA was posted; or
2. The applicant contractor has an outstanding accounts receivable balance with the CDE; or
3. The applicant contractor has a delinquent audit with the CDE pursuant to 5 CCR 18073.

Review of Contracts for Continued Funding

(5 CCR 18010)

1. Contractors have no vested right to a subsequent contract.
2. Contractors that are not on conditional contract status, but which have evidenced fiscal or programmatic noncompliance with the provisions of this contract, laws, or regulations, shall receive an administrative review to determine whether they will receive an offer for continued funding.
3. Contractors currently on conditional status that do not meet the requirements specified in the Conditional Status Addendum may not be offered a subsequent contract and shall be so notified by the CDE at least ninety (90) calendar days prior to the end of the current contract period.
4. Contractors that intend to accept the offer to continue services in the subsequent contract period shall respond to a continued funding application request from the CDE in accordance with the instructions and timelines specified in the request.
5. Failure to respond within the timelines specified in the continued funding application request shall constitute notification to the CDE of the contractor's intent to discontinue services at the end of the current contract period unless the contractor has received a written extension of the original timeline from the CDE.

Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the *Corporations Code* including standards of conduct and management of the organization.

Conflicts of Interest

(EC 8258)

1. All transactions shall be fair and reasonable and conducted at arm's length where the contractor is a party to a transaction and the other party is one of the following:
 - a. An officer or employee of the contractor or of an organization having financial interest in the contractor; or
 - b. A partner or controlling stockholder or an organization having a financial interest in the contractor; or
 - c. A family member of a person having a financial interest in the contractor.
2. No person employed by the CDE in a policymaking position in the area of early learning and care programs shall serve as a member of the board of directors, advisory council, or advisory committee for any agency receiving funds pursuant to this chapter. The provisions of this subdivision shall not apply to any person appointed prior to January 1, 1985.
3. No retired, dismissed, separated, or formerly employed person of the CDE employed under the State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE. The prohibition contained in this subdivision shall apply to the person only during the two-year period beginning on the date the person left state employment.
4. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 if he or she was employed by the department in a policymaking position in the area of early learning and care programs within the twelve (12) month period prior to his or her retirement, dismissal, or separation.
5. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may be employed by a contractor pursuant to EC Section 8262 if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE.
6. The provisions above shall not apply to any persons who were already in the

situations described by these subdivisions prior to January 1, 1985.

7. Based on corporate law (*Corporations Code* sections 310, 5233-5234, 7233 and 9243 as applicable), the general rules to be followed to ensure that transactions are conducted "at arm's length" include:
 - a. Prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and
 - b. All parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.
8. If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser, licensed by the California Office of Real Estate Appraisers that supports all reimbursable costs under the transaction.
 - a. A new "fair market rental estimate" for each change, adjustment or escalation to any reimbursable costs under a transaction is required.
 - b. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply.
9. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance.
10. Any transaction described in this section shall be disclosed by the auditor in the notes to the financial statement in the annual audit. (*Uniform Guidance*, Subpart F)
11. Rental costs for equipment owned by affiliated organizations, officers, or other key personnel of the contractor or their families are allowable only as depreciation or use allowance.

Unlawful Denial of Services

(GC 11135 and 5 CCR 4900)

As used in this section, "disability" means any mental or physical disability as defined in GC 12926.

1. No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded

directly by the state, or receives any financial assistance from the state.

2. With respect to discrimination on the basis of disability, programs and activities subject to 5 CCR 4900(a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

Recycled Paper Certification

(PCC 12205, 12209, 12320)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in *Public Contract Code (PCC)*, sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the *PCC*, sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

Healthy Schools Act

All early learning and care center-based contractors are subject to the requirements of the Healthy Schools Act (HSA) as specified in *EC* sections 17608 to 17614.

For more information about the requirements of the HSA, contact the Department of Pesticide Regulation (DPR), Integrated Pest Management (IPM) via e-mail at ccipmlist@cdpr.ca.gov or visit the DPR School and Child Care IPM Web site at: <http://www.cdpr.ca.gov/schoolipm/>

To comply with the provisions of the HSA, early learning and care center-based contractors shall, among other requirements:

1. Identify a school designee
 - a. Choose a center employee who will make sure the requirements of the Healthy Schools Act (HSA) are met when pesticides are used at your center.
2. Develop an IPM plan
 - a. Create an IPM plan using the DPR IPM Plan template available on the DPR

School and Child Care IPM website; or get a self-drafted center IPM plan approved by DPR.

3. Provide annual written notification
 - a. Send parents, guardians, and staff a written notification of pesticides you expect to apply at your center during the year.
4. Establish individual notification registry
 - a. Establish a registry for all interested parents, guardians, and staff to sign up and receive notifications of individual pesticide applications.
5. Post warning signs
 - a. Post signs where you will apply pesticides.
6. Keep Records
 - a. Keep records of pesticide applications made by center staff and pest management contractors for at least four years.
7. Send pesticide use reports to DPR
 - a. Send pesticide use reports for pesticide applications made by center employees to DPR at least once per year.
8. Never use prohibited pesticides
 - a. Always check the list of Pesticide Products Prohibited from Use in California Schools and Child Care Facilities prior to using a new pesticide product.
9. Complete Annual IPM Training
 - a. Take a DPR-approved training course before applying pesticides, and renew annually.

III. FACILITIES AND EQUIPMENT

(5 CCR 18034)

A. Facilities and Equipment Expenditures

Facilities and Equipment Expenditures, are subdivided into two categories:

1. Capitalized
 - a. Buildings and Improvements: Sites; renovations and repairs of sites; buildings; renovations and repairs of buildings, building fixtures, services systems; and
 - b. Capitalized Equipment: Tangible personal property (including information

technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or \$5,000. 2 CFR 200.33

2. Non-capitalized

- a. Non-capitalized equipment expenditures are those for tangible personal property with a useful life of more than one year other than those described in Capitalized Equipment above.

B. Buildings and Improvements

1. Buildings are only reimbursable as depreciation or use allowance.
2. To be reimbursable as direct costs, prior written approval by the CDE is required for improvements to land, buildings, or equipment which materially increase their value or useful life. 2 CFR 200.439(b)(3)
3. If the Contractor wishes to share the use of real property among multiple programs, the associated reimbursable capital expenditures shall be prorated among the programs according to the benefits received.
4. Building and improvement expenditures are not reimbursable as indirect costs, except as depreciation or use allowance.

C. Renovation and Repair

(5 CCR 18034)

1. Improvement of sites and adjacent grounds to meet or exceed the 22 CCR, Community Care Licensing Standards are reimbursable for both private and public agencies. Reimbursable improvements are those that:
 - a. Do not unnecessarily increase the value as defined in 18013(v) of a facility; and
 - b. The contractor has obtained prior CDE approval for proposed work for ten thousand dollars (\$10,000) or more.

D. Depreciation and Use Allowance

1. Depreciation and use allowance may be claimed on eligible, appropriate capital assets.
2. Depreciation shall not be claimed on land, donated assets or assets purchased with public funds, on any fully depreciated asset or on idle or excess facilities.
3. A use allowance shall not be claimed on land or assets purchased with contract funds or on assets for which depreciation has been claimed.

4. When depreciation is applied to assets acquired in prior years, the annual charges shall not exceed the amounts that would have resulted had depreciation been claimed from the date of acquisition.
5. The use allowance for buildings and improvements is computed at an annual rate not to exceed two percent (2%) of acquisition costs.
6. The use allowance for equipment is computed at an annual rate not to exceed six and two-thirds percent (6 2/3%) of acquisition costs.
7. To be reimbursable, interest paid on private sector debt for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by contractors providing center-based care must be actual interest paid, not to exceed a fair market rate of interest. This provision does not apply to family child care home facilities.

E. Preapproval Requirements

(5 CCR 18029 and 18040)

1. All equipment and equipment replacement purchases that meet either of the following criteria shall be approved in writing in advance by the CDE. 2 CFR 200.33 and 200.439(b)(1)
 - a. The per-unit acquisition cost equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or five thousand dollars (\$5,000), including tax, shall be approved in writing in advance by the CDE.
 - b. The sum of all items included in the purchase equals ten thousand dollars (\$10,000) or more, including tax, shall be approved in writing in advance by the CDE.
 - i. All expenses associated with a purchase that are necessary for the equipment to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required (e.g., a playground structure includes multiple components, although each component may be purchased separately. When determining pre-approval requirements, all components purchased for the playground should be considered).
 - ii. Subdividing equipment purchases into separate items to avoid the preapproval requirement is prohibited.
2. Proposed renovation and repair work for ten thousand dollars (\$10,000) or more, including the invoiced cost, plus any applicable sales tax, delivery fees, or installation charges, shall be approved in writing in advance by the CDE. 2 CFR 200.439(b)(3)
 - a. All expenses associated with a purchase that are necessary for the improvement to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required.

- b. Subdividing renovation and repair work into separate purchases to avoid the preapproval requirement is prohibited.
 - 3. Approval requests shall be submitted on the Request for Approval of Equipment form.
 - 4. Bids, if applicable, shall be attached to the Request for Approval of Equipment when submitted to the CDE for approval.
 - a. One copy of the request shall be retained by the CDE.
 - b. One copy will be returned to the contractor approved or disapproved within thirty (30) calendar days of receipt.
 - c. If the request for approval of an equipment purchase is disapproved, the contractor may appeal the decision in accordance with instructions specified in 5 CCR 18040(d), 18302.
 - 5. Procurement practices must be in accordance with 5 CCR 18040.
 - 6. Public Agencies shall comply with the applicable sections of the PCC.
 - 7. Lease-purchase agreements are subject to the above requirements.
 - 8. If the work is to be performed through a subcontract, the requirements of the FT&C section titled *Subcontracts* also applies.
 - 9. When private agencies submit proposed subcontracts for renovation and repair for approval, evidence shall be included that the proposed subcontractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract. 5 CCR 18029(d)
- F. Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies
- 1. All equipment purchases, replacements, and improvements not performed by the contractor's staff exceeding five thousand dollars (\$5,000), including tax, must have at least three (3) bids or estimates.
 - a. Each bid or estimate must contain prices for equivalent and comparable items and/or services.
 - b. When available, consolidating procurements to obtain a more economical purchase is required.
 - c. Subdividing equipment purchases into separate items to avoid the competitive bidding requirement is prohibited.
 - 2. If bids or estimates are required, the contractor shall purchase the goods or services from the lowest responsible bidder or estimator. The contractor shall conform to the

materials, terms and conditions of the invitation for bid, and with 5 CCR 18040.

3. If bids or estimates are required, and three (3) bids or estimates cannot be obtained, the contractor shall provide adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., an emergency situation, or the item is only available from a single source).
4. Lease-purchase agreements are subject to the above requirements.

G. Obtaining Bids for Equipment Purchases for Public Agencies

Public Agencies shall comply with the applicable sections of the *Public Contract Code*.

H. Asset Management

1. Asset Control System

(2 CFR 200.313(d)(3))

A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

2. Inventory

(2 CFR 200.313 (d)(1))

- a. An inventory of all equipment and all non-disposable items with an estimated useful life of more than one year, purchased in whole or in part with early learning and care contract funds, shall be maintained. For more guidance refer to *California School Accounting Manual Procedure 770*.
- b. Property records must be maintained that include the following:
 - i. Description;
 - ii. Serial number or other identification number;
 - iii. The source of funding;
 - iv. The acquisition date;
 - v. The cost;
 - vi. The location, use and condition; and
 - vii. Any ultimate disposition date including date of disposal and sale price if applicable.
- c. A physical inventory must be taken at least every two (2) years and reconciled with property records. 2 CFR 200.313(d)(2)

I. Title, Use, Disposition and Retention

1. Buildings and Improvements

- a. Title to real property acquired in whole or part with state early learning and care (ELC) funds shall vest in the contractor subject to the condition that the contractor shall use the real property for the authorized purpose of the ELC program as long as it has a contract with the CDE and shall not encumber the property without the prior written approval of the CDE. 2 *CFR* 200.311(a)
- b. When the real property is no longer needed for the purposes of any CDE program, the Contractor shall request disposition instructions from the CDE, which shall observe one of the following three disposition instructions:
 - i. The CDE may permit the contractor to retain title without further obligation to the CDE after the contractor compensates the CDE or that percentage of the current fair market value of the property, net of reasonable and necessary selling costs, attributable to the CDE's share of the acquisition cost.
 - ii. The contractor may be directed to sell the property under guidelines provided by the CDE and pay the CDE for that percentage of the current fair market value of the property, net of reasonable and necessary selling and fix-up costs, attributable to the CDE's share of the acquisition cost.
 - iii. The contractor may be directed to transfer title to the property to the CDE or to an eligible third party, provided that, in such cases, the contractor shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

2. Equipment

(5 *CCR* 18025)

- a. Title – When equipment is purchased with state funds, title shall vest with the contractor only for such period of time as the contractor has a contract with the CDE.
- b. Retention of Equipment – The CDE may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the state for the state's share of the cost of the equipment. Fair compensation shall be determined by the state using the state's share of original acquisition cost, less depreciation, computed on a straight-line method over the estimated useful life expectancy of the equipment.
- c. Use – When equipment is purchased in whole or in part with state funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs.

- d. Disposition – The contractor may dispose of obsolete equipment and remove the asset at its recorded value. If the sale of equipment originally purchased with state funds occurs, the proceeds from the sale of the equipment must be returned to the program. If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written directions from the CDE.

IV. SUBCONTRACTS

- A. A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.
- B. Subcontracts Excluded from Requirements of this Section

(5 CCR 18026)

The following types of relationships are not subject to the requirements contained in this section:

- 1. Employment agreements;
- 2. Facility rental or lease agreements except as set forth below;
- 3. Payment arrangements with family child care homes and/or providers;
- 4. Medical or dental service agreements;
- 5. Bookkeeping/auditing agreements, except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*; (5 CCR 18027)
- 6. Food services agreements;
- 7. Janitorial and grounds keeping agreements;
- 8. A subcontract with a public agency, except for a subcontract with a public agency to provide early learning and care services; and
- 9. Subcontracts with an individual for less than ten thousand dollars (\$10,000), except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

Contractors are responsible for ensuring financial and compliance audits of all subcontractors.

Required Subcontract Provisions

(5 CCR 18031)

The following provisions apply to all subcontracts unless exempted in Section A above.

Every subcontract shall be in writing and specify:

1. The dates within which the subcontractor is to perform the contract.
2. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the state.
3. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.
4. The service(s) to be provided under the subcontract and the responsibilities of each party under the subcontract.
5. The subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers, employees or agents of the State of California.
6. Modifications of the subcontract shall be in writing, and for subcontracts in excess of ten thousand dollars (\$10,000), prior written CDE approval is required unless the subcontract is otherwise exempt from prior CDE approval.
7. The subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.
8. The remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. The State of California retains title to any equipment or supplies purchased with state funds and the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDE for any unit of equipment that costs in excess of five thousand dollars (\$5,000).
10. The subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's non-represented employees computed in accordance with California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1.
11. The subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.
12. For those subcontracts requiring prior approval, the subcontractor shall maintain

- records for program review, evaluation, audit and/or other purposes and make the records available to agents of the state for a period of five (5) years.
13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in the 2 CCR 11105.
 14. Funding of the subcontract should be made subject to the appropriation and availability of funds from the state.
 15. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
 16. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.
 17. Subcontracts for ten thousand dollars (\$10,000) or more cannot become effective and binding on either the prime contractor or the subcontractor until approved in writing by the CDE, and any work performed by the subcontractor prior to the date of such approval shall not be used as a claim against the state. Modifications to any contracts for \$10,000 or more shall also not be effective until approved in writing by the CDE and any work in performance of such modification prior to the date of approval of the modification shall not be used as a claim against the state. Specific approval requirements are set forth in Section F below.
 18. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.
 19. All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

Private Agencies-Bids for Subcontracts

(5 CCR 18027 & 2 CFR 200.320(f))

1. Private contractors shall obtain at least three (3) bids or estimates for subcontracts exceeding five thousand dollars (\$5,000), prior to cost allocation
2. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents in its records that establish:
 - a. The reasons three (3) bids or estimates could not be obtained; and
 - b. The reasonableness of the proposed expenditure without three (3) bids or estimates.
 - c. Documentation for the single-source vendor or service provider, including the

reason that vendor should be approved, must be submitted for approval in lieu of three (3) bids.

3. The subcontract shall be awarded to the lowest responsible bidder.
4. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Public Agencies Subcontracts

1. Public Agencies shall award subcontracts in accordance with the Public Contract Code.

Prior CDE Approval for Subcontracts \$10,000 and Above

(5 CCR 18028-18030)

1. Contractors shall obtain prior written approval from the CDE for subcontracts of ten thousand dollars (\$10,000) or more, prior to cost allocation, that are otherwise not excluded from the provisions as stated in the FT&C section *Subcontracts Excluded from the Requirements of this Section*.
2. Prior to execution of a subcontract and commencement of work, the contractor shall submit two (2) copies of the proposed subcontract to the CDE for approval, including a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Bids, if applicable, shall be submitted to the CDE when requesting approval. If three (3) bids were not obtained, the contractor shall provide written justification when the subcontract is submitted to the CDE for prior approval. Contractors shall demonstrate that approval of the subcontract is cost effective to the state.
3. For proposed capital outlay subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.
4. Requests for approval of subcontracts for transportation services shall include a Certificate of Insurance of the subcontractor in an amount not less than \$1 million per occurrence (or a greater amount if required by the Public Utilities Commission regulations), listing the contractor and the state as additional named insured.
5. One copy of the subcontract will be retained by the CDE and the other copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt of all required documents.

No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDE approval. A disapproved contract will include a statement of the reason(s) for not approving the subcontract. If the request for approval of a subcontract is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Appeals and Termination, Contract*

Administration Disputes.

6. The CDE does not assume any responsibility for performance of approved subcontracts nor does the CDE assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.
7. Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are not reimbursable.

Audit Requirements for Subcontracts

(5 CCR 18032)

An organization that operates an early learning and care program under a direct service contract with the CDE is called a contractor. The contractor may choose to enter into an agreement with another organization (subcontractor), where the subcontractor operates one (1) or more of the contractor's early learning and care programs. Consequently, an entity may be acting in the dual capacity of contractor and subcontractor for one (1) or more CDE contractors – each having one (1) or more CDE contracts. In some cases, a subcontractor may not have its own CDE contract directly with the CDE.

The organization receiving funds from the state shall be responsible for obtaining the required financial and compliance audits of the organization and any subcontractors, except for subcontracts exempt from CDE review, as agreed to by the Departments of Finance (DOF) and General Services (DGS).

The audit of the subcontract shall be submitted to the CDE as follows:

1. School districts, county offices of education, community colleges, and direct funded charter schools, shall submit the audit of the subcontract by the fifteenth day of the fifth month following the fiscal year in which the subcontracted services were performed;
2. All other contractors shall submit the subcontract audit along with the contractor's audit as specified in 5 CCR 18071.

V. COSTS, EARNINGS AND REIMBURSEMENT

(5 CCR 18033, 18034)

A. Contract Amount Adjustments

(Applies to C2AP, C3AP)

Child Development and Nutrition Fiscal Services (CDNFS) shall conduct monthly analyses of caseloads and expenditures and adjust agency contract maximum reimbursable amounts and allocations as necessary to ensure that funds are distributed in proportion to need. Prior to such action, however, CDNFS will notify the contractor of the proposed action and the contractor will be given an opportunity to provide written

documentation that demonstrates the CDNFS projections are inaccurate. Because of the need to transfer funds to an under-funded agency as quickly as possible, the contractor shall have three (3) working days from the date of notification to respond.

Reasonable and Necessary Costs

(5 CCR 18013(s), 18033, 2 CFR 200.404)

Contractors may be reimbursed for actual costs that are reasonable and necessary to the performance of the contract. Reasonable and necessary costs are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. Consideration must be given to market prices for comparable goods or services for the geographic area.

Indirect Costs

(5 CCR Sections 18013(m), 18013(n))

1. If indirect costs are claimed, an indirect cost allocation plan must be on file with the contractor and available for review by the CDE staff and auditors.
2. The maximum indirect cost rate shall be ten percent (10%) of the modified total direct costs.
3. For any non-federal entity that has a negotiated indirect cost rate, which includes all school districts and county offices of education, the maximum indirect cost rate shall be the lesser of the negotiated indirect cost rate or ten percent (10%).
4. This rate is applied to budget categories 1000-5000 only in determining the maximum amount of indirect costs that are reimbursable under the contract.
5. The amount of cost allocable to this contract shall not exceed the benefits to this contract. The allocation method must quantify this benefit among all similar programs and then distribute the costs accordingly.
6. The indirect cost rate shall not include consideration of any costs otherwise non-reimbursable. If depreciation or use allowance is included in the indirect cost rate, such allowance shall not be claimed on the asset as a direct cost.

Administrative Costs

(EC 8276.7, 5 CCR 18013(c))

Contractors may claim administrative costs, as defined in 5 CCR 18013(c), which are related to the administration of the early learning and care program.

Reimbursement of administrative costs shall not exceed fifteen percent (15%) of the net reimbursable program costs or actual administrative costs, whichever is less.

The fifteen percent (15%) includes any allowance for indirect costs and audits. Contractors shall maintain written documentation of the rationale used in determining direct and administrative costs.

Service Level Exemption (Start-Up) for New or Expanded Programs

(*EC 8275*)

1. Allowable start-up costs will be in an amount not to exceed fifteen percent (15%) of new or expansion funding authorized in the Budget Act for State Early Learning and Care Programs. *EC 8275(a)*
2. Start-up costs must be necessary for the establishment and stability of new early learning and care programs (*EC 8275(c)*) and include:
 - a. Employment and orientation of necessary staff;
 - b. Setting up of the program and facility;
 - c. Finalization of rental agreements and necessary deposits;
 - d. Purchase of a reasonable inventory of materials and supplies; and
 - e. Purchase of an initial premium for insurance.
3. Contractors shall maintain an auditable record of start-up costs which shall be included within the audit at the end of the year.
4. Reimbursable start-up costs shall occur prior to attainment of full enrollment.
5. If all or part of the fifteen percent (15%) allowable start-up costs is needed and spent, that portion will **not** have to be earned through provision of services.
6. If the contractor neither needs nor chooses to claim any of the fifteen percent (15%) start-up costs, the full service requirements shall be earned at the contract rate.
7. Migrant early learning and care agencies operating on a seasonal basis shall be reimbursed up to fifteen percent (15%) of the contract amount annually for approved start-up and close-down costs associated with starting up and closing down agency operations to correspond with periods of service needed by migrant families as specified in *EC 8233(b)*.

Costs for Travel and Per Diem & Restrictions

(*GC 11139.8, EC 8265, 8269, 5 CCR 18031, 18034, and 18041*)

Contractors and subcontractors shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with the California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1, Article 2.

Contractors with collective bargaining agreements allowing higher rates of reimbursement shall not pay the difference out of contract funds.

The CDE shall notify the contractor of a change in expense rates within thirty (30) calendar days after the CDE has received notification of a change in rates from the California Department of Human Resources.

Contractors shall be reimbursed for out-of-state travel expenses only with prior written approval from the CDE. The CDE shall not approve out-of-state travel expenses:

1. For more than one employee, per contract per year.
2. For contractors with delinquent accounts payable which are delinquent more than ninety (90) calendar days after the date of the original invoice.
3. For contractors on conditional status.
4. When there is no clear benefit to the state.
5. When the benefit to the state can be obtained within California.

The CDE shall approve or deny the request for out-of-state travel within thirty (30) calendar days of the receipt of the request. If the request is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Internal Appeal Procedures to Resolve Contract Administration Disputes*.

Out-of-state travel to states identified in California's travel ban will not be considered. Costs associated with traveling to banned states will not be reimbursable.

Specific Items of Reimbursable Costs

(EC 8261, 8269 and 5 CCR 18034)

Reimbursable costs include, but are not limited to, the following:

1. Start-up costs of child development agencies or facilities in an amount not to exceed fifteen percent (15%) of the expansion or increase of each agency's total contract amount.
2. Close down costs for Migrant Programs as specified in EC 8233.
3. Administrative costs not to exceed fifteen percent (15%) of net reimbursable program costs.
4. Employee compensation, including fringe benefits, and personal service contracts.
5. Equipment and equipment replacement with prior CDE approval if required in the FT&C section *Facilities and Equipment*.
6. Supplies purchased in accordance with procurement practices found in 2 CFR

sections 200.317 to 200.326, including bidding requirements for micro-purchases that exceed \$10,000.

7. Improvement of sites and adjacent grounds to meet or continue to meet 22 CCR Community Care Licensing Standards in accordance with the FT&C section *Renovation and Repair*.
8. Taxes, insurance, and maintenance for buildings and/or equipment.
9. Depreciation based on the useful life of an asset in accordance with the FT&C section *Depreciation and Use Allowance*.
10. A use allowance for buildings and improvements in accordance with the FT&C section *Depreciation and Use Allowance*.
11. Travel and per diem expenses, including approved out-of-state travel, in accordance with the FT&C section *Costs for Travel and Per Diem*.
12. An indirect cost rate based on an approved indirect cost plan, in accordance with the FT&C section *Indirect Costs*.
13. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Lease payments or depreciation and interest on loans incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents in the community in which the facility is located in accordance with guidelines issued by the CDE.
14. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Interest on private sector debt financing for purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased for providing center-based care upon demonstration that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
15. Payments to providers made in accordance with applicable state laws and regulations.
16. (Applies to C2AP, C3AP, CAPP, CMAP, CFCC) Support services as specified in the FT&C section *Definitions*.

Nonreimbursable Costs

(EC 8261, 8269 and 5 CCR 18035)

The following costs shall not be reimbursable under the early learning and care contract:

1. Bad debts, including losses arising from uncollectible accounts and any related legal costs. (Uncollected parent fees are not considered to be bad debts if documentation of collection attempts exists.);
2. Contributions;

3. Costs of amusement or entertainment;
4. Costs of fines or penalties;
5. Costs of idle facilities unless those costs are related to a partial year program and the costs of the idle facilities have been approved by the CDE;
6. Costs incurred after the contract has been terminated;
7. Fund raising costs except as specified in 5 CCR 18277;
8. Interest expenses except:
 - a. Interest on borrowed funds when apportionments are withheld because of a delay or error attributable to the state and the amount of interest claimed is approved by the CDE.
 - b. When interest is part of a lease purchase agreement.
 - c. When the interest is part of payments on a loan incurred to acquire, rehabilitate or construct licensable facilities, not to exceed fair market rents existing in the community in which the facility is located.
 - d. When the interest is on private sector debt financing for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by the contractor, and it has been demonstrated that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
9. Investment management costs;
10. Costs of organization of a nonprofit corporation such as incorporation fees or consultant fees;
11. Public relations consultant fees;
12. Costs of legal, consulting and accounting services incurred in prosecution of claims against the state;
13. State and federal income taxes;
14. Costs for the acquisition of sites and buildings except through depreciation;
15. Bonuses, unless part of a collective bargaining agreement;
16. Compensation to the members of the board of directors except for:
 - a. Reimbursement for travel and/or per diem, computed in accordance with Costs for Travel and Per Diem, incurred while the members are conducting business for the

organization

- b. As provided in the California *Corporation Code* Section 5227, et seq.
- 17. Costs of subcontracts, which increase the contractor's cost or subcontracts, which contain a provision for reimbursement for cost-plus-a-percentage-of-costs;
- 18. Costs incurred in prior or future years, with the exception of the cost of an annual independent audit, which may be claimed either in the contract period which was the subject of the audit, or during the contract period in which the audit is completed;
- 19. Costs that are not adequately documented.

Charging of Expenditures

(EC 8261, 8269 and 5 CCR 18037)

Net reimbursable program costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations. However, the cost of the annual independent audit may be claimed either in the contract period which was the subject of the audit or during the contract period in which the audit is completed.

Recoupment of Advanced Contract Funds

(EC 8261, 8265, 8269 and 5 CCR 18038)

The CDE shall recoup any payments made for costs which were not reasonable and necessary. The amount recouped shall be the excess payment over the reasonable or fair market value, or one hundred percent (100%) of the cost, if the cost was not necessary. The CDE may elect to recover any costs associated with recouping advanced contract funds, including collection services or attorney fees.

Use of Subsidized Family Fees

(EC 8235, 8261, 8269, 8273, 8273.1, and 5 CCR 18039)

(Applies to C2AP, C3AP, CAPP, CCTR, CFCC, CHAN, CMAP, CMIG, CSPP) Fees received from subsidized parents are to be expended and earned by the contractor before contract funds shall be claimed for reimbursement.

(Applies to CCTR, CSPP, CHAN, CMIG) Such fees shall be expended on reimbursable costs and earned by providing child days of enrollment. In order to be reimbursed the full contract amount, in addition to the fees received from subsidized parents, the contractor must have additional reimbursable expenditures and provide child days of enrollment beyond the minimum required by the contract. Notwithstanding any other law, commencing with the 2014–15 fiscal year, family fees shall not be assessed for families enrolled in the part-day California preschool program. (EC 8273.1)

Determination of Reimbursable Amount

(EC 8261, 8269 and 5 CCR 18054)

CCTR, CSPP, CHAN, CMIG contractors shall be reimbursed for an audited claim that is the least of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract;
2. The actual and allowable net costs; or
3. Contract service earnings – The adjusted child days/hours of enrollment for certified children, pursuant to EC 8265.5 and 8266.1, times the contract rate per child day/hour of enrollment, times the actual percentage of attendance plus five percent (5%), but in no case to exceed one hundred percent (100%) of enrollment.

C2AP, C3AP, CAPP, CMAP contractors shall be reimbursed for an audited claim that is the least of the following:

The maximum reimbursable amount as stated in the annual early learning and care contract; or

1. The amount earned, which are reimbursable expenditures of:
 - a. Direct payments to providers, (which consist of the rate charged by the provider in accordance with applicable statutory and regulatory provision, not to exceed the Regional Market Rate Ceiling), and which includes family fees for certified children and interest earned on advanced contract funds; and
 - b. Actual administrative and support costs related to early learning and care services provided, which combined cannot exceed seventeen and one half percent (17.5%) of the total contract amount, and no more than fifteen percent (15%) may be for administrative costs alone.

CFCC contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual child development contract; or
2. The amount earned which is defined as net reimbursable program costs, of which at least seventy percent (70%) must be payments for direct services, not more than thirty percent (30%) may be for support services and administrative costs together, and no more than fifteen percent (15%) may be for administrative costs alone.

CRRP contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract; or

2. The actual and allowable net costs.

Minimum Days of Operation

(5 CCR 18055)

If the contractor fails to operate at least ninety-eight percent (98%) of the minimum days of operation required in its contract, ceases operation or the contract is terminated prior to the end of the contract period, the maximum reimbursable amount shall be reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation.

Reduction, Withholding, and Canceling Apportionments to Contractors

(EC 8261, 8269 and 5 CCR 18056)

The CDE shall reduce, withhold or cancel any scheduled apportionment when one (1) or more of the following conditions exist:

1. The contractor has not submitted an acceptable audit for any prior year of operation on or before the date due.
2. The contractor has not submitted the required reports on or before the date due.
3. The contractor will not earn the full contract amount based on the current year projected and the prior year actual net reimbursable program costs as determined by the CDNFS.
4. A creditor of the contractor has placed a lien on the contractor's scheduled apportionments.
5. The contractor has accounts payable which are:
 - a. More than ninety (90) days delinquent to the CDE and
 - b. Not the subject of an appeal
6. If any apportionment is to be reduced, withheld or cancelled, the CDE shall provide the contractor prior written notice of the intended action.

Order of Expenditure

(5 CCR 18057)

Expenditures from the Child Development Fund shall occur in the following order:

1. Fees collected from parents of certified children shall be first in and first out;
2. State or federal contract funds apportioned by the CDE shall be second in and second out; and

3. Interest received on advanced contract funds shall be last in and last out.

VI. ACCOUNTING AND REPORTING REQUIREMENTS

A. General Provisions

(EC 8261 and 5 CCR 18063)

Contractors shall follow the accounting procedures specified in the most recent edition of the *California School Accounting Manual*. Contractors shall report revenue and expenditures on an accrual basis. The School Accounting Manual specifies that under an accrual basis of accounting, revenues are recorded when earned and expenditures are recorded when a liability is incurred, regardless of when the receipt or payment of cash takes place.

Child Development Fund and Interest Bearing Accounts

(5 CCR 18064)

All contractors shall establish a fund to be known as the "Child Development Fund" as specified in EC 8328, except that private contractors shall establish the fund in a federally insured banking institution located in California. Contractors with multiple fund sources shall establish separate program cost accounts for each source of funds pursuant to EC 8261 and 8269; 5 CCR 18064 (a) (b).

If a contractor places advanced contract funds in an interest bearing account, the interest bearing account shall be a separate account within the Child Development Fund. Interest earned shall be retained by the contractor if it is expended on reimbursable costs and earned by providing subsidized child days of enrollment, beyond the minimum required to earn the maximum reimbursable amount, at a rate equal to the lesser of the daily contract rate or the actual program costs, pursuant to EC 8261 and 8269; 5 CCR 18064(c).

Enrollment and Attendance Accounting

(EC 8221.5, 8261, 8269 and 5 CCR 18065)

1. A child shall not be enrolled in more than one program for the same time period on the same day.
2. CCTR, CSPP, CHAN, and CMIG contractors shall use daily sign-in/sign-out sheets as a primary source document for audit and reimbursement purposes.
 - a. On a daily basis, one of the following persons shall enter the time of arrival and departure on a sign-in/sign-out sheet and shall sign the sheet using their full signature for both arrival and departure times:
 - i. The parent or other adult authorized by the parent to drop off/pick up a child; or

- ii. The staff person designated by the contractor as the person responsible for entering the times of arrival and departure if the child is not dropped off/picked up by a parent or other adult authorized by the parent.
 - b. First and last initials of the contractor's authorized representative, along with a notation of the time, are required to be documented when a school-age child departs for and returns from school during the day.
3. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall use the monthly attendance record or invoice as the primary source document for audit and reimbursement purposes.
- a. Child care providers shall submit a monthly attendance record or invoice, for each child who received services, Child care providers shall maintain attendance records or invoices in the original format in which they were created.
 - b. The monthly attendance record or invoices shall include, at a minimum:
 - i. The dates and actual times the child entered and left care each day. This information shall be documented on a daily basis.
 - ii. The signature of the parent or guardian, the name of the child receiving services and signature of the child care provider attesting under penalty of perjury that the information included on the monthly attendance record or invoice is true and accurate.
 - c. Contractors shall reimburse child care providers based on the following criteria:
 - i. The hours of service provided that are broadly consistent with the certified hours of need.
 - ii. For families with variable schedules, the actual days and hours of attendance, up to the maximum certified hours.
 - iii. For license-exempt providers that provide part-time services, the actual days and hours of attendance up to the maximum certified hours.
 - iv. Contractors shall reimburse providers within 21 calendar days of the receipt of a complete invoice for services (CCGDB 98.45(l)(1)).

Attendance and Absences

(5 CCR 18066)

(Applies only to CCTR, CSPP, CHAN, CMIG)

Attendance, for the purposes of reimbursement, includes excused absences because of illness or quarantine of the child, illness or quarantine of their parent, family emergency, court-ordered visitations or a reason which is clearly in the best interest of the child.

If the absence is claimed by the contractor as an excused absence, the attendance accounting records shall contain verification including:

1. The name of the child;
2. The date(s) of absence;
3. The specific reason for the absence; and
4. The signature of the parent or the contractor's authorized representative if verification is made by telephone.

If an excused absence is based on time spent with a parent or other relative as required by a court of law, the family data file shall contain a copy of the Court Order.

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child."

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

Contractors shall not disenroll any family due to excessive absences, except in circumstances of abandonment of care described in the Implementation Guidance section 18066.5.

Abandonment of Care

(Implementation Guidance Section 18066.5)

For purposes of abandonment of care, a "provider" is any person or entity that is contracted or reimbursed to provide subsidized early learning and care services. This may include, but is not limited to, an Alternative Payment Program provider, family childcare home provider, eligible license-exempt provider, or contractor that provides subsidized early learning and care services directly to children.

When the family has not been in communication with the provider for seven (7) consecutive calendar days and has not notified the provider of the reason the family is not using services, the provider shall promptly notify the contractor.

Using the contact information on file, the contractor shall attempt to contact the parent through a variety of communication methods. At least one communication attempt shall be in writing, which may be through electronic methods. The contractor shall keep documentation of all communication attempts, including a copy of all written communication, in the family data file. The contractor shall inform the parent in these communications that failure to communicate with the contractor or provider may result in termination of early learning and care services.

The contractor shall issue a notice of action to disenroll the family on the basis of abandonment of care when there has been no communication with the provider or the

contractor for a total of 30 consecutive calendar days.

General Record Keeping Requirements

(EC 8227.3, 8262.1, 33421 and 5 CCR 18067)

1. Pursuant to EC 33421, all records shall be retained by each contractor at least five (5) years or where an audit has been requested by a state agency, until the date the audit is resolved, whichever is longer. Claims for reimbursement shall not be paid unless there are documents to support the claims. The contractor has the burden of supporting claims for reimbursement.
2. Pursuant to EC 35254, public contractors must ensure that no original records be destroyed prior to the second July 1st succeeding the completion of the audit.
3. All CDE contractors and providers providing early learning and care services to eligible families, may maintain records electronically and are authorized to convert records from a paper format to an electronic format, in compliance with state and federal standards as determined by the CDE (EC 8227.3 and 8262.1).
4. If the contractor has more than one (1) CDE program, then the method used to allocate administrative costs must be documented.
5. Contractors are required to maintain records to support salaries and benefits charged to early learning and care programs in accordance with the *California School Accounting Manual*.
6. State employees or representatives shall be allowed access to all program related or fiscal records during normal work hours. (EC 33421 and 5 CCR 18301(4))

Attendance and Expenditure Reports

(Applies to CCTR, CSPP, CHAN, CMIG) (EC 8261, 8269, 8406.6 and 5 CCR 18068)

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative attendance and fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Days of enrollment, as indicated on the family's Notice of Action, for all children served in the program in the current reporting period and year to date.
2. Days of attendance, per the child's sign in and out records and other accompanying attendance records, for all children served in the program in the current reporting period and year to date.

3. Total days of operation in the current reporting period and year to date.
4. All services, revenues and expenditures for both subsidized and non-subsidized children, if non-subsidized and subsidized children are commingled as defined in Section I above.
5. Amount and sources of all revenues, including restricted and unrestricted income utilized for the child development program, other than advanced contract funds for the current reporting period and the year-to-date.
 - a. Restricted income that is not expended during the contract period remains restricted and shall be considered deferred revenue and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
6. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes, as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR Section 18056.

Contractors on conditional status or provisional status shall report monthly.

The report shall include a certification that the information contained in the report is correct and complete and the original signature, or digital signature where applicable, of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the audit submission due date to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Alternative Payment and CFCC Expenditure Reports

(Applies to C2AP, C3AP, CAPP, CMAP, CFCC)

C2AP, C3AP, CMAP, and contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). Multi-year CAPP contractors shall report monthly (due to CDNFS by the 20th of the following month) for the first fiscal year of the contract. CAPP contractors who continue to expend funds in the second year, shall report monthly until funds are fully expended. CFCC contractors on clear status shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. All reports must be submitted strictly through the internet via CDE's official Web site. Reports not received by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract:

1. Amount and sources of all revenues, other than advanced contract funds for the current reporting period and year-to-date, restricted and unrestricted income shall be reported as follows:
 - a. Restricted income expended during the contract period shall be reported as “restricted.” Restricted income that is not expended during the contract period remains restricted and shall be considered “deferred revenue” and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
 - b. All unrestricted income shall be reported as “unrestricted.”
2. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

3. Total Days of Operation

C2AP, C3AP, CAPP, CMAP, CFCC will include the Days of Operation in the current reporting period and year to date.

Caseload Reports

(Applies to C2AP, C3AP, CAPP and CMAP)

1. In addition to submitting a monthly expenditure report, C2AP, C3AP, CAPP and CMAP contractors shall submit an Alternative Payment/CalWORKs Caseload Report(s) on a monthly basis. Caseload reports shall be submitted strictly through the internet via CDE’s official Web site and are due to CDNFS by the 20th of the following month. Caseload reports not received by CDNFS by the 20th of the month, following the end of the contractor’s reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report(s) is received.
 - a. If a contractor provides services in more than one (1) county, the contractor is required to submit a separate CalWORKs Caseload Report for each county in which services are being provided.
 - b. CalWORKs Caseload Reports shall represent actual service and expenditure data for the report month.

- c. Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

CRRP Expenditure Reports

5 CCR 18068

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Total days of operation in the current reporting period and year to date;
2. Amount and sources of all revenues, other than advanced contract funds, for the current reporting period and the year-to-date total;
3. Total expenditures related to the program operation for the current reporting period and the year-to-date total.

The report shall include a certification that the information contained in the report is correct and complete and the original signature of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final fiscal report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Service Data Report for Resource and Referral Programs

(5 CCR 18069) (Applies to CRRP)

Contractors shall submit reports to the CDE which contain the following data at intervals specified above.

1. Number of requests for general child care information and child care referrals;
2. Age categories of child care requests and referrals:
 - a. Infant (birth to eighteen months);
 - b. Toddlers (eighteen months to thirty-six months);
 - c. Preschool (three years to kindergarten enrollment; and

- d. School age (kindergarten enrollment to age 14.
- 3. Time categories of child care referrals:
 - a. Full-time;
 - b. Part-time.
- 4. Number of children needing:
 - a. Before and/or after school;
 - b. Summer only child care;
 - c. Other child care (evening, overnight, weekends, drop-in, etc.).
- 5. Reasons for requesting referrals:
 - a. Employed;
 - b. Looking for work;
 - c. In school/training;
 - d. Other parental needs;
 - e. Child protective services (CPS)/respite referral;
 - f. Alternative/back-up care;
 - g. Mildly ill child;
 - h. Enrichment and/or development.
- 6. Number of:
 - a. Licensed child care centers;
 - b. Licensed family day care homes;
 - c. License-exempt child care centers

Other license-exempt providers (optional). Penalties for delinquent reporting are specified

Child Development Data Collection

(5 CCR 18070)

The contractor shall submit the following:

Monthly Child Care Population Information (CDD-801A) submitted electronically in accordance with instructions from the CDE.

If the contractor is selected and notified by mail to submit sample data, they must complete the Child Development Data Collection Sample Report (CDD-801B) electronically in accordance with the instructions from the CDE.

Contractors shall submit complete, accurate reports to the CDE by the date specified, and in the format specified in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required date, shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Other Report Data

(5 CCR 18070)

Contractors shall submit statistical, cost and program data as requested by the CDE in order for the CDE to prepare various legislatively mandated reports, to meet state and federal reporting requirements and for the effective administration of early learning and care programs.

Contractors submitting data to the CDE will include a certification that the data are correct and complete, and the signature of the person authorized by the contractor to certify the data. The signature may be electronic as specified by the CDE.

Contractors shall submit complete, accurate data to the CDE by the date specified, and as specified, in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required due date shall be considered delinquent. Penalties for delinquent reporting are specified.

Building a Better Early Care and Education System (BBECES)

(Applies to all contract types that provide care through family child care homes and/or through individual licensed-exempt providers)

(EC 8430-8432; Civil Code 1798.17; 42 US 9858c(2)(D) and (U); 45 CFR 98.16(aa), 98.33 and 98.42)

“Family childcare provider” or “provider” for purposes of implementation of Section VI(M) of these Funding Terms and Conditions means a childcare provider who participates in a state-funded early care and education program and is either of the following:

(A) An individual who operates a family daycare home, as defined in Section 1596.78 of the Health and Safety Code, and who is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(B) An individual who provides early care and education in their own home or in the home of the child receiving care and is exempt from licensing requirements pursuant to Section 1596.792 of the Health and Safety Code. *EC 8431 (a)(1)*

1) Submission and Disclosure of Child Care Provider Information

Contractors are required to collect and submit to the CDE, or its designee, as required by law, the following information for all licensed family child care home providers and individual licensed-exempt child care providers providing subsidized child care services and in conformance with the format, timeline and manner prescribed by the CDE, and in accordance with the BBECES:

- a) Name of child care provider (excluding volunteers and assistants)
- b) Mailing address of provider
- c) Home address of provider
- d) County of provider home address
- e) Email Address of provider, if known
- f) Cell, Work and Home phone numbers of provider, if known
- g) Whether provider Is licensed or not, and, if licensed, the license number
- h) The date subsidized care began
- i) The date subsidized care ended, if applicable
- j) Agency, contractor, subcontractor, or political subdivision administering the program

The information collected from family child care providers, as defined, may be re-disclosed by the CDE to provider organizations as defined in law as well as other state agencies as permitted by law for purposes of organizing, representing, and assisting family child care providers, as well as for purposes of emergency response planning and monitoring health and safety requirements to comply with Child Care and Development Block Grant requirements.

Contractors shall not delay or obstruct the collection of the provider information.

Contractors must notify family child care providers in writing of the collection and use of the information in order to comply with applicable laws, including the Information Practices Act.

Upon learning that a family child care provider will no longer receive a subsidized child care payment, contractors shall, as required by law and in conformance with the format, timeline and manner prescribed by the CDE, inform the CDE of the date the provider ended subsidized care.

2) Notices and Communications

Contractors are required to distribute to providers and/or post on their website all notices and communications as may be required by the BBECES or any applicable Memorandum of Understanding.

3) Reimbursement

Contractors are required to deduct from reimbursement any dues as requested by a certified provider organization. The deductions may include membership dues, initiation fees, general assessments, and payment of any other membership benefit program sponsored by the certified provider organization.

If the deductions from a provider's subsidy payments required action by more than one contractor, the certified provider organization shall establish reasonable procedures to ensure that the total amount deducted does not exceed the total dues and other voluntary deductions owned by that provider.

A contractor must rely on a certification from the certified provider organization requesting a deduction that it has and will maintain an authorization, signed by the individual provider from whose subsidy the deduction is to be made. A certified provider organization that certifies that it has and will maintain authorization shall not be required to provide a copy of an individual authorization to the entity unless a dispute arises about the existence or terms of the authorizations.

4) Memorandum of Understanding

Must adhere to any requirements that bind contractors in any applicable memorandum of understanding

5) Interference

Contractors are prohibited from interfering with the right of providers to collectively bargain and further prohibited from deterring or discouraging providers to join the union

6) Training Partnership

Contractors must notify the certified provider organization of orientations, preservice meetings, meetings, and trainings, either in-person or online, and allow representatives from the certified provider organization to present at the orientations and training as permitted under the BBECES or as provided for in any applicable memorandum of understanding.

Annual Financial and Compliance Audits

(5 CCR 18071 and EC 8224)

Contractors shall submit to the CDE, Audits and Investigations Division (A&I), an acceptable annual financial and compliance audit as follows:

1. The audits for school districts and county offices of education for the contract period shall be submitted to the State Controller and the CDE by December 15, in

accordance with EC 41020 and extensions shall only be granted in accordance with EC 41020.2.

2. The audit reports for community colleges are due to CDE by December 31.
3. All other contractors shall submit their annual audit to CDE by the 15th day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by CDE. The audit report must meet the requirements of the Audit Guide, including the requirements for early learning and care specific supplementary information. If a contractor receives less than twenty-five thousand dollars (\$25,000) per year from any state agency, the audit shall be conducted and submitted biennially, unless the CDE deems there is evidence of fraud or other violation of state law in connection with the contract. If the contract is terminated during the contract period, then the audit required under this paragraph shall cover the period from the beginning of the contract through the date of termination.

All audits shall be performed by one of the following:

1. A Certified Public Accountant who possesses a valid license to practice within the State of California;
2. A Public Accountant licensed on or before December 31, 1970 and currently certified and licensed by the State of California;
3. A member of the CDE's staff of auditors.
4. Public contractors may have their audits prepared by in-house auditors or internal audit staff that performs auditing functions and meets the tests of independence found in the Government Auditing Standards, issued by the Comptroller General of the United States.

Any contractor who subcontracts their early learning and care services to another entity (see "Subcontract for early learning and care services" in Definitions) is required to submit an audit report that complies with the *Audit Guide* for their subcontractor(s) as well as for their agency.

Private agencies (including proprietary entities) that expend seven hundred fifty thousand dollars (\$750,000) or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with the *Uniform Guidance* and the *Audit Guide*.

Governmental and other public agencies (excluding school districts, county offices of education and community college districts) must comply with the requirements of the *Uniform Guidance* and the *Audit Guide*. All other agencies (excluding school districts, county offices of education and community colleges) must submit a contractor audit performed in accordance with the *Audit Guide*.

The audits for Alternative Payment Programs (APs) shall include, but not be limited to, a

sampling of the evidence of fees charged to, and paid by, families of non-subsidized children, the daily enrollment of subsidized children, the number of days of service provided to subsidized children, the assessment and collection of parent fees, and the availability of support services to subsidized children and their families as needed pursuant to the terms of the contract.

Review of Audit by the CDE Audits and Investigations Division (A&I)

(5 CCR 18072)

The A&I shall conduct a review of the audit to determine whether the audit is acceptable and to determine the contractor's net reimbursable program costs.

The contractor may appeal the A&I findings according to the procedures specified, if the amount of the demand for remittance meets or exceeds the threshold specified in *EC* 8402(a)(3).

Delinquent Audits and One-Time-Only Extensions

(5 CCR 18073)

If an audit is not received on or before the required due date and an extension has not been granted, the audit shall be considered delinquent and all apportionments shall be withheld.

Except for contractors on conditional status, the A&I may annually grant a contractor a one-time-only, thirty (30) calendar day extension of the audit due date provided the inability of the contractor to submit the audit by the due date was beyond the fault and control of the contractor.

Contractors shall be liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

California State Auditor

(GC 8546.7)

Contractors shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this contract.

Budget and Calendar

Contractors shall submit a revised calendar to the ELCD and CDNFS whenever there are changes to the most recent version submitted. Contractors shall submit revised budgets as requested.

Reserve Accounts

All contractors are encouraged to develop and maintain a reserve within the Child Development Fund. This reserve is derived from earned, but unexpended contract funds.

Reserve account funds are state funds the contractor holds in reserve as deferred revenue until they are properly spent or returned to the CDE.

C2AP, C3AP, CAPP, CMAP, CFCC contractors may retain a reserve balance of up to two percent (2%) of the maximum allowable administration and support costs for the aggregate sum of all alternative payment contracts or one thousand dollars (\$1,000), whichever is greater. *EC 8450 (d)*

CCTR, CHAN, and CMIG contractors may retain a reserve balance equal to five percent (5%) of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. *EC 8450*

CSPP contractors may retain a reserve balance in a center-based reserve account, separate from reserve funds maintained in a resource and referral reserve account or alternative payment reserve account. The reserve account may be equal to fifteen percent (15%) of the sum of the maximum reimbursable amounts of CSPP, CCTR, CMIG, CHAN contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. Of the fifteen percent (15%), ten percent (10%) shall be solely used for the purposes of professional development for CSPP instructional staff. *EC 8450 (b)(2)(B)*

CRRP contractors may retain a reserve balance not to exceed three percent (3%) of the contract maximum reimbursable amount. This reserve is derived from unexpended contract funds. *EC 8450 (c)*

Reserve Account Requirements

The following criteria must be followed when establishing and using any reserve account:

1. Each agency wishing to establish a reserve shall submit a letter of intent no later than July 20 following the close of the fiscal year for which the reserve will be established. The letter of intent must be on the form provided by CDNFS and signed by the executive director (or authorized designee for public agencies).
2. Each reserve must be maintained in an interest-bearing account and the amount of interest earned will be included in the reserve balance.
3. Reserve monies can only be used for expenses that are allowable reimbursable expenses. Transfers from one reserve account type (or category) to another are not allowable. However, transfers to a current-year contract in the same reserve category are allowable and shall be reported as restricted program income on that contract's attendance and fiscal report.
4. Reserve monies are generated from current year contracts, therefore, the transferable amount generated during the contract period will not be available until July 1 of the subsequent fiscal year.
5. Transfers to the reserve will be authorized by CDNFS only once per fiscal year. Upon receipt of the June final report, preliminary reserve amounts will be calculated by

CDNFS and reported to the contractor. If the contractor is an LEA, this may be the official notification provided there are no further amendments. For agencies required to submit an audit to the CDE, the amount will not be final until the audit is closed by the A&I and there are no outstanding billings.

6. Participating agencies must submit a Reserve Account Activity Report with a copy of their supporting General Ledger for each reserve account category type along with their June attendance and fiscal report due July 20. Reports not received in CDNFS by July 20 shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.
7. Upon closure of a reserve account or termination of early learning and care contracts, all monies in any reserve account shall be returned to the CDE.

VII. TECHNICAL ASSISTANCE

(EC 8406.6)

Technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within sixty (60) days of receipt of the request.

VIII. CONTRACT CLASSIFICATIONS

A. Clear Contract

(EC 8406.6)

This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (B) nor a conditional contract, as described in paragraph (C).

Provisional Contract

(EC 8406.6 and 5 CCR 18068)

This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the CDE and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. Contractors on provisional status shall submit monthly fiscal and attendance reports to CDNFS. The contract status shall be reviewed annually.

Conditional Contract

(EC 8406.6, 5 CCR 18001, 18068, and 18306)

This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance.

A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the CDE for all early learning and care program purposes and is subject to any restrictions deemed reasonable to secure compliance.

The conditional contract shall include Conditional Status Addendum that contains a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the agency for clear contract status, and a technical assistance plan.

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in *EC* 8406.7 or 8407, in accordance with Section 8402.

Contractors receiving conditional contracts (stamped on the face sheet of the contract) shall be on conditional status until the CDE issues a contract rider formally clearing the contract.

While on conditional status, the contractor shall submit monthly fiscal and attendance reports to CDNFS. The first monthly report shall include a current inventory of equipment purchased in whole or in part with contract funds.

Contractors on “conditional” status are not eligible to apply for new or additional funds.

Contractors on “conditional” status shall receive technical assistance from the CDE.

IX. APPEALS, TERMINATIONS, AND NON-RENEWALS

(*EC* 8400-8409 and 5 *CCR* 18301, 18302)

A. Resolution of Contract Administration Disputes

(*EC* 8401.5 and 5 *CCR* 18301)

The procedure specified in this Section shall be used to resolve disputes between contractors and the CDE that may arise regarding the interpretation and application of any term or condition of a contract, including, but not limited to, requests for waivers, approval of subcontracts or expenditures requiring approval, requests for reimbursement rate adjustments, or reductions in the total amount of contract reimbursement that are not appealable.

The contractor shall attempt to resolve contract disputes at the lowest staff level within the CDE.

If the dispute is not resolved at the lowest staff level, the contractor may appeal the decision by submitting a written description of the issues and the basis for the dispute to the Regional Administrator of the CDE having jurisdiction over the contractor's service delivery area. The Regional Administrator shall make a determination and shall send a written notification of the decision to the contractor, together with the reasons for the decision, within thirty (30) calendar days of the receipt of the appeal by the Regional

Administrator.

The contractor may appeal the decision of the Regional Administrator to the Associate Director of the ELCD by submitting a written description of the issues in dispute, and a copy of the Regional Administrator's decision. The Associate Director of the ELCD shall send notification of the decision to the contractor and shall specify the reason(s) for the decision within thirty (30) calendar days of the receipt of the appeal by the Associate Director. The decision of the Associate Director of the ELCD shall be the final administrative action afforded the contractor.

B. Independent Appeal Procedures

(EC 8402 and 5 CCR 18301)

Pursuant to the requirements of EC 8400 through 8409, an independent appeal procedure shall be available to any contractor whose contract is terminated, or where the denial of an agency's contracted payment or a demand for remittance of an overpayment is more than twenty-five thousand dollars (\$25,000) or four percent (4%) of a local contracting agency's annual contract, whichever is less.

Such appeals shall be heard by independent hearing officers in accordance with procedures established by the Office of Administrative Hearings (OAH) as specified in California *Code of Regulations, Title 1*, sections 1121 through 1126,

C. Immediate Termination

(EC 8406.7, 8406.9 and 8408)

1. A contracting agency that evidences any of the following acts or omissions may have its contract immediately terminated if there is documented evidence of the acts and omissions, and upon review and recommendation of the general counsel of the CDE for any of the following reasons:
 - a. Fraud, or conspiracy to defraud.
 - b. Misuse or misappropriation of state or federal funds, including a violation of EC 8406.9.
 - c. Embezzlement.
 - d. Threats of bodily or other harm to a state official.
 - e. Bribery or attempted bribery of a state official.
 - f. Unsafe or unhealthy physical environment or facility.
 - g. Substantiated abuse or molestation of children.
 - h. Failure to report suspected child abuse or molestation.

- i. Theft of supplies, equipment or food.
- j. Cessation of operations without the permission of the CDE, or acts or omissions evidencing abandonment of the contract or contracts.
- k. C2AP, C3AP, CAPP, CMAP, and CFCC contractors that fail to fully reimburse a significant number of approved child care providers as determined by the CDE, within fifteen (15) calendar days after the date set in the plan for timely payments to child care providers, adopted by the contracting agency, pursuant to 5 CCR 18226, unless the failure is attributable to a delay in receiving apportionments from the state.
- l. Failure to pay salaries owed to employees, or pay federal payroll tax, for more than fifteen (15) days after the employee salaries, or federal payroll taxes were due, unless the failure is attributable to a delay in receiving apportionments from the state.
- m. Contractors that have in place or who place a person in a position of fiscal responsibility or control who have been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract terminated if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the CDE.
For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal early learning and care funds received pursuant to this section whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

If the agency provides evidence to the CDE, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the CDE shall withdraw the termination action.

- 2. A contractor whose contract is immediately terminated retains appeal rights.

Contractors that are the subject of an immediate termination shall not continue to operate during the appeal of termination.

Non-Immediate Termination

(EC 8406.7, 8406.9, 8407 and 5 CCR 18301)

- 1. In addition to the grounds set forth above in *Immediate Termination*, which also may be the basis for a non-immediate termination, termination of a contract during the contract period may occur when:
 - a. A contractor fails to correct items of fiscal or programmatic noncompliance

within six (6) months of receiving a conditional contract which includes a Conditional Status Addendum stating the specific items of noncompliance and the corrective actions necessary to come into compliance; or

- b. A contractor fails or refuses to make available for examination or copying by an authorized employee of the CDE any records or documents that the contractor is required to retain, upon a request by that employee to examine or copy such records or documents; or
 - c. A contractor refuses to permit an authorized employee of the CDE to enter a facility operated by the contractor during the days and/or hours of operation on file with the CDE, for the purpose of reviewing administrative operations of the contractor or for observing early learning and care services provided by the contractor.
2. Any action by the CDE to terminate a contract, other than to terminate a contract on an immediate basis or to take action to deny the contracting agency more than four percent (4%) or twenty-five thousand dollars (\$25,000), (whichever is less), of an agency's contract or to demand remittance of an overpayment of an agency's contract of more than the same amount, as stated in *EC* 8402(a)(1) through (3), shall be preceded by a ninety (90) day notice of the action, stating the specific reasons for the action and describing the contractor's appeal rights. Except for cases of immediate termination, contractors that are terminated shall be allowed to continue to operate during the appeal of termination.

Appeals Procedures For Independent Appeals

(5 *CCR* 18301 and *GC* 11500)

3. Notice of Defense/Appeal Petition

The contractor shall be served notice of the action as set forth in *EC* 8406 and *GC* 1500 et seq. The contractor may contest the noticed action as set forth in *GC* 11506 by filing a notice of defense/appeal petition with the CDE within fifteen (15) days after service of the action, and may request a hearing before the OAH. The notice of defense/appeal petition shall include:

- a. A clear, concise statement of the action being appealed; and
- b. The name, address and telephone number of the contractor's authorized representative for the proceeding.

In addition, the contractor may also, as part of the Notice of defense/appeal petition:

- a. Object to the action upon the grounds that it does not state acts or omissions upon which the contractor may proceed;
- b. Object to the form of the action on the grounds it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;

- c. Admit any of the charges in the action in whole or in part;
 - d. Object to the action upon the grounds that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
2. Failure To Submit A Timely Notice Of Defense Or Appeal Petition Or Proceed With Appeal

If a contractor is served a notice of action and fails to properly file a notice of defense/appeal petition, or files a notice of defense/appeal petition, but fails to appear at the appeal hearing, action may be taken by the CDE (or by the Administrative Law Judge for failure to appear at the hearing) based upon the contractor's express admissions or other evidence and affidavits without any notice to the contractor. Notwithstanding the default, the CDE or the OAH may, before a proposed decision is issued, grant an appeal hearing on reasonable notice to the parties. If the CDE issues a default decision against the contractor, it must serve notice of that decision on the contractor and the contractor has seven (7) days after service to request that the decision be vacated stating the grounds relied on. The CDE, in its discretion, may vacate the decision and grant a hearing on a showing of good cause.

3. Hearing

If the contractor submits a timely request for a hearing, the CDE shall have ten (10) calendar days to request that the OAH schedule a hearing and transmit the following to the OAH:

- a. The notice of defense/appeal petition submitted to the CDE by the contractor;
- b. The original notice of action sent to the contractor; and
- c. The name, address and telephone number of the CDE authorized representative for the proceeding.

The OAH shall schedule a hearing on the appeal filed by a contractor to commence no later than thirty (30) calendar days following the receipt of the petition by the CDE, but at least ten (10) calendar days' written notice will be given of the time and place of the hearing. An OAH hearing officer will hear evidence submitted by the CDE and the contractor during the hearing. The hearing will be recorded. The hearing officer may continue hearings, if deemed necessary.

4. The Decision

The hearing officer shall issue a final decision, in writing, within thirty (30) calendar days after the submission of the case. The decision shall be sent by registered mail or personally served on the representatives of the parties by OAH. The decision shall be the final administrative action afforded the contractor.

5. Settlement between the Parties

The CDE and contractor may, at any time before or after issuance of a notice of action, agree to a settlement of the actions. The settlement terms, as agreed to by both parties, are to be incorporated into a stipulation and waiver decision that is approved by the CDE agency head or his or her designee and issued by the CDE. The decision shall be the final administrative action afforded the contractor.

6. Request for Additional Written Materials on File at CDE

Contractors may request, in writing, any public documents on which the CDE intends to rely from the CDE files at a cost of fifteen cents (\$.15) cents per page, payable in advance. The CDE will mail the material requested not later than ten (10) days from the receipt of the request.

Contractor's Responsibility After Notice of Termination/Nonrenewal

(5 CCR 18302 and 18054)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

The CDE shall only be obligated to compensate the contractor for net reimbursable program costs or earnings, whichever is less, in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The CDE shall offset any monies the contractor owes against any monies CDE owes under this contract.

X. CONTRACT STATUS CHANGE PROCEDURES

(EC 8401.5 and 8406.6)

A. Administrative Review of Changes in Contract Status

(5 CCR 18303)

Contract performance shall be reviewed at least annually by CDE staff who shall determine by April 1 of each year whether to offer continued funding on a clear contract, continued funding on a conditional basis or to make no offer of continued funding.

If the staff recommends conditional status or no offer of continued funding, the contractor

shall be notified in writing of the reasons for the proposed change in contract status by April 7. The notice of proposed action shall be sufficiently specific to allow the contractor to respond to the factual basis for the proposed action.

If the contractor disagrees with the proposed action, the contractor's response shall be received by the CDE within ten (10) calendar days of receipt of the notice of proposed action. The contractor's response shall include any written materials in support of its position and, if the contractor intends to make an oral presentation, the response shall so specify.

If the action is being appealed, the staff recommendation and the contractor's response shall be reviewed by an administrative review panel convened by the Director of the ELCD within seven (7) calendar days of receipt of the contractor's response. The review panel will consist of representatives of ELCD management, CDNFS, CDE's Legal Office, A&I, Contracts Office, and a representative of an early learning and care service provider familiar with the type(s) of program(s) operated by the contractor.

Upon review of the written submissions, the panel will do one of the following:

1. Issue a final decision upholding or modifying the proposed change in status if no oral presentation has been requested;
2. Schedule a time and place for an oral presentation by the contractor; or
3. Issue a final decision to not change the contract status.

If an oral presentation has been requested, the contractor will be notified by telephone of the time and place of the presentation. The oral presentation will be scheduled no later than fourteen (14) calendar days from receipt of the contractor's response.

At the oral presentation, the contractor or the contractor's representative will have an opportunity to explain any material submitted in its response. While the contractor may present any information or arguments that are relevant to the proposed action, the review panel may set reasonable limits on the scope of the presentation.

Within seven (7) calendar days after the oral presentation, the review panel shall issue and mail to the contractor a decision upholding, reversing or modifying the proposed change in contract status. The decision of the review panel shall be the final action of the CDE with regard to that contract.

Conditional Status Imposed During the Contract Period

(5 CCR 18304)

If the contractor demonstrates fiscal or programmatic noncompliance during the contract period, based on such information as an annual audit report, a FPM/CMR, or a change in licensing status, the CDE may place the contract on conditional status for the remainder of the contract period.

The contractor shall receive notice and may request an administrative review of the

proposed action as required by 5 CCR 18303, in the event such a change in contract status is recommended by staff of the CDE.

If the contract is placed on conditional status during the last ninety (90) days of the contract period and the contractor is offered continued funding, the contract for the subsequent contract period will also be on conditional status.

Conditional Status Addendum

(EC 8406.7, 8406.9, 5 CCR 18305)

If the contractor is placed on conditional status during the contract period a Conditional Status Addendum will be issued by the CDE and the Conditional Status Addendum shall be considered a part of the annual child development contract and binding on the contractor.

A Conditional Status Addendum shall contain a bill of particulars as specified in EC 8406.6, which shall detail the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the contractor for clear contract status and a technical assistance plan. The Addendum shall further include all the following:

1. The specific item(s) of noncompliance which the contractor must correct;
2. The specific corrective action(s) which must be taken;
3. The time period within which the contractor must complete the corrections; and
4. Notice that failure to demonstrate substantive progress within six (6) months shall constitute a breach of contract and may result in termination of the contract either through an immediate or ninety (90) day noticed action, or no offer of continued funding.

Duration of Conditional Contract Status

(EC 8406.6(a)(3) and 5 CCR 18307)

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of being on conditional status shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in EC 8406.7 or 8407 in accordance with EC 8402. Regardless of whether the contractor complies with the terms of the Conditional Status Addendum, the contractor's contract may not be renewed the following year pursuant to the procedures set forth in the FT&C section *Appeals and Termination*.

A contractor with a repayment plan shall remain on conditional contract status and not receive any apportionments until full repayment is made.

A contractor on conditional contract status that is not on a repayment plan shall remain in that status until:

1. The CDE issues written notice to the contractor that the conditional status has been cleared;
2. The contractor is issued a clear contract; or
3. The contract terminates according to its terms.

A contractor may request written verification from the CDE that some of the deficiencies have been corrected even if the contractor will not be removed from conditional contract status.

Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding

(5 CCR 18302)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. CFCC contractors and Alternative Payment programs shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of July 1, 2021, is by and between the County of Alameda, hereinafter referred to as the “County”, and Davis Street Community Center, hereinafter referred to as the “Contractor”.

WITNESSETH

Whereas, County desires to obtain California Alternative Payment Program, Child Development Programs, which are more fully described in Exhibit A hereto (“Child Development Programs”); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide Child Development Programs, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Attachment A	Client Grievance Policy
Attachment B	Language Access Requirements for Contractors
Attachment C	Confidentiality – Contract Provisions
Exhibit B	Payment Terms
Exhibit B-1	Program Budget
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements
Exhibit F	Audit Requirements
Exhibit G	HIPAA Business Associate Agreement (Intentionally Omitted)
Exhibit H	Additional Contract Provisions - Federal Provisions
Exhibit H-1	Certification Regarding Lobbying
Exhibit I	California Department of Education Funding Terms and Conditions

The term of this Agreement shall be from July 1, 2021 through June 30, 2022.

The compensation payable to Contractor hereunder shall not exceed *one hundred fifty-eight thousand, eight hundred and forty-one dollars (\$158,841)* for the term of this Agreement.

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

COUNTY OF ALAMEDA

CONTRACTOR

By: _____
Signature

By:  _____
Signature

Name: Keith Carson
(Printed)

Name: Rose Padilla Johnson
(Printed)

Title: President of the Board of Supervisors

Title: Executive Director

Date: _____

Date: 9/22/2021

Approved as to Form:

By:  _____
County Counsel Signature

Date: 9/23/2021

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two weeks' notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to

injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the

Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
- b. Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
- c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;

- (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of

such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. **Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. **Telex or facsimile transmission:** When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Government and Community Relations, Office of Policy
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Jennifer Cabán
Email: Jennifer.Caban@acgov.org

Contracts Office
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Michelle Manor
Email: michelle.manor@acgov.org

To Contractor: Davis Street Community Center
3081 Teagarden Street
San Leandro, CA 94577
Attn: Rose Padilla Johnson
Email: rjohnson@davisstreet.org

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national

origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

- c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of,

destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Child Care and Development Programs shall not exceed \$158,841 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor

shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

- 22. FIRST SOURCE PROGRAM: For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.
- 24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for an additional two years by mutual agreement of the County and the Contractor.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on

this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Davis Street Community Center
Type of Services	Resource and Referral Contractor under CAPP-1000

I. OVERVIEW

Program Name: California Alternative Payment Program – Child Care and Development Programs

Contractor shall provide quality Child Care and Development Programs to a target population of families who meet Eligibility and Need Criteria as specified in the CDSS Program Requirements for Alternative Payment Programs, available on the California Department of Education (CDSS) website.

II. PROJECT PLAN

A. Program Goals:

Contractor shall accomplish the goal of providing subsidies under the California Child Care Alternative Payment Program for child care in a location of the parents' choice while the parent or parents are working, seeking employment, in vocational training, seeking permanent housing, and/or are incapacitated.

B. Target Population:

Contractor shall provide services to the following populations:

1. First Priority for services through the program is given to children who are receiving child protective services through local County Welfare Department or identified by a medical, social service agency, or emergency shelter as abused, neglected, or exploited, or at risk of abuse, neglect, or exploitation.
2. Second Priority: All children and families who are not within the first priority for admission shall be admitted in accordance with family income, with the lowest per capita income admitted first. For purposes of determining the order of admission, public assistance grants are counted as income. If two or more families have comparable per capita income, the family that has been on the waiting list the longest shall be admitted first.

C. Program Requirements:

1. Service Criteria: The California Department of Social Services, Child Development Division, subsidizes child care services for eligible families through its Alternative Payment Program.
2. Alameda County is permitted to subcontract its Alternative Payment Program (AP) funding to local Child Care Resource and Referral (R&R) agencies and AP agencies currently contracting with California Department of Social Services, Child Development Division.
3. Services will be provided in accordance with California Department of Social Services Program Requirements for Alternative Payment Programs as posted on cde.ca.gov.
4. This subcontract with Contractor ensures Contractor's continuance of the County AP Program with the County.
5. Hours and Days of Operation: Monday through Thursday, from 8:00 a.m. to 8:00 p.m., and Friday 8:00 a.m. to 6:00 p.m.
6. Service Area: Contractor will serve eligible families residing in Alameda County. Precise boundaries of the Contractor's service area will be determined by SSA Program staff and are subject to change, based on community needs, as determined by SSA.
7. Service Delivery Sites: Davis Street Community Center at 3081 Teagarden Street, San Leandro, CA 94577.

D. Minimum Staffing Qualifications:

Contractor shall have and maintain current job descriptions on file with the Department for all personnel whose salaries, wages, and benefits are reimbursable in whole or in part under this agreement. Job descriptions shall specify the minimum qualifications for services to be performed and shall meet the requirements of the Department. Contractor shall submit revised job descriptions meeting the approval of the Department prior to implementing any changes or employing persons who do not meet the minimum qualifications on file with the Department.

E. CDSS Evaluation and Performance Requirements

Contractor will comply with all of the California Department of Social Services (CDSS) Terms and Conditions for the AP Program including family certifications, parent counseling on child care choices, administering provider contracts and payments, ensuring provider eligibility for payment, collection and accounting of parenting fees, and ensuring confidentiality of family and provider files.

F. Monitoring, Records, and Data Collection Monitoring:

1. SSA Contracts Office Liaison or a member of the SSA GCR team may at any time, upon one week's notice, monitor and conduct an evaluation of operations, which may include site visits and reviews of Contractor's financial records and other records and materials to determine progress in the achievement of program goals and objectives and service criteria and requirements as specified within this Agreement.
 - a. A final report will be prepared by the Contracts Office Liaison to provide feedback on areas of compliance and/or non-compliance. Contractor shall submit a written corrective action plan to the Contracts Office Liaison in response to all findings of non-compliance.
 - b. A follow-up monitoring visit will be conducted to ensure that all corrective action measures have been completed and Contractor is in compliance with contract requirements.
2. Should subcontractors be utilized, the contractor will be responsible for monitoring all subcontractors under this Agreement.

G. Records:

1. Contractor will prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided to eligible SSA clients, and to maintain and preserve said records for at least three years from the date of final payment under the potential Agreement.
2. Pursuant to California Government Code Section 8546.7, all records documents, conditions and activities of Contractor and its subcontractors, related to the services provided, shall be subject to the examinations and audit of the California State Auditor and any other duly authorized local, state and/or federal agencies. Contractor will further agree to allow interviews of any of its employees who might reasonably have information related to such records by County and any authorized local, state and/or federal agencies.
3. Contractor will comply with fiscal or program monitoring/assessment recommendations by the SSA Contracts Office Liaison and execute all written corrective action plans generated thereby.
4. Contractor will maintain individual client case files and make these files available for inspection by SSA staff.

H. Data Collection:

1. On a monthly basis, the Contractor will provide County with:
 - a. Data compiled to complete the CDD 801A reports for the County and submit both reports to the County no later than the 10th of each month.
 - b. A child care monthly report which includes data elements established by SSA GCR staff no later than the 15th of each month.
2. Contractor will maintain complete records on numbers of children serviced in child care centers, family child care homes or licensed-exempt care provided to a client, and the amounts expended for such care.
3. Contractor will advise County of any suspected improper or potentially fraudulent use of CAPP funds, any suspected overpayment made with CAPP Child Care funds, or misinformation provided by a CAPP participant with regard to child care.
4. Contractor will provide additional data reports as needed and requested by County.

I. Contractor Responsibilities – Client Grievance Policy

SSA Contractors are required to have a Client Grievance Policy in place and to disclose the policy to all SSA clients during the Client Intake Process. As evidence that a Client Grievance Policy is in place and all SSA clients provided services by the Contractor have been made aware of its existence, Contractor must obtain the signature of each SSA client on a copy of the policy acknowledging they were made aware of it, understand it, and received a copy of the signed document. Contractor must also place a copy of the signed document in each client's case file and make the files available for review by County staff upon request. See Attachment A for a sample SSA Grievance Policy. An MS Word file of the SSA Grievance Policy Template is available through your SSA Contract Liaison.

J. Language Access Requirement for Contractors

Attachment B provides more information regarding Limited English Proficient (LEP) client language access requirements for contractors with Alameda County.

III. Performance Measures

SSA has adopted Performance Metrics to strengthen and increase data collection and improve contract performance. This framework establishes performance metrics that will allow SSA to track the positive impact and benefits of services for the target population by focusing on three critical questions: How much work was done? How well was it done? and Is anyone better off?

The framework establishes a partnership between the service provider and SSA. The performance metrics and deliverables are outlined below including measures added to the "Data

Development Agenda.” The Contractor will continue to actively work with SSA to further develop and refine performance measures and data elements as they relate to child care in the County of Alameda for the purposes of data development and the Agency’s Child Care Monthly Report.

Performance Measures			Frequency	How to Calculate	Contractor Data Source
How Much Did We Do?	# of County CAPP child care subsidies		Monthly	Count of County CAPP child care subsidies administered	○ Monthly Report (see data collection under Section V and VI)
	# of surveys* issued		Annual	Count of County CAPP surveys provided to participants	○ Annual Report
How Well Was It Done?	% of County CAPP participants reporting satisfaction with Contractor services		Annual	<u># of participants reporting satisfaction on survey</u> # of participants completed survey	○ Annual Report
	% of surveys received		Annual	<u># of completed surveys</u> # of surveys issued	○ Annual Report
Is Anyone Better Off?	% of County CAPP families reporting child care made it easier to maintain employment / education goals		Annual	<u># of families reporting County CAPP child care subsidies made it easier to maintain employment / education goals</u> # of families receiving child care subsidies	○ Annual Report
Definitions	*Survey – Contractor will annually conduct a family survey of their choice no later than the end of any given fiscal year.				

DELIVERABLE:

Annual Survey – Contractor will conduct an annual survey of County CAPP clients utilizing the following questions:

Category: How Well Was It Done?

Question: “How satisfied were you with the overall quality of services provided?”

Contractor will use the following Likert Scale:

- Very Unsatisfied
- Unsatisfied
- Neutral
- Satisfied
- Very Satisfied

Category: Is Anyone Better Off?

Question: “My child care subsidy has made it easier to (Check all that apply):”

- Seek employment
- Accept employment
- Keep employment
- Find better employment
- Enroll / Complete school or vocational training
- Other – Please Specify *[open ended]*

DELIVERABLE:

Contractor will provide an annual report with data elements as identified in the Performance Measures chart above. SSA GCR staff will be available to guide format.

Below are additional performance measures on the **Data Development Agenda** which will be developed and incorporated, in partnership with the Contractor and SSA GCR staff, by the end of Fiscal Year 2021 - 2022.

Measures on the Data Development Agenda

Question Type	Performance Measure
How Much Did We Do?	# of referrals received (by Contractor)
How Much Did We Do?	# of referrals issued (from SSA)
How Well Was It Done?	% of subsidies used/started

IV. KEY PERSONNEL

- A. Contractor project team will consist of the following Key Personnel and subcontractors, if applicable, during the contract term:

Position Title	Employee
Children Services Manager	Trish Murillo
Children Services Fiscal Manager	Tracy Tran
Case Specialist	Elizabeth Raiz

- B. Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

Attachment A

CLIENT GRIEVANCE POLICY

WHAT TO DO IF YOU HAVE A GRIEVANCE

If you have a complaint about the performance of (_____)

INSERT NAME OF CONTRACTOR

staff, and/or you feel you have been treated unfairly, the following are the steps you should take to have your complaint heard:

1. Talk privately to the person with whom you have the problem. We encourage you to try first to work out the problem in an open and informal way.
2. If you do not feel comfortable talking with the person with whom you have the problem, or you do talk with them and are not satisfied with the outcome, you may make an appointment to speak with or submit a written complaint (which may be in your own language) to (_____)'s Executive Director or designee.

INSERT NAME OF CONTRACTOR

If you have good cause to use another medium to communicate your complaint, such as a tape recording, you may do so. The Executive Director or designee shall meet with you or provide you with a written response to your written complaint within ten (10) working days of the meeting or receipt of your written complaint.

3. Or, if you prefer, you may bypass the above steps and immediately contact the funding agency below:

Alameda County Social Services Agency

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Email: ContractsCustomer@acgov.org

I certify that the information in this document was explained to my satisfaction in my own language and a copy of this form was given to me. I understand that by signing below, I hereby

authorize (_____) to release all my information

INSERT NAME OF THE CONTRACTOR

pertaining to my grievance to the Alameda County Social Services Agency.

Client's Name (printed)

Client's Signature

Date

(Revised 9/6/19)

ANEXO A

POLITICA PARA QUEJAS DE CLIENTES

QUÉ HACER SI USTED TIENE UNA QUEJA

Si tiene una queja acerca del desempeño del personal de (_____) o siente que se le ha tratado injustamente, tendrá que seguir los siguientes pasos para que su queja sea escuchada:

INSERTAR NOMBRE DEL CONTRATISTA

1. Hable en privado con la persona con quien tiene el problema. Le recomendamos que trate de solucionar el problema de una manera abierta e informal.
2. Si no se siente cómodo hablando con la persona con quien tiene el problema, o habla con esa persona y no está satisfecho/a con los resultados, puede hacer una cita para hablar con el director ejecutivo de (_____) o su representante, o enviarle la queja por escrito (la cual puede ser en su propio idioma). Si tiene una buena razón para utilizar otro medio de comunicar su queja, como una cinta de grabación, lo podrá hacer. El director ejecutivo o el representante se reunirá con usted o le proveerá una respuesta por escrito a su queja en el plazo de diez (10) días hábiles a partir de su cita o de haber recibido su queja por escrito.
3. O, si usted prefiere, puede evitar los pasos previos y contactar, inmediatamente, al siguiente organismo de financiación:

Agencia de Servicios Sociales del Condado de Alameda

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Correo electrónico: ContractsCustomer@acgov.org

Certifico que la información en este documento fue explicada para mi entera satisfacción y en mi propio idioma, y que se me dio una copia de este formulario. Comprendo que al firmar abajo autorizo a (_____) a que divulgue a la Agencia de Servicios

INSERTAR NOMBRE DEL CONTRATISTA

Sociales del Condado de Alameda toda mi información en relación con mi queja.

Nombre del cliente (en letra de imprenta)

Firma del cliente

Fecha

Attachment B
(Revised: 08/31/18)

LANGUAGE ACCESS REQUIREMENTS FOR CONTRACTORS

- I. The Alameda County Social Services Agency (SSA) has developed and adopted a Master Plan on Language Access to ensure its limited-English proficient (LEP) clients are provided with language accessible services and communications. Under the plan's provisions, community-based organizations (CBOs)/contractors whose services are contracted by the SSA:
 - A. Shall clearly disclose language access capabilities in relationship to the population served.
 - B. Shall have a plan in place—available for review upon request by County staff—for referring clients whose language needs the contractor can't accommodate.
 - C. Shall permit County staff to conduct ongoing monitoring of contracted services for compliance with provisions of the County's Language Access Plan.
 - D. Shall provide the County with a list and copies of all printed contract-related marketing/promotional/education-related materials (including languages materials are printed in).
- II. The SSA shall aid contracted CBOs in expanding language interpretation services through:
 - A. Providing CBOs/contractors with training, materials and instruction on how to effectively refer LEP clients to appropriate language resources.
 - B. Including service-marketing plan requirements in requests for proposals (RFPs) and contracts with CBOs that propose to offer language services (including appropriate outreach and notification of programs and services) to the LEP community and customers.
 - C. Developing a monitoring process of contracted services to ensure high-quality, language accessible services are always provided to LEP clients.
 - D. Providing CBOs/contractors with access to **Telephonic Interpreters**, a 24-hours-a-day, 365-days-a-year telephone language interpretation service in over 100+ languages — to supplement on-site language access services.

Attachment C

CONFIDENTIALITY–CONTRACT PROVISIONS

Confidentiality: Contractor agrees to maintain the confidentiality of any information which may be obtained with this work. Contractor shall comply with whatever special requirements in this regard as are described or referred herein as in Exhibit A to this Agreement. Confidential information is defined as all information disclosed to Contractor which relates to County's past, present and future activities, as well as activities under this Agreement. Contractor will hold all such information in trust and confidence. Upon cancellation or expiration of this Agreement, Contractor will return to County all written or descriptive matter which contains any such confidential information. County shall respect the confidentiality of information furnished by Contractor to County as specified in Exhibit A or as otherwise provided by law.

Pursuant to contract provisions to protect confidential client data file records against any and all unauthorized practices as stated heretofore, the Contractor will:

1. Assume responsibility for all personnel having access to the client list in regard to the confidential nature of client information. Safeguard measures are required to protect civil and criminal sanctions for non-compliance as contained in applicable statutes.
2. Restrict access to client information to those authorized employees and officials who require access in the performance of their delivery of services under this contract.
3. Work with the information under the control of authorized personnel in a manner to protect the confidentiality of client data file records and in such a manner to protect against unauthorized retrieval by computer, remote terminals, or any unauthorized means.
4. Use SSA confidential client information provided to contractor for the purposes covered under the terms of this agreement. Any and all disclosure of client data file records, transactions or transmissions will be made only with prior written consent and authorization from the SSA.
5. Return to SSA any and all client confidential information contained in hard copy or computer files/disc generated by this agreement as required for confidential destruction. All such files are the legal sole property of the SSA.
6. Ensure project compliance with written corrective action plans as may be mandated by the County.

EXHIBIT B**PAYMENT TERMS**

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Davis Street Community Center
Type of Services	Child Care and Development Programs, CAPP-1000

In addition to all terms of payment described in the General Terms and Conditions and any relevant exhibits and attachments, the parties to this Agreement shall abide by the following terms of payment:

I. Budget

Contractor shall use all payments solely in support of the program budget, as set forth in **Exhibit B-1, Program Budget**.

II. Terms and Conditions of Payment**A. Contract Amount/Maximum:**

Total payment under the terms of this Agreement will not exceed the total amount of \$158,841. This cost includes all taxes and all other charges.

B. Contract Term:

The contract term is July 1, 2021 to June 30, 2022.

C. Budget Revision Procedures:

1. Contractor shall be reimbursed in accordance with the contract budget as detailed in Exhibit B-1. Any budget adjustments, revisions to the service categories and service units within the contract must be approved by SSA Program Department prior to submitting invoices for payment to the County.
2. Contractor must submit a formal written (via e-mail) request to the SSA Contracts Office for any contract budget adjustment with justification for requested expenditure revisions inclusive of specific impacts to current services being delivered. The request will be forwarded to the SSA Program Department for approval.
3. No supplemental billing will be accepted without Contractor's prior notification and approval by SSA Program Department of the need and justification for revisions of the service categories, service units or contract budget (line-items or unit costs).
4. The County Auditor Controller's Office will not pay for unauthorized service categories, service units and budget line-items that are revised or rendered by

Contractor that are not approved by SSA Program Department and/or for claimed services that contract program monitoring findings indicate have not been provided.

III. Invoicing Procedures

A. Indirect Costs

For the purpose of the CDSS CAPP contract, **indirect costs** are defined as expenses that cannot be readily assigned to one specific program or one specific line item within a program. Indirect costs are a subset of the category of administrative costs. If indirect costs are included in the program budget, the percentage charged for indirect costs must be indicated on the budget. There is a 15% limit on administrative costs, and the indirect costs must be included within that 15% limit. The limit for indirect costs is strict, and contractors should therefore verify that the costs reported as indirect cannot be allocated to another reporting category. If indirect costs are reported, a cost allocation plan must be on file and available to the contract monitor.

B. Administrative and Support Costs

For the purpose of the CDSS CAPP contract, **administrative costs** include activities and functions that do not provide a direct benefit to the children, parents or providers. Administrative costs are limited to 15% and can include indirect costs (see III.A above).

Support costs include services which, when combined with Child Care and Development Programs, help promote healthy physical, mental, social and emotional growth of children and families.

The **administrative and support allowance combined** cannot exceed 17.5%, with the administrative part of that limit not exceeding 15%, pursuant to California Education Code 8223. Therefore, any combination of administrative and support allowance is acceptable if the total allowance does not exceed 17.5% and the administrative portion does not exceed 15%.

C. Reimbursable Expenses

Reimbursable expenses include the cost of child care paid to child care providers plus administrative and support service cost of the alternative program. The budget line items should include the following:

1000 – Certificated Salaries

2000 – Classified Salaries

3000 – Employee Benefits

4000 – Books and Supplies, including the costs of sales/use tax, freight and handling

5000 – Services and Other Operating Expenses, including:

- a. Expenditures for rentals, leases
- b. Service contracts including janitorial, consultant, auditor, maintenance contracts, etc.
- c. Nutrition expenditures for meals/snacks served to children in the program
- d. Travel, insurance, utilities, legal, and other operating expenditures

D. Submitting Invoices

Contractor shall submit monthly invoices no later than the 10th of each month. Invoices are to be sent electronically to SSA GCR Program Liaison, Jennifer Cabán, at Jennifer.Caban@acgov.org who will review and forward them to the SSA Payables Unit at SSAInvoices@acgov.org. In addition, please copy the Financial Specialist, Johnny Cua, at Johnny.Cua@acgov.org, on all invoices.

The invoice packet must include a form #CDNFS-9500-AP (CDSS's fiscal report for alternative payment program) and a copy of State report CDD 801A.

The SSA Finance Department has established a centralized Payments Unit that will be the CONTRACTOR'S contact for all payment and invoicing matters. For additional assistance, contact the Financial Services Officer, Beverly Warren, at brwarren@acgov.org.

Invoices must contain the following elements:

1. Printed on company letterhead that includes name, address, and contact information
2. For Community Based Organizations, must be signed by head of the organization, i.e., Executive Director, CEO, etc.
3. Document must contain the title *Invoice*
4. Date of the invoice
5. Description of services
6. Date range for services provided
7. If needed, itemization of any sales tax and delivery/postage charges
8. Purchase Order (PO) number provided by the County
9. Total amount owed
10. Remittance instructions/address
11. A *cc* indication at the bottom of the invoice with names of people who received courtesy copies
12. CEO or Executive Director must be included in the *cc*, and
13. All other data as required by your contract.

E. Reporting: Contractor shall provide Performance Measures and Data Collection reports to the GCR unit of SSA, in accordance with Exhibit A of this Agreement.

F. A final CDNFS-9500-AP report for the prior fiscal year will be submitted to County no later than July 10, 2021.

- G. Payments to Contractor by County may be contingent upon filing of CDNFS-9500-AP reports due to County.
- H. County will pay Contractor within 30 days, upon successful completion and acceptance of services, and upon receipt of invoice and accompanying reports.
- I. Contractor may bill County monthly in arrears or less frequently at Contractor's option, for payment made to eligible cases under rates and provisions of Exhibit A herein.
- J. As required by CDSS, Contractor will mail an Annual Financial Audit Report of the prior fiscal year, which must include an Audited Fiscal Report (AUD form) by November 10, 2021 to:

California Department of Social Services
Office of Audit Services Branch
Attn: Audit Report Review Bureau
744 P Street, Mailbox 9-13-04
Sacramento, CA 95814

Refer to the CDSS Audit Guidelines at: <https://www.cdss.ca.gov/inforesources/cdss-programs/internal-audits/contracting-agencies-audit-guidelines-and-resources>

- K. Contractor will email the completed Annual Financial Audit Report to the contract liaison of SSA by November 17, 2021 to confirm the report was sent.
- L. In order for the County to meet year end closing deadlines, Contractor must submit the May invoice and any prior late invoices by June 10. The June invoice must be submitted by July 10.

IV. Funding and Reporting Requirements

- A. Failure to submit required reports can delay the processing of invoices for reimbursement.
- B. Funding under this contract shall not duplicate funding from other sources. Should other funding duplicate funding under this contract, the invoices to Alameda County will be reduced accordingly by the amount of duplicate funding.
- C. The contract maximum amount of \$158,841 is based on the estimated amount at the time the contract was executed. This does not affect the total contract amount awarded to the agency. The actual federal expenditure amount, if any, will be available to contractors by October of the following fiscal year and Contractor shall contact SSA Contracts Liaison to receive this information.

Exhibit B-1
Program Budget FY 2021 - 2022
The Davis Street Community Center, Inc.

	FTE	AMOUNT
Total Contract Amount		\$158,841
PROVIDER PAYMENTS - 82.5%		\$ 131,044
PERONNEL EXPENSES		
Salaries & Wages		
List position titles here and fill in FTE column		
Salaries FTE (Children Services Fiscal Manager)	0.10	8,819
Salaries FTE (Case Specialist)	0.14	6,962
Salaries FTE (Children Services Manager)	0.10	7,004
Subtotal Salaries & Wages		22,785
Payroll Taxes & Employee Benefits - 22%		5,013
TOTAL PERSONNEL EXPENSES (Salaries & Benefits) - 17.5%		27,797
OPERATING EXPENSES		
Professional & Contractual Services		
Rent		
Office Expenses		
Facilities		
Staff Development		
Utilities		
Telecommunications		
IT Services		
Travel/Conferences		
Bank Charges		
Communications		
Dues/Subscriptions		
Insurance		
TOTAL OPERATING EXPENSES		0
ADMINISTRATIVE & SUPPORT COSTS		27,797
Administrative cost (15%)		
Voucher administration (2.5%)		
TOTAL CONTRACT		158,841

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: <u>County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives.</u> 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party)", or at minimum named as an "Additional Insured" on the other's policies. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: <u>Contracts Office: 2000 San Pablo Ave., 4th Floor, Oakland, CA 94612</u> 	

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Davis Street Community Center

PRINCIPAL: Rose Padilla Johnson **TITLE:** Executive Director

SIGNATURE: Rose Padilla Johnson **DATE:** 9/22/2021

EXHIBIT E

AUDIT REQUIREMENTS

The County contracts with various organizations to carry out programs mandated by the Federal and State governments or sponsored by the Board of Supervisors. Under the Single Audit Act Amendments of 1996 (31 U.S.C.A. §§ 7501-7507) and Board policy, the County has the responsibility to determine whether organizations receiving funds through the County have spent them in accordance with applicable laws, regulations, contract terms, and grant agreements. To this end, effective with the first fiscal year beginning on and after December 26, 2014, the following are required.

I. AUDIT REQUIREMENTS

A. Funds from Federal Sources:

1. Non-Federal entities which are determined to be subrecipients by the supervising department according to 2 CFR § 200.330 and which expend annual Federal awards in the amount specified in 2 CFR § 200.501 are required to have a single audit performed in accordance with 2 CFR § 200.514.
2. When a non-Federal entity expends annual Federal awards in the amount specified in 2 CFR § 200.501(a) under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the non-Federal entity may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 (Program Specific Audits).
3. Non-Federal entities which expend annual Federal awards less than the amount specified in 2 CFR § 200.501(d) are exempt from the single audit requirements for that year except that the County may require a limited-scope audit in accordance with 2 CFR § 200.503(c).

B. Funds from All Sources:

Non-Federal entities which expend annual funds from any source (Federal, State, County, etc.) through the County in an amount of:

1. \$100,000 or more must have a financial audit in accordance with the U.S. Comptroller General's Generally Accepted Government Auditing Standards (GAGAS) covering all County programs.
2. Less than \$100,000 are exempt from these audit requirements except as otherwise noted in the contract.

Non-Federal entities that are required to have or choose to do a single audit in accordance with 2 CFR Subpart F, Audit Requirements are not required to have a financial audit in the same year. However, Non-Federal entities that are required to have a financial audit may also be required to have a limited-scope audit in the same year.

C. General Requirements for All Audits:

1. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States (GAGAS).
2. All audits must be conducted annually, except for biennial audits authorized by 2 CFR § 200.504 and where specifically allowed otherwise by laws, regulations, or County policy.
3. The audit report must contain a separate schedule that identifies all funds received from or passed through the County that is covered by the audit. County programs must be identified by contract number, contract amount, contract period, and amount expended during the fiscal year by funding source. An exhibit number must be included when applicable.
4. If a funding source has more stringent and specific audit requirements, these requirements must prevail over those described above.

II. AUDIT REPORTS

A. For Single Audits

1. Within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period, the auditee must electronically submit to the Federal Audit Clearinghouse (FAC) the data collection form described in 2 CFR § 200.512(b) and the reporting package described in 2 CFR § 200.512(c). The auditee and auditors must ensure that the reporting package does not include protected personally identifiable information. The FAC will make the reporting package and the data collection form available on a web site and all Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC. As required by 2 CFR § 200.512(a)(2), unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection.
2. A notice of the audit report issuance along with two copies of the management letter with its corresponding response should be sent to the County supervising department within ten calendar days after it is submitted to the FAC. The County supervising department is responsible for forwarding a copy of the audit report,

management letter, and corresponding responses to the County Auditor within one week of receipt.

B. For Audits other than Single Audits

At least two copies of the audit report package, including all attachments and any management letter with its corresponding response, should be sent to the County supervising department within six months after the end of the audit year, or other time frame as specified by the department. The County supervising department is responsible for forwarding a copy of the audit report package to the County Auditor within one week of receipt.

III. AUDIT RESOLUTION

Within 30 days of issuance of the audit report, the entity must submit to its County supervising department a corrective action plan consistent with 2 CFR § 200.511(c) to address each audit finding included in the current year auditor's report. Questioned costs and disallowed costs must be resolved according to procedures established by the County in the Contract Administration Manual. The County supervising department will follow up on the implementation of the corrective action plan as it pertains to County programs.

IV. ADDITIONAL AUDIT WORK

The County, the State, or Federal agencies may conduct additional audits or reviews to carry out their regulatory responsibilities. To the extent possible, these audits and reviews will rely on the audit work already performed under the audit requirements listed above.

EXHIBIT F

HIPAA BUSINESS ASSOCIATE AGREEMENT

INTENTIONALLY OMITTED

**EXHIBIT G
COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

County project managers will provide a special access code to contractors and subcontractors participating in this contract to allow use of the Elation Systems free of charge.

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

EXHIBIT - H
ADDITIONAL CONTRACT PROVISIONS
FEDERAL PROVISIONS

Funds used for payment of this Contract may be from or subject to reimbursement by state and/or federal funds. Some of these funding sources require additional contractual obligations and County and Contractor hereby agree to the following additional terms and conditions. The parties agree to each of these terms for reasons including, but not limited to, meeting all contracting requirements as set forth in 2 C.R.F. § 200.326 and 2 C.F.R. Part 200, Appendix II. These terms supplement the General Terms and Conditions.

I. General Provisions

(A) Remedies. In the event of a breach by Contractor of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Contractor of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Contractor shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

(B) Termination. The County may suspend, terminate, or abandon the execution of any work by the Contractor under this Contract with or without cause at any time upon giving the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment, but in no event shall Contractor be entitled to more than the not to exceed amount of the Contract, or if applicable, the portion of the Contract being terminated.

(C) Equal Employment Opportunity. During the performance of this contract, Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will

take such action with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

These provisions are included in addition to the Equal Employment Opportunity Practices Provisions in the General Terms and Conditions and Contractor shall abide by both provisions.

(D) Rights to Inventions Made Under a Contract or Agreement. If this Contract is funded in whole or part by a Federal award of funds and the Contract and/or funding meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor (the "recipient or subrecipient") wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and

Cooperative Agreements,” and any implementing regulations issued by the awarding agency. This requirement applies to “funding agreements,” but it does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(E) Clean Air Act and the Federal Water Pollution Control Act. The following provisions apply for all contracts in excess of \$150,000:

(1) Clean Air Act (42 U.S.C. 7401–7671q).

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation of the Clean Air Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Contractor agrees to report each violation of the Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(F) Debarment and Suspension. In addition to the debarment and suspension requirements in the General Terms and Conditions and executed Debarment certificate, the following terms shall apply:

(1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

(3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered contracts.

(G) Conflict of Interest. By executing this Contract, Contractor certifies that it does not know of any fact which constitutes a violation of Section 66 of County's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the County if it becomes aware of any such fact during the term of this Contract. In addition, Contractor shall be in full compliance with all other conflict of interest requirements, including those contained in 2 C.F.R. § 200.318.

(H) Byrd Anti-Lobbying Amendment. For any contract of \$100,000 or more, Contractor shall complete the required certification (included below) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

(I) Procurement of recovered materials.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- b. Meeting Contract performance requirements; or
- c. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(J) Access to Records.

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(K) Changes. The cost of any change, modification, change order, or constructive change must be allowable, allocable, within the scope of a funding grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the Contract by entering a written amendment executed by authorized representatives. The Contract may not be modified except by a written document signed by both parties. It is mutually understood and agreed that no alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

(L) Seal, Logo, And Flags. The Contractor shall not use the Department of Homeland Security, or any other Federal, state or local seals, logos, crests, or reproductions of flags or likenesses of agency officials without specific FEMA or specified agency pre-approval.

(M) Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(N) No Obligation of Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

(O) Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

(P) Local Preferences: To the extent that any local preferences are prohibited by funding, SLEB and other local preferences and policies have already been or are waived.

(Q) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the following provisions, from 29 C.F.R §5.5(b) shall apply:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of

Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(R) Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the contractor and their subcontractor(s), to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(S) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor and their subcontractor(s) are prohibited from obligating or expending funds from this Agreement to (1) procure or obtain (2) extend or renew a contract to procure or obtain or (3) enter into a contract for equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(1) As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation

with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (2) See Public Law 115–232, section 889 for additional information. See also 2 CFR § 200.471.

II. Construction and Repair Work. The following provisions apply to construction or repair work:

Compliance with the Davis-Bacon Act and Copeland “Anti-Kickback” Act. For all prime construction contracts in excess of \$2,000 the following terms shall apply:

(1) Davis-Bacon Act

a. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

(2) Copeland “Anti-Kickback” Act

a. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Contractor, Davis Street Community Center, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Executive Director
Title

EXHIBIT I

**CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND
CONDITIONS (FT&C)**

FT&C For:

CalWORKs Stage 2 (C2AP)

CalWORKs Stage 3 (C3AP)

Alternative Payment Program (CAPP)

General Child Care and Development (CCTR)

Family Child Care Home Education Networks (CFCC)

Programs for Children with Severe Disabilities (CHAN)

Migrant Alternative Payment Program (CMAP)

Migrant Child Care and Development Program (CMIG)

Resource and Referral Program (CRRP)

California State Preschool Program (CSPP)

FISCAL YEAR 2021-22

TABLE OF CONTENTS

<u>CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND CONDITIONS (FT&C)</u>	13
<u>TABLE OF CONTENTS</u>	14
<u>INTRODUCTION</u>	18
<u>I. DEFINITIONS</u>	19
<u>II. GENERAL PROVISIONS</u>	37
A. <u>Notification of Address Change</u>	37
B. <u>Notification of E-mail Contact Changes</u>	37
C. <u>Materials Developed with Contract Funds</u>	37
D. <u>Prohibition Against Religious Instruction or Worship</u>	38
E. <u>Issuance and Use of Checks</u>	38
F. <u>Plan for Provider Reimbursement and Certificates for Alternative Payment Programs</u>	38
G. <u>Prohibition against Loans and Advances</u>	39
H. <u>Contracts with Multiple Service Areas</u>	39
I. <u>Compliance Reviews</u>	40
J. <u>Reviews of Alternative Payment Agencies</u>	40
K. <u>Contractor's Termination for Convenience</u>	40
L. <u>Uniform Complaint Procedures</u>	41
M. <u>Eligibility for Funding</u>	41
N. <u>Review of Contracts for Continued Funding</u>	42
O. <u>Applicability of Corporations Code</u>	43
P. <u>Conflicts of Interest</u>	43
Q. <u>Unlawful Denial of Services</u>	44
R. <u>Computer Software Copyright Compliance</u>	45
S. <u>Recycled Paper Certification</u>	45

T. <u>Healthy Schools Act</u>	45
III. <u>FACILITIES AND EQUIPMENT</u>	46
A. <u>Facilities and Equipment Expenditures</u>	46
B. <u>Buildings and Improvements</u>	47
C. <u>Renovation and Repair</u>	47
D. <u>Depreciation and Use Allowance</u>	47
E. <u>Preapproval Requirements</u>	48
F. <u>Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies</u>	49
G. <u>Obtaining Bids for Equipment Purchases for Public Agencies</u>	50
H. <u>Asset Management</u>	50
I. <u>Title, Use, Disposition and Retention</u>	51
IV. <u>SUBCONTRACTS</u>	52
A. <u>A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.</u>	52
B. <u>Subcontracts Excluded from Requirements of this Section</u>	52
C. <u>Required Subcontract Provisions</u>	52
D. <u>Private Agencies-Bids for Subcontracts</u>	54
E. <u>Public Agencies Subcontracts</u>	55
F. <u>Prior CDE Approval for Subcontracts \$10,000 and Above</u>	55
G. <u>Audit Requirements for Subcontracts</u>	56
V. <u>COSTS, EARNINGS AND REIMBURSEMENT</u>	56
A. <u>Contract Amount Adjustments</u>	56
B. <u>Reasonable and Necessary Costs</u>	57
C. <u>Indirect Costs</u>	57
D. <u>Administrative Costs</u>	57
E. <u>Service Level Exemption (Start-Up) for New or Expanded Programs</u>	58

F.	<u>Costs for Travel and Per Diem & Restrictions</u>	58
G.	<u>Specific Items of Reimbursable Costs</u>	59
H.	<u>Nonreimbursable Costs</u>	60
I.	<u>Charging of Expenditures</u>	62
J.	<u>Recoupment of Advanced Contract Funds</u>	62
K.	<u>Use of Subsidized Family Fees</u>	62
L.	<u>Determination of Reimbursable Amount</u>	62
M.	<u>Minimum Days of Operation</u>	64
N.	<u>Reduction, Withholding, and Canceling Apportionments to Contractors</u>	64
O.	<u>Order of Expenditure</u>	64
VI.	<u>ACCOUNTING AND REPORTING REQUIREMENTS</u>	65
A.	<u>General Provisions</u>	65
B.	<u>Child Development Fund and Interest Bearing Accounts</u>	65
C.	<u>Enrollment and Attendance Accounting</u>	65
D.	<u>Attendance and Absences</u>	66
E.	<u>Abandonment of Care</u>	67
F.	<u>General Record Keeping Requirements</u>	68
G.	<u>Attendance and Expenditure Reports</u>	68
H.	<u>Alternative Payment and CFCC Expenditure Reports</u>	69
I.	<u>Caseload Reports</u>	70
J.	<u>CRRP Expenditure Reports</u>	71
K.	<u>Service Data Report for Resource and Referral Programs</u>	71
L.	<u>Child Development Data Collection</u>	72
M.	<u>Other Report Data</u>	73
N.	<u>Building a Better Early Care and Education System (BBECES)</u>	73
O.	<u>Annual Financial and Compliance Audits</u>	75

P.	<u>Review of Audit by the CDE Audits and Investigations Division (A&I)</u>	77
Q.	<u>Delinquent Audits and One-Time-Only Extensions</u>	77
R.	<u>California State Auditor</u>	77
S.	<u>Budget and Calendar</u>	77
T.	<u>Reserve Accounts</u>	77
<u>VII.</u>	<u>TECHNICAL ASSISTANCE</u>	79
<u>VIII.</u>	<u>CONTRACT CLASSIFICATIONS</u>	79
A.	<u>Clear Contract</u>	79
B.	<u>Provisional Contract</u>	79
C.	<u>Conditional Contract</u>	79
<u>IX.</u>	<u>APPEALS, TERMINATIONS, AND NON-RENEWALS</u>	80
A.	<u>Resolution of Contract Administration Disputes</u>	80
B.	<u>Independent Appeal Procedures</u>	81
C.	<u>Immediate Termination</u>	81
D.	<u>Non-Immediate Termination</u>	82
E.	<u>Appeals Procedures For Independent Appeals</u>	83
F.	<u>Contractor's Responsibility After Notice of Termination/Nonrenewal</u>	85
<u>X.</u>	<u>CONTRACT STATUS CHANGE PROCEDURES</u>	85
A.	<u>Administrative Review of Changes in Contract Status</u>	85
B.	<u>Conditional Status Imposed During the Contract Period</u>	86
C.	<u>Conditional Status Addendum</u>	87
D.	<u>Duration of Conditional Contract Status</u>	87
E.	<u>Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding</u>	88

INTRODUCTION

These are the Funding Terms and Conditions (FT&C) for early learning and care contracts for fiscal year 2021-2022. Each contractor is required as a condition of its contract (“The Contract”) with the California Department of Education (CDE), to adhere to the following laws and documents, as may be in effect during the 2021-2022 fiscal year:

1. Any applicable Education Code statutes and Welfare and Institutions Code statutes¹
2. The FT&C;
3. The specific Program Requirements;
4. The CDE Audit Guide;
5. The California School Accounting Manual;
6. The procedures and standards set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (2 CFR Part 200 and Title 45 CFR Part 75), hereinafter referred to as Uniform Guidance (UG);
7. Title 5 California Code of Regulations (5 CCR) Division 1, Chapter 19 and 19.5, sections 18000 et seq., including 12-Month Eligibility Implementation Guidance (Implementation Guidance) and CSPP Free or Reduced Price Meal (FRPM) Implementation Guidance (CSPP FRPM Implementation Guidance). NOTE: Guidance documents shall only be in effect until superseding regulations are promulgated in 5 CCR.
8. Title 22 California Code of Regulations, community care facilities license regulations, including child care centers;
9. Any other requirements incorporated into the contract (including any approved pilot plan), in addition to all other applicable laws and regulations, including any applicable law and regulations that may become effective during the term of this contract.

1 Pursuant to The Early Childhood Development Act of 2020 (Chapter 1 of Part 1.7 of Division 9 of the Welfare and Institutions Code), responsibility for the Alternative Payment program, Migrant Alternative Payment program, CalWORKS Stage 2 program, CalWORKS Stage 3 program, General Childcare program, Family Childcare Home Education Network program, Migrant Childcare program, Childcare and Development Services for Children with Severe Disabilities program, and Resource and Referral program, along with other programs enumerated in Section 10203 of Welfare and Institutions, will shift from the California Department of Education to the California Department of Social Services effective July 1, 2021. Some of the Education Code sections cited in the 2021-2022 Funding Terms and Conditions and/or Program Requirements applicable to the programs covered by this contract may be subsequently modified and/or moved from the Education Code to the Welfare and Institutions Code through legislative enactment to be effective on or after July 1, 2021. Contractors will be held to the applicable statutes and regulations in effect during the term of this contract.

Any non-compliance with The Contract may subject the contractor to termination of the contract. Any variance from The Contract must be authorized in writing by the CDE and signed by the Director of the Early Learning and Care Division (ELCD) or the Director's authorized representative. Unless otherwise noted, these compliance requirements apply to all programs.

Contractors may adopt any reasonable policies relating to the administration of the program so long as such policies are not in conflict with law, regulations, or the terms of this contract, including any contract amendments. Those potentially affected by the policies shall be duly notified, as provided for in statute and regulation, and adhere to any due process requirements, if applicable.

California Education Code (EC) Section 8385(f) requires all early learning and care contracts entered into by the CDE for means-tested early learning and care programs, including, but not limited to, Alternative Payment, General Child Care and Child Care for Recipients of the California Work Opportunities and Responsibility to Kids (CalWORKs) Programs (described in EC 8220, EC 8240 and EC 8350) to implement best practices identified pursuant to subdivision (c) which states, "In developing its recommendations, the CDE shall place priority on prevention of fraud and overpayments, and shall consider existing best practices for doing so."

Early Learning and Care contracts are funded with state general funds, federal funds, or a combination of funds. The funding amounts are listed on the contract encumbrance page.

Contracts may be fully or partially funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99, the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended by the CCDBG Act of 2014, Public Law 1113-186, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 USC 9858.

If the Catalogue of Federal Domestic Assistance (CFDA) number is 93596 (shown as FC# in the funding block), the fund title is Child Care Mandatory and Matching Funds of the Child Care and Development Fund. If the CFDA number is 93575, the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant Act of 1990, the Omnibus Budget Reconciliation Act of 1990, Section 5082, Public Law 101-508, as amended, Section 658J and 658S, and Public Law 102-586.

I. DEFINITIONS

As applicable to each specific program type.

Any terms not defined in this section shall be defined, if applicable, as set forth in the *Education Code* or in Title 5 of the *California Code of Regulations (CCR)*.

"12-Month Eligibility Implementation Guidance" or "Implementation guidance" provides guidance and instruction for implementation of the new requirements in California EC 8263(h), referred to as "12-month eligibility." *See Management Bulletin 17-14*

"Actual and allowable net costs" means the costs which may be reimbursed under a particular child development contract after disallowed costs and restricted income have been subtracted

from total expenditures. 5 CCR 18013(a)

"Additional funds" means award of new contracts or expanded contracts that increase the contractor's level of administrative responsibility. Additional funds do not include cost of living adjustments, rate increases and one-time-only supplemental funds or Alternative Payment program contingency funds. 5 CCR 18000

"Adjusted child days of enrollment" means child days of enrollment after special needs adjustment factors specified in *EC 8265.5* have been applied. 5 CCR 18013

"Adjusted monthly income" means total countable income, minus verified child support payments paid by the parent whose child is receiving child development services, excluding the non-countable income listed below: 5 CCR 18078(a)

1. Earnings of a child under age eighteen (18) years;
2. Loans;
3. Grants or scholarships to students for educational purposes other than any balance available for living costs;
4. Food stamps or other food assistance;
5. Earned Income Tax Credit or tax refund;
6. GI Bill entitlements, hardship duty pay, hazardous duty pay, hostile fire pay, or imminent danger pay;
7. Adoption assistance payments received pursuant to Welfare and Institutions (W&I) Code Section 16115 et seq.;
8. Non-cash assistance or gifts;
9. All income of any individual counted in the family size who is collecting federal Supplemental Security Income (SSI) or State Supplemental Program (SSP) benefits;
10. Insurance or court settlements including pain and suffering and excluding lost wages and punitive damages;
11. Reimbursements for work-required expenses such as uniforms, mileage, or per diem expenses for food and lodging;
12. Business expenses for self-employed family members;
13. When there is no cash value to the employee, the portion of medical and/or dental insurance documented as paid by the employer and included in gross pay; and
14. Disaster relief grants or payments, except any portion for rental assistance or unemployment.

"Administrative costs" means costs incurred for administrative activities where neither the family, the child nor the service providers for Alternative Payment programs and family child care homes directly benefit from the activity. 5 CCR 18013(b)

"Adult" means a person who is at least eighteen (18) years of age. HHS, DSS, CCL, Child Care Center, Division 12, Ch. 1 Section 101152 Definitions

"Agency" or "Contractor" refers to any entity that is authorized to perform early learning and care services pursuant to the Education Code. An agency may be a public agency or private agency.

"Agency Self-Evaluation Annual Report" is a form issued by the CDE for use by contractors to submit a summary of findings of the program self-evaluation. 5 CCR 18270.5 (a) and 18279(c)

"Agricultural work" or "agricultural labor" means all service performed:

1. on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with the production or processing of any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
2. in the employ of the operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane;
3. in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, canning, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity.

The definition of agricultural work shall not be deemed to be applicable with respect to service performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. *CFR 34 Part 200*

"Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of early learning and care services, and payments that are made by an agency to a parent for the parent's purchase of early learning and care services. *EC 8208 (a)*

"Alternative payment program" means a local government agency or nonprofit organization that has contracted with the CDE pursuant to *EC 8220.1* to provide alternative payments and to provide support services to parents and providers. Types of programs include C2AP, C3AP, CAPP, and CMAP. *EC 8208 (b)*

"Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private, non-tax exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decision making prerogatives as consistent with the provisions of this chapter. *EC 8208(c)*

"Approved work activity" is an activity contained in the parent's welfare-to-work plan as described and further defined in *W&I 11322.6 et seq.* and may include:

1. Unsubsidized employment;
2. Subsidized private sector employment;
3. Subsidized public sector employment;
4. Work experience;
5. On-the-job training;
6. Grant-based on-the-job training;
7. Supported work or transitional employment;
8. Work-study;
9. Self-employment;
10. Community or vocational education and training;
11. Job search and job readiness assistance;
12. Education directly related to employment;
13. Satisfactory progress in secondary school or in a course of study leading to a General Education Development (GED) certification;
14. Mental health, substance abuse and domestic violence services; or
15. Other activities necessary to assist an individual in obtaining unsubsidized employment.

"Assistance Unit" means a group of related persons living in the same home who have been determined eligible for CalWORKs cash assistance by the county. California-DSS-Manual-EAS Eligibility and Assistance Standards, Chapter 82-800 Assistance Unit.

"At risk of abuse, neglect, or exploitation" refers to children who are so identified in a written referral from a legal, medical, social services agency, or emergency shelter. *EC 8208 (k)*

"Attendance" means the number of children present at an early learning and care facility.

"Attendance," for purposes of reimbursement, includes excused absences by children because of

illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child. *EC 8208(e)*

“Audit Guide” refers to the most recent *CDE Audit Guide*, which is a resource for audit requirements and guidance applicable to certain state and federal programs operated by private and public organizations under agreements with the CDE. The *Audit Guide* should be used by independent auditors in conducting audits of state and federal early learning and care programs.

"Authorized representative" means, depending upon the specific regulation, either:

1. A person who has been delegated the responsibility to sign a child in and out of a child care program in the absence of the parent; 5 *CCR 18013(f)*
2. A person designated by the contractor to certify eligibility for subsidized services and/or issue a notice of action, application for services or notice of action, recipient of services; 5 *CCR 18082(b), 18083(j)*
3. A person designated by the parent that would be allowed to review the child's data file; or 5 *CCR 18117(b)*
4. A person designated by the parent to represent the parent at a local hearing upon filing an appeal after receipt of a notice of action. 5 *CCR 18120-(e)*

"Benefit to the State" means that the activity will improve knowledge or expertise in areas directly related to subsidized early learning and care services. 5 *CCR 18013(e)*

“California School Accounting Manual” provides accounting policies and procedures, as well as guidance in implementing those policies and procedures.

“California State Preschool Program (CSPP)” means age and developmentally appropriate subsidized early learning and care programs designed to facilitate the transition to kindergarten for eligible three and four-year-old children. Services includes part-day or full-day services designed to meet the needs of working families. The CSPP includes educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. *EC 8235-8239*

“California State Preschool Program (CSPP) Free and Reduced Priced Meal (FRPM) Sites” means a CSPP site that has been verified as operating within the attendance boundaries of a qualified FRPM school. *CSPP FRPM Implementation Guidance 18013*

“CalWORKs cash aid recipient” means an adult or minor teen parent who receives cash aid from the county welfare department for the CalWORKs or Cal-Learn program. *EC 8350-8359.1*

"Ceases operation" means the contractor does not provide subsidized services in accordance with the contractor's program operating calendar submitted to and approved by the CDE for the applicable contract period. 5 *CCR 18013*

“Center-based programs” means all programs providing services directly to children at a licensed center or family child care home and not through the use of an alternative payment voucher.

Types of center-based programs include CCTR, CSPP, CHAN, CMIG and CFCC.

"Child Care Certificate" means a check or other disbursement that is issued by the contractor directly to a parent who may use the certificate only as payment for child care services. Nothing shall preclude the use of the certificate for sectarian child care services if freely chosen by the parent. A child care certificate is assistance to the parent, not assistance to the provider. *45 CFR* Section 98.2

"Child care and development programs" means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also "Early learning and care program". *EC 8208(i)*

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Care and Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

"Child Care and Development Programs" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, "Early learning and care services". *EC 8208(j)*

"Child care provider" means an adult or agency that provides child care services. *5 CCR 18400(b)*

"Child Days of Enrollment" means the total number of days every child is certified to attend a center-based program, excluding CFCC, regardless of attendance.

"Child development fund" means the restricted fund used by the contractor to account for contract funds and related net reimbursable program costs. *5 CCR 18064, EC 8328*

"Child Protective Services (CPS)" means children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation. *5 CCR 18078*

"Children with exceptional needs" means, as set forth in *EC 8208(1)* either of the following:

1. Infants and toddlers under (3) three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (*Title 14* (commencing with Section 95000) of the *Government Code (GC)*) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the *GC*. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.
2. Children ages three (3) to twenty-one (21) years, inclusive who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of *Title 2*, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of *Title 2*, and Sections 3030 and 3031 of 5 *CCR*. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of *Title 20* of the *United States Code*.

"Co-located programs" are those that share the same facility, but cannot be commingled because they are different types of programs with different program requirements.

"Commingled child care services" means the provision of services to both subsidized and nonsubsidized children in the same classroom at the same time. 5 *CCR* 18013

"Compliance review" means that a team of the CDE staff reviews a contractor's program at the program site to determine compliance with applicable laws, regulations, or contractual provisions. 5 *CCR* 18023(1)

"Contract period" means the time span the contract is in effect as specified in the child development contract. 5 *CCR* 18013

"Co-payment" means any usual and customary provider charges that exceed the maximum subsidy amount. The family shall be responsible for paying the provider the difference between the provider's rate and the maximum subsidy amount. This shall be considered the family's co-payment. The contractor shall not be responsible for collecting the family's co-payment. 5 *CCR* 18220.6

"CSPP eligible four-year-old children" means children who will have their fourth birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool

program. *EC 8208(aj)*

“CSPP eligible three-year-old children” means children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. Children who have their third birthday on or after December 2 of the fiscal year, may be enrolled in a California state preschool program on or after their third birthday. Any child under four years of age shall be served in a California state preschool program facility, licensed in accordance with Title 22 of the California Code of Regulations. *EC 8208(ai)*

“CSPP FRPM Implementation Guidance” provides guidance and instructions to California State Preschool Program (CSPP) contractors about implementing new eligibility criteria pursuant to California *Education Code (EC)* Sections 8236.3 and 8263(a)(2). *See Management Bulletin 20-01*

“Day of Operation” means a day in which the contractor provides service to one or more certified children enrolled in a Center-Based program, excluding CFCCs. For Alternative Payment and CFCC programs, a day of operation means a day the administrative office is open for business.

"Declaration" means a written statement signed by a parent under penalty of perjury attesting that the contents of the statement are true and correct to the best of his or her knowledge. *5 CCR 18078*

"Depreciation" means a cost in the current fiscal year that is based on acquisition costs, less any estimated residual value, computed on a straight line method (based on the normal, estimated useful life expectancy of the asset). *5 CCR 18013*

“Desired Results Parent Survey” is a document issued by the CDE to solicit information from parents regarding the child care program or services that the child and family receive. *5 CCR 18270.5(d)*

"Developmental profile" means a record of a child's physical, cognitive, social, and emotional development that is used to inform teachers and parents about a child's developmental progress in meeting desired results. In center-based programs, teacher and parent observations shall be included as part of the information used to complete the child's developmental profile. In family child care home education networks, the observations of agency staff, in consultation with providers, and parents shall be included as part of the information used to complete the child's developmental profile. *5 CCR 18270.5(b), 18272*

“Desired Results Developmental Profile” is a document issued by the CDE to record the information in the developmental profile defined in subsection 18270.5(b) that is incorporated by reference. *5 CCR 18270.5(c)*

"Disallowed costs" means costs that have been incurred but are not reimbursable because they are not reasonable and/or necessary for the performance of the contract or are otherwise nonreimbursable. *5 CCR 18013*

"Displace families" means to disenroll families in order to reduce service levels due to insufficient funding or inability of a contractor to operate one or more sites because of reasons

stated in *EC* section 8271. 5 *CCR* 18078

“Diversion services” means one-time assistance services provided by the county welfare department, either in cash or in non-cash services, to an otherwise CalWORKs eligible family, when the county welfare department determines that such assistance will help the family avoid becoming a CalWORKs cash aid recipient. 5 *CCR* 18400(d)

“Early learning and care program” means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also “Child care and development programs”. *EC* 8208(i)

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Care and Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

“Early learning and care services” means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, “Child Care and Development Programs”.

“Education program” for purposes of program quality, 5 *CCR* subchapter 12, means the environment, activities, and services provided to the children.

“Employment agreement” is a formal agreement that specifies the conditions of the relationship between an individual employee and an employer including compensation and expectations. Also referred to as an employment contract.

“English Learner (EL) Students” (Formerly Known as Limited-English-Proficient or LEP) means those students for whom there is a report of a primary language other than English on the state-approved Home Language Survey **and** who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs. *EC* 313 and 5 *CCR* 60810

“Environment rating scale” means an instrument that measures program quality by rating the education program (5 CCR 18272), the staff development program (5 CCR 18273), and parent involvement and education (5 CCR 18273) 5 CCR 18270.5 (f)

Environment rating scales include the CDE most recently used versions of the following:

1. “ECERS” means the document entitled, Early Childhood Environment Rating Scale;
2. “ITERS” means the document entitled, Infant-Toddler Environment Rating Scale;
3. “FDCCERS” means the document entitled, Family Child Care Environment Rating Scale;
4. “SACERS” means the document entitled, School-Age Care Environment Rating Scale; 5 CCR 18270(f)

"Families experiencing homelessness" means parents, children, and youths as individuals who lack a fixed, regular, and adequate nighttime residence. This includes children and youths who:

1. share the housing of other persons due to loss of housing, economic hardship, or a similar reason;
2. live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
3. live in emergency or transitional shelters; or are abandoned in hospitals;
4. have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
5. live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
6. are migratory children who qualify as homeless because the children are living in circumstances described above. (42 U.S.C. Sec. 11301 et seq.)

“Family” means the parents and the children for whom the parents are responsible; who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, “family” shall be considered the child and related siblings. 5 CCR 18078

“Family child care home education network” means an entity organized under law that contracts with the CDE pursuant to EC 8245 to make payments to licensed family child care home providers and to provide education and support services to those providers and to children and families eligible for state-subsidized early learning and care services. A family child care home education network may also be referred to as a family child care home system. EC 8208(p)

“Family Child Care Homes” refers to licensed child care provided in a private home. 22 CCR 102352(f)

“Family fee” means the fee determined from the fee schedule. 5 CCR 18078

“Fee schedule” means the “Family Fee Schedule” issued by the CDE pursuant to EC 8273 and 8447 (e). The “fee schedule” is used by child development contractors to assess fees for families utilizing early learning and care services. 5 CCR 18078

“Family size” for C2AP and C3AP means the number of adults and children related by blood, marriage, or adoption that comprise the household in which the child is living.

1. When an adult living in the household is neither the parent of the child nor the spouse of the parent, the adult and the adult's children if any, shall be excluded from the calculation of family size.
2. When a child is living with adult(s) other than a natural or adoptive parent, the child shall be considered a family of one. In these cases, a need criterion as specified in 5 CCR Section 18406(b) or (c) or 18421(b) or (c) must be met by the caretaker of the child. 5 CCR 18400 (e)

“Family size” for all other programs means the number of people constituting a “family” as determined by documentation supporting the number of children and parents in the family. 5 CCR 18100

“Fishing” means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence. 34 CFR 200.81(b)

“Former CalWORKs cash aid recipient” means an adult individual or minor teen parent who has previously received and is no longer receiving cash aid under the CalWORKs or Cal-Learn programs because of, but not limited to, earnings, other income, or a sanction of the adult imposed by county welfare department. 5 CCR 18400(f)

"FPM/CMR" means Federal Program Monitoring/Contract Monitoring Review (formerly referred to as Coordinated Compliance Review) and is the monitoring and review instrument for Child Care and Development Programs to determine compliance. 5 CCR 18023 (d)(2)

"Full signature" means the legal signature of the individual (e.g., signature normally used on checks and other documents). If the individual is not literate in written English, the individual may sign with an "X" which must be initialed by the contractor's authorized representative (5 CCR 18065). Pursuant to EC 8227.5 and 8262.1, the use of a digital signature shall have the same force and effect as the use of a manual signature, if it meets established program and technology requirements.

“Immediate need” for purposes of TrustLine approval means a situation in which both subdivisions (1) and (2) apply:

1. An eligible parent has a need for child care and is employed, participating in a CalWORKs work activity, is in training as described in 5 CCR 18087, or is incapacitated as defined 5 CCR 18400(g) and 18078
2. The contractor determines that no child care is reasonably available from a licensed, TrustLine registered or TrustLine-exempt provider that meets the parent’s need for care.

5 CCR 18078

"Income fluctuation" means income that varies due to:

1. Migrant, agricultural, or seasonal work;
2. Intermittent earnings or income, bonuses, commissions, lottery winnings, inheritance, back child support payment, or net proceeds from the sale of real property or stock; or
3. Unpredictable days and hours of employment, overtime, or self-employment. 5 CCR 18078(j)

"Indirect costs" are general and administrative costs that benefit the operations of the entire organization, but cannot be identified to specific programs or activities. Examples of indirect costs are described in the federal cost principles codified under the *Uniform Guidance (UG)*, 2 CFR, 200.414. 5 CCR 18013

"Indirect cost allocation plan" means a written approved justification and rationale for assigning the relative share of indirect costs across more than one program or contract. School districts and county offices of education shall use the CDE approved rate if it is less than ten percent (10%). A Nonprofit's Board of Directors will approve the indirect cost allocation plan. 5 CCR 18013

"Initial certification" means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for receipt of subsidized child development services as specified in *EC* sections 8263(a)(1)(A) and 8263 (a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. Implementation Guidance 18078(j)

"Initial Income eligibility" means the definition set forth in *EC* 8263.1(a) Implementation Guidance 18078(h)

"Interactive literacy activities" means activities in which parents or legal guardians actively participate in facilitating the acquisition by their children of pre-reading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development. *EC* 8238(a)

"Legally qualified professional" means a person licensed under applicable laws and regulations of the State of California to perform legal, medical, health or social services for the general public. 5 CCR 18078

"Licensed-exempt provider" means an individual or organization that is not required to be licensed, as specified in *Health and Safety Code (H&SC)* 1596.792, or any other federal law or regulation.

"Licensed provider" means an individual or organization that has obtained a child care license, as specified in 22 CCR 101152. *H&SC* 1596.90

"Limited-English-proficient" and "non-English proficient" means children who are unable to benefit fully from an English only early learning and care program as a result of either of the

following:

1. Having used a language other than English when they first began to speak; or
2. Having a language other than English predominately or exclusively spoken at home. EC 8208(t)

"Local education agency (LEA)" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district. EC 8208(al). Direct fund charter schools that have been funded to operate early learning and care programs are also considered to be LEAs.

"Magnet school" means an entire school with a focus on a special area of study, such as science, the performing arts, or career education, designed to attract pupils from across the school district who may choose to attend the magnet school instead of their local public school. *CSPP FRPM Implementation Guidance* 18013

"Maximum reimbursable amount" means the total dollar amount of a contract. Reimbursement from the State shall not exceed the maximum reimbursable amount. The initial maximum reimbursable amount shall be the approved original version of the annual contract based on the Budget Act as signed by the Governor. 5 CCR 18013 (o)

"Migrant agricultural worker family" means a family that has earned at least fifty percent (50%) of its total gross income from employment in fishing, agriculture or agriculturally-related work during the twelve (12) month period immediately preceding the date of application for early learning and care services. EC 8231

"Monthly attendance record or invoice" means documentation that includes, at a minimum, the name of the child receiving services, the dates and actual times care was provided each day, including the time the child entered and the time the child left care each day, that is signed under penalty of perjury by both the parent or guardian and the child care provider, attesting that the information provided is accurate. EC 8221.5

"Net reimbursable program costs" means the portion of the actual and allowable net costs that are incurred in the provision of early learning and care services for subsidized children. 5 CCR 18013

"New contract" means either:

1. A contract award to applicants who do not currently contract with the CDE for early learning and care services; or
2. A contract award to current contractor that is for a program type as specified in EC 8208(i) that is different than the child development contract(s) currently administered by the applicant. 5 CCR 18000(d)

"Nontraditional hours" refers to evenings and/or weekends for licensed providers when a licensed provider is meeting the certified need for child care that includes hours during the period from 6:00 p.m. to 6:00 a.m., Monday through Friday, or any time on Saturday or Sunday. 5 CCR 18075.1(b).

“Notice of Action, Application for Services” means a written statement of specific information issued by the contractor that informs the applicant of the contractor’s decision to approve or deny early learning and care services. See Program Requirements for a description of the specific information that must be included to have the contractor’s decision reviewed. 5 CCR 18094, 18400(k) and EC 8261, 8263

“Notice of Action, Recipient of Services” means a written statement of specific information issued by the contractor informing the family receiving child care services that a change has been made to their service agreement. These changes may include, but are not limited to, need and eligibility requirements that are no longer being met, or fees have not been paid, or the fee or amount of services provided by the contractor will be modified. 5 CCR 18078, 18095, 18400(l) and EC 8261, 8263

"Ongoing income eligibility" means the definition set forth in EC 8263.1(b) Implementation Guidance 18078.

“Parent” means a biological parent, adoptive parent, stepparent, foster parent, caretaker, relative, legal guardian, or domestic partner of the parent as defined in *Family Code* section 297, or any other adult living with a child who has responsibility for the care and welfare of the child. EC 8208(u)

"Parental Incapacity" means the temporary or permanent inability of the child’s parent(s) to provide care and supervision of the child(ren) for part of the day due to a physical or mental health condition. 5 CCR 18078

“Parent involvement and education” means those activities specifically designed to include parents in the education of their children, help parents participate in the program, and enhance their understanding of child development. EC 8208(u)

“Parent survey” means a questionnaire completed by the parent to assess the child care program or services that the child and family receive. The parent survey asks for information about how the program helps parents support their child’s learning and development and meets the family’s needs. 5 CCR 18270.5(h)

"Private agency" or "Private contractor" means an entity other than a public agency that is tax exempt or non-tax exempt and under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Program self-evaluation process” means those activities and procedures used by the contractor to evaluate its program quality and compliance with applicable laws, regulations, and contractual provisions. 5 CCR 18270.5(i)

“Provisional child care provider” means an individual, exempt from licensure pursuant to *Health and Safety Code (HSC)* sections 1596.792(d) or (f), who provides child care for a child or children of an eligible parent for a period of up to thirty (30) days when there is an immediate need. The provisional child care provider shall have completed a TrustLine application and submitted fingerprints, in accordance with *HSC* sections 1596.603 and 1596.605. 5 CCR 18078

"Public agency" or "Public contractor" means a school district, community college district,

county superintendent of schools, campus of the California State University or the University of California system, county, city or other public entity under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Qualified FRPM school” is a public elementary school, that is not a charter or magnet school, where at least 80% of the enrolled students are eligible for the Free and Reduced Priced Meal program. *CSPP FRPM Implementation Guidance* 18013

"Quality assurance" means activities intended to benefit children and families including, but not limited to, services to parents and providers such as lending libraries, resource libraries, training of parents and providers and monitoring of program quality requirements.

"Reasonable and necessary costs" are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. 45 CFR 75.404

“Recertification” means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for ongoing receipt of services as specified in Education Code sections 8263(a)(1)(A) and 8263(a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. *Implementation Guidance* 18078(q)

"Recipients of service" means families and/or children enrolled in an early learning and care program subsidized by the CDE. 5 CCR 18078

“Regional Market Rate” means the current rate charged for various types of child care services as determined by a survey of providers. *EC* 8357

“Regional market rate ceilings” means the maximum amount calculated by the CDE that providers in different regions of the state may be reimbursed for the same type of child care for the same age child in accordance with statutory ceilings currently in effect. 5 CCR 18074.1(c)

"Restricted income" means income that may only be expended for specific limited purposes that would be reimbursable according to the contract. 5 CCR 18068

"Sectarian organization or sectarian child care provider" means any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. *CFR* 45 Section 98.2

“Self-Certification of Income” means a declaration signed by the parent under penalty of perjury identifying (5 CCR 18078):

1. To the extent known, the employer and date of hire and stating the rate and frequency of pay, total amount of income received for the preceding month(s), the type of work performed, and the hours and days worked, when an employer refuses or fails to provide requested employment information or when a request for documentation would adversely

affect the parent's employment; or

2. The amount and frequency of sources of income for which no documentation is possible. 5 CCR 18084(a)(4)

"Service agreement" is a legal instrument by which the agency purchases services needed to carry out the early learning and care programs. Legal instruments that include services which are clearly incidental to the agreement are not considered service agreements.

"Service delivery area" means the community, geographic area, or political subdivision in which the early learning and care services are to be provided as specified in the Request for Applications. 5 CCR 18000(f)

"Severely disabled children" are children with exceptional needs from birth to twenty-one (21) years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance or severe developmental disability. These children may be assessed by public school special education staff, regional center staff or another appropriately licensed clinical professional. EC 8208 (y)

"Site supervisor" means a person, who, regardless of his or her title, has operational program responsibility for an early learning and care program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of an early learning and care program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented. EC 8208(aa).

For CSPP, a site supervisor may qualify under any of the provisions above, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both EC Sections 8244 and 8360.1 is also qualified under this subdivision.

"Social service agency" means an agency that, in the course of day-to-day business, provides personal counseling, personal or group therapy provided by personnel properly certified or licensed under California law. Examples of such agencies include county welfare departments and county mental health departments.

"Staff development program" means those activities that address the needs, interests, and skills of program staff or service providers to improve program quality. 5 CCR 18270.5(j)

"Stage 1" means the first stage of CalWORKs child care services. Stage 1 child care services are administered by the California Department of Social Services (DSS) through county welfare departments pursuant to EC 8351. Stage 1 child care begins when authorized by the county welfare department. 5 CCR 18400(n)

"Stage 2" means the second stage of CalWORKs child care services. Stage 2 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to EC 8353. Stage 2 child care begins when the county welfare department determines that a CalWORKs family is stable and transfers the family to a Stage 2 child care contractor for

child care services, or a family applies and is found eligible for Stage 2 services. 5 CCR 18400(o)

“Stage 3” means the third stage of CalWORKs child care services. Stage 3 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to *EC 8354*. Stage 3 child care begins when a CalWORKs family receiving Stage 1 or Stage 2 child care services has fully utilized the family’s twenty-four (24) months of eligibility to Stage 1 and Stage 2 child care services following the date the adult stopped receiving cash assistance. 5 CCR 18400(p)

“Standard reimbursement rate” means that rate established by the Superintendent of Public Instruction (SSPI) pursuant to *EC 8265* and *EC 8208(ab)*

"State median income" means the most recent median income for California families as determined by the State Department of Finance (DOF). *EC 8263.1* and 5 CCR 18078(r)

“Subcontract” means a written agreement between the contractor and any entity to perform a service on behalf of the contractor.

“Subcontract for early learning and care services” means a specific type of subcontract where the contractor enters into a written agreement with another entity to carry out all or part of the early learning and care services.

“Subsidized families” means eligible families who are receiving early learning and care services and on whose behalf the CDE or the California Department of Social Services (DSS) is providing a reimbursement, in whole or in part. 5 CCR 18074.1(d)

“Superintendent” unless otherwise noted, refers to the California State Superintendent of Public Instruction (SSPI). *EC 95*

“Support services” means those services which, when combined with early learning and care services, help promote the healthy physical, mental, social and emotional growth of children and families. *EC 8208(ae)*

“Time Out” means that a family receiving CalWORKs Stage 1 or Stage 2 child care services becomes ineligible for Stage 1 or Stage 2 because the adult has been off cash aid for twenty-four (24) months. 5 CCR 18400(r)

“Total contract amount” for the purposes of determining the limit of allowable administrative and program support services for Alternative Payment type programs means either the initial maximum reimbursable amount or the total of direct payments to providers, which includes family fees for certified children and interest earned on advanced contract funds, plus reimbursable administrative and support services costs, whichever is greater. 5 CCR 18013

“Total countable income” means all income of the individuals counted in the family size (5 CCR 18078) including, but not limited to, the following:

1. Gross wages or salary, advances, commissions, overtime, tips, bonuses, gambling or lottery winnings;

2. Wages for migrant, agricultural, or seasonal work;
3. Public cash assistance;
4. Gross income from self-employment less business expenses with the exception of wage draws;
5. Disability or unemployment compensation;
6. Workers compensation;
7. Spousal support, child support received from the former spouse or absent parent, or financial assistance for housing costs or car payments paid as part of or in addition to spousal or child support;
8. Survivor and retirement benefits;
9. Dividends, interest on bonds, income from estates or trusts, net rental income or royalties;
10. Rent for room within the family's residence;
11. Foster care grants, payments or clothing allowance for children placed through child welfare services;
12. Financial assistance received for the care of a child living with an adult who is not the child's biological or adoptive parent;
13. Veterans pensions;
14. Pensions or annuities;
15. Inheritance;
16. Allowances for housing or automobiles provided as part of compensation;
17. Portion of student grants or scholarships not identified for educational purposes as tuition, books, or supplies;
18. Insurance or court settlements for lost wages or punitive damages;
19. Net proceeds from the sale of real property, stocks, or inherited property; or
20. Other enterprise for gain.

"Total expenditures" means all costs for the provision of subsidized services under the contract and any nonsubsidized services which are provided in commingled classrooms. 5 CCR 18013

"Unrestricted income" means income that has no restrictions regarding use by the donor, and income restricted by the donor for purposes that are not reimbursable according to the contract, including income for services to children not subsidized by the contract. 5 CCR 18013

“Unsubsidized” or “nonsubsidized” refers to children or families other than eligible families receiving reimbursement for early learning and care services. 5 CCR 18074.1(e)

"Use allowance" means an alternate method for claiming the use of the contractor's assets as a cost when depreciation methods are not used. 5 CCR 18013

“Welfare-to-work activity” means a county welfare department approved activity, including but not limited to, employment, job search, job training, educational training, or participating as a volunteer in a job-related activity. 5 CCR 18400(s)

II. GENERAL PROVISIONS

Notification of Address Change

(5 CCR 18014)

1. Contractors shall notify the CDE in writing of any change in the mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by:
 - a. Board minutes verifying the change in address; and
 - b. A copy of the notification to the Internal Revenue Service of the address change.
2. Contractors shall notify the CDE in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood, or earthquake.

Notification of E-mail Contact Changes

Contractors shall assure that at all times the e-mail address on file at the CDE is accurate for contacting the following individuals:

1. Executive Officer
2. Program Director

Contractors shall utilize procedures provided by the CDE to electronically add new addresses or delete old addresses, as needed.

Materials Developed with Contract Funds

(5 CCR 18016)

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the early learning and care program.

If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development and development program shall

be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of state general or federal funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

Prohibition Against Religious Instruction or Worship

(5 CCR 18017)

CCTR, CSPP, CHAN, CMIG, and CFCC contractors shall not provide nor be reimbursed for early learning and care services which include religious instruction or worship.

Issuance and Use of Checks

(5 CCR 18018)

Except for external payroll services, private contractors:

1. Shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDE; and
2. Shall require two (2) authorized signatures on all checks unless:
 - a. The contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount.
 - b. The annual audit verifies that appropriate internal controls are maintained.

Plan for Provider Reimbursement and Certificates for Alternative Payment Programs

(EC 8261, 5 CCR 18226, 45 CFR 98.45(l)(1)(ii))

(Applies to C2AP, C3AP, CAPP, CMAP, AND CFCC)

The contractor shall develop and implement a plan for the timely reimbursement to providers. The plan shall include a provision requiring that providers be reimbursed within 21 calendar days of the receipt of a complete record or invoice for services

Procedures shall include measures to ensure security of certificates and prevent fraud and/or abuse and provide for timely redemption of certificates by either parents or providers.

Within two (2) business days of receiving license suspension or revocation notification from the Resource and Referral Program, the contractor shall terminate payment to the affected facility as of the effective date of the suspension or revocation.

Contractors must set up an electronic reimbursement program for licensed and license-exempt providers so that the reimbursement to providers may be electronically

transmitted to the financial institution of their choice.

Contractors may not require the providers to use direct deposit or any other form of electronic reimbursement to receive their reimbursements. However, any contractors which had a policy in place prior to July 1, 2019 which required that providers be reimbursed via direct deposit or other form of electronic reimbursement may continue to require those affected providers receive reimbursement in conformance with such policy. Any new providers starting with such contractors after July 1, 2019, or any contractors without such a policy in place prior to July 1, 2019, must give providers the option of receiving their reimbursements electronically.

When the contractor makes the reimbursement to the early learning and care provider, electronically or otherwise, they must provide a description of the reimbursement to the provider, including the child(ren) served, and the month of service covered by the reimbursement.

Any fees assessed by a provider's financial institution for electronic banking would be incurred by the provider; the fees would not be paid by the contractor.

Prohibition against Loans and Advances

(5 CCR 18019)

1. Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies.
2. Contractors shall not advance unearned salary to employees.
3. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received except for:
 - a. Subcontractors providing early learning and care services; and
 - b. Subcontractors with subcontracts exempt from the provisions of 5 CCR 18026.

Contracts with Multiple Service Areas

1. CCTR, CSPP, CHAN, and CMIG contractors with more than one service delivery area as specified in and funded through a single contract shall maintain service at the same level, plus or minus ten percent (10%) of the contracted child hours or child days of enrollment as applicable, in the individual service area(s) specified in its current contract. 5 CCR 18022
2. The contractor may request approval from the CDE to vary service levels by more than ten percent (10%) if the contractor can demonstrate that the need for services in the designated area(s) has changed.
3. The CDE shall approve or deny the variable service level request within thirty (30) calendar days of receipt of the request.

4. If the variable service level request is denied, the contractor may appeal this decision in accordance with 5 CCR 18308.
5. Non-CalWORKs Alternative Payment program and CFCC contractors with more than one service delivery area, as specified in and funded through a single contract, shall maintain service at the same level in the individual service area(s) as most recently approved by CDE.

Compliance Reviews

(5 CCR 18023(b), (c), (d))

(Applies to all programs)

1. At least once every three (3) years, and as resources permit, the CDE shall conduct reviews at the contractor's office(s) and operating facility(ies) to determine the contractor's compliance with applicable laws, regulations and/or contractual provisions.
2. The compliance reviews shall be conducted according to the provisions of the FPM/CMR.
3. The compliance reviews shall be conducted by consultants, analysts, and/or management staff of the CDE or other State of California representatives.

Reviews of Alternative Payment Agencies

(EC 8385)

Annually, the CDE shall conduct a review of each Alternative Payment agency to determine an error rate in each of the following areas:

1. Family fee determinations;
2. Eligibility;
3. Basis of hours of care; and
4. Provider payments

Contractor's Termination for Convenience

(5 CCR 18024)

1. A contractor may terminate the contract for any reason during the contract term.
2. The contractor shall notify the CDE of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

3. Within fifteen (15) days from the date the contractor notifies the CDE of its intent to terminate the contract, the contractor shall submit:
 - a. A current inventory of equipment purchased in whole or in part with contract funds; and
 - b. The names, addresses and telephone numbers of all families served by the contract and all staff members funded by the contract.
 - c. CFCC and Alternative Payment program contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services funded by the early learning and care contract.
4. Upon receipt of a notice of intent to terminate, the CDE will transfer the program to another agency as soon as practicable.

Uniform Complaint Procedures

(5 CCR 4600-4694)

5 CCR 4610 authorizes the CDE the responsibility for Uniform Complaint Procedures (UCP). Early learning and care programs are covered under the UCP. Contractors shall abide by the applicable procedures set forth in 5 CCR 4600-4694.

For additional general information regarding the UCP, contact the Categorical Program Complaint Management Office, California Department of Education, via telephone (916) 319-0929, or visit the CDE Web site at the following link:

<https://www.cde.ca.gov/re/cp/uc/>

Eligibility for Funding

(5 CCR 18001, 18303, 18304, and 18023)

A current contractor is eligible to apply for new or additional funds except when one or more of the following conditions apply during the Request for Application (RFA) cycle:

1. The contractor is on conditional status because of fiscal or programmatic noncompliance as described in 5 CCR 18303 or 18304; or
2. The CDE has conducted a compliance review pursuant to 5 CCR 18023 and the contractor has failed to cure items of fiscal and programmatic noncompliance identified in the review within twelve (12) months of the issuance of the compliance review report; or
3. The CDE reduced the contractor's current year maximum reimbursement amount due to the contractor's inability to utilize its full contract amount, whether through low enrollment or low expenditures for the same contract type.
4. A current contracting agency may be determined, on a case-by-case basis, to be ineligible to receive expansion funding if:

- The agency was previously awarded expansion funding and has not yet begun to provide services with that funding; or
- The CDE has evidence that the agency has not been able to successfully fulfill current contract requirements by serving children in a quality program and in a fiscally responsible manner.

A current contractor that is applying for additional funds may be awarded less than the full amount requested during negotiations of the award, particularly if it has been determined that they are not fully utilizing their current contract maximum reimbursable amount.

An applicant that is not a current CDE contractor is not eligible to apply for funding if one of the following conditions apply:

1. The contractor had a previous contract with the CDE that was terminated or not continued by the CDE for fiscal or programmatic noncompliance as described in section 18303 or 18304 within three (3) years immediately preceding the date the RFA was posted; or
2. The applicant contractor has an outstanding accounts receivable balance with the CDE; or
3. The applicant contractor has a delinquent audit with the CDE pursuant to 5 CCR 18073.

Review of Contracts for Continued Funding

(5 CCR 18010)

1. Contractors have no vested right to a subsequent contract.
2. Contractors that are not on conditional contract status, but which have evidenced fiscal or programmatic noncompliance with the provisions of this contract, laws, or regulations, shall receive an administrative review to determine whether they will receive an offer for continued funding.
3. Contractors currently on conditional status that do not meet the requirements specified in the Conditional Status Addendum may not be offered a subsequent contract and shall be so notified by the CDE at least ninety (90) calendar days prior to the end of the current contract period.
4. Contractors that intend to accept the offer to continue services in the subsequent contract period shall respond to a continued funding application request from the CDE in accordance with the instructions and timelines specified in the request.
5. Failure to respond within the timelines specified in the continued funding application request shall constitute notification to the CDE of the contractor's intent to discontinue services at the end of the current contract period unless the contractor has received a written extension of the original timeline from the CDE.

Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the *Corporations Code* including standards of conduct and management of the organization.

Conflicts of Interest

(EC 8258)

1. All transactions shall be fair and reasonable and conducted at arm's length where the contractor is a party to a transaction and the other party is one of the following:
 - a. An officer or employee of the contractor or of an organization having financial interest in the contractor; or
 - b. A partner or controlling stockholder or an organization having a financial interest in the contractor; or
 - c. A family member of a person having a financial interest in the contractor.
2. No person employed by the CDE in a policymaking position in the area of early learning and care programs shall serve as a member of the board of directors, advisory council, or advisory committee for any agency receiving funds pursuant to this chapter. The provisions of this subdivision shall not apply to any person appointed prior to January 1, 1985.
3. No retired, dismissed, separated, or formerly employed person of the CDE employed under the State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE. The prohibition contained in this subdivision shall apply to the person only during the two-year period beginning on the date the person left state employment.
4. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 if he or she was employed by the department in a policymaking position in the area of early learning and care programs within the twelve (12) month period prior to his or her retirement, dismissal, or separation.
5. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may be employed by a contractor pursuant to EC Section 8262 if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE.
6. The provisions above shall not apply to any persons who were already in the

situations described by these subdivisions prior to January 1, 1985.

7. Based on corporate law (*Corporations Code* sections 310, 5233-5234, 7233 and 9243 as applicable), the general rules to be followed to ensure that transactions are conducted "at arm's length" include:
 - a. Prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and
 - b. All parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.
8. If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser, licensed by the California Office of Real Estate Appraisers that supports all reimbursable costs under the transaction.
 - a. A new "fair market rental estimate" for each change, adjustment or escalation to any reimbursable costs under a transaction is required.
 - b. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply.
9. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance.
10. Any transaction described in this section shall be disclosed by the auditor in the notes to the financial statement in the annual audit. (*Uniform Guidance*, Subpart F)
11. Rental costs for equipment owned by affiliated organizations, officers, or other key personnel of the contractor or their families are allowable only as depreciation or use allowance.

Unlawful Denial of Services

(GC 11135 and 5 CCR 4900)

As used in this section, "disability" means any mental or physical disability as defined in GC 12926.

1. No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded

directly by the state, or receives any financial assistance from the state.

2. With respect to discrimination on the basis of disability, programs and activities subject to 5 CCR 4900(a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

Recycled Paper Certification

(PCC 12205, 12209, 12320)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in *Public Contract Code (PCC)*, sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the *PCC*, sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

Healthy Schools Act

All early learning and care center-based contractors are subject to the requirements of the Healthy Schools Act (HSA) as specified in *EC* sections 17608 to 17614.

For more information about the requirements of the HSA, contact the Department of Pesticide Regulation (DPR), Integrated Pest Management (IPM) via e-mail at ccipmlist@cdpr.ca.gov or visit the DPR School and Child Care IPM Web site at: <http://www.cdpr.ca.gov/schoolipm/>

To comply with the provisions of the HSA, early learning and care center-based contractors shall, among other requirements:

1. Identify a school designee
 - a. Choose a center employee who will make sure the requirements of the Healthy Schools Act (HSA) are met when pesticides are used at your center.
2. Develop an IPM plan
 - a. Create an IPM plan using the DPR IPM Plan template available on the DPR

School and Child Care IPM website; or get a self-drafted center IPM plan approved by DPR.

3. Provide annual written notification
 - a. Send parents, guardians, and staff a written notification of pesticides you expect to apply at your center during the year.
4. Establish individual notification registry
 - a. Establish a registry for all interested parents, guardians, and staff to sign up and receive notifications of individual pesticide applications.
5. Post warning signs
 - a. Post signs where you will apply pesticides.
6. Keep Records
 - a. Keep records of pesticide applications made by center staff and pest management contractors for at least four years.
7. Send pesticide use reports to DPR
 - a. Send pesticide use reports for pesticide applications made by center employees to DPR at least once per year.
8. Never use prohibited pesticides
 - a. Always check the list of Pesticide Products Prohibited from Use in California Schools and Child Care Facilities prior to using a new pesticide product.
9. Complete Annual IPM Training
 - a. Take a DPR-approved training course before applying pesticides, and renew annually.

III. FACILITIES AND EQUIPMENT

(5 CCR 18034)

A. Facilities and Equipment Expenditures

Facilities and Equipment Expenditures, are subdivided into two categories:

1. Capitalized
 - a. Buildings and Improvements: Sites; renovations and repairs of sites; buildings; renovations and repairs of buildings, building fixtures, services systems; and
 - b. Capitalized Equipment: Tangible personal property (including information

technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or \$5,000. 2 CFR 200.33

2. Non-capitalized

- a. Non-capitalized equipment expenditures are those for tangible personal property with a useful life of more than one year other than those described in Capitalized Equipment above.

B. Buildings and Improvements

1. Buildings are only reimbursable as depreciation or use allowance.
2. To be reimbursable as direct costs, prior written approval by the CDE is required for improvements to land, buildings, or equipment which materially increase their value or useful life. 2 CFR 200.439(b)(3)
3. If the Contractor wishes to share the use of real property among multiple programs, the associated reimbursable capital expenditures shall be prorated among the programs according to the benefits received.
4. Building and improvement expenditures are not reimbursable as indirect costs, except as depreciation or use allowance.

C. Renovation and Repair

(5 CCR 18034)

1. Improvement of sites and adjacent grounds to meet or exceed the 22 CCR, Community Care Licensing Standards are reimbursable for both private and public agencies. Reimbursable improvements are those that:
 - a. Do not unnecessarily increase the value as defined in 18013(v) of a facility; and
 - b. The contractor has obtained prior CDE approval for proposed work for ten thousand dollars (\$10,000) or more.

D. Depreciation and Use Allowance

1. Depreciation and use allowance may be claimed on eligible, appropriate capital assets.
2. Depreciation shall not be claimed on land, donated assets or assets purchased with public funds, on any fully depreciated asset or on idle or excess facilities.
3. A use allowance shall not be claimed on land or assets purchased with contract funds or on assets for which depreciation has been claimed.

4. When depreciation is applied to assets acquired in prior years, the annual charges shall not exceed the amounts that would have resulted had depreciation been claimed from the date of acquisition.
5. The use allowance for buildings and improvements is computed at an annual rate not to exceed two percent (2%) of acquisition costs.
6. The use allowance for equipment is computed at an annual rate not to exceed six and two-thirds percent (6 2/3%) of acquisition costs.
7. To be reimbursable, interest paid on private sector debt for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by contractors providing center-based care must be actual interest paid, not to exceed a fair market rate of interest. This provision does not apply to family child care home facilities.

E. Preapproval Requirements

(5 CCR 18029 and 18040)

1. All equipment and equipment replacement purchases that meet either of the following criteria shall be approved in writing in advance by the CDE. 2 CFR 200.33 and 200.439(b)(1)
 - a. The per-unit acquisition cost equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or five thousand dollars (\$5,000), including tax, shall be approved in writing in advance by the CDE.
 - b. The sum of all items included in the purchase equals ten thousand dollars (\$10,000) or more, including tax, shall be approved in writing in advance by the CDE.
 - i. All expenses associated with a purchase that are necessary for the equipment to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required (e.g., a playground structure includes multiple components, although each component may be purchased separately. When determining pre-approval requirements, all components purchased for the playground should be considered).
 - ii. Subdividing equipment purchases into separate items to avoid the preapproval requirement is prohibited.
2. Proposed renovation and repair work for ten thousand dollars (\$10,000) or more, including the invoiced cost, plus any applicable sales tax, delivery fees, or installation charges, shall be approved in writing in advance by the CDE. 2 CFR 200.439(b)(3)
 - a. All expenses associated with a purchase that are necessary for the improvement to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required.

- b. Subdividing renovation and repair work into separate purchases to avoid the preapproval requirement is prohibited.
 3. Approval requests shall be submitted on the Request for Approval of Equipment form.
 4. Bids, if applicable, shall be attached to the Request for Approval of Equipment when submitted to the CDE for approval.
 - a. One copy of the request shall be retained by the CDE.
 - b. One copy will be returned to the contractor approved or disapproved within thirty (30) calendar days of receipt.
 - c. If the request for approval of an equipment purchase is disapproved, the contractor may appeal the decision in accordance with instructions specified in 5 CCR 18040(d), 18302.
 5. Procurement practices must be in accordance with 5 CCR 18040.
 6. Public Agencies shall comply with the applicable sections of the PCC.
 7. Lease-purchase agreements are subject to the above requirements.
 8. If the work is to be performed through a subcontract, the requirements of the FT&C section titled *Subcontracts* also applies.
 9. When private agencies submit proposed subcontracts for renovation and repair for approval, evidence shall be included that the proposed subcontractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract. 5 CCR 18029(d)
- F. Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies
 1. All equipment purchases, replacements, and improvements not performed by the contractor's staff exceeding five thousand dollars (\$5,000), including tax, must have at least three (3) bids or estimates.
 - a. Each bid or estimate must contain prices for equivalent and comparable items and/or services.
 - b. When available, consolidating procurements to obtain a more economical purchase is required.
 - c. Subdividing equipment purchases into separate items to avoid the competitive bidding requirement is prohibited.
 2. If bids or estimates are required, the contractor shall purchase the goods or services from the lowest responsible bidder or estimator. The contractor shall conform to the

materials, terms and conditions of the invitation for bid, and with 5 CCR 18040.

3. If bids or estimates are required, and three (3) bids or estimates cannot be obtained, the contractor shall provide adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., an emergency situation, or the item is only available from a single source).
4. Lease-purchase agreements are subject to the above requirements.

G. Obtaining Bids for Equipment Purchases for Public Agencies

Public Agencies shall comply with the applicable sections of the *Public Contract Code*.

H. Asset Management

1. Asset Control System

(2 CFR 200.313(d)(3))

A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

2. Inventory

(2 CFR 200.313 (d)(1))

- a. An inventory of all equipment and all non-disposable items with an estimated useful life of more than one year, purchased in whole or in part with early learning and care contract funds, shall be maintained. For more guidance refer to *California School Accounting Manual Procedure 770*.
- b. Property records must be maintained that include the following:
 - i. Description;
 - ii. Serial number or other identification number;
 - iii. The source of funding;
 - iv. The acquisition date;
 - v. The cost;
 - vi. The location, use and condition; and
 - vii. Any ultimate disposition date including date of disposal and sale price if applicable.
- c. A physical inventory must be taken at least every two (2) years and reconciled with property records. 2 CFR 200.313(d)(2)

I. Title, Use, Disposition and Retention

1. Buildings and Improvements

- a. Title to real property acquired in whole or part with state early learning and care (ELC) funds shall vest in the contractor subject to the condition that the contractor shall use the real property for the authorized purpose of the ELC program as long as it has a contract with the CDE and shall not encumber the property without the prior written approval of the CDE. 2 *CFR* 200.311(a)
- b. When the real property is no longer needed for the purposes of any CDE program, the Contractor shall request disposition instructions from the CDE, which shall observe one of the following three disposition instructions:
 - i. The CDE may permit the contractor to retain title without further obligation to the CDE after the contractor compensates the CDE or that percentage of the current fair market value of the property, net of reasonable and necessary selling costs, attributable to the CDE's share of the acquisition cost.
 - ii. The contractor may be directed to sell the property under guidelines provided by the CDE and pay the CDE for that percentage of the current fair market value of the property, net of reasonable and necessary selling and fix-up costs, attributable to the CDE's share of the acquisition cost.
 - iii. The contractor may be directed to transfer title to the property to the CDE or to an eligible third party, provided that, in such cases, the contractor shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

2. Equipment

(5 *CCR* 18025)

- a. Title – When equipment is purchased with state funds, title shall vest with the contractor only for such period of time as the contractor has a contract with the CDE.
- b. Retention of Equipment – The CDE may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the state for the state's share of the cost of the equipment. Fair compensation shall be determined by the state using the state's share of original acquisition cost, less depreciation, computed on a straight-line method over the estimated useful life expectancy of the equipment.
- c. Use – When equipment is purchased in whole or in part with state funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs.

- d. Disposition – The contractor may dispose of obsolete equipment and remove the asset at its recorded value. If the sale of equipment originally purchased with state funds occurs, the proceeds from the sale of the equipment must be returned to the program. If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written directions from the CDE.

IV. SUBCONTRACTS

- A. A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.
- B. Subcontracts Excluded from Requirements of this Section

(5 CCR 18026)

The following types of relationships are not subject to the requirements contained in this section:

1. Employment agreements;
2. Facility rental or lease agreements except as set forth below;
3. Payment arrangements with family child care homes and/or providers;
4. Medical or dental service agreements;
5. Bookkeeping/auditing agreements, except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*; (5 CCR 18027)
6. Food services agreements;
7. Janitorial and grounds keeping agreements;
8. A subcontract with a public agency, except for a subcontract with a public agency to provide early learning and care services; and
9. Subcontracts with an individual for less than ten thousand dollars (\$10,000), except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

Contractors are responsible for ensuring financial and compliance audits of all subcontractors.

Required Subcontract Provisions

(5 CCR 18031)

The following provisions apply to all subcontracts unless exempted in Section A above.

Every subcontract shall be in writing and specify:

1. The dates within which the subcontractor is to perform the contract.
2. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the state.
3. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.
4. The service(s) to be provided under the subcontract and the responsibilities of each party under the subcontract.
5. The subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers, employees or agents of the State of California.
6. Modifications of the subcontract shall be in writing, and for subcontracts in excess of ten thousand dollars (\$10,000), prior written CDE approval is required unless the subcontract is otherwise exempt from prior CDE approval.
7. The subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.
8. The remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. The State of California retains title to any equipment or supplies purchased with state funds and the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDE for any unit of equipment that costs in excess of five thousand dollars (\$5,000).
10. The subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's non-represented employees computed in accordance with California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1.
11. The subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.
12. For those subcontracts requiring prior approval, the subcontractor shall maintain

- records for program review, evaluation, audit and/or other purposes and make the records available to agents of the state for a period of five (5) years.
13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in the 2 CCR 11105.
 14. Funding of the subcontract should be made subject to the appropriation and availability of funds from the state.
 15. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
 16. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.
 17. Subcontracts for ten thousand dollars (\$10,000) or more cannot become effective and binding on either the prime contractor or the subcontractor until approved in writing by the CDE, and any work performed by the subcontractor prior to the date of such approval shall not be used as a claim against the state. Modifications to any contracts for \$10,000 or more shall also not be effective until approved in writing by the CDE and any work in performance of such modification prior to the date of approval of the modification shall not be used as a claim against the state. Specific approval requirements are set forth in Section F below.
 18. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.
 19. All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

Private Agencies-Bids for Subcontracts

(5 CCR 18027 & 2 CFR 200.320(f))

1. Private contractors shall obtain at least three (3) bids or estimates for subcontracts exceeding five thousand dollars (\$5,000), prior to cost allocation
2. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents in its records that establish:
 - a. The reasons three (3) bids or estimates could not be obtained; and
 - b. The reasonableness of the proposed expenditure without three (3) bids or estimates.
 - c. Documentation for the single-source vendor or service provider, including the

reason that vendor should be approved, must be submitted for approval in lieu of three (3) bids.

3. The subcontract shall be awarded to the lowest responsible bidder.
4. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Public Agencies Subcontracts

1. Public Agencies shall award subcontracts in accordance with the Public Contract Code.

Prior CDE Approval for Subcontracts \$10,000 and Above

(5 CCR 18028-18030)

1. Contractors shall obtain prior written approval from the CDE for subcontracts of ten thousand dollars (\$10,000) or more, prior to cost allocation, that are otherwise not excluded from the provisions as stated in the FT&C section *Subcontracts Excluded from the Requirements of this Section*.
2. Prior to execution of a subcontract and commencement of work, the contractor shall submit two (2) copies of the proposed subcontract to the CDE for approval, including a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Bids, if applicable, shall be submitted to the CDE when requesting approval. If three (3) bids were not obtained, the contractor shall provide written justification when the subcontract is submitted to the CDE for prior approval. Contractors shall demonstrate that approval of the subcontract is cost effective to the state.
3. For proposed capital outlay subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.
4. Requests for approval of subcontracts for transportation services shall include a Certificate of Insurance of the subcontractor in an amount not less than \$1 million per occurrence (or a greater amount if required by the Public Utilities Commission regulations), listing the contractor and the state as additional named insured.
5. One copy of the subcontract will be retained by the CDE and the other copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt of all required documents.

No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDE approval. A disapproved contract will include a statement of the reason(s) for not approving the subcontract. If the request for approval of a subcontract is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Appeals and Termination, Contract*

Administration Disputes.

6. The CDE does not assume any responsibility for performance of approved subcontracts nor does the CDE assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.
7. Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are not reimbursable.

Audit Requirements for Subcontracts

(5 CCR 18032)

An organization that operates an early learning and care program under a direct service contract with the CDE is called a contractor. The contractor may choose to enter into an agreement with another organization (subcontractor), where the subcontractor operates one (1) or more of the contractor's early learning and care programs. Consequently, an entity may be acting in the dual capacity of contractor and subcontractor for one (1) or more CDE contractors – each having one (1) or more CDE contracts. In some cases, a subcontractor may not have its own CDE contract directly with the CDE.

The organization receiving funds from the state shall be responsible for obtaining the required financial and compliance audits of the organization and any subcontractors, except for subcontracts exempt from CDE review, as agreed to by the Departments of Finance (DOF) and General Services (DGS).

The audit of the subcontract shall be submitted to the CDE as follows:

1. School districts, county offices of education, community colleges, and direct funded charter schools, shall submit the audit of the subcontract by the fifteenth day of the fifth month following the fiscal year in which the subcontracted services were performed;
2. All other contractors shall submit the subcontract audit along with the contractor's audit as specified in 5 CCR 18071.

V. COSTS, EARNINGS AND REIMBURSEMENT

(5 CCR 18033, 18034)

A. Contract Amount Adjustments

(Applies to C2AP, C3AP)

Child Development and Nutrition Fiscal Services (CDNFS) shall conduct monthly analyses of caseloads and expenditures and adjust agency contract maximum reimbursable amounts and allocations as necessary to ensure that funds are distributed in proportion to need. Prior to such action, however, CDNFS will notify the contractor of the proposed action and the contractor will be given an opportunity to provide written

documentation that demonstrates the CDNFS projections are inaccurate. Because of the need to transfer funds to an under-funded agency as quickly as possible, the contractor shall have three (3) working days from the date of notification to respond.

Reasonable and Necessary Costs

(5 CCR 18013(s), 18033, 2 CFR 200.404)

Contractors may be reimbursed for actual costs that are reasonable and necessary to the performance of the contract. Reasonable and necessary costs are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. Consideration must be given to market prices for comparable goods or services for the geographic area.

Indirect Costs

(5 CCR Sections 18013(m), 18013(n))

1. If indirect costs are claimed, an indirect cost allocation plan must be on file with the contractor and available for review by the CDE staff and auditors.
2. The maximum indirect cost rate shall be ten percent (10%) of the modified total direct costs.
3. For any non-federal entity that has a negotiated indirect cost rate, which includes all school districts and county offices of education, the maximum indirect cost rate shall be the lesser of the negotiated indirect cost rate or ten percent (10%).
4. This rate is applied to budget categories 1000-5000 only in determining the maximum amount of indirect costs that are reimbursable under the contract.
5. The amount of cost allocable to this contract shall not exceed the benefits to this contract. The allocation method must quantify this benefit among all similar programs and then distribute the costs accordingly.
6. The indirect cost rate shall not include consideration of any costs otherwise non-reimbursable. If depreciation or use allowance is included in the indirect cost rate, such allowance shall not be claimed on the asset as a direct cost.

Administrative Costs

(EC 8276.7, 5 CCR 18013(c))

Contractors may claim administrative costs, as defined in 5 CCR 18013(c), which are related to the administration of the early learning and care program.

Reimbursement of administrative costs shall not exceed fifteen percent (15%) of the net reimbursable program costs or actual administrative costs, whichever is less.

The fifteen percent (15%) includes any allowance for indirect costs and audits. Contractors shall maintain written documentation of the rationale used in determining direct and administrative costs.

Service Level Exemption (Start-Up) for New or Expanded Programs

(*EC 8275*)

1. Allowable start-up costs will be in an amount not to exceed fifteen percent (15%) of new or expansion funding authorized in the Budget Act for State Early Learning and Care Programs. *EC 8275(a)*
2. Start-up costs must be necessary for the establishment and stability of new early learning and care programs (*EC 8275(c)*) and include:
 - a. Employment and orientation of necessary staff;
 - b. Setting up of the program and facility;
 - c. Finalization of rental agreements and necessary deposits;
 - d. Purchase of a reasonable inventory of materials and supplies; and
 - e. Purchase of an initial premium for insurance.
3. Contractors shall maintain an auditable record of start-up costs which shall be included within the audit at the end of the year.
4. Reimbursable start-up costs shall occur prior to attainment of full enrollment.
5. If all or part of the fifteen percent (15%) allowable start-up costs is needed and spent, that portion will **not** have to be earned through provision of services.
6. If the contractor neither needs nor chooses to claim any of the fifteen percent (15%) start-up costs, the full service requirements shall be earned at the contract rate.
7. Migrant early learning and care agencies operating on a seasonal basis shall be reimbursed up to fifteen percent (15%) of the contract amount annually for approved start-up and close-down costs associated with starting up and closing down agency operations to correspond with periods of service needed by migrant families as specified in *EC 8233(b)*.

Costs for Travel and Per Diem & Restrictions

(*GC 11139.8, EC 8265, 8269, 5 CCR 18031, 18034, and 18041*)

Contractors and subcontractors shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with the California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1, Article 2.

Contractors with collective bargaining agreements allowing higher rates of reimbursement shall not pay the difference out of contract funds.

The CDE shall notify the contractor of a change in expense rates within thirty (30) calendar days after the CDE has received notification of a change in rates from the California Department of Human Resources.

Contractors shall be reimbursed for out-of-state travel expenses only with prior written approval from the CDE. The CDE shall not approve out-of-state travel expenses:

1. For more than one employee, per contract per year.
2. For contractors with delinquent accounts payable which are delinquent more than ninety (90) calendar days after the date of the original invoice.
3. For contractors on conditional status.
4. When there is no clear benefit to the state.
5. When the benefit to the state can be obtained within California.

The CDE shall approve or deny the request for out-of-state travel within thirty (30) calendar days of the receipt of the request. If the request is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Internal Appeal Procedures to Resolve Contract Administration Disputes*.

Out-of-state travel to states identified in California's travel ban will not be considered. Costs associated with traveling to banned states will not be reimbursable.

Specific Items of Reimbursable Costs

(EC 8261, 8269 and 5 CCR 18034)

Reimbursable costs include, but are not limited to, the following:

1. Start-up costs of child development agencies or facilities in an amount not to exceed fifteen percent (15%) of the expansion or increase of each agency's total contract amount.
2. Close down costs for Migrant Programs as specified in EC 8233.
3. Administrative costs not to exceed fifteen percent (15%) of net reimbursable program costs.
4. Employee compensation, including fringe benefits, and personal service contracts.
5. Equipment and equipment replacement with prior CDE approval if required in the FT&C section *Facilities and Equipment*.
6. Supplies purchased in accordance with procurement practices found in 2 CFR

sections 200.317 to 200.326, including bidding requirements for micro-purchases that exceed \$10,000.

7. Improvement of sites and adjacent grounds to meet or continue to meet 22 *CCR* Community Care Licensing Standards in accordance with the FT&C section *Renovation and Repair*.
8. Taxes, insurance, and maintenance for buildings and/or equipment.
9. Depreciation based on the useful life of an asset in accordance with the FT&C section *Depreciation and Use Allowance*.
10. A use allowance for buildings and improvements in accordance with the FT&C section *Depreciation and Use Allowance*.
11. Travel and per diem expenses, including approved out-of-state travel, in accordance with the FT&C section *Costs for Travel and Per Diem*.
12. An indirect cost rate based on an approved indirect cost plan, in accordance with the FT&C section *Indirect Costs*.
13. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Lease payments or depreciation and interest on loans incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents in the community in which the facility is located in accordance with guidelines issued by the CDE.
14. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Interest on private sector debt financing for purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased for providing center-based care upon demonstration that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
15. Payments to providers made in accordance with applicable state laws and regulations.
16. (Applies to C2AP, C3AP, CAPP, CMAP, CFCC) Support services as specified in the FT&C section *Definitions*.

Nonreimbursable Costs

(EC 8261, 8269 and 5 *CCR* 18035)

The following costs shall not be reimbursable under the early learning and care contract:

1. Bad debts, including losses arising from uncollectible accounts and any related legal costs. (Uncollected parent fees are not considered to be bad debts if documentation of collection attempts exists.);
2. Contributions;

3. Costs of amusement or entertainment;
4. Costs of fines or penalties;
5. Costs of idle facilities unless those costs are related to a partial year program and the costs of the idle facilities have been approved by the CDE;
6. Costs incurred after the contract has been terminated;
7. Fund raising costs except as specified in 5 CCR 18277;
8. Interest expenses except:
 - a. Interest on borrowed funds when apportionments are withheld because of a delay or error attributable to the state and the amount of interest claimed is approved by the CDE.
 - b. When interest is part of a lease purchase agreement.
 - c. When the interest is part of payments on a loan incurred to acquire, rehabilitate or construct licensable facilities, not to exceed fair market rents existing in the community in which the facility is located.
 - d. When the interest is on private sector debt financing for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by the contractor, and it has been demonstrated that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
9. Investment management costs;
10. Costs of organization of a nonprofit corporation such as incorporation fees or consultant fees;
11. Public relations consultant fees;
12. Costs of legal, consulting and accounting services incurred in prosecution of claims against the state;
13. State and federal income taxes;
14. Costs for the acquisition of sites and buildings except through depreciation;
15. Bonuses, unless part of a collective bargaining agreement;
16. Compensation to the members of the board of directors except for:
 - a. Reimbursement for travel and/or per diem, computed in accordance with Costs for Travel and Per Diem, incurred while the members are conducting business for the

organization

b. As provided in the California *Corporation Code* Section 5227, et seq.

17. Costs of subcontracts, which increase the contractor's cost or subcontracts, which contain a provision for reimbursement for cost-plus-a-percentage-of-costs;
18. Costs incurred in prior or future years, with the exception of the cost of an annual independent audit, which may be claimed either in the contract period which was the subject of the audit, or during the contract period in which the audit is completed;
19. Costs that are not adequately documented.

Charging of Expenditures

(EC 8261, 8269 and 5 CCR 18037)

Net reimbursable program costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations. However, the cost of the annual independent audit may be claimed either in the contract period which was the subject of the audit or during the contract period in which the audit is completed.

Recoupment of Advanced Contract Funds

(EC 8261, 8265, 8269 and 5 CCR 18038)

The CDE shall recoup any payments made for costs which were not reasonable and necessary. The amount recouped shall be the excess payment over the reasonable or fair market value, or one hundred percent (100%) of the cost, if the cost was not necessary. The CDE may elect to recover any costs associated with recouping advanced contract funds, including collection services or attorney fees.

Use of Subsidized Family Fees

(EC 8235, 8261, 8269, 8273, 8273.1, and 5 CCR 18039)

(Applies to C2AP, C3AP, CAPP, CCTR, CFCC, CHAN, CMAP, CMIG, CSPP) Fees received from subsidized parents are to be expended and earned by the contractor before contract funds shall be claimed for reimbursement.

(Applies to CCTR, CSPP, CHAN, CMIG) Such fees shall be expended on reimbursable costs and earned by providing child days of enrollment. In order to be reimbursed the full contract amount, in addition to the fees received from subsidized parents, the contractor must have additional reimbursable expenditures and provide child days of enrollment beyond the minimum required by the contract. Notwithstanding any other law, commencing with the 2014–15 fiscal year, family fees shall not be assessed for families enrolled in the part-day California preschool program. (EC 8273.1)

Determination of Reimbursable Amount

(EC 8261, 8269 and 5 CCR 18054)

CCTR, CSPP, CHAN, CMIG contractors shall be reimbursed for an audited claim that is the least of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract;
2. The actual and allowable net costs; or
3. Contract service earnings – The adjusted child days/hours of enrollment for certified children, pursuant to EC 8265.5 and 8266.1, times the contract rate per child day/hour of enrollment, times the actual percentage of attendance plus five percent (5%), but in no case to exceed one hundred percent (100%) of enrollment.

C2AP, C3AP, CAPP, CMAP contractors shall be reimbursed for an audited claim that is the least of the following:

The maximum reimbursable amount as stated in the annual early learning and care contract; or

1. The amount earned, which are reimbursable expenditures of:
 - a. Direct payments to providers, (which consist of the rate charged by the provider in accordance with applicable statutory and regulatory provision, not to exceed the Regional Market Rate Ceiling), and which includes family fees for certified children and interest earned on advanced contract funds; and
 - b. Actual administrative and support costs related to early learning and care services provided, which combined cannot exceed seventeen and one half percent (17.5%) of the total contract amount, and no more than fifteen percent (15%) may be for administrative costs alone.

CFCC contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual child development contract; or
2. The amount earned which is defined as net reimbursable program costs, of which at least seventy percent (70%) must be payments for direct services, not more than thirty percent (30%) may be for support services and administrative costs together, and no more than fifteen percent (15%) may be for administrative costs alone.

CRRP contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract; or

2. The actual and allowable net costs.

Minimum Days of Operation

(5 CCR 18055)

If the contractor fails to operate at least ninety-eight percent (98%) of the minimum days of operation required in its contract, ceases operation or the contract is terminated prior to the end of the contract period, the maximum reimbursable amount shall be reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation.

Reduction, Withholding, and Canceling Apportionments to Contractors

(EC 8261, 8269 and 5 CCR 18056)

The CDE shall reduce, withhold or cancel any scheduled apportionment when one (1) or more of the following conditions exist:

1. The contractor has not submitted an acceptable audit for any prior year of operation on or before the date due.
2. The contractor has not submitted the required reports on or before the date due.
3. The contractor will not earn the full contract amount based on the current year projected and the prior year actual net reimbursable program costs as determined by the CDNFS.
4. A creditor of the contractor has placed a lien on the contractor's scheduled apportionments.
5. The contractor has accounts payable which are:
 - a. More than ninety (90) days delinquent to the CDE and
 - b. Not the subject of an appeal
6. If any apportionment is to be reduced, withheld or cancelled, the CDE shall provide the contractor prior written notice of the intended action.

Order of Expenditure

(5 CCR 18057)

Expenditures from the Child Development Fund shall occur in the following order:

1. Fees collected from parents of certified children shall be first in and first out;
2. State or federal contract funds apportioned by the CDE shall be second in and second out; and

3. Interest received on advanced contract funds shall be last in and last out.

VI. ACCOUNTING AND REPORTING REQUIREMENTS

A. General Provisions

(EC 8261 and 5 CCR 18063)

Contractors shall follow the accounting procedures specified in the most recent edition of the *California School Accounting Manual*. Contractors shall report revenue and expenditures on an accrual basis. The School Accounting Manual specifies that under an accrual basis of accounting, revenues are recorded when earned and expenditures are recorded when a liability is incurred, regardless of when the receipt or payment of cash takes place.

Child Development Fund and Interest Bearing Accounts

(5 CCR 18064)

All contractors shall establish a fund to be known as the "Child Development Fund" as specified in EC 8328, except that private contractors shall establish the fund in a federally insured banking institution located in California. Contractors with multiple fund sources shall establish separate program cost accounts for each source of funds pursuant to EC 8261 and 8269; 5 CCR 18064 (a) (b).

If a contractor places advanced contract funds in an interest bearing account, the interest bearing account shall be a separate account within the Child Development Fund. Interest earned shall be retained by the contractor if it is expended on reimbursable costs and earned by providing subsidized child days of enrollment, beyond the minimum required to earn the maximum reimbursable amount, at a rate equal to the lesser of the daily contract rate or the actual program costs, pursuant to EC 8261 and 8269; 5 CCR 18064(c).

Enrollment and Attendance Accounting

(EC 8221.5, 8261, 8269 and 5 CCR 18065)

1. A child shall not be enrolled in more than one program for the same time period on the same day.
2. CCTR, CSPP, CHAN, and CMIG contractors shall use daily sign-in/sign-out sheets as a primary source document for audit and reimbursement purposes.
 - a. On a daily basis, one of the following persons shall enter the time of arrival and departure on a sign-in/sign-out sheet and shall sign the sheet using their full signature for both arrival and departure times:
 - i. The parent or other adult authorized by the parent to drop off/pick up a child; or

- ii. The staff person designated by the contractor as the person responsible for entering the times of arrival and departure if the child is not dropped off/picked up by a parent or other adult authorized by the parent.
 - b. First and last initials of the contractor's authorized representative, along with a notation of the time, are required to be documented when a school-age child departs for and returns from school during the day.
3. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall use the monthly attendance record or invoice as the primary source document for audit and reimbursement purposes.
- a. Child care providers shall submit a monthly attendance record or invoice, for each child who received services, Child care providers shall maintain attendance records or invoices in the original format in which they were created.
 - b. The monthly attendance record or invoices shall include, at a minimum:
 - i. The dates and actual times the child entered and left care each day. This information shall be documented on a daily basis.
 - ii. The signature of the parent or guardian, the name of the child receiving services and signature of the child care provider attesting under penalty of perjury that the information included on the monthly attendance record or invoice is true and accurate.
 - c. Contractors shall reimburse child care providers based on the following criteria:
 - i. The hours of service provided that are broadly consistent with the certified hours of need.
 - ii. For families with variable schedules, the actual days and hours of attendance, up to the maximum certified hours.
 - iii. For license-exempt providers that provide part-time services, the actual days and hours of attendance up to the maximum certified hours.
 - iv. Contractors shall reimburse providers within 21 calendar days of the receipt of a complete invoice for services (CCGDB 98.45(l)(1)).

Attendance and Absences

(5 CCR 18066)

(Applies only to CCTR, CSPP, CHAN, CMIG)

Attendance, for the purposes of reimbursement, includes excused absences because of illness or quarantine of the child, illness or quarantine of their parent, family emergency, court-ordered visitations or a reason which is clearly in the best interest of the child.

If the absence is claimed by the contractor as an excused absence, the attendance accounting records shall contain verification including:

1. The name of the child;
2. The date(s) of absence;
3. The specific reason for the absence; and
4. The signature of the parent or the contractor's authorized representative if verification is made by telephone.

If an excused absence is based on time spent with a parent or other relative as required by a court of law, the family data file shall contain a copy of the Court Order.

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child."

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

Contractors shall not disenroll any family due to excessive absences, except in circumstances of abandonment of care described in the Implementation Guidance section 18066.5.

Abandonment of Care

(Implementation Guidance Section 18066.5)

For purposes of abandonment of care, a "provider" is any person or entity that is contracted or reimbursed to provide subsidized early learning and care services. This may include, but is not limited to, an Alternative Payment Program provider, family childcare home provider, eligible license-exempt provider, or contractor that provides subsidized early learning and care services directly to children.

When the family has not been in communication with the provider for seven (7) consecutive calendar days and has not notified the provider of the reason the family is not using services, the provider shall promptly notify the contractor.

Using the contact information on file, the contractor shall attempt to contact the parent through a variety of communication methods. At least one communication attempt shall be in writing, which may be through electronic methods. The contractor shall keep documentation of all communication attempts, including a copy of all written communication, in the family data file. The contractor shall inform the parent in these communications that failure to communicate with the contractor or provider may result in termination of early learning and care services.

The contractor shall issue a notice of action to disenroll the family on the basis of abandonment of care when there has been no communication with the provider or the

contractor for a total of 30 consecutive calendar days.

General Record Keeping Requirements

(EC 8227.3, 8262.1, 33421 and 5 CCR 18067)

1. Pursuant to EC 33421, all records shall be retained by each contractor at least five (5) years or where an audit has been requested by a state agency, until the date the audit is resolved, whichever is longer. Claims for reimbursement shall not be paid unless there are documents to support the claims. The contractor has the burden of supporting claims for reimbursement.
2. Pursuant to EC 35254, public contractors must ensure that no original records be destroyed prior to the second July 1st succeeding the completion of the audit.
3. All CDE contractors and providers providing early learning and care services to eligible families, may maintain records electronically and are authorized to convert records from a paper format to an electronic format, in compliance with state and federal standards as determined by the CDE (EC 8227.3 and 8262.1).
4. If the contractor has more than one (1) CDE program, then the method used to allocate administrative costs must be documented.
5. Contractors are required to maintain records to support salaries and benefits charged to early learning and care programs in accordance with the *California School Accounting Manual*.
6. State employees or representatives shall be allowed access to all program related or fiscal records during normal work hours. (EC 33421 and 5 CCR 18301(4))

Attendance and Expenditure Reports

(Applies to CCTR, CSPP, CHAN, CMIG) (EC 8261, 8269, 8406.6 and 5 CCR 18068)

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative attendance and fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Days of enrollment, as indicated on the family's Notice of Action, for all children served in the program in the current reporting period and year to date.
2. Days of attendance, per the child's sign in and out records and other accompanying attendance records, for all children served in the program in the current reporting period and year to date.

3. Total days of operation in the current reporting period and year to date.
4. All services, revenues and expenditures for both subsidized and non-subsidized children, if non-subsidized and subsidized children are commingled as defined in Section I above.
5. Amount and sources of all revenues, including restricted and unrestricted income utilized for the child development program, other than advanced contract funds for the current reporting period and the year-to-date.
 - a. Restricted income that is not expended during the contract period remains restricted and shall be considered deferred revenue and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
6. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes, as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR Section 18056.

Contractors on conditional status or provisional status shall report monthly.

The report shall include a certification that the information contained in the report is correct and complete and the original signature, or digital signature where applicable, of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the audit submission due date to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Alternative Payment and CFCC Expenditure Reports

(Applies to C2AP, C3AP, CAPP, CMAP, CFCC)

C2AP, C3AP, CMAP, and contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). Multi-year CAPP contractors shall report monthly (due to CDNFS by the 20th of the following month) for the first fiscal year of the contract. CAPP contractors who continue to expend funds in the second year, shall report monthly until funds are fully expended. CFCC contractors on clear status shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. All reports must be submitted strictly through the internet via CDE's official Web site. Reports not received by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract:

1. Amount and sources of all revenues, other than advanced contract funds for the current reporting period and year-to-date, restricted and unrestricted income shall be reported as follows:
 - a. Restricted income expended during the contract period shall be reported as “restricted.” Restricted income that is not expended during the contract period remains restricted and shall be considered “deferred revenue” and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
 - b. All unrestricted income shall be reported as “unrestricted.”
2. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

3. Total Days of Operation

C2AP, C3AP, CAPP, CMAP, CFCC will include the Days of Operation in the current reporting period and year to date.

Caseload Reports

(Applies to C2AP, C3AP, CAPP and CMAP)

1. In addition to submitting a monthly expenditure report, C2AP, C3AP, CAPP and CMAP contractors shall submit an Alternative Payment/CalWORKs Caseload Report(s) on a monthly basis. Caseload reports shall be submitted strictly through the internet via CDE’s official Web site and are due to CDNFS by the 20th of the following month. Caseload reports not received by CDNFS by the 20th of the month, following the end of the contractor’s reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report(s) is received.
 - a. If a contractor provides services in more than one (1) county, the contractor is required to submit a separate CalWORKs Caseload Report for each county in which services are being provided.
 - b. CalWORKs Caseload Reports shall represent actual service and expenditure data for the report month.

- c. Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

CRRP Expenditure Reports

5 CCR 18068

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Total days of operation in the current reporting period and year to date;
2. Amount and sources of all revenues, other than advanced contract funds, for the current reporting period and the year-to-date total;
3. Total expenditures related to the program operation for the current reporting period and the year-to-date total.

The report shall include a certification that the information contained in the report is correct and complete and the original signature of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final fiscal report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Service Data Report for Resource and Referral Programs

(5 CCR 18069) (Applies to CRRP)

Contractors shall submit reports to the CDE which contain the following data at intervals specified above.

1. Number of requests for general child care information and child care referrals;
2. Age categories of child care requests and referrals:
 - a. Infant (birth to eighteen months);
 - b. Toddlers (eighteen months to thirty-six months);
 - c. Preschool (three years to kindergarten enrollment; and

- d. School age (kindergarten enrollment to age 14.
- 3. Time categories of child care referrals:
 - a. Full-time;
 - b. Part-time.
- 4. Number of children needing:
 - a. Before and/or after school;
 - b. Summer only child care;
 - c. Other child care (evening, overnight, weekends, drop-in, etc.).
- 5. Reasons for requesting referrals:
 - a. Employed;
 - b. Looking for work;
 - c. In school/training;
 - d. Other parental needs;
 - e. Child protective services (CPS)/respite referral;
 - f. Alternative/back-up care;
 - g. Mildly ill child;
 - h. Enrichment and/or development.
- 6. Number of:
 - a. Licensed child care centers;
 - b. Licensed family day care homes;
 - c. License-exempt child care centers

Other license-exempt providers (optional). Penalties for delinquent reporting are specified

Child Development Data Collection

(5 CCR 18070)

The contractor shall submit the following:

Monthly Child Care Population Information (CDD-801A) submitted electronically in accordance with instructions from the CDE.

If the contractor is selected and notified by mail to submit sample data, they must complete the Child Development Data Collection Sample Report (CDD-801B) electronically in accordance with the instructions from the CDE.

Contractors shall submit complete, accurate reports to the CDE by the date specified, and in the format specified in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required date, shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Other Report Data

(5 CCR 18070)

Contractors shall submit statistical, cost and program data as requested by the CDE in order for the CDE to prepare various legislatively mandated reports, to meet state and federal reporting requirements and for the effective administration of early learning and care programs.

Contractors submitting data to the CDE will include a certification that the data are correct and complete, and the signature of the person authorized by the contractor to certify the data. The signature may be electronic as specified by the CDE.

Contractors shall submit complete, accurate data to the CDE by the date specified, and as specified, in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required due date shall be considered delinquent. Penalties for delinquent reporting are specified.

Building a Better Early Care and Education System (BBECES)

(Applies to all contract types that provide care through family child care homes and/or through individual licensed-exempt providers)

(EC 8430-8432; Civil Code 1798.17; 42 US 9858c(2)(D) and (U); 45 CFR 98.16(aa), 98.33 and 98.42)

“Family childcare provider” or “provider” for purposes of implementation of Section VI(M) of these Funding Terms and Conditions means a childcare provider who participates in a state-funded early care and education program and is either of the following:

(A) An individual who operates a family daycare home, as defined in Section 1596.78 of the Health and Safety Code, and who is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(B) An individual who provides early care and education in their own home or in the home of the child receiving care and is exempt from licensing requirements pursuant to Section 1596.792 of the Health and Safety Code. *EC 8431 (a)(1)*

1) Submission and Disclosure of Child Care Provider Information

Contractors are required to collect and submit to the CDE, or its designee, as required by law, the following information for all licensed family child care home providers and individual licensed-exempt child care providers providing subsidized child care services and in conformance with the format, timeline and manner prescribed by the CDE, and in accordance with the BBECES:

- a) Name of child care provider (excluding volunteers and assistants)
- b) Mailing address of provider
- c) Home address of provider
- d) County of provider home address
- e) Email Address of provider, if known
- f) Cell, Work and Home phone numbers of provider, if known
- g) Whether provider Is licensed or not, and, if licensed, the license number
- h) The date subsidized care began
- i) The date subsidized care ended, if applicable
- j) Agency, contractor, subcontractor, or political subdivision administering the program

The information collected from family child care providers, as defined, may be re-disclosed by the CDE to provider organizations as defined in law as well as other state agencies as permitted by law for purposes of organizing, representing, and assisting family child care providers, as well as for purposes of emergency response planning and monitoring health and safety requirements to comply with Child Care and Development Block Grant requirements.

Contractors shall not delay or obstruct the collection of the provider information.

Contractors must notify family child care providers in writing of the collection and use of the information in order to comply with applicable laws, including the Information Practices Act.

Upon learning that a family child care provider will no longer receive a subsidized child care payment, contractors shall, as required by law and in conformance with the format, timeline and manner prescribed by the CDE, inform the CDE of the date the provider ended subsidized care.

2) Notices and Communications

Contractors are required to distribute to providers and/or post on their website all notices and communications as may be required by the BBECES or any applicable Memorandum of Understanding.

3) Reimbursement

Contractors are required to deduct from reimbursement any dues as requested by a certified provider organization. The deductions may include membership dues, initiation fees, general assessments, and payment of any other membership benefit program sponsored by the certified provider organization.

If the deductions from a provider's subsidy payments required action by more than one contractor, the certified provider organization shall establish reasonable procedures to ensure that the total amount deducted does not exceed the total dues and other voluntary deductions owned by that provider.

A contractor must rely on a certification from the certified provider organization requesting a deduction that it has and will maintain an authorization, signed by the individual provider from whose subsidy the deduction is to be made. A certified provider organization that certifies that it has and will maintain authorization shall not be required to provide a copy of an individual authorization to the entity unless a dispute arises about the existence or terms of the authorizations.

4) Memorandum of Understanding

Must adhere to any requirements that bind contractors in any applicable memorandum of understanding

5) Interference

Contractors are prohibited from interfering with the right of providers to collectively bargain and further prohibited from deterring or discouraging providers to join the union

6) Training Partnership

Contractors must notify the certified provider organization of orientations, preservice meetings, meetings, and trainings, either in-person or online, and allow representatives from the certified provider organization to present at the orientations and training as permitted under the BBECES or as provided for in any applicable memorandum of understanding.

Annual Financial and Compliance Audits

(5 CCR 18071 and EC 8224)

Contractors shall submit to the CDE, Audits and Investigations Division (A&I), an acceptable annual financial and compliance audit as follows:

1. The audits for school districts and county offices of education for the contract period shall be submitted to the State Controller and the CDE by December 15, in

accordance with EC 41020 and extensions shall only be granted in accordance with EC 41020.2.

2. The audit reports for community colleges are due to CDE by December 31.
3. All other contractors shall submit their annual audit to CDE by the 15th day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by CDE. The audit report must meet the requirements of the Audit Guide, including the requirements for early learning and care specific supplementary information. If a contractor receives less than twenty-five thousand dollars (\$25,000) per year from any state agency, the audit shall be conducted and submitted biennially, unless the CDE deems there is evidence of fraud or other violation of state law in connection with the contract. If the contract is terminated during the contract period, then the audit required under this paragraph shall cover the period from the beginning of the contract through the date of termination.

All audits shall be performed by one of the following:

1. A Certified Public Accountant who possesses a valid license to practice within the State of California;
2. A Public Accountant licensed on or before December 31, 1970 and currently certified and licensed by the State of California;
3. A member of the CDE's staff of auditors.
4. Public contractors may have their audits prepared by in-house auditors or internal audit staff that performs auditing functions and meets the tests of independence found in the Government Auditing Standards, issued by the Comptroller General of the United States.

Any contractor who subcontracts their early learning and care services to another entity (see "Subcontract for early learning and care services" in Definitions) is required to submit an audit report that complies with the *Audit Guide* for their subcontractor(s) as well as for their agency.

Private agencies (including proprietary entities) that expend seven hundred fifty thousand dollars (\$750,000) or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with the *Uniform Guidance* and the *Audit Guide*.

Governmental and other public agencies (excluding school districts, county offices of education and community college districts) must comply with the requirements of the *Uniform Guidance* and the *Audit Guide*. All other agencies (excluding school districts, county offices of education and community colleges) must submit a contractor audit performed in accordance with the *Audit Guide*.

The audits for Alternative Payment Programs (APs) shall include, but not be limited to, a

sampling of the evidence of fees charged to, and paid by, families of non-subsidized children, the daily enrollment of subsidized children, the number of days of service provided to subsidized children, the assessment and collection of parent fees, and the availability of support services to subsidized children and their families as needed pursuant to the terms of the contract.

Review of Audit by the CDE Audits and Investigations Division (A&I)

(5 CCR 18072)

The A&I shall conduct a review of the audit to determine whether the audit is acceptable and to determine the contractor's net reimbursable program costs.

The contractor may appeal the A&I findings according to the procedures specified, if the amount of the demand for remittance meets or exceeds the threshold specified in *EC* 8402(a)(3).

Delinquent Audits and One-Time-Only Extensions

(5 CCR 18073)

If an audit is not received on or before the required due date and an extension has not been granted, the audit shall be considered delinquent and all apportionments shall be withheld.

Except for contractors on conditional status, the A&I may annually grant a contractor a one-time-only, thirty (30) calendar day extension of the audit due date provided the inability of the contractor to submit the audit by the due date was beyond the fault and control of the contractor.

Contractors shall be liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

California State Auditor

(GC 8546.7)

Contractors shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this contract.

Budget and Calendar

Contractors shall submit a revised calendar to the ELCD and CDNFS whenever there are changes to the most recent version submitted. Contractors shall submit revised budgets as requested.

Reserve Accounts

All contractors are encouraged to develop and maintain a reserve within the Child Development Fund. This reserve is derived from earned, but unexpended contract funds.

Reserve account funds are state funds the contractor holds in reserve as deferred revenue until they are properly spent or returned to the CDE.

C2AP, C3AP, CAPP, CMAP, CFCC contractors may retain a reserve balance of up to two percent (2%) of the maximum allowable administration and support costs for the aggregate sum of all alternative payment contracts or one thousand dollars (\$1,000), whichever is greater. *EC 8450 (d)*

CCTR, CHAN, and CMIG contractors may retain a reserve balance equal to five percent (5%) of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. *EC 8450*

CSPP contractors may retain a reserve balance in a center-based reserve account, separate from reserve funds maintained in a resource and referral reserve account or alternative payment reserve account. The reserve account may be equal to fifteen percent (15%) of the sum of the maximum reimbursable amounts of CSPP, CCTR, CMIG, CHAN contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. Of the fifteen percent (15%), ten percent (10%) shall be solely used for the purposes of professional development for CSPP instructional staff. *EC 8450 (b)(2)(B)*

CRRP contractors may retain a reserve balance not to exceed three percent (3%) of the contract maximum reimbursable amount. This reserve is derived from unexpended contract funds. *EC 8450 (c)*

Reserve Account Requirements

The following criteria must be followed when establishing and using any reserve account:

1. Each agency wishing to establish a reserve shall submit a letter of intent no later than July 20 following the close of the fiscal year for which the reserve will be established. The letter of intent must be on the form provided by CDNFS and signed by the executive director (or authorized designee for public agencies).
2. Each reserve must be maintained in an interest-bearing account and the amount of interest earned will be included in the reserve balance.
3. Reserve monies can only be used for expenses that are allowable reimbursable expenses. Transfers from one reserve account type (or category) to another are not allowable. However, transfers to a current-year contract in the same reserve category are allowable and shall be reported as restricted program income on that contract's attendance and fiscal report.
4. Reserve monies are generated from current year contracts, therefore, the transferable amount generated during the contract period will not be available until July 1 of the subsequent fiscal year.
5. Transfers to the reserve will be authorized by CDNFS only once per fiscal year. Upon receipt of the June final report, preliminary reserve amounts will be calculated by

CDNFS and reported to the contractor. If the contractor is an LEA, this may be the official notification provided there are no further amendments. For agencies required to submit an audit to the CDE, the amount will not be final until the audit is closed by the A&I and there are no outstanding billings.

6. Participating agencies must submit a Reserve Account Activity Report with a copy of their supporting General Ledger for each reserve account category type along with their June attendance and fiscal report due July 20. Reports not received in CDNFS by July 20 shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.
7. Upon closure of a reserve account or termination of early learning and care contracts, all monies in any reserve account shall be returned to the CDE.

VII. TECHNICAL ASSISTANCE

(EC 8406.6)

Technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within sixty (60) days of receipt of the request.

VIII. CONTRACT CLASSIFICATIONS

A. Clear Contract

(EC 8406.6)

This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (B) nor a conditional contract, as described in paragraph (C).

Provisional Contract

(EC 8406.6 and 5 CCR 18068)

This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the CDE and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. Contractors on provisional status shall submit monthly fiscal and attendance reports to CDNFS. The contract status shall be reviewed annually.

Conditional Contract

(EC 8406.6, 5 CCR 18001, 18068, and 18306)

This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance.

A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the CDE for all early learning and care program purposes and is subject to any restrictions deemed reasonable to secure compliance.

The conditional contract shall include Conditional Status Addendum that contains a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the agency for clear contract status, and a technical assistance plan.

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in *EC* 8406.7 or 8407, in accordance with Section 8402.

Contractors receiving conditional contracts (stamped on the face sheet of the contract) shall be on conditional status until the CDE issues a contract rider formally clearing the contract.

While on conditional status, the contractor shall submit monthly fiscal and attendance reports to CDNFS. The first monthly report shall include a current inventory of equipment purchased in whole or in part with contract funds.

Contractors on “conditional” status are not eligible to apply for new or additional funds.

Contractors on “conditional” status shall receive technical assistance from the CDE.

IX. APPEALS, TERMINATIONS, AND NON-RENEWALS

(*EC* 8400-8409 and 5 *CCR* 18301, 18302)

A. Resolution of Contract Administration Disputes

(*EC* 8401.5 and 5 *CCR* 18301)

The procedure specified in this Section shall be used to resolve disputes between contractors and the CDE that may arise regarding the interpretation and application of any term or condition of a contract, including, but not limited to, requests for waivers, approval of subcontracts or expenditures requiring approval, requests for reimbursement rate adjustments, or reductions in the total amount of contract reimbursement that are not appealable.

The contractor shall attempt to resolve contract disputes at the lowest staff level within the CDE.

If the dispute is not resolved at the lowest staff level, the contractor may appeal the decision by submitting a written description of the issues and the basis for the dispute to the Regional Administrator of the CDE having jurisdiction over the contractor's service delivery area. The Regional Administrator shall make a determination and shall send a written notification of the decision to the contractor, together with the reasons for the decision, within thirty (30) calendar days of the receipt of the appeal by the Regional

Administrator.

The contractor may appeal the decision of the Regional Administrator to the Associate Director of the ELCD by submitting a written description of the issues in dispute, and a copy of the Regional Administrator's decision. The Associate Director of the ELCD shall send notification of the decision to the contractor and shall specify the reason(s) for the decision within thirty (30) calendar days of the receipt of the appeal by the Associate Director. The decision of the Associate Director of the ELCD shall be the final administrative action afforded the contractor.

B. Independent Appeal Procedures

(EC 8402 and 5 CCR 18301)

Pursuant to the requirements of EC 8400 through 8409, an independent appeal procedure shall be available to any contractor whose contract is terminated, or where the denial of an agency's contracted payment or a demand for remittance of an overpayment is more than twenty-five thousand dollars (\$25,000) or four percent (4%) of a local contracting agency's annual contract, whichever is less.

Such appeals shall be heard by independent hearing officers in accordance with procedures established by the Office of Administrative Hearings (OAH) as specified in California *Code of Regulations, Title 1*, sections 1121 through 1126,

C. Immediate Termination

(EC 8406.7, 8406.9 and 8408)

1. A contracting agency that evidences any of the following acts or omissions may have its contract immediately terminated if there is documented evidence of the acts and omissions, and upon review and recommendation of the general counsel of the CDE for any of the following reasons:
 - a. Fraud, or conspiracy to defraud.
 - b. Misuse or misappropriation of state or federal funds, including a violation of EC 8406.9.
 - c. Embezzlement.
 - d. Threats of bodily or other harm to a state official.
 - e. Bribery or attempted bribery of a state official.
 - f. Unsafe or unhealthy physical environment or facility.
 - g. Substantiated abuse or molestation of children.
 - h. Failure to report suspected child abuse or molestation.

- i. Theft of supplies, equipment or food.
 - j. Cessation of operations without the permission of the CDE, or acts or omissions evidencing abandonment of the contract or contracts.
 - k. C2AP, C3AP, CAPP, CMAP, and CFCC contractors that fail to fully reimburse a significant number of approved child care providers as determined by the CDE, within fifteen (15) calendar days after the date set in the plan for timely payments to child care providers, adopted by the contracting agency, pursuant to 5 CCR 18226, unless the failure is attributable to a delay in receiving apportionments from the state.
 - l. Failure to pay salaries owed to employees, or pay federal payroll tax, for more than fifteen (15) days after the employee salaries, or federal payroll taxes were due, unless the failure is attributable to a delay in receiving apportionments from the state.
 - m. Contractors that have in place or who place a person in a position of fiscal responsibility or control who have been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract terminated if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the CDE.
For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal early learning and care funds received pursuant to this section whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

If the agency provides evidence to the CDE, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the CDE shall withdraw the termination action.
2. A contractor whose contract is immediately terminated retains appeal rights.

Contractors that are the subject of an immediate termination shall not continue to operate during the appeal of termination.

Non-Immediate Termination

(EC 8406.7, 8406.9, 8407 and 5 CCR 18301)

1. In addition to the grounds set forth above in *Immediate Termination*, which also may be the basis for a non-immediate termination, termination of a contract during the contract period may occur when:
 - a. A contractor fails to correct items of fiscal or programmatic noncompliance

within six (6) months of receiving a conditional contract which includes a Conditional Status Addendum stating the specific items of noncompliance and the corrective actions necessary to come into compliance; or

- b. A contractor fails or refuses to make available for examination or copying by an authorized employee of the CDE any records or documents that the contractor is required to retain, upon a request by that employee to examine or copy such records or documents; or
 - c. A contractor refuses to permit an authorized employee of the CDE to enter a facility operated by the contractor during the days and/or hours of operation on file with the CDE, for the purpose of reviewing administrative operations of the contractor or for observing early learning and care services provided by the contractor.
2. Any action by the CDE to terminate a contract, other than to terminate a contract on an immediate basis or to take action to deny the contracting agency more than four percent (4%) or twenty-five thousand dollars (\$25,000), (whichever is less), of an agency's contract or to demand remittance of an overpayment of an agency's contract of more than the same amount, as stated in *EC* 8402(a)(1) through (3), shall be preceded by a ninety (90) day notice of the action, stating the specific reasons for the action and describing the contractor's appeal rights. Except for cases of immediate termination, contractors that are terminated shall be allowed to continue to operate during the appeal of termination.

Appeals Procedures For Independent Appeals

(5 *CCR* 18301 and *GC* 11500)

3. Notice of Defense/Appeal Petition

The contractor shall be served notice of the action as set forth in *EC* 8406 and *GC* 1500 et seq. The contractor may contest the noticed action as set forth in *GC* 11506 by filing a notice of defense/appeal petition with the CDE within fifteen (15) days after service of the action, and may request a hearing before the OAH. The notice of defense/appeal petition shall include:

- a. A clear, concise statement of the action being appealed; and
- b. The name, address and telephone number of the contractor's authorized representative for the proceeding.

In addition, the contractor may also, as part of the Notice of defense/appeal petition:

- a. Object to the action upon the grounds that it does not state acts or omissions upon which the contractor may proceed;
- b. Object to the form of the action on the grounds it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;

- c. Admit any of the charges in the action in whole or in part;
 - d. Object to the action upon the grounds that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
2. Failure To Submit A Timely Notice Of Defense Or Appeal Petition Or Proceed With Appeal

If a contractor is served a notice of action and fails to properly file a notice of defense/appeal petition, or files a notice of defense/appeal petition, but fails to appear at the appeal hearing, action may be taken by the CDE (or by the Administrative Law Judge for failure to appear at the hearing) based upon the contractor's express admissions or other evidence and affidavits without any notice to the contractor. Notwithstanding the default, the CDE or the OAH may, before a proposed decision is issued, grant an appeal hearing on reasonable notice to the parties. If the CDE issues a default decision against the contractor, it must serve notice of that decision on the contractor and the contractor has seven (7) days after service to request that the decision be vacated stating the grounds relied on. The CDE, in its discretion, may vacate the decision and grant a hearing on a showing of good cause.

3. Hearing

If the contractor submits a timely request for a hearing, the CDE shall have ten (10) calendar days to request that the OAH schedule a hearing and transmit the following to the OAH:

- a. The notice of defense/appeal petition submitted to the CDE by the contractor;
- b. The original notice of action sent to the contractor; and
- c. The name, address and telephone number of the CDE authorized representative for the proceeding.

The OAH shall schedule a hearing on the appeal filed by a contractor to commence no later than thirty (30) calendar days following the receipt of the petition by the CDE, but at least ten (10) calendar days' written notice will be given of the time and place of the hearing. An OAH hearing officer will hear evidence submitted by the CDE and the contractor during the hearing. The hearing will be recorded. The hearing officer may continue hearings, if deemed necessary.

4. The Decision

The hearing officer shall issue a final decision, in writing, within thirty (30) calendar days after the submission of the case. The decision shall be sent by registered mail or personally served on the representatives of the parties by OAH. The decision shall be the final administrative action afforded the contractor.

5. Settlement between the Parties

The CDE and contractor may, at any time before or after issuance of a notice of action, agree to a settlement of the actions. The settlement terms, as agreed to by both parties, are to be incorporated into a stipulation and waiver decision that is approved by the CDE agency head or his or her designee and issued by the CDE. The decision shall be the final administrative action afforded the contractor.

6. Request for Additional Written Materials on File at CDE

Contractors may request, in writing, any public documents on which the CDE intends to rely from the CDE files at a cost of fifteen cents (\$.15) cents per page, payable in advance. The CDE will mail the material requested not later than ten (10) days from the receipt of the request.

Contractor's Responsibility After Notice of Termination/Nonrenewal

(5 CCR 18302 and 18054)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

The CDE shall only be obligated to compensate the contractor for net reimbursable program costs or earnings, whichever is less, in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The CDE shall offset any monies the contractor owes against any monies CDE owes under this contract.

X. CONTRACT STATUS CHANGE PROCEDURES

(EC 8401.5 and 8406.6)

A. Administrative Review of Changes in Contract Status

(5 CCR 18303)

Contract performance shall be reviewed at least annually by CDE staff who shall determine by April 1 of each year whether to offer continued funding on a clear contract, continued funding on a conditional basis or to make no offer of continued funding.

If the staff recommends conditional status or no offer of continued funding, the contractor

shall be notified in writing of the reasons for the proposed change in contract status by April 7. The notice of proposed action shall be sufficiently specific to allow the contractor to respond to the factual basis for the proposed action.

If the contractor disagrees with the proposed action, the contractor's response shall be received by the CDE within ten (10) calendar days of receipt of the notice of proposed action. The contractor's response shall include any written materials in support of its position and, if the contractor intends to make an oral presentation, the response shall so specify.

If the action is being appealed, the staff recommendation and the contractor's response shall be reviewed by an administrative review panel convened by the Director of the ELCD within seven (7) calendar days of receipt of the contractor's response. The review panel will consist of representatives of ELCD management, CDNFS, CDE's Legal Office, A&I, Contracts Office, and a representative of an early learning and care service provider familiar with the type(s) of program(s) operated by the contractor.

Upon review of the written submissions, the panel will do one of the following:

1. Issue a final decision upholding or modifying the proposed change in status if no oral presentation has been requested;
2. Schedule a time and place for an oral presentation by the contractor; or
3. Issue a final decision to not change the contract status.

If an oral presentation has been requested, the contractor will be notified by telephone of the time and place of the presentation. The oral presentation will be scheduled no later than fourteen (14) calendar days from receipt of the contractor's response.

At the oral presentation, the contractor or the contractor's representative will have an opportunity to explain any material submitted in its response. While the contractor may present any information or arguments that are relevant to the proposed action, the review panel may set reasonable limits on the scope of the presentation.

Within seven (7) calendar days after the oral presentation, the review panel shall issue and mail to the contractor a decision upholding, reversing or modifying the proposed change in contract status. The decision of the review panel shall be the final action of the CDE with regard to that contract.

Conditional Status Imposed During the Contract Period

(5 CCR 18304)

If the contractor demonstrates fiscal or programmatic noncompliance during the contract period, based on such information as an annual audit report, a FPM/CMR, or a change in licensing status, the CDE may place the contract on conditional status for the remainder of the contract period.

The contractor shall receive notice and may request an administrative review of the

proposed action as required by 5 CCR 18303, in the event such a change in contract status is recommended by staff of the CDE.

If the contract is placed on conditional status during the last ninety (90) days of the contract period and the contractor is offered continued funding, the contract for the subsequent contract period will also be on conditional status.

Conditional Status Addendum

(EC 8406.7, 8406.9, 5 CCR 18305)

If the contractor is placed on conditional status during the contract period a Conditional Status Addendum will be issued by the CDE and the Conditional Status Addendum shall be considered a part of the annual child development contract and binding on the contractor.

A Conditional Status Addendum shall contain a bill of particulars as specified in EC 8406.6, which shall detail the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the contractor for clear contract status and a technical assistance plan. The Addendum shall further include all the following:

1. The specific item(s) of noncompliance which the contractor must correct;
2. The specific corrective action(s) which must be taken;
3. The time period within which the contractor must complete the corrections; and
4. Notice that failure to demonstrate substantive progress within six (6) months shall constitute a breach of contract and may result in termination of the contract either through an immediate or ninety (90) day noticed action, or no offer of continued funding.

Duration of Conditional Contract Status

(EC 8406.6(a)(3) and 5 CCR 18307)

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of being on conditional status shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in EC 8406.7 or 8407 in accordance with EC 8402. Regardless of whether the contractor complies with the terms of the Conditional Status Addendum, the contractor's contract may not be renewed the following year pursuant to the procedures set forth in the FT&C section *Appeals and Termination*.

A contractor with a repayment plan shall remain on conditional contract status and not receive any apportionments until full repayment is made.

A contractor on conditional contract status that is not on a repayment plan shall remain in that status until:

1. The CDE issues written notice to the contractor that the conditional status has been cleared;
2. The contractor is issued a clear contract; or
3. The contract terminates according to its terms.

A contractor may request written verification from the CDE that some of the deficiencies have been corrected even if the contractor will not be removed from conditional contract status.

Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding

(5 CCR 18302)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. CFCC contractors and Alternative Payment programs shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

**COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT**

This Agreement, dated as of July 1, 2021, is by and between the County of Alameda, hereinafter referred to as the “County”, and Hively, hereinafter referred to as the “Contractor”.

WITNESSETH

Whereas, County desires to obtain California Alternative Payment Program, Child Development Programs, which are more fully described in Exhibit A hereto (“Child Development Programs”); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore, it is agreed that County does hereby retain Contractor to provide Child Development Programs, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Attachment A	Client Grievance Policy
Attachment B	Language Access Requirements for Contractors
Attachment C	Confidentiality – Contract Provisions
Exhibit B	Payment Terms
Exhibit B-1	Program Budget
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contract Compliance Reporting Requirements
Exhibit F	Audit Requirements
Exhibit G	HIPAA Business Associate Agreement (Intentionally Omitted)
Exhibit H	Additional Contract Provisions - Federal Provisions
Exhibit H-1	Certification Regarding Lobbying
Exhibit I	California Department of Education Funding Terms and Conditions

The term of this Agreement shall be from July 1, 2021 through June 30, 2022.

The compensation payable to Contractor hereunder shall not exceed *three hundred seventeen thousand, six hundred and eighty-two dollars (\$317,682)* for the term of this Agreement.

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

COUNTY OF ALAMEDA

CONTRACTOR

By: _____
Signature

By: _____
DocuSigned by:
Kelly O'Lague Dulka
2571A797F7F64DA...
Signature

Name: Keith Carson
(Printed)

Name: Kelly O'Lague Dulka
(Printed)

Title: President of the Board of Supervisors

Title: Executive Director

Date: _____

Date: 9/24/2021

Approved as to Form

By: _____
DocuSigned by:
Victoria Wu
0D781CB1CEFC42F...
County Counsel Signature

Date: 9/24/2021

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two weeks' notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to

injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.
4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.
5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the

Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. CONFORMITY WITH LAW AND SAFETY:

- a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.
- b. Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.
- c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. DEBARMENT AND SUSPENSION CERTIFICATION: (Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

- a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.
- b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;

- (2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.
8. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.
9. TRAVEL EXPENSES: Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.
10. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.
11. OWNERSHIP OF DOCUMENTS: Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of

such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. **Certified Mail:** When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. **Telex or facsimile transmission:** When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA

Government and Community Relations, Office of Policy
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Jennifer Caban
Email: Jennifer.Caban@acgov.org

Contracts Office
2000 San Pablo Avenue, 4th Floor
Oakland, CA 94612
Attn: Michelle Manor
Email: michelle.manor@acgov.org

To Contractor: Hively
7901 Stoneridge Drive, Suite 150
Pleasanton, CA 94588
Attn: Kelly O'Lague Dulka
Email: kelly@behively.org

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. USE OF COUNTY PROPERTY: Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
15. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.
 - a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.
 - b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees

because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

- c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.
 - d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.
 - e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.
 - f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.
16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor's books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as

evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor's obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County's last payment to Contractor under this Agreement.
19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
20. **TERMINATION:** The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its Child Development Programs shall not exceed \$317,682 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.
21. **SMALL, LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:** Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

- a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).
- b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.
- c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor

shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

- d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance (OCC).
- e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCC via e-mail at ACSLEBcompliance@acgov.org.

- 22. FIRST SOURCE PROGRAM: For contracts over \$100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.
- 23. CHOICE OF LAW: This Agreement shall be governed by the laws of the State of California.
- 24. WAIVER: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
- 25. ENTIRE AGREEMENT: This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.
27. ADVERTISING OR PUBLICITY: Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.
28. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
29. ASSURANCE OF PERFORMANCE: If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
30. SUBCONTRACTING/ASSIGNMENT: Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.
 - c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.
 - d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.
31. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
33. PATENT AND COPYRIGHT INDEMNITY: Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.
- a. If Contractor is obligated to defend County pursuant to this Section 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.
 - b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.
 - c. Notwithstanding this Section 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.
34. OTHER AGENCIES: Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.
35. EXTENSION: This agreement may be extended for an additional two years by mutual agreement of the County and the Contractor.
36. SIGNATORY: By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on

this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Hively
Type of Services	Resource and Referral Contractor under CAPP-1000

I. OVERVIEW

Program Name: California Alternative Payment Program – Child Development Programs

Contractor shall provide quality Child Development Programs to a target population of families who meet Eligibility and Need Criteria as specified in the CDSS Program Requirements for Alternative Payment Programs, available on the California Department of Social Services (CDSS) website.

II. PROJECT PLAN

A. Program Goals:

Contractor shall accomplish the goal of providing subsidies under the California Child Care Alternative Payment Program for child care in a location of the parents' choice while the parent or parents are working, seeking employment, in vocational training, seeking permanent housing, and/or are incapacitated.

B. Target Population:

Contractor shall provide services to the following populations:

1. First Priority for services through the program is given to children who are receiving child protective services through local County Welfare Department or identified by a medical, social service agency, or emergency shelter as abused, neglected, or exploited, or at risk of abuse, neglect, or exploitation.
2. Second Priority: All children and families who are not within the first priority for admission shall be admitted in accordance with family income, with the lowest per capita income admitted first. For purposes of determining the order of admission, public assistance grants are counted as income. If two or more families have comparable per capita income, the family that has been on the waiting list the longest shall be admitted first.

C. Program Requirements:

1. Service Criteria: The California Department of Social Services, Child Care and Development Programs, subsidizes child care services for eligible families through its Alternative Payment Program.

2. Alameda County is permitted to subcontract its Alternative Payment Program (AP) funding to local Child Care Resource and Referral (R&R) agencies and AP agencies currently contracting with California Department of Social Services, Child Care and Development Program.
3. Services will be provided in accordance with California Department of Social Services Child Care and Development Program Requirements for Alternative Payment Programs as posted on cdss.ca.gov.
4. This subcontract with Contractor ensures Contractor's continuance of the County AP Program with the County.
5. Hours and Days of Operation: Monday through Thursday, from 8:00 a.m. to 4:00 p.m.
6. Service Area: Contractor will serve eligible families in the following zip codes:

<ul style="list-style-type: none">• Livermore (94550)• Pleasanton (94566, 94588)• Sunol (94586)	<ul style="list-style-type: none">• Union City (94587)• Newark (94560)• Fremont (94536, 94537, 94538, 94539, 94555)
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7. Service Delivery Sites:
Main Office (East County), 6601 Owens Street, Suite 100, Pleasanton, CA 94588

D. Minimum Staffing Qualifications:

Contractor shall have and maintain current job descriptions on file with the Department for all personnel whose salaries, wages, and benefits are reimbursable in whole or in part under this agreement. Job descriptions shall specify the minimum qualifications for services to be performed and shall meet the requirements of the Department. Contractor shall submit revised job descriptions meeting the approval of the Department prior to implementing any changes or employing persons who do not meet the minimum qualifications on file with the Department.

E. CDSS Evaluation and Performance Requirements

Contractor will comply with all of the California Department of Social Services, Child Care and Development Program's Funding Terms and Conditions for the AP Program including family certifications, parent counseling on child care choices, administering provider contracts and payments, ensuring provider eligibility for payment, collection and accounting of parenting fees, and ensuring confidentiality of family and provider files.

F. Monitoring, Records, and Data Collection Monitoring:

1. SSA Contracts Office Liaison or a member of the SSA Government and Government and Community Relations (GCR) team may at any time, upon one week's notice, monitor and conduct an evaluation of operations, which may include site visits

and reviews of Contractor's financial records and other records and materials to determine progress in the achievement of program goals and objectives and service criteria and requirements as specified within this Agreement.

- a. A final report will be prepared by the Contracts Office Liaison to provide feedback on areas of compliance and/or non-compliance. Contractor shall submit a written corrective action plan to the Contracts Office Liaison in response to all findings of non-compliance.
 - b. A follow-up monitoring visit will be conducted to ensure that all corrective action measures have been completed and Contractor is in compliance with contract requirements.
2. Should subcontractors be utilized, the contractor will be responsible for monitoring all subcontractors under this Agreement.

G. Records:

1. Contractor will prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided to eligible SSA clients, and to maintain and preserve said records for at least three years from the date of final payment under the potential Agreement.
2. Pursuant to California Government Code Section 8546.7, all records documents, conditions and activities of Contractor and its subcontractors, related to the services provided, shall be subject to the examinations and audit of the California State Auditor and any other duly authorized local, state and/or federal agencies. Contractor will further agree to allow interviews of any of its employees who might reasonably have information related to such records by County and any authorized local, state and/or federal agencies.
3. Contractor will comply with fiscal or program monitoring/assessment recommendations by the SSA Contracts Office Liaison and execute all written corrective action plans generated thereby.
4. Contractor will maintain individual client case files and make these files available for inspection by SSA staff.

H. Data Collection:

1. On a monthly basis, the Contractor will provide County with:
 - a. Data compiled to complete the CDD 801A reports for the County and submit both reports to the County no later than the 10th of each month.
 - b. A child care monthly report which includes data elements established by SSA GCR staff no later than the 15th of each month.

2. Contractor will maintain complete records on numbers of children serviced in child care centers, family child care homes or licensed-exempt care provided to a client, and the amounts expended for such care.
3. Contractor will advise County of any suspected improper or potentially fraudulent use of CAPP funds, any suspected overpayment made with CAPP Child Care funds, or misinformation provided by a CAPP participant with regard to child care.
4. Contractor will provide additional data reports as needed and requested by County.

I. Contractor Responsibilities – Client Grievance Policy

SSA Contractors are required to have a Client Grievance Policy in place and to disclose the policy to all SSA clients during the Client Intake Process. As evidence that a Client Grievance Policy is in place and all SSA clients provided services by the Contractor have been made aware of its existence, Contractor must obtain the signature of each SSA client on a copy of the policy acknowledging they were made aware of it, understand it, and received a copy of the signed document. Contractor must also place a copy of the signed document in each client's case file and make the files available for review by County staff upon request. See Attachment A for a sample SSA Grievance Policy. An MS Word file of the SSA Grievance Policy Template is available through your SSA Contract Liaison.

J. Language Access Requirement for Contractors

Attachment B provides more information regarding Limited English Proficient (LEP) client language access requirements for contractors with Alameda County.

III. Performance Measures

SSA has adopted Performance Metrics to strengthen and increase data collection and improve contract performance. This framework establishes performance metrics that will allow SSA to track the positive impact and benefits of services for the target population by focusing on three critical questions: How much work was done? How well was it done? and Is anyone better off?

The framework establishes a partnership between the service provider and SSA. The performance metrics and deliverables are outlined below including measures added to the "Data Development Agenda." The Contractor will continue to actively work with SSA to further develop and refine performance measures and data elements as they relate to child care in the County of Alameda for the purposes of data development and the Agency's Child Care Monthly Report.

Performance Measures		Frequency	How to Calculate	Contractor Data Source
How Much Did We Do?	# of County CAPP child care subsidies	Monthly	Count of County CAPP child care subsidies administered	○ Monthly Report (see data collection under Section V and VI)
	# of surveys* issued	Annual	Count of County CAPP surveys provided to participants	○ Annual Report
How Well Was It Done?	% of County CAPP participants reporting satisfaction with Contractor services	Annual	$\frac{\text{\# of participants reporting satisfaction on survey}}{\text{\# of participants completed survey}}$	○ Annual Report
	% of surveys received	Annual	$\frac{\text{\# of completed surveys}}{\text{\# of surveys issued}}$	○ Annual Report
Is Anyone Better Off?	% of County CAPP families reporting child care made it easier to maintain employment / education goals	Annual	$\frac{\text{\# of families reporting County CAPP child care subsidies made it easier to maintain employment / education goals}}{\text{\# of families receiving child care subsidies}}$	○ Annual Report
Definitions	*Survey – Contractor will annually conduct a family survey of their choice no later than the end of any given fiscal year.			

DELIVERABLE:

Annual Survey – Contractor will conduct an annual survey of County CAPP clients utilizing the following questions:

Category: How Well Was It Done?

Question: “How satisfied were you with the overall quality of services provided?”

Contractor will use the following Likert Scale:

- Very Unsatisfied
- Unsatisfied
- Neutral
- Satisfied
- Very Satisfied

Category: Is Anyone Better Off?

Question: “My child care subsidy has made it easier to (Check all that apply):”

- Seek employment
- Accept employment
- Keep employment
- Find better employment
- Enroll / Complete school or vocational training
- Other – Please Specify *[open ended]*

DELIVERABLE:

Contractor will provide an annual report with data elements as identified in the Performance Measures chart above. SSA GCR staff will be available to guide format.

Below are additional performance measures on the **Data Development Agenda** which will be developed and incorporated, in partnership with the Contractor and SSA GCR staff, by the end of Fiscal Year 2021 - 2022.

Measures on the Data Development Agenda

Question Type	Performance Measure
How Much Did We Do?	# of referrals received (by Contractor)
How Much Did We Do?	# of referrals issued (from SSA)
How Well Was It Done?	% of subsidies used/started

IV. KEY PERSONNEL

- A. Contractor project team will consist of the following Key Personnel and subcontractors, if applicable, during the contract term:

Position Title	Employee
Chief Executive Officer	K. Dulka
Office Manager	V. Arkin
Accounting Specialist	X. Zhou, A. Lindblom
Finance Director	J. Chang
Provider Payment Specialist	N. Gipson
Provider Payment Specialist	J. Rice
Program Director	M. Shirk
Family Support Coordinator	M. Sanhueza
Family Support Specialist	A. Raven, S. Varsha, E. Cortez
Director of Business Services	B. Hourel

- B. Contractor agrees that it shall not transfer or reassign the individuals identified above as Key Personnel or substitute subcontractors without the express written agreement of County, which agreement shall not be unreasonably withheld. Should such individual or individuals in the employ of Contractor no longer be employed by Contractor during the term of this Agreement, Contractor shall make a good faith effort to present to County an individual with greater or equal qualifications as a replacement subject to County's approval, which approval shall not be unreasonably withheld.

The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.

Attachment A

CLIENT GRIEVANCE POLICY

WHAT TO DO IF YOU HAVE A GRIEVANCE

If you have a complaint about the performance of (_____)

INSERT NAME OF CONTRACTOR

staff, and/or you feel you have been treated unfairly, the following are the steps you should take to have your complaint heard:

1. Talk privately to the person with whom you have the problem. We encourage you to try first to work out the problem in an open and informal way.
2. If you do not feel comfortable talking with the person with whom you have the problem, or you do talk with them and are not satisfied with the outcome, you may make an appointment to speak with or submit a written complaint (which may be in your own language) to (_____)'s Executive Director or designee.

INSERT NAME OF CONTRACTOR

If you have good cause to use another medium to communicate your complaint, such as a tape recording, you may do so. The Executive Director or designee shall meet with you or provide you with a written response to your written complaint within ten (10) working days of the meeting or receipt of your written complaint.

3. Or, if you prefer, you may bypass the above steps and immediately contact the funding agency below:

Alameda County Social Services Agency

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Email: ContractsCustomer@acgov.org

I certify that the information in this document was explained to my satisfaction in my own language and a copy of this form was given to me. I understand that by signing below, I hereby

authorize (_____) to release all my information

INSERT NAME OF THE CONTRACTOR

pertaining to my grievance to the Alameda County Social Services Agency.

Client's Name (printed)

Client's Signature

Date

(Revised 9/6/19)

ANEXO A

POLITICA PARA QUEJAS DE CLIENTES

QUÉ HACER SI USTED TIENE UNA QUEJA

Si tiene una queja acerca del desempeño del personal de (_____) o siente que se le ha tratado injustamente, tendrá que seguir los siguientes pasos para que su queja sea escuchada:

INSERTAR NOMBRE DEL CONTRATISTA

1. Hable en privado con la persona con quien tiene el problema. Le recomendamos que trate de solucionar el problema de una manera abierta e informal.
2. Si no se siente cómodo hablando con la persona con quien tiene el problema, o habla con esa persona y no está satisfecho/a con los resultados, puede hacer una cita para hablar con el director ejecutivo de (_____) o su representante, o enviarle la queja por escrito (la cual puede ser en su propio idioma). Si tiene una buena razón para utilizar otro medio de comunicar su queja, como una cinta de grabación, lo podrá hacer. El director ejecutivo o el representante se reunirá con usted o le proveerá una respuesta por escrito a su queja en el plazo de diez (10) días hábiles a partir de su cita o de haber recibido su queja por escrito.
3. O, si usted prefiere, puede evitar los pasos previos y contactar, inmediatamente, al siguiente organismo de financiación:

Agencia de Servicios Sociales del Condado de Alameda

Contracts Office

2000 San Pablo Ave., 4th Floor

Oakland, CA 94612

Correo electrónico: ContractsCustomer@acgov.org

Certifico que la información en este documento fue explicada para mi entera satisfacción y en mi propio idioma, y que se me dio una copia de este formulario. Comprendo que al firmar abajo autorizo a (_____) a que divulgue a la Agencia de Servicios

INSERTAR NOMBRE DEL CONTRATISTA

Sociales del Condado de Alameda toda mi información en relación con mi queja.

Nombre del cliente (en letra de imprenta)

Firma del cliente

Fecha

Attachment B
(Revised: 08/31/18)

LANGUAGE ACCESS REQUIREMENTS FOR CONTRACTORS

- I. The Alameda County Social Services Agency (SSA) has developed and adopted a Master Plan on Language Access to ensure its limited-English proficient (LEP) clients are provided with language accessible services and communications. Under the plan's provisions, community-based organizations (CBOs)/contractors whose services are contracted by the SSA:
 - A. Shall clearly disclose language access capabilities in relationship to the population served.
 - B. Shall have a plan in place—available for review upon request by County staff—for referring clients whose language needs the contractor can't accommodate.
 - C. Shall permit County staff to conduct ongoing monitoring of contracted services for compliance with provisions of the County's Language Access Plan.
 - D. Shall provide the County with a list and copies of all printed contract-related marketing/promotional/education-related materials (including languages materials are printed in).

- II. The SSA shall aid contracted CBOs in expanding language interpretation services through:
 - A. Providing CBOs/contractors with training, materials and instruction on how to effectively refer LEP clients to appropriate language resources.
 - B. Including service-marketing plan requirements in requests for proposals (RFPs) and contracts with CBOs that propose to offer language services (including appropriate outreach and notification of programs and services) to the LEP community and customers.
 - C. Developing a monitoring process of contracted services to ensure high-quality, language accessible services are always provided to LEP clients.
 - D. Providing CBOs/contractors with access to **Telephonic Interpreters**, a 24-hours-a-day, 365-days-a-year telephone language interpretation service in over 100+ languages — to supplement on-site language access services.

Attachment C

CONFIDENTIALITY–CONTRACT PROVISIONS

Confidentiality: Contractor agrees to maintain the confidentiality of any information which may be obtained with this work. Contractor shall comply with whatever special requirements in this regard as are described or referred herein as in Exhibit A to this Agreement. Confidential information is defined as all information disclosed to Contractor which relates to County's past, present and future activities, as well as activities under this Agreement. Contractor will hold all such information in trust and confidence. Upon cancellation or expiration of this Agreement, Contractor will return to County all written or descriptive matter which contains any such confidential information. County shall respect the confidentiality of information furnished by Contractor to County as specified in Exhibit A or as otherwise provided by law.

Pursuant to contract provisions to protect confidential client data file records against any and all unauthorized practices as stated heretofore, the Contractor will:

1. Assume responsibility for all personnel having access to the client list in regard to the confidential nature of client information. Safeguard measures are required to protect civil and criminal sanctions for non-compliance as contained in applicable statutes.
2. Restrict access to client information to those authorized employees and officials who require access in the performance of their delivery of services under this contract.
3. Work with the information under the control of authorized personnel in a manner to protect the confidentiality of client data file records and in such a manner to protect against unauthorized retrieval by computer, remote terminals, or any unauthorized means.
4. Use SSA confidential client information provided to contractor for the purposes covered under the terms of this agreement. Any and all disclosure of client data file records, transactions or transmissions will be made only with prior written consent and authorization from the SSA.
5. Return to SSA any and all client confidential information contained in hard copy or computer files/disc generated by this agreement as required for confidential destruction. All such files are the legal sole property of the SSA.
6. Ensure project compliance with written corrective action plans as may be mandated by the County.

EXHIBIT B**PAYMENT TERMS**

Contracting Department	Government and Community Relations, Office of Policy
Contractor Name	Hively
Type of Services	Child Development Programs, CAPP-1000

In addition to all terms of payment described in the General Terms and Conditions and any relevant exhibits and attachments, the parties to this Agreement shall abide by the following terms of payment:

I. Budget

Contractor shall use all payments solely in support of the program budget, as set forth in **Exhibit B-1, Program Budget**.

II. Terms and Conditions of Payment**A. Contract Amount/Maximum:**

Total payment under the terms of this Agreement will not exceed the total amount of \$317,682. This cost includes all taxes and all other charges.

B. Contract Term:

The contract term is July 1, 2021 to June 30, 2022.

C. Budget Revision Procedures:

1. Contractor shall be reimbursed in accordance with the contract budget as detailed in Exhibit B-1. Any budget adjustments, revisions to the service categories and service units within the contract must be approved by SSA Program Department prior to submitting invoices for payment to the County.
2. Contractor must submit a formal written (via e-mail) request to the SSA Contracts Office for any contract budget adjustment with justification for requested expenditure revisions inclusive of specific impacts to current services being delivered. The request will be forwarded to the SSA Program Department for approval.
3. No supplemental billing will be accepted without Contractor's prior notification and approval by SSA Program Department of the need and justification for revisions of the service categories, service units or contract budget (line-items or unit costs).
4. The County Auditor Controller's Office will not pay for unauthorized service categories, service units and budget line-items that are revised or rendered by

Contractor that are not approved by SSA Program Department and/or for claimed services that contract program monitoring findings indicate have not been provided.

III. Invoicing Procedures

A. Indirect Costs

For the purpose of the CDSS CAPP contract, **indirect costs** are defined as expenses that cannot be readily assigned to one specific program or one specific line item within a program. Indirect costs are a subset of the category of administrative costs. If indirect costs are included in the program budget, the percentage charged for indirect costs must be indicated on the budget. There is a 15% limit on administrative costs, and the indirect costs must be included within that 15% limit. The limit for indirect costs is strict, and contractors should therefore verify that the costs reported as indirect cannot be allocated to another reporting category. If indirect costs are reported, a cost allocation plan must be on file and available to the contract monitor.

B. Administrative and Support Costs

For the purpose of the CDSS CAPP contract, **administrative costs** include activities and functions that do not provide a direct benefit to the children, parents or providers. Administrative costs are limited to 15% and can include indirect costs (see III.A above).

Support costs include services which, when combined with Child Development Programs, help promote healthy physical, mental, social and emotional growth of children and families.

The **administrative and support allowance combined** cannot exceed 17.5%, with the administrative part of that limit not exceeding 15%, pursuant to California Education Code 8223. Therefore, any combination of administrative and support allowance is acceptable if the total allowance does not exceed 17.5% and the administrative portion does not exceed 15%.

C. Reimbursable Expenses

Reimbursable expenses include the cost of child care paid to child care providers plus administrative and support service cost of the alternative program. The budget line items should include the following:

1000 – Certificated Salaries

2000 – Classified Salaries

3000 – Employee Benefits

4000 – Books and Supplies, including the costs of sales/use tax, freight and handling

5000 – Services and Other Operating Expenses, including:

- a. Expenditures for rentals, leases
- b. Service contracts including janitorial, consultant, auditor, maintenance contracts, etc.
- c. Nutrition expenditures for meals/snacks served to children in the program
- d. Travel, insurance, utilities, legal, and other operating expenditures

D. Submitting Invoices

Contractor shall submit monthly invoices no later than the 10th of each month. Invoices are to be sent electronically to SSA GCR Program Liaison, Jennifer Cabán, at Jennifer.Caban@acgov.org who will review and forward them to the SSA Payables Unit at SSAInvoices@acgov.org. In addition, please copy the Financial Specialist, Johnny Cua, at Johnny.Cua@acgov.org, on all invoices.

The invoice packet must include a form #CDNFS-9500-AP (CDSS's fiscal report for alternative payment program) and a copy of State report CDD 801A.

The SSA Finance Department has established a centralized Payments Unit that will be the CONTRACTOR'S contact for all payment and invoicing matters. For additional assistance, contact the Financial Services Officer, Beverly Warren, at brwarren@acgov.org.

Invoices must contain the following elements:

1. Printed on company letterhead that includes name, address, and contact information
2. For Community Based Organizations, must be signed by head of the organization, i.e., Executive Director, CEO, etc.
3. Document must contain the title *Invoice*
4. Date of the invoice
5. Description of services
6. Date range for services provided
7. If needed, itemization of any sales tax and delivery/postage charges
8. Purchase Order (PO) number provided by the County
9. Total amount owed
10. Remittance instructions/address
11. A *cc* indication at the bottom of the invoice with names of people who received courtesy copies
12. CEO or Executive Director must be included in the *cc*, and
13. All other data as required by your contract.

- E. Reporting: Contractor shall provide Performance Measures and Data Collection reports to the GCR unit of SSA, in accordance with Exhibit A of this Agreement.
- F. A final CDNFS-9500-AP report for the prior fiscal year will be submitted to County no later than July 10, 2021.

- G. Payments to Contractor by County may be contingent upon filing of CDNFS-9500-AP reports due to County.
- H. County will pay Contractor within 30 days, upon successful completion and acceptance of services, and upon receipt of invoice and accompanying reports.
- I. Contractor may bill County monthly in arrears or less frequently at Contractor's option, for payment made to eligible cases under rates and provisions of Exhibit A herein.
- J. As required by CDSS, Contractor will mail an Annual Financial Audit Report of the prior fiscal year, which must include an Audited Fiscal Report (AUD form) by November 10, 2021 to:

California Department of Social Services
Office of Audit Services Branch
Attn: Audit Report Review Bureau
744 P Street, Mailbox 9-13-04
Sacramento, CA 95814

Refer to the CDSS Audit Guidelines at: <https://www.cdss.ca.gov/inforesources/cdss-programs/internal-audits/contracting-agencies-audit-guidelines-and-resources>

- K. Contractor will email the completed Annual Financial Audit Report to the contract liaison of SSA by November 17, 2021 to confirm the report was sent.
- L. In order for the County to meet year end closing deadlines, Contractor must submit the May invoice and any prior late invoices by June 10. The June invoice must be submitted by July 10.

IV. Funding and Reporting Requirements

- A. Failure to submit required reports can delay the processing of invoices for reimbursement.
- B. Funding under this contract shall not duplicate funding from other sources. Should other funding duplicate funding under this contract, the invoices to Alameda County will be reduced accordingly by the amount of duplicate funding.
- C. The contract maximum amount of \$317,682 is based on the estimated amount at the time the contract was executed. This does not affect the total contract amount awarded to the agency. The actual federal expenditure amount, if any, will be available to contractors by October of the following fiscal year and Contractor shall contact SSA Contracts Liaison to receive this information.

EXHIBIT B-1**PROGRAM BUDGET**

PROVIDER PAYMENTS				262,088
Salaries & Wages				
K Dulka, Chief Executive Officer		1%	250,000	2,500
V Arkin, Office Manager		3%	59,000	1,770
X Zhou, Accounting Specialist		3%	61,000	1,830
J Chang, Finance Director		3%	150,000	4,500
A Lindblom, Accounting Specialist		3%	63,000	1,890
N Gipson, Provider Payment Specialist		3%	47,000	1,410
J Rice, Provider Payment Specialist		3%	57,000	1,710
B Hourel, Director Business Services		3%	120,000	3,600
M Sanhueza, Family Support Coordinator		3%	63,000	1,890
A Raven, Family Support specialist		3%	47,000	1,410
Sharma Varsha, Family Support Specialist		3%	50,000	1,500
Elvira Cortez, Family Support Specialist		3%	50,000	1,500
Mona Shirk, Program Director		1%	95,000	950
Salaries & Wages subtotal				26,460
Taxes & Benefits				
FICA				2,100
SUI				300
Worker's Comp				380
EAP/Life insurance/Long Term Care				160
Fringe/Medical Expense				8,109
Retirement				1,500

Procurement Contract No. 22838

Taxes & Benefits Subtotal			12,549
SALARIES & BENEFITS TOTAL			39,009
Services & Supplies			
Administrative Expenses			2,785
Printing/Supplies/Postage			3,000
Audit/Contracted Services/Insurance			2,100
Maintenance			5,150
Staff Travel Expenses			250
Rent & Utilities			1,500
Dues & Memberships/Conferences/Staff Development			1,800
Services & Supplies subtotal			16,585
TOTAL OPERATING EXPENSES			55,594
TOTAL ALL CATEGORIES			317,682

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following insurance coverage, limits and endorsements:

TYPE OF INSURANCE COVERAGES		MINIMUM LIMITS
A	Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	\$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	\$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	Workers' Compensation (WC) and Employers Liability (EL) Required for all contractors with employees	WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease
D	Professional Liability/Errors & Omissions Includes endorsements of contractual liability	\$1,000,000 per occurrence \$2,000,000 project aggregate
E	<p><u>Endorsements and Conditions:</u></p> <ol style="list-style-type: none"> 1. ADDITIONAL INSURED: All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: <u>County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees and representatives.</u> 2. DURATION OF COVERAGE: All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. 3. REDUCTION OR LIMIT OF OBLIGATION: All insurance policies shall be primary insurance to any insurance available to the Indemnified Parties and Additional Insured(s). Pursuant to the provisions of this Agreement, insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties. 4. INSURER FINANCIAL RATING: Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. 5. SUBCONTRACTORS: Contractor shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. 6. JOINT VENTURES: If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by any one of the following methods: <ul style="list-style-type: none"> – Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured (covered party)", or at minimum named as an "Additional Insured" on the other's policies. – Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured." 7. CANCELLATION OF INSURANCE: All required insurance shall be endorsed to provide thirty (30) days advance written notice to the County of cancellation. 8. CERTIFICATE OF INSURANCE: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent to: <u>Contracts Office: 2000 San Pablo Ave., 4th Floor, Oakland, CA 94612</u> 	

EXHIBIT D

**COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION**

(Applicable to all agreements funded in part or whole with federal funds and contracts over \$25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

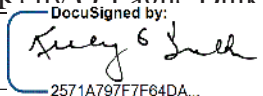
If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining contractor responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: Hively

PRINCIPAL: Kelly O'Tague Dulka TITLE: Executive Director

SIGNATURE:  DATE: 9/24/2021

DocuSigned by: 2571A797F7F64DA...

EXHIBIT E

AUDIT REQUIREMENTS

The County contracts with various organizations to carry out programs mandated by the Federal and State governments or sponsored by the Board of Supervisors. Under the Single Audit Act Amendments of 1996 (31 U.S.C.A. §§ 7501-7507) and Board policy, the County has the responsibility to determine whether organizations receiving funds through the County have spent them in accordance with applicable laws, regulations, contract terms, and grant agreements. To this end, effective with the first fiscal year beginning on and after December 26, 2014, the following are required.

I. AUDIT REQUIREMENTS

A. Funds from Federal Sources:

1. Non-Federal entities which are determined to be subrecipients by the supervising department according to 2 CFR § 200.330 and which expend annual Federal awards in the amount specified in 2 CFR § 200.501 are required to have a single audit performed in accordance with 2 CFR § 200.514.
2. When a non-Federal entity expends annual Federal awards in the amount specified in 2 CFR § 200.501(a) under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or terms and conditions of the Federal award do not require a financial statement audit of the auditee, the non-Federal entity may elect to have a program-specific audit conducted in accordance with 2 CFR § 200.507 (Program Specific Audits).
3. Non-Federal entities which expend annual Federal awards less than the amount specified in 2 CFR § 200.501(d) are exempt from the single audit requirements for that year except that the County may require a limited-scope audit in accordance with 2 CFR § 200.503(c).

B. Funds from All Sources:

Non-Federal entities which expend annual funds from any source (Federal, State, County, etc.) through the County in an amount of:

1. \$100,000 or more must have a financial audit in accordance with the U.S. Comptroller General's Generally Accepted Government Auditing Standards (GAGAS) covering all County programs.
2. Less than \$100,000 are exempt from these audit requirements except as otherwise noted in the contract.

Non-Federal entities that are required to have or choose to do a single audit in accordance with 2 CFR Subpart F, Audit Requirements are not required to have a financial audit in the same year. However, Non-Federal entities that are required to have a financial audit may also be required to have a limited-scope audit in the same year.

C. General Requirements for All Audits:

1. All audits must be conducted in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States (GAGAS).
2. All audits must be conducted annually, except for biennial audits authorized by 2 CFR § 200.504 and where specifically allowed otherwise by laws, regulations, or County policy.
3. The audit report must contain a separate schedule that identifies all funds received from or passed through the County that is covered by the audit. County programs must be identified by contract number, contract amount, contract period, and amount expended during the fiscal year by funding source. An exhibit number must be included when applicable.
4. If a funding source has more stringent and specific audit requirements, these requirements must prevail over those described above.

II. AUDIT REPORTS

A. For Single Audits

1. Within the earlier of 30 calendar days after receipt of the auditor's report or nine months after the end of the audit period, the auditee must electronically submit to the Federal Audit Clearinghouse (FAC) the data collection form described in 2 CFR § 200.512(b) and the reporting package described in 2 CFR § 200.512(c). The auditee and auditors must ensure that the reporting package does not include protected personally identifiable information. The FAC will make the reporting package and the data collection form available on a web site and all Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC. As required by 2 CFR § 200.512(a)(2), unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection.
2. A notice of the audit report issuance along with two copies of the management letter with its corresponding response should be sent to the County supervising department within ten calendar days after it is submitted to the FAC. The County supervising department is responsible for forwarding a copy of the audit report,

management letter, and corresponding responses to the County Auditor within one week of receipt.

B. For Audits other than Single Audits

At least two copies of the audit report package, including all attachments and any management letter with its corresponding response, should be sent to the County supervising department within six months after the end of the audit year, or other time frame as specified by the department. The County supervising department is responsible for forwarding a copy of the audit report package to the County Auditor within one week of receipt.

III. AUDIT RESOLUTION

Within 30 days of issuance of the audit report, the entity must submit to its County supervising department a corrective action plan consistent with 2 CFR § 200.511(c) to address each audit finding included in the current year auditor's report. Questioned costs and disallowed costs must be resolved according to procedures established by the County in the Contract Administration Manual. The County supervising department will follow up on the implementation of the corrective action plan as it pertains to County programs.

IV. ADDITIONAL AUDIT WORK

The County, the State, or Federal agencies may conduct additional audits or reviews to carry out their regulatory responsibilities. To the extent possible, these audits and reviews will rely on the audit work already performed under the audit requirements listed above.

EXHIBIT F

HIPAA BUSINESS ASSOCIATE AGREEMENT

INTENTIONALLY OMITTED

**EXHIBIT G
COUNTY OF ALAMEDA
CONTRACT COMPLIANCE REPORTING REQUIREMENTS**

County project managers will provide a special access code to contractors and subcontractors participating in this contract to allow use of the Elation Systems free of charge.

Upon receipt of signed contract documents, prime contractor shall immediately enter/assign subcontractors in the System, confirm payments received from the County within five business days in the System, immediately enter payments made to subcontractors, and ensure that subcontractors confirm they received payments within five business days in the System. Subcontractors shall confirm their payments received from the prime contractor within five business days in the System.

Alameda County Contract Compliance System training and ongoing support are provided at no charge to contractors and participating sub-contractors awarded a contract as a result of this bid process for this project. Contractors having contracts with the County should schedule a representative from their office/company, along with each of their subcontractors, to attend training. For the training schedule, please call Elation Systems at (925) 924-0340.

It is the Contractor's responsibility to ensure that they and their subcontractors are registered and trained as required to utilize the Alameda County Contract Compliance System. Training sessions are approximately one hour and will be held periodically in a number of locations throughout Alameda County.

EXHIBIT - H
ADDITIONAL CONTRACT PROVISIONS
FEDERAL PROVISIONS

Funds used for payment of this Contract may be from or subject to reimbursement by state and/or federal funds. Some of these funding sources require additional contractual obligations and County and Contractor hereby agree to the following additional terms and conditions. The parties agree to each of these terms for reasons including, but not limited to, meeting all contracting requirements as set forth in 2 C.R.F. § 200.326 and 2 C.F.R. Part 200, Appendix II. These terms supplement the General Terms and Conditions.

I. General Provisions

(A) Remedies. In the event of a breach by Contractor of any term or provision of this Agreement, the County shall have the right to pursue all available remedies at law or equity, including recovery of damages and specific performance of this Agreement. The parties hereto agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by Contractor of any of the provisions of this Agreement and hereby further agrees that, in the event of any action for specific performance in respect of such breach, Contractor shall waive the defense that a remedy at law would be adequate. Except as expressly provided elsewhere in this Agreement, each party's rights and remedies under this Agreement are cumulative and in addition to, not exclusive of or in substitution for, any rights or remedies otherwise available to that party.

(B) Termination. The County may suspend, terminate, or abandon the execution of any work by the Contractor under this Contract with or without cause at any time upon giving the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment, but in no event shall Contractor be entitled to more than the not to exceed amount of the Contract, or if applicable, the portion of the Contract being terminated.

(C) Equal Employment Opportunity. During the performance of this contract, Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the labor union or workers' representatives of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will

take such action with respect to any subcontract or purchase order as the County may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Contractor so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Contractor and refer the case to the Department of Justice for appropriate legal proceedings.

These provisions are included in addition to the Equal Employment Opportunity Practices Provisions in the General Terms and Conditions and Contractor shall abide by both provisions.

(D) Rights to Inventions Made Under a Contract or Agreement. If this Contract is funded in whole or part by a Federal award of funds and the Contract and/or funding meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Contractor (the "recipient or subrecipient") wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and

Cooperative Agreements,” and any implementing regulations issued by the awarding agency. This requirement applies to “funding agreements,” but it does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(E) Clean Air Act and the Federal Water Pollution Control Act. The following provisions apply for all contracts in excess of \$150,000:

(1) Clean Air Act (42 U.S.C. 7401–7671q).

- a. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- b. The Contractor agrees to report each violation of the Clean Air Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(2) Federal Water Pollution Control Act (33 U.S.C. 1251–1387).

- a. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- b. The Contractor agrees to report each violation of the Federal Water Pollution Control Act to the County and understands and agrees that the County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- c. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

(F) Debarment and Suspension. In addition to the debarment and suspension requirements in the General Terms and Conditions and executed Debarment certificate, the following terms shall apply:

(1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters.

(3) This certification is a material representation of fact relied upon by the County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C throughout the period of the Contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered contracts.

(G) Conflict of Interest. By executing this Contract, Contractor certifies that it does not know of any fact which constitutes a violation of Section 66 of County's Charter; Title 9, Chapter 7 of the California Government Code (Section 87100 et seq.), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 et seq.), and further agrees promptly to notify the County if it becomes aware of any such fact during the term of this Contract. In addition, Contractor shall be in full compliance with all other conflict of interest requirements, including those contained in 2 C.F.R. § 200.318.

(H) Byrd Anti-Lobbying Amendment. For any contract of \$100,000 or more, Contractor shall complete the required certification (included below) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the County.

(I) Procurement of recovered materials.

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

- a. Competitively within a timeframe providing for compliance with the Contract performance schedule;
- b. Meeting Contract performance requirements; or
- c. At a reasonable price.

(2) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(J) Access to Records.

(1) The Contractor agrees to provide the County, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

(4) In compliance with the Disaster Recovery Act of 2018, the County and the Contractor acknowledge and agree that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

(K) Changes. The cost of any change, modification, change order, or constructive change must be allowable, allocable, within the scope of a funding grant or cooperative agreement, and reasonable for the completion of project scope. Changes can be made by either party to alter the method, price, or schedule of the work without breaching the Contract by entering a written amendment executed by authorized representatives. The Contract may not be modified except by a written document signed by both parties. It is mutually understood and agreed that no alterations or variations of the terms of this Contract shall be valid unless made in writing and signed by the parties hereto, and that no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.

(L) Seal, Logo, And Flags. The Contractor shall not use the Department of Homeland Security, or any other Federal, state or local seals, logos, crests, or reproductions of flags or likenesses of agency officials without specific FEMA or specified agency pre-approval.

(M) Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

(N) No Obligation of Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the Contract.

(O) Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Contract.

(P) Local Preferences: To the extent that any local preferences are prohibited by funding, SLEB and other local preferences and policies have already been or are waived.

(Q) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the following provisions, from 29 C.F.R §5.5(b) shall apply:

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The County shall upon its own action or upon written request of an authorized representative of the Department of

Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

(R) Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, the contractor and their subcontractor(s), to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

- (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(S) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. Contractor and their subcontractor(s) are prohibited from obligating or expending funds from this Agreement to (1) procure or obtain (2) extend or renew a contract to procure or obtain or (3) enter into a contract for equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(1) As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation

with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- (2) See Public Law 115–232, section 889 for additional information. See also 2 CFR § 200.471.

II. Construction and Repair Work. The following provisions apply to construction or repair work:

Compliance with the Davis-Bacon Act and Copeland “Anti-Kickback” Act. For all prime construction contracts in excess of \$2,000 the following terms shall apply:

(1) Davis-Bacon Act

a. All transactions regarding this Contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

b. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

c. Additionally, contractors are required to pay wages not less than once a week.

(2) Copeland “Anti-Kickback” Act

a. Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

b. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

c. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Contractor, Hively, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Executive Director
Title

EXHIBIT I

**CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND
CONDITIONS (FT&C)**

FT&C For:

CalWORKs Stage 2 (C2AP)

CalWORKs Stage 3 (C3AP)

Alternative Payment Program (CAPP)

General Child Care and Development (CCTR)

Family Child Care Home Education Networks (CFCC)

Programs for Children with Severe Disabilities (CHAN)

Migrant Alternative Payment Program (CMAP)

Migrant Child Care and Development Program (CMIG)

Resource and Referral Program (CRRP)

California State Preschool Program (CSPP)

FISCAL YEAR 2021-22

TABLE OF CONTENTS

<u>CALIFORNIA DEPARTMENT OF EDUCATION FUNDING TERMS AND CONDITIONS (FT&C)</u>	13
<u>TABLE OF CONTENTS</u>	14
<u>INTRODUCTION</u>	18
<u>I. DEFINITIONS</u>	19
<u>II. GENERAL PROVISIONS</u>	37
A. <u>Notification of Address Change</u>	37
B. <u>Notification of E-mail Contact Changes</u>	37
C. <u>Materials Developed with Contract Funds</u>	37
D. <u>Prohibition Against Religious Instruction or Worship</u>	38
E. <u>Issuance and Use of Checks</u>	38
F. <u>Plan for Provider Reimbursement and Certificates for Alternative Payment Programs</u>	38
G. <u>Prohibition against Loans and Advances</u>	39
H. <u>Contracts with Multiple Service Areas</u>	39
I. <u>Compliance Reviews</u>	40
J. <u>Reviews of Alternative Payment Agencies</u>	40
K. <u>Contractor's Termination for Convenience</u>	40
L. <u>Uniform Complaint Procedures</u>	41
M. <u>Eligibility for Funding</u>	41
N. <u>Review of Contracts for Continued Funding</u>	42
O. <u>Applicability of Corporations Code</u>	43
P. <u>Conflicts of Interest</u>	43
Q. <u>Unlawful Denial of Services</u>	44
R. <u>Computer Software Copyright Compliance</u>	45
S. <u>Recycled Paper Certification</u>	45

T.	<u>Healthy Schools Act</u>	45
III.	<u>FACILITIES AND EQUIPMENT</u>	46
A.	<u>Facilities and Equipment Expenditures</u>	46
B.	<u>Buildings and Improvements</u>	47
C.	<u>Renovation and Repair</u>	47
D.	<u>Depreciation and Use Allowance</u>	47
E.	<u>Preapproval Requirements</u>	48
F.	<u>Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies</u>	49
G.	<u>Obtaining Bids for Equipment Purchases for Public Agencies</u>	50
H.	<u>Asset Management</u>	50
I.	<u>Title, Use, Disposition and Retention</u>	51
IV.	<u>SUBCONTRACTS</u>	52
A.	<u>A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.</u>	52
B.	<u>Subcontracts Excluded from Requirements of this Section</u>	52
C.	<u>Required Subcontract Provisions</u>	52
D.	<u>Private Agencies-Bids for Subcontracts</u>	54
E.	<u>Public Agencies Subcontracts</u>	55
F.	<u>Prior CDE Approval for Subcontracts \$10,000 and Above</u>	55
G.	<u>Audit Requirements for Subcontracts</u>	56
V.	<u>COSTS, EARNINGS AND REIMBURSEMENT</u>	56
A.	<u>Contract Amount Adjustments</u>	56
B.	<u>Reasonable and Necessary Costs</u>	57
C.	<u>Indirect Costs</u>	57
D.	<u>Administrative Costs</u>	57
E.	<u>Service Level Exemption (Start-Up) for New or Expanded Programs</u>	58

F.	<u>Costs for Travel and Per Diem & Restrictions</u>	58
G.	<u>Specific Items of Reimbursable Costs</u>	59
H.	<u>Nonreimbursable Costs</u>	60
I.	<u>Charging of Expenditures</u>	62
J.	<u>Recoupment of Advanced Contract Funds</u>	62
K.	<u>Use of Subsidized Family Fees</u>	62
L.	<u>Determination of Reimbursable Amount</u>	62
M.	<u>Minimum Days of Operation</u>	64
N.	<u>Reduction, Withholding, and Canceling Apportionments to Contractors</u>	64
O.	<u>Order of Expenditure</u>	64
VI.	<u>ACCOUNTING AND REPORTING REQUIREMENTS</u>	65
A.	<u>General Provisions</u>	65
B.	<u>Child Development Fund and Interest Bearing Accounts</u>	65
C.	<u>Enrollment and Attendance Accounting</u>	65
D.	<u>Attendance and Absences</u>	66
E.	<u>Abandonment of Care</u>	67
F.	<u>General Record Keeping Requirements</u>	68
G.	<u>Attendance and Expenditure Reports</u>	68
H.	<u>Alternative Payment and CFCC Expenditure Reports</u>	69
I.	<u>Caseload Reports</u>	70
J.	<u>CRRP Expenditure Reports</u>	71
K.	<u>Service Data Report for Resource and Referral Programs</u>	71
L.	<u>Child Development Data Collection</u>	72
M.	<u>Other Report Data</u>	73
N.	<u>Building a Better Early Care and Education System (BBECES)</u>	73
O.	<u>Annual Financial and Compliance Audits</u>	75

P.	<u>Review of Audit by the CDE Audits and Investigations Division (A&I)</u>	77
Q.	<u>Delinquent Audits and One-Time-Only Extensions</u>	77
R.	<u>California State Auditor</u>	77
S.	<u>Budget and Calendar</u>	77
T.	<u>Reserve Accounts</u>	77
<u>VII.</u>	<u>TECHNICAL ASSISTANCE</u>	79
<u>VIII.</u>	<u>CONTRACT CLASSIFICATIONS</u>	79
A.	<u>Clear Contract</u>	79
B.	<u>Provisional Contract</u>	79
C.	<u>Conditional Contract</u>	79
<u>IX.</u>	<u>APPEALS, TERMINATIONS, AND NON-RENEWALS</u>	80
A.	<u>Resolution of Contract Administration Disputes</u>	80
B.	<u>Independent Appeal Procedures</u>	81
C.	<u>Immediate Termination</u>	81
D.	<u>Non-Immediate Termination</u>	82
E.	<u>Appeals Procedures For Independent Appeals</u>	83
F.	<u>Contractor's Responsibility After Notice of Termination/Nonrenewal</u>	85
<u>X.</u>	<u>CONTRACT STATUS CHANGE PROCEDURES</u>	85
A.	<u>Administrative Review of Changes in Contract Status</u>	85
B.	<u>Conditional Status Imposed During the Contract Period</u>	86
C.	<u>Conditional Status Addendum</u>	87
D.	<u>Duration of Conditional Contract Status</u>	87
E.	<u>Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding</u>	88

INTRODUCTION

These are the Funding Terms and Conditions (FT&C) for early learning and care contracts for fiscal year 2021-2022. Each contractor is required as a condition of its contract (“The Contract”) with the California Department of Education (CDE), to adhere to the following laws and documents, as may be in effect during the 2021-2022 fiscal year:

1. Any applicable Education Code statutes and Welfare and Institutions Code statutes¹
2. The FT&C;
3. The specific Program Requirements;
4. The CDE Audit Guide;
5. The California School Accounting Manual;
6. The procedures and standards set forth in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, (2 CFR Part 200 and Title 45 CFR Part 75), hereinafter referred to as Uniform Guidance (UG);
7. Title 5 California Code of Regulations (5 CCR) Division 1, Chapter 19 and 19.5, sections 18000 et seq., including 12-Month Eligibility Implementation Guidance (Implementation Guidance) and CSPP Free or Reduced Price Meal (FRPM) Implementation Guidance (CSPP FRPM Implementation Guidance). NOTE: Guidance documents shall only be in effect until superseding regulations are promulgated in 5 CCR.
8. Title 22 California Code of Regulations, community care facilities license regulations, including child care centers;
9. Any other requirements incorporated into the contract (including any approved pilot plan), in addition to all other applicable laws and regulations, including any applicable law and regulations that may become effective during the term of this contract.

1 Pursuant to The Early Childhood Development Act of 2020 (Chapter 1 of Part 1.7 of Division 9 of the Welfare and Institutions Code), responsibility for the Alternative Payment program, Migrant Alternative Payment program, CalWORKS Stage 2 program, CalWORKS Stage 3 program, General Childcare program, Family Childcare Home Education Network program, Migrant Childcare program, Childcare and Development Services for Children with Severe Disabilities program, and Resource and Referral program, along with other programs enumerated in Section 10203 of Welfare and Institutions, will shift from the California Department of Education to the California Department of Social Services effective July 1, 2021. Some of the Education Code sections cited in the 2021-2022 Funding Terms and Conditions and/or Program Requirements applicable to the programs covered by this contract may be subsequently modified and/or moved from the Education Code to the Welfare and Institutions Code through legislative enactment to be effective on or after July 1, 2021. Contractors will be held to the applicable statutes and regulations in effect during the term of this contract.

Any non-compliance with The Contract may subject the contractor to termination of the contract. Any variance from The Contract must be authorized in writing by the CDE and signed by the Director of the Early Learning and Care Division (ELCD) or the Director's authorized representative. Unless otherwise noted, these compliance requirements apply to all programs.

Contractors may adopt any reasonable policies relating to the administration of the program so long as such policies are not in conflict with law, regulations, or the terms of this contract, including any contract amendments. Those potentially affected by the policies shall be duly notified, as provided for in statute and regulation, and adhere to any due process requirements, if applicable.

California Education Code (EC) Section 8385(f) requires all early learning and care contracts entered into by the CDE for means-tested early learning and care programs, including, but not limited to, Alternative Payment, General Child Care and Child Care for Recipients of the California Work Opportunities and Responsibility to Kids (CalWORKs) Programs (described in EC 8220, EC 8240 and EC 8350) to implement best practices identified pursuant to subdivision (c) which states, "In developing its recommendations, the CDE shall place priority on prevention of fraud and overpayments, and shall consider existing best practices for doing so."

Early Learning and Care contracts are funded with state general funds, federal funds, or a combination of funds. The funding amounts are listed on the contract encumbrance page.

Contracts may be fully or partially funded through a grant from the federal Department of Health and Human Services and subject to Code of Federal Regulations (CFR) 45, Parts 98 and 99, the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended by the CCDBG Act of 2014, Public Law 1113-186, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 USC 9858.

If the Catalogue of Federal Domestic Assistance (CFDA) number is 93596 (shown as FC# in the funding block), the fund title is Child Care Mandatory and Matching Funds of the Child Care and Development Fund. If the CFDA number is 93575, the fund title is Child Care and Development Block Grant subject to the Child Care and Development Block Grant Act of 1990, the Omnibus Budget Reconciliation Act of 1990, Section 5082, Public Law 101-508, as amended, Section 658J and 658S, and Public Law 102-586.

I. DEFINITIONS

As applicable to each specific program type.

Any terms not defined in this section shall be defined, if applicable, as set forth in the *Education Code* or in Title 5 of the *California Code of Regulations (CCR)*.

"12-Month Eligibility Implementation Guidance" or "Implementation guidance" provides guidance and instruction for implementation of the new requirements in California EC 8263(h), referred to as "12-month eligibility." *See Management Bulletin 17-14*

"Actual and allowable net costs" means the costs which may be reimbursed under a particular child development contract after disallowed costs and restricted income have been subtracted

from total expenditures. 5 CCR 18013(a)

"Additional funds" means award of new contracts or expanded contracts that increase the contractor's level of administrative responsibility. Additional funds do not include cost of living adjustments, rate increases and one-time-only supplemental funds or Alternative Payment program contingency funds. 5 CCR 18000

"Adjusted child days of enrollment" means child days of enrollment after special needs adjustment factors specified in *EC 8265.5* have been applied. 5 CCR 18013

"Adjusted monthly income" means total countable income, minus verified child support payments paid by the parent whose child is receiving child development services, excluding the non-countable income listed below: 5 CCR 18078(a)

1. Earnings of a child under age eighteen (18) years;
2. Loans;
3. Grants or scholarships to students for educational purposes other than any balance available for living costs;
4. Food stamps or other food assistance;
5. Earned Income Tax Credit or tax refund;
6. GI Bill entitlements, hardship duty pay, hazardous duty pay, hostile fire pay, or imminent danger pay;
7. Adoption assistance payments received pursuant to Welfare and Institutions (W&I) Code Section 16115 et seq.;
8. Non-cash assistance or gifts;
9. All income of any individual counted in the family size who is collecting federal Supplemental Security Income (SSI) or State Supplemental Program (SSP) benefits;
10. Insurance or court settlements including pain and suffering and excluding lost wages and punitive damages;
11. Reimbursements for work-required expenses such as uniforms, mileage, or per diem expenses for food and lodging;
12. Business expenses for self-employed family members;
13. When there is no cash value to the employee, the portion of medical and/or dental insurance documented as paid by the employer and included in gross pay; and
14. Disaster relief grants or payments, except any portion for rental assistance or unemployment.

"Administrative costs" means costs incurred for administrative activities where neither the family, the child nor the service providers for Alternative Payment programs and family child care homes directly benefit from the activity. 5 CCR 18013(b)

"Adult" means a person who is at least eighteen (18) years of age. HHS, DSS, CCL, Child Care Center, Division 12, Ch. 1 Section 101152 Definitions

"Agency" or "Contractor" refers to any entity that is authorized to perform early learning and care services pursuant to the Education Code. An agency may be a public agency or private agency.

"Agency Self-Evaluation Annual Report" is a form issued by the CDE for use by contractors to submit a summary of findings of the program self-evaluation. 5 CCR 18270.5 (a) and 18279(c)

"Agricultural work" or "agricultural labor" means all service performed:

1. on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with the production or processing of any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
2. in the employ of the operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane;
3. in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, canning, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity.

The definition of agricultural work shall not be deemed to be applicable with respect to service performed in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer. As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards. *CFR 34 Part 200*

"Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of early learning and care services, and payments that are made by an agency to a parent for the parent's purchase of early learning and care services. *EC 8208 (a)*

"Alternative payment program" means a local government agency or nonprofit organization that has contracted with the CDE pursuant to *EC 8220.1* to provide alternative payments and to provide support services to parents and providers. Types of programs include C2AP, C3AP, CAPP, and CMAP. *EC 8208 (b)*

"Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private, non-tax exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decision making prerogatives as consistent with the provisions of this chapter. *EC 8208(c)*

"Approved work activity" is an activity contained in the parent's welfare-to-work plan as described and further defined in *W&I 11322.6 et seq.* and may include:

1. Unsubsidized employment;
2. Subsidized private sector employment;
3. Subsidized public sector employment;
4. Work experience;
5. On-the-job training;
6. Grant-based on-the-job training;
7. Supported work or transitional employment;
8. Work-study;
9. Self-employment;
10. Community or vocational education and training;
11. Job search and job readiness assistance;
12. Education directly related to employment;
13. Satisfactory progress in secondary school or in a course of study leading to a General Education Development (GED) certification;
14. Mental health, substance abuse and domestic violence services; or
15. Other activities necessary to assist an individual in obtaining unsubsidized employment.

"Assistance Unit" means a group of related persons living in the same home who have been determined eligible for CalWORKs cash assistance by the county. California-DSS-Manual-EAS Eligibility and Assistance Standards, Chapter 82-800 Assistance Unit.

"At risk of abuse, neglect, or exploitation" refers to children who are so identified in a written referral from a legal, medical, social services agency, or emergency shelter. *EC 8208 (k)*

"Attendance" means the number of children present at an early learning and care facility.

"Attendance," for purposes of reimbursement, includes excused absences by children because of

illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child. *EC 8208(e)*

“Audit Guide” refers to the most recent *CDE Audit Guide*, which is a resource for audit requirements and guidance applicable to certain state and federal programs operated by private and public organizations under agreements with the CDE. The *Audit Guide* should be used by independent auditors in conducting audits of state and federal early learning and care programs.

"Authorized representative" means, depending upon the specific regulation, either:

1. A person who has been delegated the responsibility to sign a child in and out of a child care program in the absence of the parent; 5 *CCR 18013(f)*
2. A person designated by the contractor to certify eligibility for subsidized services and/or issue a notice of action, application for services or notice of action, recipient of services; 5 *CCR 18082(b), 18083(j)*
3. A person designated by the parent that would be allowed to review the child's data file; or 5 *CCR 18117(b)*
4. A person designated by the parent to represent the parent at a local hearing upon filing an appeal after receipt of a notice of action. 5 *CCR 18120-(e)*

"Benefit to the State" means that the activity will improve knowledge or expertise in areas directly related to subsidized early learning and care services. 5 *CCR 18013(e)*

“California School Accounting Manual” provides accounting policies and procedures, as well as guidance in implementing those policies and procedures.

“California State Preschool Program (CSPP)” means age and developmentally appropriate subsidized early learning and care programs designed to facilitate the transition to kindergarten for eligible three and four-year-old children. Services includes part-day or full-day services designed to meet the needs of working families. The CSPP includes educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. *EC 8235-8239*

“California State Preschool Program (CSPP) Free and Reduced Priced Meal (FRPM) Sites” means a CSPP site that has been verified as operating within the attendance boundaries of a qualified FRPM school. *CSPP FRPM Implementation Guidance 18013*

“CalWORKs cash aid recipient” means an adult or minor teen parent who receives cash aid from the county welfare department for the CalWORKs or Cal-Learn program. *EC 8350-8359.1*

"Ceases operation" means the contractor does not provide subsidized services in accordance with the contractor's program operating calendar submitted to and approved by the CDE for the applicable contract period. 5 *CCR 18013*

“Center-based programs” means all programs providing services directly to children at a licensed center or family child care home and not through the use of an alternative payment voucher.

Types of center-based programs include CCTR, CSPP, CHAN, CMIG and CFCC.

"Child Care Certificate" means a check or other disbursement that is issued by the contractor directly to a parent who may use the certificate only as payment for child care services. Nothing shall preclude the use of the certificate for sectarian child care services if freely chosen by the parent. A child care certificate is assistance to the parent, not assistance to the provider. *45 CFR* Section 98.2

"Child care and development programs" means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also "Early learning and care program". *EC 8208(i)*

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

"Child Development Programs" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, "Early learning and care services". *EC 8208(j)*

"Child care provider" means an adult or agency that provides child care services. *5 CCR 18400(b)*

"Child Days of Enrollment" means the total number of days every child is certified to attend a center-based program, excluding CFCC, regardless of attendance.

"Child development fund" means the restricted fund used by the contractor to account for contract funds and related net reimbursable program costs. *5 CCR 18064, EC 8328*

"Child Protective Services (CPS)" means children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation. *5 CCR 18078*

"Children with exceptional needs" means, as set forth in *EC 8208(1)* either of the following:

1. Infants and toddlers under (3) three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act (*Title 14* (commencing with Section 95000) of the *Government Code (GC)*) and its implementing regulations. These children include an infant or toddler with a developmental delay or established risk condition, or who is at high risk of having a substantial developmental disability, as defined in subdivision (a) of Section 95014 of the *GC*. These children shall have active individualized family service plans, shall be receiving early intervention services, and shall be children who require the special attention of adults in a child care setting.
2. Children ages three (3) to twenty-one (21) years, inclusive who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000) of Division 4 of *Title 2*, and who meet eligibility criteria described in Section 56026 and, Article 2.5 (commencing with Section 56333) of Chapter 4 of Part 30 of Division 4 of *Title 2*, and Sections 3030 and 3031 of 5 *CCR*. These children shall have an active individualized education program, shall be receiving early intervention services or appropriate special education and related services, and shall be children who require the special attention of adults in a child care setting. These children include children with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbances (also referred to as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, who need special education and related services consistent with Section 1401(3)(A) of *Title 20* of the *United States Code*.

"Co-located programs" are those that share the same facility, but cannot be commingled because they are different types of programs with different program requirements.

"Commingled child care services" means the provision of services to both subsidized and nonsubsidized children in the same classroom at the same time. 5 *CCR* 18013

"Compliance review" means that a team of the CDE staff reviews a contractor's program at the program site to determine compliance with applicable laws, regulations, or contractual provisions. 5 *CCR* 18023(1)

"Contract period" means the time span the contract is in effect as specified in the child development contract. 5 *CCR* 18013

"Co-payment" means any usual and customary provider charges that exceed the maximum subsidy amount. The family shall be responsible for paying the provider the difference between the provider's rate and the maximum subsidy amount. This shall be considered the family's co-payment. The contractor shall not be responsible for collecting the family's co-payment. 5 *CCR* 18220.6

"CSPP eligible four-year-old children" means children who will have their fourth birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool

program. *EC 8208(aj)*

“CSPP eligible three-year-old children” means children who will have their third birthday on or before December 1 of the fiscal year in which they are enrolled in a California state preschool program. Children who have their third birthday on or after December 2 of the fiscal year, may be enrolled in a California state preschool program on or after their third birthday. Any child under four years of age shall be served in a California state preschool program facility, licensed in accordance with Title 22 of the California Code of Regulations. *EC 8208(ai)*

“CSPP FRPM Implementation Guidance” provides guidance and instructions to California State Preschool Program (CSPP) contractors about implementing new eligibility criteria pursuant to California *Education Code (EC)* Sections 8236.3 and 8263(a)(2). *See Management Bulletin 20-01*

“Day of Operation” means a day in which the contractor provides service to one or more certified children enrolled in a Center-Based program, excluding CFCCs. For Alternative Payment and CFCC programs, a day of operation means a day the administrative office is open for business.

"Declaration" means a written statement signed by a parent under penalty of perjury attesting that the contents of the statement are true and correct to the best of his or her knowledge. *5 CCR 18078*

"Depreciation" means a cost in the current fiscal year that is based on acquisition costs, less any estimated residual value, computed on a straight line method (based on the normal, estimated useful life expectancy of the asset). *5 CCR 18013*

“Desired Results Parent Survey” is a document issued by the CDE to solicit information from parents regarding the child care program or services that the child and family receive. *5 CCR 18270.5(d)*

"Developmental profile" means a record of a child's physical, cognitive, social, and emotional development that is used to inform teachers and parents about a child's developmental progress in meeting desired results. In center-based programs, teacher and parent observations shall be included as part of the information used to complete the child's developmental profile. In family child care home education networks, the observations of agency staff, in consultation with providers, and parents shall be included as part of the information used to complete the child's developmental profile. *5 CCR 18270.5(b), 18272*

“Desired Results Developmental Profile” is a document issued by the CDE to record the information in the developmental profile defined in subsection 18270.5(b) that is incorporated by reference. *5 CCR 18270.5(c)*

"Disallowed costs" means costs that have been incurred but are not reimbursable because they are not reasonable and/or necessary for the performance of the contract or are otherwise nonreimbursable. *5 CCR 18013*

"Displace families" means to disenroll families in order to reduce service levels due to insufficient funding or inability of a contractor to operate one or more sites because of reasons

stated in *EC* section 8271. 5 *CCR* 18078

“Diversion services” means one-time assistance services provided by the county welfare department, either in cash or in non-cash services, to an otherwise CalWORKs eligible family, when the county welfare department determines that such assistance will help the family avoid becoming a CalWORKs cash aid recipient. 5 *CCR* 18400(d)

“Early learning and care program” means those programs which offer a full range of services for children from infancy to (13) thirteen years of age for any part of the day, by a public or private agency, in centers and family child care homes. See also “Child care and development programs”. *EC* 8208(i)

These programs include Alternative Payment Programs, Center-based programs and Resource and referral programs and specifically include the following:

1. General child care and development.
2. Migrant child care and development.
3. California state preschool program.
4. Resource and referral.
5. Child Development Programs for children with exceptional needs.
6. Family child care home education network.
7. Alternative payment program.

“Early learning and care services” means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services may include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements. See also, “Child Development Programs”.

“Education program” for purposes of program quality, 5 *CCR* subchapter 12, means the environment, activities, and services provided to the children.

“Employment agreement” is a formal agreement that specifies the conditions of the relationship between an individual employee and an employer including compensation and expectations. Also referred to as an employment contract.

“English Learner (EL) Students” (Formerly Known as Limited-English-Proficient or LEP) means those students for whom there is a report of a primary language other than English on the state-approved Home Language Survey **and** who, on the basis of the state approved oral language (grades kindergarten through grade twelve) assessment procedures and literacy (grades three through twelve only), have been determined to lack the clearly defined English language skills of listening comprehension, speaking, reading, and writing necessary to succeed in the school's regular instructional programs. *EC* 313 and 5 *CCR* 60810

“Environment rating scale” means an instrument that measures program quality by rating the education program (5 CCR 18272), the staff development program (5 CCR 18273), and parent involvement and education (5 CCR 18273) 5 CCR 18270.5 (f)

Environment rating scales include the CDE most recently used versions of the following:

1. “ECERS” means the document entitled, Early Childhood Environment Rating Scale;
2. “ITERS” means the document entitled, Infant-Toddler Environment Rating Scale;
3. “FDCCERS” means the document entitled, Family Child Care Environment Rating Scale;
4. “SACERS” means the document entitled, School-Age Care Environment Rating Scale; 5 CCR 18270(f)

"Families experiencing homelessness" means parents, children, and youths as individuals who lack a fixed, regular, and adequate nighttime residence. This includes children and youths who:

1. share the housing of other persons due to loss of housing, economic hardship, or a similar reason;
2. live in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations;
3. live in emergency or transitional shelters; or are abandoned in hospitals;
4. have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
5. live in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
6. are migratory children who qualify as homeless because the children are living in circumstances described above. (42 U.S.C. Sec. 11301 et seq.)

“Family” means the parents and the children for whom the parents are responsible; who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, “family” shall be considered the child and related siblings. 5 CCR 18078

“Family child care home education network” means an entity organized under law that contracts with the CDE pursuant to EC 8245 to make payments to licensed family child care home providers and to provide education and support services to those providers and to children and families eligible for state-subsidized early learning and care services. A family child care home education network may also be referred to as a family child care home system. EC 8208(p)

“Family Child Care Homes” refers to licensed child care provided in a private home. 22 CCR 102352(f)

“Family fee” means the fee determined from the fee schedule. 5 CCR 18078

“Fee schedule” means the “Family Fee Schedule” issued by the CDE pursuant to EC 8273 and 8447 (e). The “fee schedule” is used by child development contractors to assess fees for families utilizing early learning and care services. 5 CCR 18078

“Family size” for C2AP and C3AP means the number of adults and children related by blood, marriage, or adoption that comprise the household in which the child is living.

1. When an adult living in the household is neither the parent of the child nor the spouse of the parent, the adult and the adult's children if any, shall be excluded from the calculation of family size.
2. When a child is living with adult(s) other than a natural or adoptive parent, the child shall be considered a family of one. In these cases, a need criterion as specified in 5 CCR Section 18406(b) or (c) or 18421(b) or (c) must be met by the caretaker of the child. 5 CCR 18400 (e)

“Family size” for all other programs means the number of people constituting a “family” as determined by documentation supporting the number of children and parents in the family. 5 CCR 18100

“Fishing” means any activity directly related to the catching or processing of fish or shellfish for initial commercial sale or as a principal means of personal subsistence. 34 CFR 200.81(b)

“Former CalWORKs cash aid recipient” means an adult individual or minor teen parent who has previously received and is no longer receiving cash aid under the CalWORKs or Cal-Learn programs because of, but not limited to, earnings, other income, or a sanction of the adult imposed by county welfare department. 5 CCR 18400(f)

"FPM/CMR" means Federal Program Monitoring/Contract Monitoring Review (formerly referred to as Coordinated Compliance Review) and is the monitoring and review instrument for child development programs to determine compliance. 5 CCR 18023 (d)(2)

"Full signature" means the legal signature of the individual (e.g., signature normally used on checks and other documents). If the individual is not literate in written English, the individual may sign with an "X" which must be initialed by the contractor's authorized representative (5 CCR 18065). Pursuant to EC 8227.5 and 8262.1, the use of a digital signature shall have the same force and effect as the use of a manual signature, if it meets established program and technology requirements.

“Immediate need” for purposes of TrustLine approval means a situation in which both subdivisions (1) and (2) apply:

1. An eligible parent has a need for child care and is employed, participating in a CalWORKs work activity, is in training as described in 5 CCR 18087, or is incapacitated as defined 5 CCR 18400(g) and 18078
2. The contractor determines that no child care is reasonably available from a licensed, TrustLine registered or TrustLine-exempt provider that meets the parent’s need for care.

5 CCR 18078

"Income fluctuation" means income that varies due to:

1. Migrant, agricultural, or seasonal work;
2. Intermittent earnings or income, bonuses, commissions, lottery winnings, inheritance, back child support payment, or net proceeds from the sale of real property or stock; or
3. Unpredictable days and hours of employment, overtime, or self-employment. 5 CCR 18078(j)

"Indirect costs" are general and administrative costs that benefit the operations of the entire organization, but cannot be identified to specific programs or activities. Examples of indirect costs are described in the federal cost principles codified under the *Uniform Guidance (UG)*, 2 CFR, 200.414. 5 CCR 18013

"Indirect cost allocation plan" means a written approved justification and rationale for assigning the relative share of indirect costs across more than one program or contract. School districts and county offices of education shall use the CDE approved rate if it is less than ten percent (10%). A Nonprofit's Board of Directors will approve the indirect cost allocation plan. 5 CCR 18013

"Initial certification" means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for receipt of subsidized child development services as specified in *EC* sections 8263(a)(1)(A) and 8263 (a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. Implementation Guidance 18078(j)

"Initial Income eligibility" means the definition set forth in *EC* 8263.1(a) Implementation Guidance 18078(h)

"Interactive literacy activities" means activities in which parents or legal guardians actively participate in facilitating the acquisition by their children of pre-reading skills through guided activities such as shared reading, learning the alphabet, and basic vocabulary development. *EC* 8238(a)

"Legally qualified professional" means a person licensed under applicable laws and regulations of the State of California to perform legal, medical, health or social services for the general public. 5 CCR 18078

"Licensed-exempt provider" means an individual or organization that is not required to be licensed, as specified in *Health and Safety Code (H&SC)* 1596.792, or any other federal law or regulation.

"Licensed provider" means an individual or organization that has obtained a child care license, as specified in 22 CCR 101152. *H&SC* 1596.90

"Limited-English-proficient" and "non-English proficient" means children who are unable to benefit fully from an English only early learning and care program as a result of either of the

following:

1. Having used a language other than English when they first began to speak; or
2. Having a language other than English predominately or exclusively spoken at home. EC 8208(t)

"Local education agency (LEA)" means a school district, a county office of education, a community college district, or a school district on behalf of one or more schools within the school district. EC 8208(al). Direct fund charter schools that have been funded to operate early learning and care programs are also considered to be LEAs.

"Magnet school" means an entire school with a focus on a special area of study, such as science, the performing arts, or career education, designed to attract pupils from across the school district who may choose to attend the magnet school instead of their local public school. *CSPP FRPM Implementation Guidance* 18013

"Maximum reimbursable amount" means the total dollar amount of a contract. Reimbursement from the State shall not exceed the maximum reimbursable amount. The initial maximum reimbursable amount shall be the approved original version of the annual contract based on the Budget Act as signed by the Governor. 5 CCR 18013 (o)

"Migrant agricultural worker family" means a family that has earned at least fifty percent (50%) of its total gross income from employment in fishing, agriculture or agriculturally-related work during the twelve (12) month period immediately preceding the date of application for early learning and care services. EC 8231

"Monthly attendance record or invoice" means documentation that includes, at a minimum, the name of the child receiving services, the dates and actual times care was provided each day, including the time the child entered and the time the child left care each day, that is signed under penalty of perjury by both the parent or guardian and the child care provider, attesting that the information provided is accurate. EC 8221.5

"Net reimbursable program costs" means the portion of the actual and allowable net costs that are incurred in the provision of early learning and care services for subsidized children. 5 CCR 18013

"New contract" means either:

1. A contract award to applicants who do not currently contract with the CDE for early learning and care services; or
2. A contract award to current contractor that is for a program type as specified in EC 8208(i) that is different than the child development contract(s) currently administered by the applicant. 5 CCR 18000(d)

"Nontraditional hours" refers to evenings and/or weekends for licensed providers when a licensed provider is meeting the certified need for child care that includes hours during the period from 6:00 p.m. to 6:00 a.m., Monday through Friday, or any time on Saturday or Sunday. 5 CCR 18075.1(b).

“Notice of Action, Application for Services” means a written statement of specific information issued by the contractor that informs the applicant of the contractor’s decision to approve or deny early learning and care services. See Program Requirements for a description of the specific information that must be included to have the contractor’s decision reviewed. 5 CCR 18094, 18400(k) and EC 8261, 8263

“Notice of Action, Recipient of Services” means a written statement of specific information issued by the contractor informing the family receiving child care services that a change has been made to their service agreement. These changes may include, but are not limited to, need and eligibility requirements that are no longer being met, or fees have not been paid, or the fee or amount of services provided by the contractor will be modified. 5 CCR 18078, 18095, 18400(l) and EC 8261, 8263

"Ongoing income eligibility" means the definition set forth in EC 8263.1(b) Implementation Guidance 18078.

“Parent” means a biological parent, adoptive parent, stepparent, foster parent, caretaker, relative, legal guardian, or domestic partner of the parent as defined in *Family Code* section 297, or any other adult living with a child who has responsibility for the care and welfare of the child. EC 8208(u)

"Parental Incapacity" means the temporary or permanent inability of the child’s parent(s) to provide care and supervision of the child(ren) for part of the day due to a physical or mental health condition. 5 CCR 18078

“Parent involvement and education” means those activities specifically designed to include parents in the education of their children, help parents participate in the program, and enhance their understanding of child development. EC 8208(u)

“Parent survey” means a questionnaire completed by the parent to assess the child care program or services that the child and family receive. The parent survey asks for information about how the program helps parents support their child’s learning and development and meets the family’s needs. 5 CCR 18270.5(h)

"Private agency" or "Private contractor" means an entity other than a public agency that is tax exempt or non-tax exempt and under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Program self-evaluation process” means those activities and procedures used by the contractor to evaluate its program quality and compliance with applicable laws, regulations, and contractual provisions. 5 CCR 18270.5(i)

“Provisional child care provider” means an individual, exempt from licensure pursuant to *Health and Safety Code (HSC)* sections 1596.792(d) or (f), who provides child care for a child or children of an eligible parent for a period of up to thirty (30) days when there is an immediate need. The provisional child care provider shall have completed a TrustLine application and submitted fingerprints, in accordance with *HSC* sections 1596.603 and 1596.605. 5 CCR 18078

"Public agency" or "Public contractor" means a school district, community college district,

county superintendent of schools, campus of the California State University or the University of California system, county, city or other public entity under contract with the CDE for the provision of early learning and care services. 5 CCR 18013

“Qualified FRPM school” is a public elementary school, that is not a charter or magnet school, where at least 80% of the enrolled students are eligible for the Free and Reduced Priced Meal program. *CSPP FRPM Implementation Guidance* 18013

"Quality assurance" means activities intended to benefit children and families including, but not limited to, services to parents and providers such as lending libraries, resource libraries, training of parents and providers and monitoring of program quality requirements.

"Reasonable and necessary costs" are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. 45 CFR 75.404

“Recertification” means the formal process for completing an application for services and collecting information and documentation to determine that the family and/or child meets the legal requirements for ongoing receipt of services as specified in Education Code sections 8263(a)(1)(A) and 8263(a)(1)(B). The signature of the authorized representative on an application for services certifies that the legal requirements have been met and documented. *Implementation Guidance* 18078(q)

"Recipients of service" means families and/or children enrolled in an early learning and care program subsidized by the CDE. 5 CCR 18078

“Regional Market Rate” means the current rate charged for various types of child care services as determined by a survey of providers. *EC* 8357

“Regional market rate ceilings” means the maximum amount calculated by the CDE that providers in different regions of the state may be reimbursed for the same type of child care for the same age child in accordance with statutory ceilings currently in effect. 5 CCR 18074.1(c)

"Restricted income" means income that may only be expended for specific limited purposes that would be reimbursable according to the contract. 5 CCR 18068

"Sectarian organization or sectarian child care provider" means any organization or provider that engages in religious conduct or activity or that seeks to maintain a religious identity in some or all of its functions. *CFR* 45 Section 98.2

“Self-Certification of Income” means a declaration signed by the parent under penalty of perjury identifying (5 CCR 18078):

1. To the extent known, the employer and date of hire and stating the rate and frequency of pay, total amount of income received for the preceding month(s), the type of work performed, and the hours and days worked, when an employer refuses or fails to provide requested employment information or when a request for documentation would adversely

affect the parent's employment; or

2. The amount and frequency of sources of income for which no documentation is possible. 5 CCR 18084(a)(4)

"Service agreement" is a legal instrument by which the agency purchases services needed to carry out the early learning and care programs. Legal instruments that include services which are clearly incidental to the agreement are not considered service agreements.

"Service delivery area" means the community, geographic area, or political subdivision in which the early learning and care services are to be provided as specified in the Request for Applications. 5 CCR 18000(f)

"Severely disabled children" are children with exceptional needs from birth to twenty-one (21) years of age, inclusive, who require intensive instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance or severe developmental disability. These children may be assessed by public school special education staff, regional center staff or another appropriately licensed clinical professional. EC 8208 (y)

"Site supervisor" means a person, who, regardless of his or her title, has operational program responsibility for an early learning and care program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of an early learning and care program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the Superintendent determines that the existence of compelling need is appropriately documented. EC 8208(aa).

For CSPP, a site supervisor may qualify under any of the provisions above, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both EC Sections 8244 and 8360.1 is also qualified under this subdivision.

"Social service agency" means an agency that, in the course of day-to-day business, provides personal counseling, personal or group therapy provided by personnel properly certified or licensed under California law. Examples of such agencies include county welfare departments and county mental health departments.

"Staff development program" means those activities that address the needs, interests, and skills of program staff or service providers to improve program quality. 5 CCR 18270.5(j)

"Stage 1" means the first stage of CalWORKs child care services. Stage 1 child care services are administered by the California Department of Social Services (DSS) through county welfare departments pursuant to EC 8351. Stage 1 child care begins when authorized by the county welfare department. 5 CCR 18400(n)

"Stage 2" means the second stage of CalWORKs child care services. Stage 2 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to EC 8353. Stage 2 child care begins when the county welfare department determines that a CalWORKs family is stable and transfers the family to a Stage 2 child care contractor for

child care services, or a family applies and is found eligible for Stage 2 services. 5 CCR 18400(o)

“Stage 3” means the third stage of CalWORKs child care services. Stage 3 child care services are administered by the CDE through contracts with Alternative Payment program providers pursuant to *EC 8354*. Stage 3 child care begins when a CalWORKs family receiving Stage 1 or Stage 2 child care services has fully utilized the family’s twenty-four (24) months of eligibility to Stage 1 and Stage 2 child care services following the date the adult stopped receiving cash assistance. 5 CCR 18400(p)

“Standard reimbursement rate” means that rate established by the Superintendent of Public Instruction (SSPI) pursuant to *EC 8265* and *EC 8208(ab)*

"State median income" means the most recent median income for California families as determined by the State Department of Finance (DOF). *EC 8263.1* and 5 CCR 18078(r)

“Subcontract” means a written agreement between the contractor and any entity to perform a service on behalf of the contractor.

“Subcontract for early learning and care services” means a specific type of subcontract where the contractor enters into a written agreement with another entity to carry out all or part of the early learning and care services.

“Subsidized families” means eligible families who are receiving early learning and care services and on whose behalf the CDE or the California Department of Social Services (DSS) is providing a reimbursement, in whole or in part. 5 CCR 18074.1(d)

“Superintendent” unless otherwise noted, refers to the California State Superintendent of Public Instruction (SSPI). *EC 95*

“Support services” means those services which, when combined with early learning and care services, help promote the healthy physical, mental, social and emotional growth of children and families. *EC 8208(ae)*

“Time Out” means that a family receiving CalWORKs Stage 1 or Stage 2 child care services becomes ineligible for Stage 1 or Stage 2 because the adult has been off cash aid for twenty-four (24) months. 5 CCR 18400(r)

“Total contract amount” for the purposes of determining the limit of allowable administrative and program support services for Alternative Payment type programs means either the initial maximum reimbursable amount or the total of direct payments to providers, which includes family fees for certified children and interest earned on advanced contract funds, plus reimbursable administrative and support services costs, whichever is greater. 5 CCR 18013

“Total countable income” means all income of the individuals counted in the family size (5 CCR 18078) including, but not limited to, the following:

1. Gross wages or salary, advances, commissions, overtime, tips, bonuses, gambling or lottery winnings;

2. Wages for migrant, agricultural, or seasonal work;
3. Public cash assistance;
4. Gross income from self-employment less business expenses with the exception of wage draws;
5. Disability or unemployment compensation;
6. Workers compensation;
7. Spousal support, child support received from the former spouse or absent parent, or financial assistance for housing costs or car payments paid as part of or in addition to spousal or child support;
8. Survivor and retirement benefits;
9. Dividends, interest on bonds, income from estates or trusts, net rental income or royalties;
10. Rent for room within the family's residence;
11. Foster care grants, payments or clothing allowance for children placed through child welfare services;
12. Financial assistance received for the care of a child living with an adult who is not the child's biological or adoptive parent;
13. Veterans pensions;
14. Pensions or annuities;
15. Inheritance;
16. Allowances for housing or automobiles provided as part of compensation;
17. Portion of student grants or scholarships not identified for educational purposes as tuition, books, or supplies;
18. Insurance or court settlements for lost wages or punitive damages;
19. Net proceeds from the sale of real property, stocks, or inherited property; or
20. Other enterprise for gain.

"Total expenditures" means all costs for the provision of subsidized services under the contract and any nonsubsidized services which are provided in commingled classrooms. 5 CCR 18013

"Unrestricted income" means income that has no restrictions regarding use by the donor, and income restricted by the donor for purposes that are not reimbursable according to the contract, including income for services to children not subsidized by the contract. 5 CCR 18013

“Unsubsidized” or “nonsubsidized” refers to children or families other than eligible families receiving reimbursement for early learning and care services. 5 CCR 18074.1(e)

"Use allowance" means an alternate method for claiming the use of the contractor's assets as a cost when depreciation methods are not used. 5 CCR 18013

“Welfare-to-work activity” means a county welfare department approved activity, including but not limited to, employment, job search, job training, educational training, or participating as a volunteer in a job-related activity. 5 CCR 18400(s)

II. GENERAL PROVISIONS

Notification of Address Change

(5 CCR 18014)

1. Contractors shall notify the CDE in writing of any change in the mailing address for communication regarding the contract (administrative address) within ten (10) calendar days of the address change. For non-public agencies, the notification must be accompanied by:
 - a. Board minutes verifying the change in address; and
 - b. A copy of the notification to the Internal Revenue Service of the address change.
2. Contractors shall notify the CDE in writing of any proposed change in operating facility address(es) at least thirty (30) calendar days in advance of the change unless such change is required by an emergency such as fire, flood, or earthquake.

Notification of E-mail Contact Changes

Contractors shall assure that at all times the e-mail address on file at the CDE is accurate for contacting the following individuals:

1. Executive Officer
2. Program Director

Contractors shall utilize procedures provided by the CDE to electronically add new addresses or delete old addresses, as needed.

Materials Developed with Contract Funds

(5 CCR 18016)

If the contractor receives income from materials developed with contract funds, the use of the income shall be restricted to the early learning and care program.

If the materials were developed in part with contract funds, the income from the sale of the materials that shall be used in the child development and development program shall

be computed in direct proportion to the share of contract funds used in development of the materials.

Materials developed with contract funds shall contain an acknowledgement of the use of state general or federal funds in the development of materials and a disclaimer that the contents do not necessarily reflect the position or policy of the CDE.

Prohibition Against Religious Instruction or Worship

(5 CCR 18017)

CCTR, CSPP, CHAN, CMIG, and CFCC contractors shall not provide nor be reimbursed for early learning and care services which include religious instruction or worship.

Issuance and Use of Checks

(5 CCR 18018)

Except for external payroll services, private contractors:

1. Shall not use any pre-signed, pre-authorized, or pre-stamped checks without the prior written approval of the CDE; and
2. Shall require two (2) authorized signatures on all checks unless:
 - a. The contractor has a policy approved by its governing board requiring dual signatures only on checks above a specified dollar amount.
 - b. The annual audit verifies that appropriate internal controls are maintained.

Plan for Provider Reimbursement and Certificates for Alternative Payment Programs

(EC 8261, 5 CCR 18226, 45 CFR 98.45(l)(1)(ii))

(Applies to C2AP, C3AP, CAPP, CMAP, AND CFCC)

The contractor shall develop and implement a plan for the timely reimbursement to providers. The plan shall include a provision requiring that providers be reimbursed within 21 calendar days of the receipt of a complete record or invoice for services

Procedures shall include measures to ensure security of certificates and prevent fraud and/or abuse and provide for timely redemption of certificates by either parents or providers.

Within two (2) business days of receiving license suspension or revocation notification from the Resource and Referral Program, the contractor shall terminate payment to the affected facility as of the effective date of the suspension or revocation.

Contractors must set up an electronic reimbursement program for licensed and license-exempt providers so that the reimbursement to providers may be electronically

transmitted to the financial institution of their choice.

Contractors may not require the providers to use direct deposit or any other form of electronic reimbursement to receive their reimbursements. However, any contractors which had a policy in place prior to July 1, 2019 which required that providers be reimbursed via direct deposit or other form of electronic reimbursement may continue to require those affected providers receive reimbursement in conformance with such policy. Any new providers starting with such contractors after July 1, 2019, or any contractors without such a policy in place prior to July 1, 2019, must give providers the option of receiving their reimbursements electronically.

When the contractor makes the reimbursement to the early learning and care provider, electronically or otherwise, they must provide a description of the reimbursement to the provider, including the child(ren) served, and the month of service covered by the reimbursement.

Any fees assessed by a provider's financial institution for electronic banking would be incurred by the provider; the fees would not be paid by the contractor.

Prohibition against Loans and Advances

(5 CCR 18019)

1. Contractors shall not loan contract funds to individuals, corporations, organizations, public agencies or private agencies.
2. Contractors shall not advance unearned salary to employees.
3. Contractors shall not make advance payments to subcontractors and shall compensate subcontractors after services are rendered or goods are received except for:
 - a. Subcontractors providing early learning and care services; and
 - b. Subcontractors with subcontracts exempt from the provisions of 5 CCR 18026.

Contracts with Multiple Service Areas

1. CCTR, CSPP, CHAN, and CMIG contractors with more than one service delivery area as specified in and funded through a single contract shall maintain service at the same level, plus or minus ten percent (10%) of the contracted child hours or child days of enrollment as applicable, in the individual service area(s) specified in its current contract. 5 CCR 18022
2. The contractor may request approval from the CDE to vary service levels by more than ten percent (10%) if the contractor can demonstrate that the need for services in the designated area(s) has changed.
3. The CDE shall approve or deny the variable service level request within thirty (30) calendar days of receipt of the request.

4. If the variable service level request is denied, the contractor may appeal this decision in accordance with 5 CCR 18308.
5. Non-CalWORKs Alternative Payment program and CFCC contractors with more than one service delivery area, as specified in and funded through a single contract, shall maintain service at the same level in the individual service area(s) as most recently approved by CDE.

Compliance Reviews

(5 CCR 18023(b), (c), (d))

(Applies to all programs)

1. At least once every three (3) years, and as resources permit, the CDE shall conduct reviews at the contractor's office(s) and operating facility(ies) to determine the contractor's compliance with applicable laws, regulations and/or contractual provisions.
2. The compliance reviews shall be conducted according to the provisions of the FPM/CMR.
3. The compliance reviews shall be conducted by consultants, analysts, and/or management staff of the CDE or other State of California representatives.

Reviews of Alternative Payment Agencies

(EC 8385)

Annually, the CDE shall conduct a review of each Alternative Payment agency to determine an error rate in each of the following areas:

1. Family fee determinations;
2. Eligibility;
3. Basis of hours of care; and
4. Provider payments

Contractor's Termination for Convenience

(5 CCR 18024)

1. A contractor may terminate the contract for any reason during the contract term.
2. The contractor shall notify the CDE of its intent to terminate the contract at least ninety (90) calendar days prior to the date the contractor intends to terminate the contract.

3. Within fifteen (15) days from the date the contractor notifies the CDE of its intent to terminate the contract, the contractor shall submit:
 - a. A current inventory of equipment purchased in whole or in part with contract funds; and
 - b. The names, addresses and telephone numbers of all families served by the contract and all staff members funded by the contract.
 - c. CFCC and Alternative Payment program contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services funded by the early learning and care contract.
4. Upon receipt of a notice of intent to terminate, the CDE will transfer the program to another agency as soon as practicable.

Uniform Complaint Procedures

(5 CCR 4600-4694)

5 CCR 4610 authorizes the CDE the responsibility for Uniform Complaint Procedures (UCP). Early learning and care programs are covered under the UCP. Contractors shall abide by the applicable procedures set forth in 5 CCR 4600-4694.

For additional general information regarding the UCP, contact the Categorical Program Complaint Management Office, California Department of Education, via telephone (916) 319-0929, or visit the CDE Web site at the following link:

<https://www.cde.ca.gov/re/cp/uc/>

Eligibility for Funding

(5 CCR 18001, 18303, 18304, and 18023)

A current contractor is eligible to apply for new or additional funds except when one or more of the following conditions apply during the Request for Application (RFA) cycle:

1. The contractor is on conditional status because of fiscal or programmatic noncompliance as described in 5 CCR 18303 or 18304; or
2. The CDE has conducted a compliance review pursuant to 5 CCR 18023 and the contractor has failed to cure items of fiscal and programmatic noncompliance identified in the review within twelve (12) months of the issuance of the compliance review report; or
3. The CDE reduced the contractor's current year maximum reimbursement amount due to the contractor's inability to utilize its full contract amount, whether through low enrollment or low expenditures for the same contract type.
4. A current contracting agency may be determined, on a case-by-case basis, to be ineligible to receive expansion funding if:

- The agency was previously awarded expansion funding and has not yet begun to provide services with that funding; or
- The CDE has evidence that the agency has not been able to successfully fulfill current contract requirements by serving children in a quality program and in a fiscally responsible manner.

A current contractor that is applying for additional funds may be awarded less than the full amount requested during negotiations of the award, particularly if it has been determined that they are not fully utilizing their current contract maximum reimbursable amount.

An applicant that is not a current CDE contractor is not eligible to apply for funding if one of the following conditions apply:

1. The contractor had a previous contract with the CDE that was terminated or not continued by the CDE for fiscal or programmatic noncompliance as described in section 18303 or 18304 within three (3) years immediately preceding the date the RFA was posted; or
2. The applicant contractor has an outstanding accounts receivable balance with the CDE; or
3. The applicant contractor has a delinquent audit with the CDE pursuant to 5 CCR 18073.

Review of Contracts for Continued Funding

(5 CCR 18010)

1. Contractors have no vested right to a subsequent contract.
2. Contractors that are not on conditional contract status, but which have evidenced fiscal or programmatic noncompliance with the provisions of this contract, laws, or regulations, shall receive an administrative review to determine whether they will receive an offer for continued funding.
3. Contractors currently on conditional status that do not meet the requirements specified in the Conditional Status Addendum may not be offered a subsequent contract and shall be so notified by the CDE at least ninety (90) calendar days prior to the end of the current contract period.
4. Contractors that intend to accept the offer to continue services in the subsequent contract period shall respond to a continued funding application request from the CDE in accordance with the instructions and timelines specified in the request.
5. Failure to respond within the timelines specified in the continued funding application request shall constitute notification to the CDE of the contractor's intent to discontinue services at the end of the current contract period unless the contractor has received a written extension of the original timeline from the CDE.

Applicability of Corporations Code

Except for partnerships and sole proprietorships, private contractors shall be subject to all applicable sections of the *Corporations Code* including standards of conduct and management of the organization.

Conflicts of Interest

(EC 8258)

1. All transactions shall be fair and reasonable and conducted at arm's length where the contractor is a party to a transaction and the other party is one of the following:
 - a. An officer or employee of the contractor or of an organization having financial interest in the contractor; or
 - b. A partner or controlling stockholder or an organization having a financial interest in the contractor; or
 - c. A family member of a person having a financial interest in the contractor.
2. No person employed by the CDE in a policymaking position in the area of early learning and care programs shall serve as a member of the board of directors, advisory council, or advisory committee for any agency receiving funds pursuant to this chapter. The provisions of this subdivision shall not apply to any person appointed prior to January 1, 1985.
3. No retired, dismissed, separated, or formerly employed person of the CDE employed under the State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE. The prohibition contained in this subdivision shall apply to the person only during the two-year period beginning on the date the person left state employment.
4. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may enter into a contract pursuant to EC Section 8262 if he or she was employed by the department in a policymaking position in the area of early learning and care programs within the twelve (12) month period prior to his or her retirement, dismissal, or separation.
5. For a period of twelve (12) months following the date of his or her retirement, dismissal, or separation from state service, no person employed under State Civil Service or otherwise appointed to serve in the CDE may be employed by a contractor pursuant to EC Section 8262 if he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by the CDE.
6. The provisions above shall not apply to any persons who were already in the

situations described by these subdivisions prior to January 1, 1985.

7. Based on corporate law (*Corporations Code* sections 310, 5233-5234, 7233 and 9243 as applicable), the general rules to be followed to ensure that transactions are conducted "at arm's length" include:
 - a. Prior to consummating the transaction, the governing body should authorize or approve the transaction in good faith and the board should require the interested party, or parties, to make full disclosure to the board both in writing and during the board meeting where the transaction is being discussed; and
 - b. All parties having a financial interest in the transaction should refrain from voting on the transaction and it should be so noted in the board minutes.
8. If the transaction involves the renting of property, either land or buildings, owned by affiliated organizations, officers or other key personnel of the contractor or their families, the board of directors shall request the interested party to obtain a "fair market rental estimate" from an independent appraiser, licensed by the California Office of Real Estate Appraisers that supports all reimbursable costs under the transaction.
 - a. A new "fair market rental estimate" for each change, adjustment or escalation to any reimbursable costs under a transaction is required.
 - b. If the contractor has no board or is a sole proprietor, the requirement for a "fair market rental estimate" shall also apply.
9. The contractor has the burden of supporting the reasonableness of rental costs. If the property is owned by the contractor, rental costs are not reimbursable and costs may be claimed only as depreciation or use allowance.
10. Any transaction described in this section shall be disclosed by the auditor in the notes to the financial statement in the annual audit. (*Uniform Guidance*, Subpart F)
11. Rental costs for equipment owned by affiliated organizations, officers, or other key personnel of the contractor or their families are allowable only as depreciation or use allowance.

Unlawful Denial of Services

(GC 11135 and 5 CCR 4900)

As used in this section, "disability" means any mental or physical disability as defined in GC 12926.

1. No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded

directly by the state, or receives any financial assistance from the state.

2. With respect to discrimination on the basis of disability, programs and activities subject to 5 CCR 4900(a) shall meet the protections and prohibitions contained in Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

Computer Software Copyright Compliance

By signing this agreement, the contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

Recycled Paper Certification

(PCC 12205, 12209, 12320)

The contractor agrees to certify in writing to the CDE, under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post-consumer waste and secondary waste as defined in *Public Contract Code (PCC)*, sections 12161 and 12200, in materials, goods or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the *PCC*, sections 12161 and 12200. Contractor may certify that the product contains zero recycled content.

Healthy Schools Act

All early learning and care center-based contractors are subject to the requirements of the Healthy Schools Act (HSA) as specified in *EC* sections 17608 to 17614.

For more information about the requirements of the HSA, contact the Department of Pesticide Regulation (DPR), Integrated Pest Management (IPM) via e-mail at ccipmlist@cdpr.ca.gov or visit the DPR School and Child Care IPM Web site at: <http://www.cdpr.ca.gov/schoolipm/>

To comply with the provisions of the HSA, early learning and care center-based contractors shall, among other requirements:

1. Identify a school designee
 - a. Choose a center employee who will make sure the requirements of the Healthy Schools Act (HSA) are met when pesticides are used at your center.
2. Develop an IPM plan
 - a. Create an IPM plan using the DPR IPM Plan template available on the DPR

School and Child Care IPM website; or get a self-drafted center IPM plan approved by DPR.

3. Provide annual written notification
 - a. Send parents, guardians, and staff a written notification of pesticides you expect to apply at your center during the year.
4. Establish individual notification registry
 - a. Establish a registry for all interested parents, guardians, and staff to sign up and receive notifications of individual pesticide applications.
5. Post warning signs
 - a. Post signs where you will apply pesticides.
6. Keep Records
 - a. Keep records of pesticide applications made by center staff and pest management contractors for at least four years.
7. Send pesticide use reports to DPR
 - a. Send pesticide use reports for pesticide applications made by center employees to DPR at least once per year.
8. Never use prohibited pesticides
 - a. Always check the list of Pesticide Products Prohibited from Use in California Schools and Child Care Facilities prior to using a new pesticide product.
9. Complete Annual IPM Training
 - a. Take a DPR-approved training course before applying pesticides, and renew annually.

III. FACILITIES AND EQUIPMENT

(5 CCR 18034)

A. Facilities and Equipment Expenditures

Facilities and Equipment Expenditures, are subdivided into two categories:

1. Capitalized
 - a. Buildings and Improvements: Sites; renovations and repairs of sites; buildings; renovations and repairs of buildings, building fixtures, services systems; and
 - b. Capitalized Equipment: Tangible personal property (including information

technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or \$5,000. 2 CFR 200.33

2. Non-capitalized

- a. Non-capitalized equipment expenditures are those for tangible personal property with a useful life of more than one year other than those described in Capitalized Equipment above.

B. Buildings and Improvements

1. Buildings are only reimbursable as depreciation or use allowance.
2. To be reimbursable as direct costs, prior written approval by the CDE is required for improvements to land, buildings, or equipment which materially increase their value or useful life. 2 CFR 200.439(b)(3)
3. If the Contractor wishes to share the use of real property among multiple programs, the associated reimbursable capital expenditures shall be prorated among the programs according to the benefits received.
4. Building and improvement expenditures are not reimbursable as indirect costs, except as depreciation or use allowance.

C. Renovation and Repair

(5 CCR 18034)

1. Improvement of sites and adjacent grounds to meet or exceed the 22 CCR, Community Care Licensing Standards are reimbursable for both private and public agencies. Reimbursable improvements are those that:
 - a. Do not unnecessarily increase the value as defined in 18013(v) of a facility; and
 - b. The contractor has obtained prior CDE approval for proposed work for ten thousand dollars (\$10,000) or more.

D. Depreciation and Use Allowance

1. Depreciation and use allowance may be claimed on eligible, appropriate capital assets.
2. Depreciation shall not be claimed on land, donated assets or assets purchased with public funds, on any fully depreciated asset or on idle or excess facilities.
3. A use allowance shall not be claimed on land or assets purchased with contract funds or on assets for which depreciation has been claimed.

4. When depreciation is applied to assets acquired in prior years, the annual charges shall not exceed the amounts that would have resulted had depreciation been claimed from the date of acquisition.
5. The use allowance for buildings and improvements is computed at an annual rate not to exceed two percent (2%) of acquisition costs.
6. The use allowance for equipment is computed at an annual rate not to exceed six and two-thirds percent (6 2/3%) of acquisition costs.
7. To be reimbursable, interest paid on private sector debt for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by contractors providing center-based care must be actual interest paid, not to exceed a fair market rate of interest. This provision does not apply to family child care home facilities.

E. Preapproval Requirements

(5 CCR 18029 and 18040)

1. All equipment and equipment replacement purchases that meet either of the following criteria shall be approved in writing in advance by the CDE. 2 CFR 200.33 and 200.439(b)(1)
 - a. The per-unit acquisition cost equals or exceeds the lesser of the capitalization level established by the contractor for financial statement purposes, or five thousand dollars (\$5,000), including tax, shall be approved in writing in advance by the CDE.
 - b. The sum of all items included in the purchase equals ten thousand dollars (\$10,000) or more, including tax, shall be approved in writing in advance by the CDE.
 - i. All expenses associated with a purchase that are necessary for the equipment to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required (e.g., a playground structure includes multiple components, although each component may be purchased separately. When determining pre-approval requirements, all components purchased for the playground should be considered).
 - ii. Subdividing equipment purchases into separate items to avoid the preapproval requirement is prohibited.
2. Proposed renovation and repair work for ten thousand dollars (\$10,000) or more, including the invoiced cost, plus any applicable sales tax, delivery fees, or installation charges, shall be approved in writing in advance by the CDE. 2 CFR 200.439(b)(3)
 - a. All expenses associated with a purchase that are necessary for the improvement to perform its intended purpose, prior to cost allocation, should be included in determining if prior approval is required.

- b. Subdividing renovation and repair work into separate purchases to avoid the preapproval requirement is prohibited.
 - 3. Approval requests shall be submitted on the Request for Approval of Equipment form.
 - 4. Bids, if applicable, shall be attached to the Request for Approval of Equipment when submitted to the CDE for approval.
 - a. One copy of the request shall be retained by the CDE.
 - b. One copy will be returned to the contractor approved or disapproved within thirty (30) calendar days of receipt.
 - c. If the request for approval of an equipment purchase is disapproved, the contractor may appeal the decision in accordance with instructions specified in 5 CCR 18040(d), 18302.
 - 5. Procurement practices must be in accordance with 5 CCR 18040.
 - 6. Public Agencies shall comply with the applicable sections of the PCC.
 - 7. Lease-purchase agreements are subject to the above requirements.
 - 8. If the work is to be performed through a subcontract, the requirements of the FT&C section titled *Subcontracts* also applies.
 - 9. When private agencies submit proposed subcontracts for renovation and repair for approval, evidence shall be included that the proposed subcontractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract. 5 CCR 18029(d)
- F. Obtaining Bids for Equipment Purchases, Leases, Replacements and Improvements for Private Agencies
- 1. All equipment purchases, replacements, and improvements not performed by the contractor's staff exceeding five thousand dollars (\$5,000), including tax, must have at least three (3) bids or estimates.
 - a. Each bid or estimate must contain prices for equivalent and comparable items and/or services.
 - b. When available, consolidating procurements to obtain a more economical purchase is required.
 - c. Subdividing equipment purchases into separate items to avoid the competitive bidding requirement is prohibited.
 - 2. If bids or estimates are required, the contractor shall purchase the goods or services from the lowest responsible bidder or estimator. The contractor shall conform to the

materials, terms and conditions of the invitation for bid, and with 5 CCR 18040.

3. If bids or estimates are required, and three (3) bids or estimates cannot be obtained, the contractor shall provide adequate documentation of the reason(s) why three (3) bids or estimates could not be obtained (e.g., an emergency situation, or the item is only available from a single source).
4. Lease-purchase agreements are subject to the above requirements.

G. Obtaining Bids for Equipment Purchases for Public Agencies

Public Agencies shall comply with the applicable sections of the *Public Contract Code*.

H. Asset Management

1. Asset Control System

(2 CFR 200.313(d)(3))

A control system must be developed to ensure adequate safeguards to prevent loss, damage or theft (any loss, damage or theft must be investigated) and adequate maintenance procedures must be developed to keep the equipment in good condition.

2. Inventory

(2 CFR 200.313 (d)(1))

- a. An inventory of all equipment and all non-disposable items with an estimated useful life of more than one year, purchased in whole or in part with early learning and care contract funds, shall be maintained. For more guidance refer to *California School Accounting Manual Procedure 770*.
- b. Property records must be maintained that include the following:
 - i. Description;
 - ii. Serial number or other identification number;
 - iii. The source of funding;
 - iv. The acquisition date;
 - v. The cost;
 - vi. The location, use and condition; and
 - vii. Any ultimate disposition date including date of disposal and sale price if applicable.
- c. A physical inventory must be taken at least every two (2) years and reconciled with property records. 2 CFR 200.313(d)(2)

I. Title, Use, Disposition and Retention

1. Buildings and Improvements

- a. Title to real property acquired in whole or part with state early learning and care (ELC) funds shall vest in the contractor subject to the condition that the contractor shall use the real property for the authorized purpose of the ELC program as long as it has a contract with the CDE and shall not encumber the property without the prior written approval of the CDE. 2 *CFR* 200.311(a)
- b. When the real property is no longer needed for the purposes of any CDE program, the Contractor shall request disposition instructions from the CDE, which shall observe one of the following three disposition instructions:
 - i. The CDE may permit the contractor to retain title without further obligation to the CDE after the contractor compensates the CDE or that percentage of the current fair market value of the property, net of reasonable and necessary selling costs, attributable to the CDE's share of the acquisition cost.
 - ii. The contractor may be directed to sell the property under guidelines provided by the CDE and pay the CDE for that percentage of the current fair market value of the property, net of reasonable and necessary selling and fix-up costs, attributable to the CDE's share of the acquisition cost.
 - iii. The contractor may be directed to transfer title to the property to the CDE or to an eligible third party, provided that, in such cases, the contractor shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

2. Equipment

(5 *CCR* 18025)

- a. Title – When equipment is purchased with state funds, title shall vest with the contractor only for such period of time as the contractor has a contract with the CDE.
- b. Retention of Equipment – The CDE may provide written authorization for the contractor to retain the equipment for the contractor's own use if a fair compensation is paid to the state for the state's share of the cost of the equipment. Fair compensation shall be determined by the state using the state's share of original acquisition cost, less depreciation, computed on a straight-line method over the estimated useful life expectancy of the equipment.
- c. Use – When equipment is purchased in whole or in part with state funds, the contractor shall use the equipment exclusively in the program(s) from which funds were used to purchase the equipment. If the contractor wishes to share the use of the equipment between/among two (2) or more programs, the cost of such equipment shall be prorated between/among the programs.

- d. Disposition – The contractor may dispose of obsolete equipment and remove the asset at its recorded value. If the sale of equipment originally purchased with state funds occurs, the proceeds from the sale of the equipment must be returned to the program. If the contractor no longer has a contract with the CDE, the contractor shall dispose of the equipment in accordance with written directions from the CDE.

IV. SUBCONTRACTS

- A. A written subcontract is required for all service agreements as defined in Section I. Definitions, except as outlined below.
- B. Subcontracts Excluded from Requirements of this Section

(5 CCR 18026)

The following types of relationships are not subject to the requirements contained in this section:

1. Employment agreements;
2. Facility rental or lease agreements except as set forth below;
3. Payment arrangements with family child care homes and/or providers;
4. Medical or dental service agreements;
5. Bookkeeping/auditing agreements, except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*; (5 CCR 18027)
6. Food services agreements;
7. Janitorial and grounds keeping agreements;
8. A subcontract with a public agency, except for a subcontract with a public agency to provide early learning and care services; and
9. Subcontracts with an individual for less than ten thousand dollars (\$10,000), except that agencies must still follow requirements in the FT&C section *Bids for Subcontracts*.

However, no subcontract shall in any way relieve the contractor of any responsibility for performance under this contract.

Contractors are responsible for ensuring financial and compliance audits of all subcontractors.

Required Subcontract Provisions

(5 CCR 18031)

The following provisions apply to all subcontracts unless exempted in Section A above.

Every subcontract shall be in writing and specify:

1. The dates within which the subcontractor is to perform the contract.
2. The time for subcontractor performance shall not begin prior to, nor shall the time extend beyond, the time period of the contract between the contractor and the state.
3. The dollar amount of the subcontract or specify an amount not to exceed a maximum dollar amount.
4. The service(s) to be provided under the subcontract and the responsibilities of each party under the subcontract.
5. The subcontractor, and the agents and employees of the subcontractor, in the performance of the subcontract, are acting in an independent capacity and not as officers, employees or agents of the State of California.
6. Modifications of the subcontract shall be in writing, and for subcontracts in excess of ten thousand dollars (\$10,000), prior written CDE approval is required unless the subcontract is otherwise exempt from prior CDE approval.
7. The subcontract is the complete and exclusive statement of the mutual understanding of the parties and that the subcontract supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of the subcontract.
8. The remedies, in case of a breach of contract, for subcontracts in excess of ten thousand dollars (\$10,000).
9. The State of California retains title to any equipment or supplies purchased with state funds and the equipment shall be returned to the contractor upon termination of the subcontract. The subcontract shall also specify that the subcontractor shall obtain prior written approval from the contractor and the CDE for any unit of equipment that costs in excess of five thousand dollars (\$5,000).
10. The subcontractor shall be reimbursed for travel and per diem expenses only at rates that do not exceed the rates paid to the CDE's non-represented employees computed in accordance with California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1.
11. The subcontractor agrees to indemnify and hold harmless the State of California, its officers, agents and employees from any and all claims and losses occurring or resulting to any and all contractors, subcontractors, materialmen, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of the subcontract, and from any and all claims and losses occurring or resulting to any person, firm or corporation that may be injured or damaged by the subcontractor in the performance of the subcontract.
12. For those subcontracts requiring prior approval, the subcontractor shall maintain

- records for program review, evaluation, audit and/or other purposes and make the records available to agents of the state for a period of five (5) years.
13. The provisions of the "Nondiscrimination Clause" included in the prime contract as specified in the 2 CCR 11105.
 14. Funding of the subcontract should be made subject to the appropriation and availability of funds from the state.
 15. All subcontracts should contain a provision that the subcontractor is liable for any audit exception caused by, or as a result of, the subcontractor's lack of performance as required by the subcontract.
 16. The subcontract should provide that the subcontractor, its agents and employees, in the performance of the subcontract, are acting in an independent capacity and not as agents or employees of the contractor.
 17. Subcontracts for ten thousand dollars (\$10,000) or more cannot become effective and binding on either the prime contractor or the subcontractor until approved in writing by the CDE, and any work performed by the subcontractor prior to the date of such approval shall not be used as a claim against the state. Modifications to any contracts for \$10,000 or more shall also not be effective until approved in writing by the CDE and any work in performance of such modification prior to the date of approval of the modification shall not be used as a claim against the state. Specific approval requirements are set forth in Section F below.
 18. The consideration paid to the subcontractor, as provided in the subcontract, should be stated to be the full compensation for all the subcontractor's expenses incurred in the performance of the subcontract.
 19. All subcontracts, rental agreements and other contractual arrangements should include a termination for convenience clause permitting termination of such agreements without cost to the contractor.

Private Agencies-Bids for Subcontracts

(5 CCR 18027 & 2 CFR 200.320(f))

1. Private contractors shall obtain at least three (3) bids or estimates for subcontracts exceeding five thousand dollars (\$5,000), prior to cost allocation
2. If three (3) bids or estimates cannot be obtained, the private contractor shall maintain documents in its records that establish:
 - a. The reasons three (3) bids or estimates could not be obtained; and
 - b. The reasonableness of the proposed expenditure without three (3) bids or estimates.
 - c. Documentation for the single-source vendor or service provider, including the

reason that vendor should be approved, must be submitted for approval in lieu of three (3) bids.

3. The subcontract shall be awarded to the lowest responsible bidder.
4. The contractor shall not split subcontracts to avoid competitive bidding requirements.

Public Agencies Subcontracts

1. Public Agencies shall award subcontracts in accordance with the Public Contract Code.

Prior CDE Approval for Subcontracts \$10,000 and Above

(5 CCR 18028-18030)

1. Contractors shall obtain prior written approval from the CDE for subcontracts of ten thousand dollars (\$10,000) or more, prior to cost allocation, that are otherwise not excluded from the provisions as stated in the FT&C section *Subcontracts Excluded from the Requirements of this Section*.
2. Prior to execution of a subcontract and commencement of work, the contractor shall submit two (2) copies of the proposed subcontract to the CDE for approval, including a proposed line-item budget which shows the costs of the services to be performed. The budget for a proposed subcontract for renovation and repair shall show the total cost of labor and the total cost of materials. Bids, if applicable, shall be submitted to the CDE when requesting approval. If three (3) bids were not obtained, the contractor shall provide written justification when the subcontract is submitted to the CDE for prior approval. Contractors shall demonstrate that approval of the subcontract is cost effective to the state.
3. For proposed capital outlay subcontracts, private agencies shall include documents showing that the bidder selected by the contractor has obtained a payment bond in an amount not less than one-half (1/2) the amount of the proposed subcontract.
4. Requests for approval of subcontracts for transportation services shall include a Certificate of Insurance of the subcontractor in an amount not less than \$1 million per occurrence (or a greater amount if required by the Public Utilities Commission regulations), listing the contractor and the state as additional named insured.
5. One copy of the subcontract will be retained by the CDE and the other copy returned to the contractor approved or disapproved within thirty (30) calendar days of receipt of all required documents.

No reimbursement shall be made to the contractor or subcontractor for work performed prior to CDE approval. A disapproved contract will include a statement of the reason(s) for not approving the subcontract. If the request for approval of a subcontract is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Appeals and Termination, Contract*

Administration Disputes.

6. The CDE does not assume any responsibility for performance of approved subcontracts nor does the CDE assume responsibility for any unpaid debt of the contractor resulting from subcontracting liens.
7. Subcontracts which increase the contractor's cost of performance are nonreimbursable. Subcontracts which contain a provision for reimbursement for cost-plus-a-percentage-of-cost are not reimbursable.

Audit Requirements for Subcontracts

(5 CCR 18032)

An organization that operates an early learning and care program under a direct service contract with the CDE is called a contractor. The contractor may choose to enter into an agreement with another organization (subcontractor), where the subcontractor operates one (1) or more of the contractor's early learning and care programs. Consequently, an entity may be acting in the dual capacity of contractor and subcontractor for one (1) or more CDE contractors – each having one (1) or more CDE contracts. In some cases, a subcontractor may not have its own CDE contract directly with the CDE.

The organization receiving funds from the state shall be responsible for obtaining the required financial and compliance audits of the organization and any subcontractors, except for subcontracts exempt from CDE review, as agreed to by the Departments of Finance (DOF) and General Services (DGS).

The audit of the subcontract shall be submitted to the CDE as follows:

1. School districts, county offices of education, community colleges, and direct funded charter schools, shall submit the audit of the subcontract by the fifteenth day of the fifth month following the fiscal year in which the subcontracted services were performed;
2. All other contractors shall submit the subcontract audit along with the contractor's audit as specified in 5 CCR 18071.

V. COSTS, EARNINGS AND REIMBURSEMENT

(5 CCR 18033, 18034)

A. Contract Amount Adjustments

(Applies to C2AP, C3AP)

Child Development and Nutrition Fiscal Services (CDNFS) shall conduct monthly analyses of caseloads and expenditures and adjust agency contract maximum reimbursable amounts and allocations as necessary to ensure that funds are distributed in proportion to need. Prior to such action, however, CDNFS will notify the contractor of the proposed action and the contractor will be given an opportunity to provide written

documentation that demonstrates the CDNFS projections are inaccurate. Because of the need to transfer funds to an under-funded agency as quickly as possible, the contractor shall have three (3) working days from the date of notification to respond.

Reasonable and Necessary Costs

(5 CCR 18013(s), 18033, 2 CFR 200.404)

Contractors may be reimbursed for actual costs that are reasonable and necessary to the performance of the contract. Reasonable and necessary costs are those costs that do not exceed what an ordinarily prudent person would incur in the conduct of a competitive business under the circumstances prevailing at the time of the decision to incur the cost, and whether the cost is of a type recognized as ordinary and necessary for the operation of the entity or the proper and efficient performance of the award. Consideration must be given to market prices for comparable goods or services for the geographic area.

Indirect Costs

(5 CCR Sections 18013(m), 18013(n))

1. If indirect costs are claimed, an indirect cost allocation plan must be on file with the contractor and available for review by the CDE staff and auditors.
2. The maximum indirect cost rate shall be ten percent (10%) of the modified total direct costs.
3. For any non-federal entity that has a negotiated indirect cost rate, which includes all school districts and county offices of education, the maximum indirect cost rate shall be the lesser of the negotiated indirect cost rate or ten percent (10%).
4. This rate is applied to budget categories 1000-5000 only in determining the maximum amount of indirect costs that are reimbursable under the contract.
5. The amount of cost allocable to this contract shall not exceed the benefits to this contract. The allocation method must quantify this benefit among all similar programs and then distribute the costs accordingly.
6. The indirect cost rate shall not include consideration of any costs otherwise non-reimbursable. If depreciation or use allowance is included in the indirect cost rate, such allowance shall not be claimed on the asset as a direct cost.

Administrative Costs

(EC 8276.7, 5 CCR 18013(c))

Contractors may claim administrative costs, as defined in 5 CCR 18013(c), which are related to the administration of the early learning and care program.

Reimbursement of administrative costs shall not exceed fifteen percent (15%) of the net reimbursable program costs or actual administrative costs, whichever is less.

The fifteen percent (15%) includes any allowance for indirect costs and audits. Contractors shall maintain written documentation of the rationale used in determining direct and administrative costs.

Service Level Exemption (Start-Up) for New or Expanded Programs

(*EC 8275*)

1. Allowable start-up costs will be in an amount not to exceed fifteen percent (15%) of new or expansion funding authorized in the Budget Act for State Early Learning and Care Programs. *EC 8275(a)*
2. Start-up costs must be necessary for the establishment and stability of new early learning and care programs (*EC 8275(c)*) and include:
 - a. Employment and orientation of necessary staff;
 - b. Setting up of the program and facility;
 - c. Finalization of rental agreements and necessary deposits;
 - d. Purchase of a reasonable inventory of materials and supplies; and
 - e. Purchase of an initial premium for insurance.
3. Contractors shall maintain an auditable record of start-up costs which shall be included within the audit at the end of the year.
4. Reimbursable start-up costs shall occur prior to attainment of full enrollment.
5. If all or part of the fifteen percent (15%) allowable start-up costs is needed and spent, that portion will **not** have to be earned through provision of services.
6. If the contractor neither needs nor chooses to claim any of the fifteen percent (15%) start-up costs, the full service requirements shall be earned at the contract rate.
7. Migrant early learning and care agencies operating on a seasonal basis shall be reimbursed up to fifteen percent (15%) of the contract amount annually for approved start-up and close-down costs associated with starting up and closing down agency operations to correspond with periods of service needed by migrant families as specified in *EC 8233(b)*.

Costs for Travel and Per Diem & Restrictions

(*GC 11139.8, EC 8265, 8269, 5 CCR 18031, 18034, and 18041*)

Contractors and subcontractors shall be reimbursed for travel and per diem expenses at rates not exceeding those amounts paid to the CDE's represented employees computed in accordance with the California Department of Human Resources regulations, California *Code of Regulations*, Title 2, Division 1, Chapter 3, Subchapter 1, Article 2.

Contractors with collective bargaining agreements allowing higher rates of reimbursement shall not pay the difference out of contract funds.

The CDE shall notify the contractor of a change in expense rates within thirty (30) calendar days after the CDE has received notification of a change in rates from the California Department of Human Resources.

Contractors shall be reimbursed for out-of-state travel expenses only with prior written approval from the CDE. The CDE shall not approve out-of-state travel expenses:

1. For more than one employee, per contract per year.
2. For contractors with delinquent accounts payable which are delinquent more than ninety (90) calendar days after the date of the original invoice.
3. For contractors on conditional status.
4. When there is no clear benefit to the state.
5. When the benefit to the state can be obtained within California.

The CDE shall approve or deny the request for out-of-state travel within thirty (30) calendar days of the receipt of the request. If the request is denied, the contractor may appeal the decision in accordance with instructions specified in the FT&C section *Internal Appeal Procedures to Resolve Contract Administration Disputes*.

Out-of-state travel to states identified in California's travel ban will not be considered. Costs associated with traveling to banned states will not be reimbursable.

Specific Items of Reimbursable Costs

(EC 8261, 8269 and 5 CCR 18034)

Reimbursable costs include, but are not limited to, the following:

1. Start-up costs of child development agencies or facilities in an amount not to exceed fifteen percent (15%) of the expansion or increase of each agency's total contract amount.
2. Close down costs for Migrant Programs as specified in EC 8233.
3. Administrative costs not to exceed fifteen percent (15%) of net reimbursable program costs.
4. Employee compensation, including fringe benefits, and personal service contracts.
5. Equipment and equipment replacement with prior CDE approval if required in the FT&C section *Facilities and Equipment*.
6. Supplies purchased in accordance with procurement practices found in 2 CFR

sections 200.317 to 200.326, including bidding requirements for micro-purchases that exceed \$10,000.

7. Improvement of sites and adjacent grounds to meet or continue to meet 22 CCR Community Care Licensing Standards in accordance with the FT&C section *Renovation and Repair*.
8. Taxes, insurance, and maintenance for buildings and/or equipment.
9. Depreciation based on the useful life of an asset in accordance with the FT&C section *Depreciation and Use Allowance*.
10. A use allowance for buildings and improvements in accordance with the FT&C section *Depreciation and Use Allowance*.
11. Travel and per diem expenses, including approved out-of-state travel, in accordance with the FT&C section *Costs for Travel and Per Diem*.
12. An indirect cost rate based on an approved indirect cost plan, in accordance with the FT&C section *Indirect Costs*.
13. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Lease payments or depreciation and interest on loans incurred to acquire, rehabilitate or construct licensable facilities not to exceed fair market rents in the community in which the facility is located in accordance with guidelines issued by the CDE.
14. (Applies to CCTR, CSPP, CHAN, CMIG, and CFCC) Interest on private sector debt financing for purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased for providing center-based care upon demonstration that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
15. Payments to providers made in accordance with applicable state laws and regulations.
16. (Applies to C2AP, C3AP, CAPP, CMAP, CFCC) Support services as specified in the FT&C section *Definitions*.

Nonreimbursable Costs

(EC 8261, 8269 and 5 CCR 18035)

The following costs shall not be reimbursable under the early learning and care contract:

1. Bad debts, including losses arising from uncollectible accounts and any related legal costs. (Uncollected parent fees are not considered to be bad debts if documentation of collection attempts exists.);
2. Contributions;

3. Costs of amusement or entertainment;
4. Costs of fines or penalties;
5. Costs of idle facilities unless those costs are related to a partial year program and the costs of the idle facilities have been approved by the CDE;
6. Costs incurred after the contract has been terminated;
7. Fund raising costs except as specified in 5 CCR 18277;
8. Interest expenses except:
 - a. Interest on borrowed funds when apportionments are withheld because of a delay or error attributable to the state and the amount of interest claimed is approved by the CDE.
 - b. When interest is part of a lease purchase agreement.
 - c. When the interest is part of payments on a loan incurred to acquire, rehabilitate or construct licensable facilities, not to exceed fair market rents existing in the community in which the facility is located.
 - d. When the interest is on private sector debt financing for the purchase, lease-purchase, repair or renovation of early learning and care facilities owned or leased by the contractor, and it has been demonstrated that the amount of interest paid in a year does not exceed the value obtained by the state in the use of the facilities for the early learning and care program during the year in accordance with guidelines issued by the CDE.
9. Investment management costs;
10. Costs of organization of a nonprofit corporation such as incorporation fees or consultant fees;
11. Public relations consultant fees;
12. Costs of legal, consulting and accounting services incurred in prosecution of claims against the state;
13. State and federal income taxes;
14. Costs for the acquisition of sites and buildings except through depreciation;
15. Bonuses, unless part of a collective bargaining agreement;
16. Compensation to the members of the board of directors except for:
 - a. Reimbursement for travel and/or per diem, computed in accordance with Costs for Travel and Per Diem, incurred while the members are conducting business for the

organization

b. As provided in the California *Corporation Code* Section 5227, et seq.

17. Costs of subcontracts, which increase the contractor's cost or subcontracts, which contain a provision for reimbursement for cost-plus-a-percentage-of-costs;
18. Costs incurred in prior or future years, with the exception of the cost of an annual independent audit, which may be claimed either in the contract period which was the subject of the audit, or during the contract period in which the audit is completed;
19. Costs that are not adequately documented.

Charging of Expenditures

(EC 8261, 8269 and 5 CCR 18037)

Net reimbursable program costs must be incurred during the contract period. Contractors shall not use current year contract funds to pay prior or future year obligations. However, the cost of the annual independent audit may be claimed either in the contract period which was the subject of the audit or during the contract period in which the audit is completed.

Recoupment of Advanced Contract Funds

(EC 8261, 8265, 8269 and 5 CCR 18038)

The CDE shall recoup any payments made for costs which were not reasonable and necessary. The amount recouped shall be the excess payment over the reasonable or fair market value, or one hundred percent (100%) of the cost, if the cost was not necessary. The CDE may elect to recover any costs associated with recouping advanced contract funds, including collection services or attorney fees.

Use of Subsidized Family Fees

(EC 8235, 8261, 8269, 8273, 8273.1, and 5 CCR 18039)

(Applies to C2AP, C3AP, CAPP, CCTR, CFCC, CHAN, CMAP, CMIG, CSPP) Fees received from subsidized parents are to be expended and earned by the contractor before contract funds shall be claimed for reimbursement.

(Applies to CCTR, CSPP, CHAN, CMIG) Such fees shall be expended on reimbursable costs and earned by providing child days of enrollment. In order to be reimbursed the full contract amount, in addition to the fees received from subsidized parents, the contractor must have additional reimbursable expenditures and provide child days of enrollment beyond the minimum required by the contract. Notwithstanding any other law, commencing with the 2014–15 fiscal year, family fees shall not be assessed for families enrolled in the part-day California preschool program. (EC 8273.1)

Determination of Reimbursable Amount

(EC 8261, 8269 and 5 CCR 18054)

CCTR, CSPP, CHAN, CMIG contractors shall be reimbursed for an audited claim that is the least of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract;
2. The actual and allowable net costs; or
3. Contract service earnings – The adjusted child days/hours of enrollment for certified children, pursuant to EC 8265.5 and 8266.1, times the contract rate per child day/hour of enrollment, times the actual percentage of attendance plus five percent (5%), but in no case to exceed one hundred percent (100%) of enrollment.

C2AP, C3AP, CAPP, CMAP contractors shall be reimbursed for an audited claim that is the least of the following:

The maximum reimbursable amount as stated in the annual early learning and care contract; or

1. The amount earned, which are reimbursable expenditures of:
 - a. Direct payments to providers, (which consist of the rate charged by the provider in accordance with applicable statutory and regulatory provision, not to exceed the Regional Market Rate Ceiling), and which includes family fees for certified children and interest earned on advanced contract funds; and
 - b. Actual administrative and support costs related to early learning and care services provided, which combined cannot exceed seventeen and one half percent (17.5%) of the total contract amount, and no more than fifteen percent (15%) may be for administrative costs alone.

CFCC contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual child development contract; or
2. The amount earned which is defined as net reimbursable program costs, of which at least seventy percent (70%) must be payments for direct services, not more than thirty percent (30%) may be for support services and administrative costs together, and no more than fifteen percent (15%) may be for administrative costs alone.

CRRP contractors shall be reimbursed for an audited claim that is the lesser of the following:

1. The maximum reimbursable amount as stated in the annual early learning and care contract; or

2. The actual and allowable net costs.

Minimum Days of Operation

(5 CCR 18055)

If the contractor fails to operate at least ninety-eight percent (98%) of the minimum days of operation required in its contract, ceases operation or the contract is terminated prior to the end of the contract period, the maximum reimbursable amount shall be reduced in proportion to the percentage of the contract minimum days of operation that the contractor was not in operation.

Reduction, Withholding, and Canceling Apportionments to Contractors

(EC 8261, 8269 and 5 CCR 18056)

The CDE shall reduce, withhold or cancel any scheduled apportionment when one (1) or more of the following conditions exist:

1. The contractor has not submitted an acceptable audit for any prior year of operation on or before the date due.
2. The contractor has not submitted the required reports on or before the date due.
3. The contractor will not earn the full contract amount based on the current year projected and the prior year actual net reimbursable program costs as determined by the CDNFS.
4. A creditor of the contractor has placed a lien on the contractor's scheduled apportionments.
5. The contractor has accounts payable which are:
 - a. More than ninety (90) days delinquent to the CDE and
 - b. Not the subject of an appeal
6. If any apportionment is to be reduced, withheld or cancelled, the CDE shall provide the contractor prior written notice of the intended action.

Order of Expenditure

(5 CCR 18057)

Expenditures from the Child Development Fund shall occur in the following order:

1. Fees collected from parents of certified children shall be first in and first out;
2. State or federal contract funds apportioned by the CDE shall be second in and second out; and

3. Interest received on advanced contract funds shall be last in and last out.

VI. ACCOUNTING AND REPORTING REQUIREMENTS

A. General Provisions

(EC 8261 and 5 CCR 18063)

Contractors shall follow the accounting procedures specified in the most recent edition of the *California School Accounting Manual*. Contractors shall report revenue and expenditures on an accrual basis. The School Accounting Manual specifies that under an accrual basis of accounting, revenues are recorded when earned and expenditures are recorded when a liability is incurred, regardless of when the receipt or payment of cash takes place.

Child Development Fund and Interest Bearing Accounts

(5 CCR 18064)

All contractors shall establish a fund to be known as the "Child Development Fund" as specified in EC 8328, except that private contractors shall establish the fund in a federally insured banking institution located in California. Contractors with multiple fund sources shall establish separate program cost accounts for each source of funds pursuant to EC 8261 and 8269; 5 CCR 18064 (a) (b).

If a contractor places advanced contract funds in an interest bearing account, the interest bearing account shall be a separate account within the Child Development Fund. Interest earned shall be retained by the contractor if it is expended on reimbursable costs and earned by providing subsidized child days of enrollment, beyond the minimum required to earn the maximum reimbursable amount, at a rate equal to the lesser of the daily contract rate or the actual program costs, pursuant to EC 8261 and 8269; 5 CCR 18064(c).

Enrollment and Attendance Accounting

(EC 8221.5, 8261, 8269 and 5 CCR 18065)

1. A child shall not be enrolled in more than one program for the same time period on the same day.
2. CCTR, CSPP, CHAN, and CMIG contractors shall use daily sign-in/sign-out sheets as a primary source document for audit and reimbursement purposes.
 - a. On a daily basis, one of the following persons shall enter the time of arrival and departure on a sign-in/sign-out sheet and shall sign the sheet using their full signature for both arrival and departure times:
 - i. The parent or other adult authorized by the parent to drop off/pick up a child; or

- ii. The staff person designated by the contractor as the person responsible for entering the times of arrival and departure if the child is not dropped off/picked up by a parent or other adult authorized by the parent.
 - b. First and last initials of the contractor's authorized representative, along with a notation of the time, are required to be documented when a school-age child departs for and returns from school during the day.
3. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall use the monthly attendance record or invoice as the primary source document for audit and reimbursement purposes.
- a. Child care providers shall submit a monthly attendance record or invoice, for each child who received services, Child care providers shall maintain attendance records or invoices in the original format in which they were created.
 - b. The monthly attendance record or invoices shall include, at a minimum:
 - i. The dates and actual times the child entered and left care each day. This information shall be documented on a daily basis.
 - ii. The signature of the parent or guardian, the name of the child receiving services and signature of the child care provider attesting under penalty of perjury that the information included on the monthly attendance record or invoice is true and accurate.
 - c. Contractors shall reimburse child care providers based on the following criteria:
 - i. The hours of service provided that are broadly consistent with the certified hours of need.
 - ii. For families with variable schedules, the actual days and hours of attendance, up to the maximum certified hours.
 - iii. For license-exempt providers that provide part-time services, the actual days and hours of attendance up to the maximum certified hours.
 - iv. Contractors shall reimburse providers within 21 calendar days of the receipt of a complete invoice for services (CCGDB 98.45(l)(1)).

Attendance and Absences

(5 CCR 18066)

(Applies only to CCTR, CSPP, CHAN, CMIG)

Attendance, for the purposes of reimbursement, includes excused absences because of illness or quarantine of the child, illness or quarantine of their parent, family emergency, court-ordered visitations or a reason which is clearly in the best interest of the child.

If the absence is claimed by the contractor as an excused absence, the attendance accounting records shall contain verification including:

1. The name of the child;
2. The date(s) of absence;
3. The specific reason for the absence; and
4. The signature of the parent or the contractor's authorized representative if verification is made by telephone.

If an excused absence is based on time spent with a parent or other relative as required by a court of law, the family data file shall contain a copy of the Court Order.

Contractors shall adopt reasonable policies delineating circumstances that would constitute an excused absence for "family emergency" and "in the best interest of the child."

Except for children who are recipients of protective services or at risk of abuse or neglect, excused absences "in the best interest of the child" shall be limited to ten (10) days during the contract period.

Contractors shall not disenroll any family due to excessive absences, except in circumstances of abandonment of care described in the Implementation Guidance section 18066.5.

Abandonment of Care

(Implementation Guidance Section 18066.5)

For purposes of abandonment of care, a "provider" is any person or entity that is contracted or reimbursed to provide subsidized early learning and care services. This may include, but is not limited to, an Alternative Payment Program provider, family childcare home provider, eligible license-exempt provider, or contractor that provides subsidized early learning and care services directly to children.

When the family has not been in communication with the provider for seven (7) consecutive calendar days and has not notified the provider of the reason the family is not using services, the provider shall promptly notify the contractor.

Using the contact information on file, the contractor shall attempt to contact the parent through a variety of communication methods. At least one communication attempt shall be in writing, which may be through electronic methods. The contractor shall keep documentation of all communication attempts, including a copy of all written communication, in the family data file. The contractor shall inform the parent in these communications that failure to communicate with the contractor or provider may result in termination of early learning and care services.

The contractor shall issue a notice of action to disenroll the family on the basis of abandonment of care when there has been no communication with the provider or the

contractor for a total of 30 consecutive calendar days.

General Record Keeping Requirements

(EC 8227.3, 8262.1, 33421 and 5 CCR 18067)

1. Pursuant to EC 33421, all records shall be retained by each contractor at least five (5) years or where an audit has been requested by a state agency, until the date the audit is resolved, whichever is longer. Claims for reimbursement shall not be paid unless there are documents to support the claims. The contractor has the burden of supporting claims for reimbursement.
2. Pursuant to EC 35254, public contractors must ensure that no original records be destroyed prior to the second July 1st succeeding the completion of the audit.
3. All CDE contractors and providers providing early learning and care services to eligible families, may maintain records electronically and are authorized to convert records from a paper format to an electronic format, in compliance with state and federal standards as determined by the CDE (EC 8227.3 and 8262.1).
4. If the contractor has more than one (1) CDE program, then the method used to allocate administrative costs must be documented.
5. Contractors are required to maintain records to support salaries and benefits charged to early learning and care programs in accordance with the *California School Accounting Manual*.
6. State employees or representatives shall be allowed access to all program related or fiscal records during normal work hours. (EC 33421 and 5 CCR 18301(4))

Attendance and Expenditure Reports

(Applies to CCTR, CSPP, CHAN, CMIG) (EC 8261, 8269, 8406.6 and 5 CCR 18068)

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative attendance and fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Days of enrollment, as indicated on the family's Notice of Action, for all children served in the program in the current reporting period and year to date.
2. Days of attendance, per the child's sign in and out records and other accompanying attendance records, for all children served in the program in the current reporting period and year to date.

3. Total days of operation in the current reporting period and year to date.
4. All services, revenues and expenditures for both subsidized and non-subsidized children, if non-subsidized and subsidized children are commingled as defined in Section I above.
5. Amount and sources of all revenues, including restricted and unrestricted income utilized for the child development program, other than advanced contract funds for the current reporting period and the year-to-date.
 - a. Restricted income that is not expended during the contract period remains restricted and shall be considered deferred revenue and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
6. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes, as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR Section 18056.

Contractors on conditional status or provisional status shall report monthly.

The report shall include a certification that the information contained in the report is correct and complete and the original signature, or digital signature where applicable, of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the audit submission due date to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Alternative Payment and CFCC Expenditure Reports

(Applies to C2AP, C3AP, CAPP, CMAP, CFCC)

C2AP, C3AP, CMAP, and contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). Multi-year CAPP contractors shall report monthly (due to CDNFS by the 20th of the following month) for the first fiscal year of the contract. CAPP contractors who continue to expend funds in the second year, shall report monthly until funds are fully expended. CFCC contractors on clear status shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. All reports must be submitted strictly through the internet via CDE's official Web site. Reports not received by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract:

1. Amount and sources of all revenues, other than advanced contract funds for the current reporting period and year-to-date, restricted and unrestricted income shall be reported as follows:
 - a. Restricted income expended during the contract period shall be reported as “restricted.” Restricted income that is not expended during the contract period remains restricted and shall be considered “deferred revenue” and is not reported on the Attendance and Expenditure Reports until expended, at which time it is reported as restricted income.
 - b. All unrestricted income shall be reported as “unrestricted.”
2. Total expenditures related to the program operation for the current reporting period and the year-to-date total, including all expenses for specific purposes as designated by restricted income and all non-reimbursable expenses.

Reports not received by the due date shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

3. Total Days of Operation

C2AP, C3AP, CAPP, CMAP, CFCC will include the Days of Operation in the current reporting period and year to date.

Caseload Reports

(Applies to C2AP, C3AP, CAPP and CMAP)

1. In addition to submitting a monthly expenditure report, C2AP, C3AP, CAPP and CMAP contractors shall submit an Alternative Payment/CalWORKs Caseload Report(s) on a monthly basis. Caseload reports shall be submitted strictly through the internet via CDE’s official Web site and are due to CDNFS by the 20th of the following month. Caseload reports not received by CDNFS by the 20th of the month, following the end of the contractor’s reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report(s) is received.
 - a. If a contractor provides services in more than one (1) county, the contractor is required to submit a separate CalWORKs Caseload Report for each county in which services are being provided.
 - b. CalWORKs Caseload Reports shall represent actual service and expenditure data for the report month.

- c. Each report shall include a certification of the person authorized by the contractor that the information contained in the report is correct and complete.

CRRP Expenditure Reports

5 CCR 18068

Contractors on conditional and provisional status shall report monthly (due to CDNFS by the 20th of the following month). All other contractors shall submit four (4) cumulative fiscal reports to CDNFS for the quarters ending September 30, December 31, March 31, and June 30. Reports not received in CDNFS by the 20th of the month, following the end of the contractor's reporting period, shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.

Contractors shall submit reports containing the following information for each contract to the CDNFS:

1. Total days of operation in the current reporting period and year to date;
2. Amount and sources of all revenues, other than advanced contract funds, for the current reporting period and the year-to-date total;
3. Total expenditures related to the program operation for the current reporting period and the year-to-date total.

The report shall include a certification that the information contained in the report is correct and complete and the original signature of the person authorized by the contractor to certify the report.

Contractors have sixty (60) days from the due date for submission of the audit to submit a revised final fiscal report. For local educational agencies, the final report shall be the final accounting of any amount payable to or receivable from the contractor pursuant to this contract.

Service Data Report for Resource and Referral Programs

(5 CCR 18069) (Applies to CRRP)

Contractors shall submit reports to the CDE which contain the following data at intervals specified above.

1. Number of requests for general child care information and child care referrals;
2. Age categories of child care requests and referrals:
 - a. Infant (birth to eighteen months);
 - b. Toddlers (eighteen months to thirty-six months);
 - c. Preschool (three years to kindergarten enrollment; and

- d. School age (kindergarten enrollment to age 14).
- 3. Time categories of child care referrals:
 - a. Full-time;
 - b. Part-time.
- 4. Number of children needing:
 - a. Before and/or after school;
 - b. Summer only child care;
 - c. Other child care (evening, overnight, weekends, drop-in, etc.).
- 5. Reasons for requesting referrals:
 - a. Employed;
 - b. Looking for work;
 - c. In school/training;
 - d. Other parental needs;
 - e. Child protective services (CPS)/respite referral;
 - f. Alternative/back-up care;
 - g. Mildly ill child;
 - h. Enrichment and/or development.
- 6. Number of:
 - a. Licensed child care centers;
 - b. Licensed family day care homes;
 - c. License-exempt child care centers

Other license-exempt providers (optional). Penalties for delinquent reporting are specified

Child Development Data Collection

(5 CCR 18070)

The contractor shall submit the following:

Monthly Child Care Population Information (CDD-801A) submitted electronically in accordance with instructions from the CDE.

If the contractor is selected and notified by mail to submit sample data, they must complete the Child Development Data Collection Sample Report (CDD-801B) electronically in accordance with the instructions from the CDE.

Contractors shall submit complete, accurate reports to the CDE by the date specified, and in the format specified in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required date, shall be considered delinquent. Penalties for delinquent reporting are specified in 5 CCR 18056.

Other Report Data

(5 CCR 18070)

Contractors shall submit statistical, cost and program data as requested by the CDE in order for the CDE to prepare various legislatively mandated reports, to meet state and federal reporting requirements and for the effective administration of early learning and care programs.

Contractors submitting data to the CDE will include a certification that the data are correct and complete, and the signature of the person authorized by the contractor to certify the data. The signature may be electronic as specified by the CDE.

Contractors shall submit complete, accurate data to the CDE by the date specified, and as specified, in the CDE's request for this information. Incomplete, inaccurate, or incorrectly formatted reports, and reports not received by the required due date shall be considered delinquent. Penalties for delinquent reporting are specified.

Building a Better Early Care and Education System (BBECES)

(Applies to all contract types that provide care through family child care homes and/or through individual licensed-exempt providers)

(EC 8430-8432; Civil Code 1798.17; 42 US 9858c(2)(D) and (U); 45 CFR 98.16(aa), 98.33 and 98.42)

“Family childcare provider” or “provider” for purposes of implementation of Section VI(M) of these Funding Terms and Conditions means a childcare provider who participates in a state-funded early care and education program and is either of the following:

(A) An individual who operates a family daycare home, as defined in Section 1596.78 of the Health and Safety Code, and who is licensed pursuant to the requirement in Section 1596.80 of the Health and Safety Code.

(B) An individual who provides early care and education in their own home or in the home of the child receiving care and is exempt from licensing requirements pursuant to Section 1596.792 of the Health and Safety Code. *EC 8431 (a)(1)*

1) Submission and Disclosure of Child Care Provider Information

Contractors are required to collect and submit to the CDE, or its designee, as required by law, the following information for all licensed family child care home providers and individual licensed-exempt child care providers providing subsidized child care services and in conformance with the format, timeline and manner prescribed by the CDE, and in accordance with the BBECES:

- a) Name of child care provider (excluding volunteers and assistants)
- b) Mailing address of provider
- c) Home address of provider
- d) County of provider home address
- e) Email Address of provider, if known
- f) Cell, Work and Home phone numbers of provider, if known
- g) Whether provider Is licensed or not, and, if licensed, the license number
- h) The date subsidized care began
- i) The date subsidized care ended, if applicable
- j) Agency, contractor, subcontractor, or political subdivision administering the program

The information collected from family child care providers, as defined, may be re-disclosed by the CDE to provider organizations as defined in law as well as other state agencies as permitted by law for purposes of organizing, representing, and assisting family child care providers, as well as for purposes of emergency response planning and monitoring health and safety requirements to comply with Child Care and Development Block Grant requirements.

Contractors shall not delay or obstruct the collection of the provider information.

Contractors must notify family child care providers in writing of the collection and use of the information in order to comply with applicable laws, including the Information Practices Act.

Upon learning that a family child care provider will no longer receive a subsidized child care payment, contractors shall, as required by law and in conformance with the format, timeline and manner prescribed by the CDE, inform the CDE of the date the provider ended subsidized care.

2) Notices and Communications

Contractors are required to distribute to providers and/or post on their website all notices and communications as may be required by the BBECES or any applicable Memorandum of Understanding.

3) Reimbursement

Contractors are required to deduct from reimbursement any dues as requested by a certified provider organization. The deductions may include membership dues, initiation fees, general assessments, and payment of any other membership benefit program sponsored by the certified provider organization.

If the deductions from a provider's subsidy payments required action by more than one contractor, the certified provider organization shall establish reasonable procedures to ensure that the total amount deducted does not exceed the total dues and other voluntary deductions owned by that provider.

A contractor must rely on a certification from the certified provider organization requesting a deduction that it has and will maintain an authorization, signed by the individual provider from whose subsidy the deduction is to be made. A certified provider organization that certifies that it has and will maintain authorization shall not be required to provide a copy of an individual authorization to the entity unless a dispute arises about the existence or terms of the authorizations.

4) Memorandum of Understanding

Must adhere to any requirements that bind contractors in any applicable memorandum of understanding

5) Interference

Contractors are prohibited from interfering with the right of providers to collectively bargain and further prohibited from deterring or discouraging providers to join the union

6) Training Partnership

Contractors must notify the certified provider organization of orientations, preservice meetings, meetings, and trainings, either in-person or online, and allow representatives from the certified provider organization to present at the orientations and training as permitted under the BBECES or as provided for in any applicable memorandum of understanding.

Annual Financial and Compliance Audits

(5 CCR 18071 and EC 8224)

Contractors shall submit to the CDE, Audits and Investigations Division (A&I), an acceptable annual financial and compliance audit as follows:

1. The audits for school districts and county offices of education for the contract period shall be submitted to the State Controller and the CDE by December 15, in

accordance with EC 41020 and extensions shall only be granted in accordance with EC 41020.2.

2. The audit reports for community colleges are due to CDE by December 31.
3. All other contractors shall submit their annual audit to CDE by the 15th day of the fifth month following the end of the contractor's fiscal year, or earlier if specified by CDE. The audit report must meet the requirements of the Audit Guide, including the requirements for early learning and care specific supplementary information. If a contractor receives less than twenty-five thousand dollars (\$25,000) per year from any state agency, the audit shall be conducted and submitted biennially, unless the CDE deems there is evidence of fraud or other violation of state law in connection with the contract. If the contract is terminated during the contract period, then the audit required under this paragraph shall cover the period from the beginning of the contract through the date of termination.

All audits shall be performed by one of the following:

1. A Certified Public Accountant who possesses a valid license to practice within the State of California;
2. A Public Accountant licensed on or before December 31, 1970 and currently certified and licensed by the State of California;
3. A member of the CDE's staff of auditors.
4. Public contractors may have their audits prepared by in-house auditors or internal audit staff that performs auditing functions and meets the tests of independence found in the Government Auditing Standards, issued by the Comptroller General of the United States.

Any contractor who subcontracts their early learning and care services to another entity (see "Subcontract for early learning and care services" in Definitions) is required to submit an audit report that complies with the *Audit Guide* for their subcontractor(s) as well as for their agency.

Private agencies (including proprietary entities) that expend seven hundred fifty thousand dollars (\$750,000) or more in total federal funds are required to have an Organization Wide Audit (OWA) performed in accordance with the *Uniform Guidance* and the *Audit Guide*.

Governmental and other public agencies (excluding school districts, county offices of education and community college districts) must comply with the requirements of the *Uniform Guidance* and the *Audit Guide*. All other agencies (excluding school districts, county offices of education and community colleges) must submit a contractor audit performed in accordance with the *Audit Guide*.

The audits for Alternative Payment Programs (APs) shall include, but not be limited to, a

sampling of the evidence of fees charged to, and paid by, families of non-subsidized children, the daily enrollment of subsidized children, the number of days of service provided to subsidized children, the assessment and collection of parent fees, and the availability of support services to subsidized children and their families as needed pursuant to the terms of the contract.

Review of Audit by the CDE Audits and Investigations Division (A&I)

(5 CCR 18072)

The A&I shall conduct a review of the audit to determine whether the audit is acceptable and to determine the contractor's net reimbursable program costs.

The contractor may appeal the A&I findings according to the procedures specified, if the amount of the demand for remittance meets or exceeds the threshold specified in *EC* 8402(a)(3).

Delinquent Audits and One-Time-Only Extensions

(5 CCR 18073)

If an audit is not received on or before the required due date and an extension has not been granted, the audit shall be considered delinquent and all apportionments shall be withheld.

Except for contractors on conditional status, the A&I may annually grant a contractor a one-time-only, thirty (30) calendar day extension of the audit due date provided the inability of the contractor to submit the audit by the due date was beyond the fault and control of the contractor.

Contractors shall be liable for all CDE costs incurred in obtaining an independent audit if the contractor fails to produce or submit an acceptable audit.

California State Auditor

(GC 8546.7)

Contractors shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment under this contract.

Budget and Calendar

Contractors shall submit a revised calendar to the ELCD and CDNFS whenever there are changes to the most recent version submitted. Contractors shall submit revised budgets as requested.

Reserve Accounts

All contractors are encouraged to develop and maintain a reserve within the Child Development Fund. This reserve is derived from earned, but unexpended contract funds.

Reserve account funds are state funds the contractor holds in reserve as deferred revenue until they are properly spent or returned to the CDE.

C2AP, C3AP, CAPP, CMAP, CFCC contractors may retain a reserve balance of up to two percent (2%) of the maximum allowable administration and support costs for the aggregate sum of all alternative payment contracts or one thousand dollars (\$1,000), whichever is greater. *EC 8450 (d)*

CCTR, CHAN, and CMIG contractors may retain a reserve balance equal to five percent (5%) of the sum of the maximum reimbursable amounts of all contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. *EC 8450*

CSPP contractors may retain a reserve balance in a center-based reserve account, separate from reserve funds maintained in a resource and referral reserve account or alternative payment reserve account. The reserve account may be equal to fifteen percent (15%) of the sum of the maximum reimbursable amounts of CSPP, CCTR, CMIG, CHAN contracts to which the contractor is a party, or two thousand dollars (\$2,000), whichever is greater. Of the fifteen percent (15%), ten percent (10%) shall be solely used for the purposes of professional development for CSPP instructional staff. *EC 8450 (b)(2)(B)*

CRRP contractors may retain a reserve balance not to exceed three percent (3%) of the contract maximum reimbursable amount. This reserve is derived from unexpended contract funds. *EC 8450 (c)*

Reserve Account Requirements

The following criteria must be followed when establishing and using any reserve account:

1. Each agency wishing to establish a reserve shall submit a letter of intent no later than July 20 following the close of the fiscal year for which the reserve will be established. The letter of intent must be on the form provided by CDNFS and signed by the executive director (or authorized designee for public agencies).
2. Each reserve must be maintained in an interest-bearing account and the amount of interest earned will be included in the reserve balance.
3. Reserve monies can only be used for expenses that are allowable reimbursable expenses. Transfers from one reserve account type (or category) to another are not allowable. However, transfers to a current-year contract in the same reserve category are allowable and shall be reported as restricted program income on that contract's attendance and fiscal report.
4. Reserve monies are generated from current year contracts, therefore, the transferable amount generated during the contract period will not be available until July 1 of the subsequent fiscal year.
5. Transfers to the reserve will be authorized by CDNFS only once per fiscal year. Upon receipt of the June final report, preliminary reserve amounts will be calculated by

CDNFS and reported to the contractor. If the contractor is an LEA, this may be the official notification provided there are no further amendments. For agencies required to submit an audit to the CDE, the amount will not be final until the audit is closed by the A&I and there are no outstanding billings.

6. Participating agencies must submit a Reserve Account Activity Report with a copy of their supporting General Ledger for each reserve account category type along with their June attendance and fiscal report due July 20. Reports not received in CDNFS by July 20 shall be deemed delinquent and apportionment(s) shall be withheld until the required report is received.
7. Upon closure of a reserve account or termination of early learning and care contracts, all monies in any reserve account shall be returned to the CDE.

VII. TECHNICAL ASSISTANCE

(EC 8406.6)

Technical assistance shall be provided to any contracting agency making a written request to its assigned consultant or administrator within sixty (60) days of receipt of the request.

VIII. CONTRACT CLASSIFICATIONS

A. Clear Contract

(EC 8406.6)

This designation shall be given to a contract that is neither a provisional contract, as described in paragraph (B) nor a conditional contract, as described in paragraph (C).

Provisional Contract

(EC 8406.6 and 5 CCR 18068)

This designation applies to an agency's first contract for any particular service or to the contract of an existing contracting agency for a new, modified, or different type of service. The timeframe of a provisional contract is at the discretion of the CDE and is given to ensure that the contracting agency can demonstrate fiscal and programmatic compliance before the contract is designated as a clear contract. Contractors on provisional status shall submit monthly fiscal and attendance reports to CDNFS. The contract status shall be reviewed annually.

Conditional Contract

(EC 8406.6, 5 CCR 18001, 18068, and 18306)

This designation applies to a high-risk contract awarded to a contracting agency that evidences fiscal or programmatic noncompliance, or both fiscal and programmatic noncompliance.

A contracting agency with one or more contracts designated as conditional is deemed to be on conditional status with the CDE for all early learning and care program purposes and is subject to any restrictions deemed reasonable to secure compliance.

The conditional contract shall include Conditional Status Addendum that contains a bill of particulars detailing the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the agency for clear contract status, and a technical assistance plan.

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of that designation shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in *EC* 8406.7 or 8407, in accordance with Section 8402.

Contractors receiving conditional contracts (stamped on the face sheet of the contract) shall be on conditional status until the CDE issues a contract rider formally clearing the contract.

While on conditional status, the contractor shall submit monthly fiscal and attendance reports to CDNFS. The first monthly report shall include a current inventory of equipment purchased in whole or in part with contract funds.

Contractors on “conditional” status are not eligible to apply for new or additional funds.

Contractors on “conditional” status shall receive technical assistance from the CDE.

IX. APPEALS, TERMINATIONS, AND NON-RENEWALS

(*EC* 8400-8409 and 5 *CCR* 18301, 18302)

A. Resolution of Contract Administration Disputes

(*EC* 8401.5 and 5 *CCR* 18301)

The procedure specified in this Section shall be used to resolve disputes between contractors and the CDE that may arise regarding the interpretation and application of any term or condition of a contract, including, but not limited to, requests for waivers, approval of subcontracts or expenditures requiring approval, requests for reimbursement rate adjustments, or reductions in the total amount of contract reimbursement that are not appealable.

The contractor shall attempt to resolve contract disputes at the lowest staff level within the CDE.

If the dispute is not resolved at the lowest staff level, the contractor may appeal the decision by submitting a written description of the issues and the basis for the dispute to the Regional Administrator of the CDE having jurisdiction over the contractor's service delivery area. The Regional Administrator shall make a determination and shall send a written notification of the decision to the contractor, together with the reasons for the decision, within thirty (30) calendar days of the receipt of the appeal by the Regional

Administrator.

The contractor may appeal the decision of the Regional Administrator to the Associate Director of the ELCD by submitting a written description of the issues in dispute, and a copy of the Regional Administrator's decision. The Associate Director of the ELCD shall send notification of the decision to the contractor and shall specify the reason(s) for the decision within thirty (30) calendar days of the receipt of the appeal by the Associate Director. The decision of the Associate Director of the ELCD shall be the final administrative action afforded the contractor.

B. Independent Appeal Procedures

(EC 8402 and 5 CCR 18301)

Pursuant to the requirements of EC 8400 through 8409, an independent appeal procedure shall be available to any contractor whose contract is terminated, or where the denial of an agency's contracted payment or a demand for remittance of an overpayment is more than twenty-five thousand dollars (\$25,000) or four percent (4%) of a local contracting agency's annual contract, whichever is less.

Such appeals shall be heard by independent hearing officers in accordance with procedures established by the Office of Administrative Hearings (OAH) as specified in California *Code of Regulations, Title 1*, sections 1121 through 1126,

C. Immediate Termination

(EC 8406.7, 8406.9 and 8408)

1. A contracting agency that evidences any of the following acts or omissions may have its contract immediately terminated if there is documented evidence of the acts and omissions, and upon review and recommendation of the general counsel of the CDE for any of the following reasons:
 - a. Fraud, or conspiracy to defraud.
 - b. Misuse or misappropriation of state or federal funds, including a violation of EC 8406.9.
 - c. Embezzlement.
 - d. Threats of bodily or other harm to a state official.
 - e. Bribery or attempted bribery of a state official.
 - f. Unsafe or unhealthy physical environment or facility.
 - g. Substantiated abuse or molestation of children.
 - h. Failure to report suspected child abuse or molestation.

- i. Theft of supplies, equipment or food.
- j. Cessation of operations without the permission of the CDE, or acts or omissions evidencing abandonment of the contract or contracts.
- k. C2AP, C3AP, CAPP, CMAP, and CFCC contractors that fail to fully reimburse a significant number of approved child care providers as determined by the CDE, within fifteen (15) calendar days after the date set in the plan for timely payments to child care providers, adopted by the contracting agency, pursuant to 5 CCR 18226, unless the failure is attributable to a delay in receiving apportionments from the state.
- l. Failure to pay salaries owed to employees, or pay federal payroll tax, for more than fifteen (15) days after the employee salaries, or federal payroll taxes were due, unless the failure is attributable to a delay in receiving apportionments from the state.
- m. Contractors that have in place or who place a person in a position of fiscal responsibility or control who have been convicted of a crime involving misuse or misappropriation of state or federal funds, or a state or federal crime involving moral turpitude, may have its contract terminated if there is documented evidence of the conviction, and upon review and recommendation of the general counsel of the CDE.
For purposes of this section, “position of fiscal responsibility or control” includes any authority to direct or control expenditure of, or any access to, state or federal early learning and care funds received pursuant to this section whether that authority or access is conferred based on the person’s status as an employee, director, manager, board member, or volunteer, or based on any other status.

If the agency provides evidence to the CDE, before the effective date given in the notice of immediate termination, that the convicted person has been removed from the position of fiscal responsibility or control and provides assurance that the person will not be returned to a position of fiscal responsibility or control, the CDE shall withdraw the termination action.

2. A contractor whose contract is immediately terminated retains appeal rights.

Contractors that are the subject of an immediate termination shall not continue to operate during the appeal of termination.

Non-Immediate Termination

(EC 8406.7, 8406.9, 8407 and 5 CCR 18301)

1. In addition to the grounds set forth above in *Immediate Termination*, which also may be the basis for a non-immediate termination, termination of a contract during the contract period may occur when:
 - a. A contractor fails to correct items of fiscal or programmatic noncompliance

within six (6) months of receiving a conditional contract which includes a Conditional Status Addendum stating the specific items of noncompliance and the corrective actions necessary to come into compliance; or

- b. A contractor fails or refuses to make available for examination or copying by an authorized employee of the CDE any records or documents that the contractor is required to retain, upon a request by that employee to examine or copy such records or documents; or
 - c. A contractor refuses to permit an authorized employee of the CDE to enter a facility operated by the contractor during the days and/or hours of operation on file with the CDE, for the purpose of reviewing administrative operations of the contractor or for observing early learning and care services provided by the contractor.
2. Any action by the CDE to terminate a contract, other than to terminate a contract on an immediate basis or to take action to deny the contracting agency more than four percent (4%) or twenty-five thousand dollars (\$25,000), (whichever is less), of an agency's contract or to demand remittance of an overpayment of an agency's contract of more than the same amount, as stated in *EC* 8402(a)(1) through (3), shall be preceded by a ninety (90) day notice of the action, stating the specific reasons for the action and describing the contractor's appeal rights. Except for cases of immediate termination, contractors that are terminated shall be allowed to continue to operate during the appeal of termination.

Appeals Procedures For Independent Appeals

(5 *CCR* 18301 and *GC* 11500)

3. Notice of Defense/Appeal Petition

The contractor shall be served notice of the action as set forth in *EC* 8406 and *GC* 1500 et seq. The contractor may contest the noticed action as set forth in *GC* 11506 by filing a notice of defense/appeal petition with the CDE within fifteen (15) days after service of the action, and may request a hearing before the OAH. The notice of defense/appeal petition shall include:

- a. A clear, concise statement of the action being appealed; and
- b. The name, address and telephone number of the contractor's authorized representative for the proceeding.

In addition, the contractor may also, as part of the Notice of defense/appeal petition:

- a. Object to the action upon the grounds that it does not state acts or omissions upon which the contractor may proceed;
- b. Object to the form of the action on the grounds it is so indefinite or uncertain that the respondent cannot identify the transaction or prepare a defense;

- c. Admit any of the charges in the action in whole or in part;
 - d. Object to the action upon the grounds that, under the circumstances, compliance with the requirements of a regulation would result in a material violation of another regulation enacted by another department affecting substantive rights.
2. Failure To Submit A Timely Notice Of Defense Or Appeal Petition Or Proceed With Appeal

If a contractor is served a notice of action and fails to properly file a notice of defense/appeal petition, or files a notice of defense/appeal petition, but fails to appear at the appeal hearing, action may be taken by the CDE (or by the Administrative Law Judge for failure to appear at the hearing) based upon the contractor's express admissions or other evidence and affidavits without any notice to the contractor. Notwithstanding the default, the CDE or the OAH may, before a proposed decision is issued, grant an appeal hearing on reasonable notice to the parties. If the CDE issues a default decision against the contractor, it must serve notice of that decision on the contractor and the contractor has seven (7) days after service to request that the decision be vacated stating the grounds relied on. The CDE, in its discretion, may vacate the decision and grant a hearing on a showing of good cause.

3. Hearing

If the contractor submits a timely request for a hearing, the CDE shall have ten (10) calendar days to request that the OAH schedule a hearing and transmit the following to the OAH:

- a. The notice of defense/appeal petition submitted to the CDE by the contractor;
- b. The original notice of action sent to the contractor; and
- c. The name, address and telephone number of the CDE authorized representative for the proceeding.

The OAH shall schedule a hearing on the appeal filed by a contractor to commence no later than thirty (30) calendar days following the receipt of the petition by the CDE, but at least ten (10) calendar days' written notice will be given of the time and place of the hearing. An OAH hearing officer will hear evidence submitted by the CDE and the contractor during the hearing. The hearing will be recorded. The hearing officer may continue hearings, if deemed necessary.

4. The Decision

The hearing officer shall issue a final decision, in writing, within thirty (30) calendar days after the submission of the case. The decision shall be sent by registered mail or personally served on the representatives of the parties by OAH. The decision shall be the final administrative action afforded the contractor.

5. Settlement between the Parties

The CDE and contractor may, at any time before or after issuance of a notice of action, agree to a settlement of the actions. The settlement terms, as agreed to by both parties, are to be incorporated into a stipulation and waiver decision that is approved by the CDE agency head or his or her designee and issued by the CDE. The decision shall be the final administrative action afforded the contractor.

6. Request for Additional Written Materials on File at CDE

Contractors may request, in writing, any public documents on which the CDE intends to rely from the CDE files at a cost of fifteen cents (\$.15) cents per page, payable in advance. The CDE will mail the material requested not later than ten (10) days from the receipt of the request.

Contractor's Responsibility After Notice of Termination/Nonrenewal

(5 CCR 18302 and 18054)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. C2AP, C3AP, CAPP, CMAP, and CFCC contractors shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.

The CDE shall only be obligated to compensate the contractor for net reimbursable program costs or earnings, whichever is less, in accordance with this contract through the date of termination. There shall be no other compensation to the contractor. The CDE shall offset any monies the contractor owes against any monies CDE owes under this contract.

X. CONTRACT STATUS CHANGE PROCEDURES

(EC 8401.5 and 8406.6)

A. Administrative Review of Changes in Contract Status

(5 CCR 18303)

Contract performance shall be reviewed at least annually by CDE staff who shall determine by April 1 of each year whether to offer continued funding on a clear contract, continued funding on a conditional basis or to make no offer of continued funding.

If the staff recommends conditional status or no offer of continued funding, the contractor

shall be notified in writing of the reasons for the proposed change in contract status by April 7. The notice of proposed action shall be sufficiently specific to allow the contractor to respond to the factual basis for the proposed action.

If the contractor disagrees with the proposed action, the contractor's response shall be received by the CDE within ten (10) calendar days of receipt of the notice of proposed action. The contractor's response shall include any written materials in support of its position and, if the contractor intends to make an oral presentation, the response shall so specify.

If the action is being appealed, the staff recommendation and the contractor's response shall be reviewed by an administrative review panel convened by the Director of the ELCD within seven (7) calendar days of receipt of the contractor's response. The review panel will consist of representatives of ELCD management, CDNFS, CDE's Legal Office, A&I, Contracts Office, and a representative of an early learning and care service provider familiar with the type(s) of program(s) operated by the contractor.

Upon review of the written submissions, the panel will do one of the following:

1. Issue a final decision upholding or modifying the proposed change in status if no oral presentation has been requested;
2. Schedule a time and place for an oral presentation by the contractor; or
3. Issue a final decision to not change the contract status.

If an oral presentation has been requested, the contractor will be notified by telephone of the time and place of the presentation. The oral presentation will be scheduled no later than fourteen (14) calendar days from receipt of the contractor's response.

At the oral presentation, the contractor or the contractor's representative will have an opportunity to explain any material submitted in its response. While the contractor may present any information or arguments that are relevant to the proposed action, the review panel may set reasonable limits on the scope of the presentation.

Within seven (7) calendar days after the oral presentation, the review panel shall issue and mail to the contractor a decision upholding, reversing or modifying the proposed change in contract status. The decision of the review panel shall be the final action of the CDE with regard to that contract.

Conditional Status Imposed During the Contract Period

(5 CCR 18304)

If the contractor demonstrates fiscal or programmatic noncompliance during the contract period, based on such information as an annual audit report, a FPM/CMR, or a change in licensing status, the CDE may place the contract on conditional status for the remainder of the contract period.

The contractor shall receive notice and may request an administrative review of the

proposed action as required by 5 CCR 18303, in the event such a change in contract status is recommended by staff of the CDE.

If the contract is placed on conditional status during the last ninety (90) days of the contract period and the contractor is offered continued funding, the contract for the subsequent contract period will also be on conditional status.

Conditional Status Addendum

(EC 8406.7, 8406.9, 5 CCR 18305)

If the contractor is placed on conditional status during the contract period a Conditional Status Addendum will be issued by the CDE and the Conditional Status Addendum shall be considered a part of the annual child development contract and binding on the contractor.

A Conditional Status Addendum shall contain a bill of particulars as specified in EC 8406.6, which shall detail the items of noncompliance, the standards that must be met to avoid termination of the contract and to qualify the contractor for clear contract status and a technical assistance plan. The Addendum shall further include all the following:

1. The specific item(s) of noncompliance which the contractor must correct;
2. The specific corrective action(s) which must be taken;
3. The time period within which the contractor must complete the corrections; and
4. Notice that failure to demonstrate substantive progress within six (6) months shall constitute a breach of contract and may result in termination of the contract either through an immediate or ninety (90) day noticed action, or no offer of continued funding.

Duration of Conditional Contract Status

(EC 8406.6(a)(3) and 5 CCR 18307)

Failure to demonstrate substantive progress toward fiscal or program compliance within six (6) months of being on conditional status shall constitute a breach of contract and may subject the contract to termination for any applicable cause specified in EC 8406.7 or 8407 in accordance with EC 8402. Regardless of whether the contractor complies with the terms of the Conditional Status Addendum, the contractor's contract may not be renewed the following year pursuant to the procedures set forth in the FT&C section *Appeals and Termination*.

A contractor with a repayment plan shall remain on conditional contract status and not receive any apportionments until full repayment is made.

A contractor on conditional contract status that is not on a repayment plan shall remain in that status until:

1. The CDE issues written notice to the contractor that the conditional status has been cleared;
2. The contractor is issued a clear contract; or
3. The contract terminates according to its terms.

A contractor may request written verification from the CDE that some of the deficiencies have been corrected even if the contractor will not be removed from conditional contract status.

Contractor's Responsibility After Notice of Termination or Notice of Decision to Make No Offer of Continued Funding

(5 CCR 18302)

After receiving notice of the CDE's decision to terminate the contract or to make no offer of continued funding, the contractor shall submit copies to, or make available for copying by the CDE, all of the following:

1. A current inventory of equipment purchased in whole or in part with contract funds;
2. The names, addresses and telephone numbers of all families served by the contract, all staff members funded by the contract; and
3. Monthly enrollment and attendance reports until the contract is actually terminated or until the final month for which the contractor retains a contract. CFCC contractors and Alternative Payment programs shall also submit the names, addresses and telephone numbers of all providers of subsidized services under the contract.



LOCAL AGREEMENT FOR CHILD DEVELOPMENT SERVICES

DATE: July 01, 2021

CONTRACT NUMBER: CAPP-1000

PROGRAM TYPE: ALTERNATIVE PAYMENT

PROJECT NUMBER: 01-2401-00-1

STATE AGENCY: CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

CONTRACTOR'S NAME: ALAMEDA COUNTY SOCIAL SERVICES AGENCY

This Agreement is entered into between the State Agency and the Contractor named above. The Contractor agrees to comply with the terms and conditions of the CURRENT APPLICATION; the terms and conditions of the most recently-approved county pilot plan for the county where the Contractor provides services under the terms of the pilot plan; the GENERAL TERMS AND CONDITIONS (GTC 04/2017)*; the ALTERNATIVE PAYMENT PROGRAM REQUIREMENTS *; and the FUNDING TERMS AND CONDITIONS (FT&C)*, which are by this reference made a part of this Agreement. Where the GTC 04/2017 conflicts with either the Program Requirements or the FT&C, the Program Requirements or the FT&C will prevail. The Contract must meet the specifications of the ALTERNATIVE PAYMENT PROGRAM REQUIREMENTS except where the ALAMEDA COUNTY PILOT PLAN allows for exceptions.

Funding of this contract is contingent upon appropriation and availability of sufficient funds. This contract may be terminated immediately by the State if funds are not appropriated or available in amounts sufficient to fund the State's obligations under this contract.

The period of performance for this contract is July 01, 2021 through June 30, 2022. For satisfactory performance of the required services, the contractor shall be reimbursed in accordance with the Determination of Reimbursable Amount Section of the FT&C, for the Maximum Reimbursable Amount (MRA) of \$1,985,514.00. During the term of this contract, the MRA may be adjusted through an Allocation Letter issued to the Contractor by State Agency.

DONNA R. ZIEGLER, County Counsel

SERVICE REQUIREMENTS

Operation (MDO) Requirement 250

Any provision of this contract found to be in violation of Federal or State statute or regulation shall be invalid but such a finding shall not affect the remaining provisions of this contract.

Items shown with an Asterisk (*), are hereby incorporated by this reference and made part of this Agreement as if attached hereto. Amendments to any of these asterisked documents during the term of this contract shall be incorporated by reference as of the date issued by State Agency without need for formal amendment. These documents can be viewed at <https://www.cdss.ca.gov/inforesources/cdss-programs/calworks-child-care/child-care-transition>.

STATE OF CALIFORNIA		CONTRACTOR	
BY (AUTHORIZED SIGNATURE)		BY (AUTHORIZED SIGNATURE)	
PRINTED NAME, OF PERSON SIGNING		PRINTED NAME AND TITLE OF PERSON SIGNING	
TITLE		ADDRESS	
Manager or Agent for CDSS		1111 Jackson Street, 1st Floor, Oakland, CA 94607	
AMOUNT ENCUMBERED BY THIS DOCUMENT	PROGRAM/CATEGORY (CODE AND TITLE)	FUND TITLE	
\$ 1,985,514	Child Development Programs	Department of General Services use only	
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT	(OPTIONAL USE)		
\$ 0	See Attached		
TOTAL AMOUNT ENCUMBERED TO DATE	ITEM	CHAPTER	STATUTE
\$ 1,985,514	See Attached		FISCAL YEAR
	OBJECT OF EXPENDITURE (CODE AND TITLE)		
	706		
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO.	B.R. NO.
SIGNATURE OF ACCOUNTING OFFICER		DATE	
See Attached			

CONTRACTOR'S NAME: ALAMEDA COUNTY SOCIAL SERVICES AGENCY

CONTRACT NUMBER: CAPP-1000

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 353,325	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE Federal		
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 13694-2401	FC# 93.596	PC# 000322	
TOTAL AMOUNT ENCUMBERED TO DATE \$ 353,325	ITEM 30.10.020.007 5180-101-0890	CHAPTER B/A	STATUTE 2021	FISCAL YEAR 2021-2022
OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-5050 Rev-8290				

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 350,626	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE Federal		
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 14153-2401	FC# 93.596	PC# 000321	
TOTAL AMOUNT ENCUMBERED TO DATE \$ 350,626	ITEM 30.10.020.007 5180-101-0890	CHAPTER B/A	STATUTE 2021	FISCAL YEAR 2021-2022
OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-5050 Rev-8290				

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 759,608	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE General		
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 23186-2401			
TOTAL AMOUNT ENCUMBERED TO DATE \$ 759,608	ITEM 30.10.020.007 5180-101-0001	CHAPTER B/A	STATUTE 2021	FISCAL YEAR 2021-2022
OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-6040 Rev-8590				

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 366,952	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE Federal		
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 15400-2401	FC# 93.575	PC# 000324	
TOTAL AMOUNT ENCUMBERED TO DATE \$ 366,952	ITEM 30.10.050.007 5180-101-0890	CHAPTER B/A	STATUTE 2021	FISCAL YEAR 2021-2022
OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-5050 Rev-8290				

AMOUNT ENCUMBERED BY THIS DOCUMENT \$ 155,003	PROGRAM/CATEGORY (CODE AND TITLE) Child Development Programs	FUND TITLE General		
PRIOR AMOUNT ENCUMBERED \$ 0	(OPTIONAL USE)0656 25467-2401			
TOTAL AMOUNT ENCUMBERED TO DATE \$ 155,003	ITEM 30.10.020.007 5180-101-0001	CHAPTER B/A	STATUTE 2021	FISCAL YEAR 2021-2022
OBJECT OF EXPENDITURE (CODE AND TITLE) 706 SACS: Res-6040 Rev-8590				

I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.	T.B.A. NO.	B.R. NO.
SIGNATURE OF ACCOUNTING OFFICER	DATE	



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

July 26, 2019

Lorita Riga, Alameda County Pilot Manager
Alameda County General Services
1401 Lakeside Drive, Suite 1116
Oakland, CA 94612

Dear Ms. Riga:

Subject: Alameda County Local Individualized Subsidized Child Care Plan

Thank you for submitting your Alameda County Local Individualized Subsidized Child Care Plan (Pilot) Template modification on June 28, 2019. This letter is to inform you that the California Department of Education (CDE), Early Learning and Care Division (ELCD), is approving the request to incorporate new contractors as participants in the Alameda County Pilot program, effective July 26, 2019.

The following contractors are approved:

- Alameda Family Services, Inc. (CSPP)

Note: A revised participation list will need to be submitted to the CDE by close of business on August 9, 2019. The CDE approves this contractor to participate in the Alameda County Pilot program policies. The Pilot requested this agency join for program policies and elected to not request this agency to participate in the pilot rate reimbursement (PRR) plan.

To clarify the status of Alameda's County Pilot program, listed below are all contractors and contract types authorized to participate in the program, and the policy items they were approved for:

- 24 Hour Oakland Parent-Teacher Children's Center (CCTR, CSPP)
- Ala-Costa Center A Program for The Developmentally Disabled (CHAN)
- Alameda County Social Services Agency (CAPP)
- Alameda Unified School District (CCTR, CSPP)

- Albany City Unified School District (CCTR, CSPP)
- BANANAS, Inc. (C2AP, C3AP, CAPP)
- Bay Area Hispano Institute for Advancement (CCTR, CSPP)
- Berkeley Unified School District (CCTR, CSPP)
- CAPE Inc. (CSPP)
- Castro Valley Unified School District (CSPP)
- Chabot-Las Positas Community College District (CSPP)
- Child Care Links (C2AP, C3AP, CAPP) changed their name to Hively effective 7/1/19
- Child, Family & Community Services Inc. (C2AP, C3AP, CAPP)
- City of Emeryville (CSPP)
- City of Oakland (CSPP)
- Community Child Care Council of Alameda County (4Cs) (C2AP, C3AP, CAPP)
- Emery Unified school District (CSPP)
- Ephesian Children's Center (CCTR, CSPP)
- Fremont Unified School District (CSPP)
- Hayward Unified School District (CCTR, CSPP)
- Kidango, Inc. (CCTR, CSPP)
- Livermore Valley Joint Unified School District (CSPP)
- New Haven Unified School District (CSPP)
- Oakland Unified School District (CCTR, CSPP)
- Peralta Community College District (CSPP)
- Regents of the UC- UC Berkeley (CCTR, CSPP)
- San Lorenzo Unified School District (CSPP)

- Seneca Family of Agencies (CSPP)
- Spanish Speaking Unity Council (CSPP)
- St. Mary's Center (CSPP)
- St. Vincent's Day Home (CCTR, CSPP)
- Supporting Future Growth CDC (CCTR, CSPP)
- The ARC of the East Bay (CHAN)
- The Davis Street Community Center Inc. (C2AP, C3AP, CAPP, CCTR, CSPP)
- The Salvation Army (CCTR, CSPP)
- YMCA of the East Bay (CCTR, CSPP)

All items listed below were previously approved for Alameda:

Request: Alameda County is requesting 12 months of eligibility for seeking employment:

The CDE assumes that "seeking employment" is the same as "job search". Twelve months of eligibility when the need is "job search" was already approved on October 6, 2016.

Request: When a family's only need is either seeking housing or seeking employment, they would receive 6.5 hours instead of 6 hours of services.

The CDE approves families receiving up to 6.5 hours instead of 6 hours of services per day as the local policy, per the *Education Code (EC)*, Section 8340.2, may supersede state law concerning child care subsidy programs with respect to "time limits" and furthermore, approving this local policy does not violate federal law.

Request: The updated family fee schedule which was previously submitted to you.

The new Pilot Family fee schedule you previously submitted is approved. **Please note:** No changes can be made to the family fee schedule, unless you obtain written approval of the CDE.

Based on the letter dated December 17, 2017, Alameda was approved for the following items:

Lorita Riga
July 26, 2019
Page 4

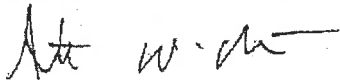
Request: Children enrolled in part-day California State Preschool Programs may be eligible for up to two 180-day periods within a 24-month period without the family being certified as a new enrollment each year (EC 8263)

The CDE approves this item based on the letter to the CDE dated December 17, 2017 requesting part-day CSPP eligibility for 24 months.

The CDE appreciates your strong commitment to Alameda County's children and families and your willingness to work with the CDE Pilot Team to ensure we have information that ultimately will benefit all of California's children and families.

If you have any questions about the information we have requested, please contact us by email at ELCDPilots@cde.ca.gov.

Sincerely,



Stephen Prophet, Associate Director
Early Learning and Care Division

SP:rj

Subsidized Child Care Pilot Plan Template

Proposed Local Policy	What data collected in the "needs assessment" this local policy?	What goal does this meet?	Expected Measurable Outcomes
Eligibility			
1. For purposes of establishing initial income eligibility, "initial income eligible" means that a family's monthly adjusted income is at or below 85%. For example, 85% SMI of the state median income, adjusted for family size (L.C. 8263.1)	Only 37% of families with children under 18 in Sonoma County qualify for subsidized child care with the entry threshold at \$58,524 per year (Addendum A, page 11). The housing wage in Sonoma County is \$5,240. Families earning the housing wage would not qualify for subsidized care at the statewide entry eligibility cutoff (Addendum A, page 14). California Self-Sufficiency Standards put the monthly income to cover child care in Sonoma County at \$7,015, more than \$2,000 dollars over the subsidy eligibility cutoff for Sonoma County (Addendum A, page 14). Almost 20% of Title V subsidized child days of enrollment (36,671 days) were unearned in FY 16-17 for CCTR and CSPP programs in Sonoma County (Addendum A, page 15).	Serve more families who need subsidized care, but are considered too high income for subsidized care by state thresholds but are nevertheless burdened by Sonoma County's high costs to access subsidized care. Maximize earned child days of enrollment and earned direct service contract funds	Number and share of children in subsidized care with family income above the state entry income threshold The aggregate adjusted child days of enrollment among pilot contractors Value and share of unearned direct service contract funds returned to CDE FEED Number and share of unearned child days of enrollment
2. A family shall be considered to meet all eligibility and need requirements for subsidized child development services, for not less than 24 months, except for families seeking employment if applicable (EC 8263 (h)(1))	There was a total of 3,522 children enrolled in subsidized child care and development programs in the county (Addendum B, page 9, 36). In Sonoma County, the FY 16/17 retention rate for children in care is 56%. The average agency retention rate is 35% (Addendum C, "FY2016-17" tab).	Increase the stability of care placements for families.	Time in services and year-to-year retention for children in subsidized care by contract type
3. Children enrolled in part-day California State Preschool Programs may be eligible for up to two 180 day periods within a 24 month period without the family being certified as a new enrollment each year (EC 8263).	There was a total of 3,522 children enrolled in subsidized child care and development programs in the county (Addendum B, page 9, 36). In Sonoma County, the FY 16/17 retention rate for children in part-day CSPP programs is 20%. The average agency retention rate is 19% (Addendum C, "FY2016-17- CSPP Part Day Only" tab).	Increase the stability of care placements for families.	Time in services and year-to-year retention for children in subsidized care by contract type.
4. "Three year old children" means children who will have their third birthday on or before December 1st of the fiscal year in which they are enrolled in a California state preschool program (EC 8208(a))	There is currently a shortage of almost 8,000 child care spaces across all age groups in the County, although there is a surplus of over 600 preschool spaces. The greatest shortages in care are for infants, ages 0 to 2 years. Currently there is a shortage of approximately 2,600 spaces for infants ages 0 to 2 years (Addendum B, page 4, 5, 40). The majority of unearned child days of enrollment were for CSPP, allowing younger children in these programs would free up slots for new families to enter CCTR (Addendum A, page 15).	Serve more families by optimizing the use of CCTR and CSPP slots. Maximize earned child days of enrollment and direct service contract funds.	Number of children born between September 1st and December 1st in CSPP programs The aggregate adjusted child days of enrollment among pilot contractors Value and share of unearned direct service contract funds returned to CDE FEED Number of children who turn 3 years old after December 1st
5. Other children who turn three after December 1st of the fiscal year are allowed to enroll immediately on their third birthday (EC 8208(a))	There is currently a shortage of almost 8,000 child care spaces across all age groups in the County, although there is a surplus of over 600 preschool spaces. The greatest shortages in care are for infants, ages 0 to 2 years. Currently there is a shortage of approximately 2,600 spaces for infants ages 0 to 2 years (Addendum B, page 4, 5, 40). The majority of unearned child days of enrollment were for CSPP, allowing younger children in these programs would free up slots for new families to enter CCTR (Addendum A, page 15).	Serve more families by optimizing the use of CCTR and CSPP slots. Maximize earned child days of enrollment and direct service contract funds.	The aggregate adjusted child days of enrollment among pilot contractors Value and share of unearned direct service contract funds returned to CDE FEED
Fees			
6. The Pilot establishes family fee schedule. Attach documentation and include methodology of revised fee schedule (EC 827.3)			
7. Other fees including, but not limited to family fees, sliding scale fees, and payments for those families not income eligible.			
Reimbursement Rates			

Subsidized Child Care Pilot Plan Template

<p>R For limited English-speaking and non-English speaking children who are 2 years of age through kindergarten age, the adjustment factor shall be 1.1 (EC 8265 5(b)(7))</p> <p>Apply adjustment factor to children less than 2 years old</p> <p>Apply adjustment factor to School age children</p> <p>For seeking permanent housing, services shall occur on no more than five (5) days per week and for less than 32.5 hours per week (SCCR 1809.1)</p>	<p>Access to housing is a major issue in Sonoma County. The FMR in Sonoma County has been rising steadily since 2014. In 2017, Sonoma County's FMR for a 2 bedroom unit was \$1,572 monthly, or \$18,864 annually. Rents are poised to increase at a rate exceeding increases in income given the diminished housing supply (Addendum A, page 12)</p> <p>Santa Rosa, the largest city in Sonoma County, lost nearly 5% of its housing stock in the recent wildfires of October 2017. Families are facing difficulties moving back into neighborhoods affected by the fires, as demand has stretched far past new construction in the region (Addendum A, page 12).</p> <p>Though the total number of homeless individuals in Sonoma County has been steadily decreasing since 2011, falling to 2,835 in 2017, homelessness is projected to have increased due to loss of homes in the wildfires (Addendum A, page 13).</p> <p>In FY 16-17, only 3 children (0.21%) received subsidized child care in Sonoma County due to homelessness or family seeking permanent housing (Addendum A, page 16). In the 2017/2018 school year, 1233 children in Sonoma County were identified as homeless in the public school system in grades TK-5th. (Addendum B). In 2016, the homeless census identified 534 children in grades TK-5th (Kids Data, 2016). (Addendum C). These data show a significant increase in the number of homeless children under the age of 12 in Sonoma County.</p> <p>Although Title 5 providers must accept these families other providers may not accept vouchers to serve children for fewer than traditional full-time hours. There is no specific data on share of providers who are inaccessible to families of this reason. Data to measure this will be collected on approval of this provision. A survey will be developed in September to collect this data and disseminated in the month of October to all child care providers (licensed centers, family child care, and license exempt providers). Survey results will be submitted to the CDE no later than November 1, 2019.</p>	<p>Provide access to care with providers with full time slots</p>	<p>Number of children whose families are homeless or seeking permanent housing</p>
<p>10 For seeking employment services shall occur on no more than five (5) days per week and for less than 32.5 hours per week (SCCR 15056.5)</p>	<p>In FY 16-17, 2.72% of children who received subsidized child care in Sonoma County needed child care due to family seeking employment (Addendum A, page 16).</p> <p>In May 2019 the Employment Development Department Labor Market Information Division indicated a 2.3% unemployment rate representing 5,900 unemployed civilians in Sonoma County (Addendum D). According to the 2013-2017 American Community Survey 5-Year Estimates 4% of the total population (11,128) of unemployed civilians have children under the age of 6 representing 445 civilians (Addendum E). The average family size in Sonoma County is 3.11 (bayareacensus.ca.gov/counties/SonomaCounty) indicating that a minimum of 445 children under the age of 6 live with a parent seeking employment.</p> <p>Although Title 5 providers must accept these families, other providers may not accept vouchers to serve children for fewer than traditional full-time hours. There is no specific data on share of providers who are inaccessible to families of this reason. Data to measure this will be collected on approval of this provision. A survey will be developed in September to collect this data and disseminated in the month of October to all child care providers (licensed centers, family child care, and license exempt providers). Survey results will be submitted to the CDE no later than November 1, 2019.</p>	<p>Provide access to care with providers with full time slots</p>	<p>Number of children whose families seeking employment as their need</p>

Subsidized Child Care Pilot Plan Template

11. The minimum standard reimbursement rate shall be \$52.33 for full day California state preschool programs [FC 8235(b)]	Reimbursement for full day California state preschool programs is \$48.28 per day, about 20% lower than the maximum reimbursement in Sonoma County allowed under the Regional Market Rate survey, despite more rigorous staffing requirements than Title 22 licensed centers. In 2017/18, CSPP contractors earned 178,488 cde out of 237,814 contracted cde. (See Sonoma CSPP Pilot Rate Work Sheet) Reimbursements for CSPP (excluding one multi-county contract) were \$7,139,467 out of \$9,428,268 in contracts, a 24% underreimbursement.	Increase the number of earned child days of enrollment and direct service contract funds Maintain the number of child care contractors	The aggregate adjusted child days of enrollment among pilot contractors Number of contractors in the county Value and share of unearned direct service contract funds returned to CDE EESD
12. The maximum standard reimbursement rate shall not exceed \$11.50 per day for part day California state preschool programs	Reimbursement for part day California state preschool programs is \$29.50 per day, compared to \$11.50 per hour maximum reimbursement for vouchers in Sonoma County based on the Regional Market Rate survey. At the same time, Title 5 providers must meet more rigorous staffing requirements than Title 22 licensed centers.	Increase the number of earned child days of enrollment and direct service contract funds Maintain the number of child care contractors	The aggregate adjusted child days of enrollment among pilot contractors Number of contractors in the county Value and share of unearned direct service contract funds returned to CDE EESD
13. The maximum standard reimbursement rate for all other non-AP programs shall be <insert daily rate> 14. Other reimbursement and/or adjustment factors.			
Methods of Maximizing the Efficient Use of Subsidy Funds			
15. Eliminate the requirement that at least one half of the children enrolled at a preschool site shall be four-year old children [FC 8235(b)]	There are more 3 year olds (5,667) than 4 year olds (4,549) in Sonoma County (Addendum A, page 10). The majority of unearned child days of enrollment were for CSPP; allowing younger children in these programs would free up slots for new families to enter CCTR (Addendum A, page 15).	Serve more families by optimizing the number of slots available in CSPP programs. Maximize earned child days of enrollment and direct service contract funds	Number of 3 year old and 4 year old children in CSPP programs The aggregate adjusted child days of enrollment among pilot contractors Value and share of unearned direct service contract funds returned to CDE EESD

CONTRACTOR CERTIFICATION CLAUSES (CCC 04/2017)

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

<i>Contractor/Bidder Firm Name (Printed)</i> County of Alameda, Social Services Agency		<i>Federal ID Number</i> 94-6000051
<i>By (Authorized Signature)</i> 		
<i>Printed Name and Title of Person Signing</i> Keith Carson, President of the Board of Supervisors		
<i>Date Executed</i> 	<i>Executed in the County of</i> Alameda	

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 11102) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of

Approved as to Form

DONNA R. ZIEGLER, County Counsel

Print Name Samantha Storewak-Hen

any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that Contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lessor of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State. Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

- a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. DOMESTIC PARTNERS: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.

8. GENDER IDENTITY: For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

The following laws apply to persons or entities doing business with the State of California.

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will

process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. **RESOLUTION:** A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. **AIR OR WATER POLLUTION VIOLATION:** Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. **PAYEE DATA RECORD FORM STD. 204:** This form must be completed by all contractors that are not another state agency or other governmental entity.

CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION (CO-005)

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract in the amount of \$100,000 or more on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. CALIFORNIA CIVIL RIGHTS LAWS: For contracts \$100,000 or more, executed or renewed after January 1, 2017, the contractor certifies compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code) and the Fair Employment and Housing Act (Section 12960 of the Government Code); and

2. EMPLOYER DISCRIMINATORY POLICIES: For contracts \$100,000 or more, executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the Fair Employment and Housing Act (Section 12960 of the Government Code).

CERTIFICATION

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.		Federal ID Number 94-6000051
Proposer/Bidder Firm Name (Printed) County of Alameda, Social Services Agency		
By (Authorized Signature)		
Printed Name and Title of Person Signing Keith Carson, President of the Board of Supervisors		
Date Executed	Executed in the County and State of Alameda, California	

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By 

Print Name Samantha Stonework - Hand

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 45 CFR Part 93, "New restrictions on Lobbying," and 45 CFR Part 76, "Government-wide Debarment and Suspension (Non procurement) and Government-wide requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 45 CFR Part 93, for persons entering into a grant or cooperative agreement over \$100,000 as defined at 45 CFR Part 93, Sections 93.105 and 93.110, the applicant certifies that:

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement:

(b) If any funds other than federal appropriated funds have been or will be paid to any person for influencing or attempting to influence an employee of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with this instruction;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by executive Order 12549, Debarment and Suspension, and other responsibilities implemented at 45 CFR Part 76, for prospective participants in primary or a lower tier covered transactions, as defined at 45 CFR Part 76, Sections 76.105 and 76.110.

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 45 CFR Part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610-

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The danger of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will -

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title,

Check [] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 45 CFR Part 76, Subpart F, for grantees, as defined at 45 CFR Part 76, Sections 76.605 and 76.610-

a. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant, and

b. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and contracts Service, U.S. department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3) Washington, DC 20202-4571. Notice shall include the identification numbers(s) of each affected grant.

ENVIRONMENTAL TOBACCO SMOKE ACT

As required by the Pro-Children Act of 1994, (also known as Environmental Tobacco Smoke), and implemented at Public Law 103-277, Part C requires that:

The applicant certifies that smoking is not permitted in any portion of any indoor facility owned or leased or contracted and used routinely or regularly for the provision of health care services, day care, and education to children under the age of 18. Failure to comply with the provisions of this law may result in the imposition of a civil monetary penalty of up to \$1,000 per day. (The law does not apply to children's services provided in private residence, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for in-patient drug and alcohol treatment.)

to: Director, Grants, and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571.

Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency:

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

1111 Jackson Street

First Floor

Oakland, CA 94607

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT (CONTRACTOR) County of Alameda, Social Services Agency	CONTRACT # CAPP-1000-00; Project Number: 01-2401-00-1
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE Keith Carson, President of the Board of Supervisors	
SIGNATURE	DATE

Approved as to Form

DONNA R. ZIEGLER, County Counsel

By

Print Name

[Signature]
Samantha Stenmark - Hand

RESOLUTION

This resolution is adopted in order to certify the approval of the Governing Board to enter into this transaction with the California Department of Social Services for the purpose of providing child care and development services and to authorize the designated personnel to sign contract documents for Fiscal Year 2021-2022.

RESOLUTION

BE IT RESOLVED that the Governing Board of Supervisors of Alameda County

authorizes entering into local agreement number CAPP 1000, Project No. 01-2401-00-1 and that the person/s who is/are listed below, is/are authorized to sign the transaction for the Governing Board.

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
Keith Carson	President of the Board of Supervisors	

PASSED AND ADOPTED THIS _____ day of _____ 2021, by the

Governing Board of Supervisors

of Alameda County, in the State of California.

I, Keith Carson, President of the Board of Supervisors, Clerk of the Governing Board of

Supervisors, of Alameda County, in the State of California, certify that the foregoing is a full, true and correct copy of a resolution adopted by the said Board at a _____ meeting thereof held at a regular public place of meeting and the resolution is on file in the office of said Board.

(Clerk's signature)

(Date)

**RESOLUTION AUTHORIZING THE WAIVER OF THE COUNTY'S
PURCHASING PROCEDURES FOR CHILD CARE AND DEVELOPMENT
SERVICES FOR THE ALAMEDA COUNTY SOCIAL SERVICES AGENCY**

RESOLUTION NUMBER R-_____

WHEREAS, the California Department of Social Services (CDSS) subsidizes childcare services for eligible families through the California Alternative Payment Program (CAPP). Under this program Alternative Payment Child Care and Development Providers (AP) are reimbursed for provided services; and

WHEREAS, priority for services through the CAPP program is given to children who are recipients of child protective services or children identified by the Alameda County Social Services Agency (SSA) or a legal, medical, local educational agency or emergency shelter authority, as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited; and

WHEREAS, the County of Alameda is requesting Board approval to authorize the Board President to execute California Alternative Payment Program Contract No. CAPP-1000-00, General Fund, Project No. 01-2401-00-1, with the CDSS to reimburse the County of Alameda for child care and development services for the contract term of 7/1/21 - 6/30/22, in the contract amount of \$1,985,514; and

WHEREAS, the County of Alameda is requesting Board approval of four Standard Services Agreements to provide child care and developmental services for the contract term of 7/1/21 - 6/30/22, in the amount of \$1,925,949:

- A. Procurement Contract No. 22836 with Community Child Care Council (4Cs) of Alameda County (Principal: Renee Herzfeld; Location: Hayward), in the contract amount of \$456,668;
- B. Procurement Contract No. 22837 with Bananas, Inc. (Principal: Kim Johnson; Location: Oakland), in the contract amount of \$992,757;
- C. Procurement Contract No. 22838 with Hively (Principal: Kelly O'Lague Dulka; Location: Pleasanton), in the contract amount of \$317,682;
- D. Procurement Contract No. 22839 with Davis Street Community Center (Principal: Rose Padilla Johnson; Location: San Leandro), in the contract amount of \$158,841; and

WHEREAS, Hively, 4Cs, Bananas, Inc., and Davis Street Community Center are the only State certified Resource and Referral (R&R) providers and AP contractors in the County of Alameda; and

WHEREAS, the County of Alameda Administrative Code Sections 4.12.010 and 4.12.070 require the solicitation of bids except in unusual cases where the Board of Supervisors has, by resolution, found and determined the public interest would not be served by complying with the bid solicitation process; and

WHEREAS, the Board has determined that Hively, 4Cs, Bananas, Inc., and Davis Street Community Center have the necessary professional qualifications and have demonstrated competence in delivering childcare services; and

WHEREAS, Hively, 4Cs, Bananas, Inc., and Davis Street Community Center are uniquely qualified within the community to serve the targeted population, and the Board has determined that the public interest would not be served by requiring a bid solicitation process in this situation;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The findings stated in the recitals to this Resolution are restated in full and adopted by reference.
2. The requirements in Administrative Code Sections 4.12.010 to .020 for the solicitation of bids are hereby waived for the selection of Hively, 4Cs, Bananas, Inc., and Davis Street Community Center contractors.

Adopted by the Board of Supervisors of the County of Alameda, State of California, on _____, 2021 by the following called vote:

AYES:
NOES:
EXCUSED:

Keith Carson
President of the Board of Supervisors
County of Alameda, State of California

ATTEST:
Clerk of the Board of Supervisors,
County of Alameda

APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

By:_____

DocuSigned by:
By: Samantha N. Stonework-Hand
8834795D688440E...
Samantha Stonework-Hand
Senior Deputy County Counsel