

**City and County of San Francisco
San Francisco Children and Families Commission
1390 Market Street, Suite 318
San Francisco, CA 94102**

Fourth Amendment

THIS AMENDMENT (this “Amendment”) is made as of **May 13, 2015**, in San Francisco, California, by and between **WestEd** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Children and Families Commission (DBA First 5 San Francisco).

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below);

To provide citywide quality rating and program improvement services to early care and education providers

and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the grant term and increase the contract amount;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated **July 12, 2012** between Contractor and City, as amended by the:

First amendment, dated March 15, 2013;

Second amendment, dated September 19, 2013; and

Third amendment, dated May 28, 2014.

1b. Contract Monitoring Division. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

2a. Section 3.2. Section **3.2 Duration of Term** of the Agreement currently reads as follows:

The term of this Agreement shall commence on the later of (a) **JULY 1, 2012** and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on **JUNE 30, 2015**.

Such section is hereby amended in its entirety to read as follows:

The term of this Agreement shall commence on the later of (a) **JULY 1, 2012** and (b) the effective date specified in Section 3.1. Such term shall end at 11:59 p.m. San Francisco time on **JUNE 30, 2016**.

2b. Section 5.1. Section **5.1 Maximum Amount of Grant Funds** of the Agreement currently reads as follows:

In no event shall the amount of Grant Funds disbursed hereunder for Quality Improvement Services exceed **THREE MILLION TWO-HUNDRED AND SEVEN THOUSAND SEVEN-HUNDRED AND SEVENTEEN** Dollars (**\$3,207,717.00**) in the period from **JULY 1, 2012** to **JUNE 30, 2015**, plus any Contingent Funds **authorized** by First 5 San Francisco and **certified** by the Commission of First 5 San Francisco and the Controller's Office.

In no event shall the amount of Grant Funds disbursed hereunder for Quality Rating Services exceed **TWO MILLION NINE-HUNDRED AND TWELVE THOUSAND FOUR-HUNDRED AND EIGHTY-FIVE** Dollars (**\$2,912,485.00**) in the period from **JULY 1, 2012** to **JUNE 30, 2015**, plus any Contingent Funds **authorized** by First 5 San Francisco and **certified** by the Commission of First 5 San Francisco and the Controller's Office.

In no event shall the amount of Contingent Funds disbursed hereunder exceed **SIX-HUNDRED AND TWELVE THOUSAND AND TWENTY** Dollars (**\$612,020.00**) in the period from **JULY 1, 2014** to **JUNE 30, 2015**, **pending availability of funding and subject to authorization** by First 5 San Francisco and **certified** by the Commission of First 5 San Francisco and the Controller's Office.

The maximum amount of Grant Funds and Contingent Funds disbursed hereunder shall not exceed **SIX-MILLION SEVEN-HUNDRED THIRTY-TWO THOUSAND TWO-HUNDRED AND TWENTY-TWO** Dollars (**\$6,732,222.00**) in the period from **JULY 1, 2012** to **JUNE 30, 2015**.

Grantee understands that, of the maximum amount of funds stated under Section 5.1 of this Agreement, **the amount listed as the Contingent Funds will not be available and may not be used in program budgets attached to Appendix B of this Agreement without an approved budget modification by First 5 San Francisco.** Grantee further understands that no payment of

any portion of this contingency amount will be made unless and until such funds are certified as available by First 5 San Francisco and the Controller's Office. Grantee agrees to fully comply with these laws, regulations, policies, and procedures.

Such section is hereby amended in its entirety to read as follows:

In no event shall the amount of Grant Funds disbursed hereunder for Quality Improvement Services exceed **FOUR MILLION FIVE HUNDRED AND FIFTY-TWO THOUSAND EIGHT HUNDRED** Dollars (**\$4,552,800.00**) in the period from **JULY 1, 2012** to **JUNE 30, 2016**.

In no event shall the amount of Grant Funds disbursed hereunder for Quality Rating Services exceed **THREE MILLION NINE HUNDRED AND EIGHTY-FIVE THOUSAND NINE HUNDRED AND TWENTY-FIVE** Dollars (**\$3,985,925.00**) in the period from **JULY 1, 2012** to **JUNE 30, 2016**.

In no event shall the amount of Contingent Funds disbursed hereunder exceed **ONE HUNDRED TWENTY-ONE THOUSAND AND ONE HUNDRED AND FIFTY-TWO** Dollars (**\$121,152.00**) in the period from **JULY 1, 2015** to **JUNE 30, 2016**, **pending availability of funding and subject to authorization** by First 5 San Francisco and **certified** by the Commission of First 5 San Francisco and the Controller's Office.

The maximum amount of Grant Funds and Contingent Funds disbursed hereunder shall not exceed **EIGHT MILLION SIX HUNDRED FIFTY-NINE THOUSAND EIGHT HUNDRED AND SEVENTY-SEVEN** Dollars (**\$8,659,877.00**) in the period from **JULY 1, 2012** to **JUNE 30, 2015**.

Grantee understands that, of the maximum amount of funds stated under Section 5.1 of this Agreement, **the amount listed as the Contingent Funds will not be available and may not be used in program budgets attached to Appendix B of this Agreement without an approved budget modification by First 5 San Francisco**. Grantee further understands that no payment of any portion of this contingency amount will be made unless and until such funds are certified as available by First 5 San Francisco and the Controller's Office. Grantee agrees to fully comply with these laws, regulations, policies, and procedures.

2c. Insurance. Article 10 Insurance is hereby replaced in its entirety to read as follows:

Article 10. Insurance.

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property

Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; policy must include Abuse and Molestation coverage, and

3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

4) Fidelity Bond. Grantee shall maintain throughout the term of this contract, at its expense a blanket fidelity bond covering all officers and employees, including City as additional obligee or loss payee as its interests may appear.

a. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

b. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

c. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

d. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

e. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

2d. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 7.3 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

7.3. Consideration of Criminal History in Hiring and Employment Decisions.

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T

is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 7.3(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement.

The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **the date of this Amendment.**

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

First 5 San Francisco

WestEd



Laurel Klooms
Executive Director




Michael Neuenfeldt
Director of Finance and Contracts

City vendor number: **90618**

Approved as to Form:

Dennis J. Herrera
City Attorney

By:  7/22/15

Virginia Dario Elizondo
Deputy City Attorney