



## Memo

**To:** Commissioners, First 5 Ventura County

**From:** Jennifer Johnson, Director of Operations (On behalf of the Administration/Finance Committee)

**Date:** March 17, 2016

**Re: Recommendation to Update Policy for Granting of First 5 Funding for the Purchase of Fixed Assets and Infrastructure Investments**

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### **Background**

#### *Policy Updates*

Under the Commission's policy for granting of First 5 funding for the purchase of fixed assets and infrastructure investments, a fixed asset or infrastructure investment contract is issued when the investment is over \$5,000 per unit. These contracts are structured as no-interest forgivable loans to ensure the public benefit is provided. Projects with item(s) whose total cost for units purchased exceeds an aggregate amount of \$5,000 are also classified as fixed assets/infrastructure projects under this policy. The attached proposed revision clarifies that the policy shall not apply to equipment and furniture costing less than \$5,000 per unit when budgeted under an existing approved contract, in which case these items are subject to return at termination of the agreement.

Additionally, the proposed revision clarifies that the asset may not be returned. The contract language provides for the return/repossession of the asset only in the case of default.

#### *Contractual Provisions*

The contract language for fixed assets currently provides for the Commission to pay the supplier of the asset directly. This requirement has presented challenges for funded programs and vendors. After conferring with legal counsel, it was determined that funded partners can pay for the asset and this provision can be eliminated (see attached). The Commission will continue to receive copies of actual invoices as back-up documentation.

When the fixed asset is for a modular building, the Commission has allowed the funded partner to relocate to a different building so long as the program is continued at the same or a higher level. This proposed update as attached reflects this option in the contract provisions.

### **Recommendation**

The recommended action is to update the existing fixed asset and infrastructure investment policy as attached to further define the parameters for classifying projects as fixed assets/infrastructure projects and to clarify the provision related to the return of an asset. The recommended action also includes updating the contract provisions as attached.



## Policy for Granting of First 5 Funding for the Purchase of Fixed Assets & Infrastructure Investments

### Scope of Policy:

- This policy ~~should~~shall apply to any entity requesting funding for the purchase of fixed assets or for infrastructure investment projects.
- Infrastructure investment projects are those in which facilities or land is provided by a partner agency for the First 5 funded program, but modifications or upgrades are necessary in order to make it useable to benefit the Commission's target population. These infrastructure investments may include such improvements as: modifications or improvements to playground areas (e.g., resurfacing, installation of tricycle path); installation of child-size bathrooms; or site preparation for a modular building that is being converted to a preschool classroom or family resource center.
- Public benefit of the fixed asset or infrastructure project shall be clearly identified. For new contractors, the public benefit of the project shall be described in the proposal and in the grant agreement. For existing contractors, the public benefit of the project shall be described in the grant agreement.
- This policy ~~should~~shall apply to fixed assets or infrastructure investment projects over \$5,000.

### Policy Guidelines:

- Any funds granted for the purchase of fixed assets or for infrastructure investment projects ~~should~~shall be structured as a no-interest forgivable loan.
- Projects with item(s) whose total cost for units purchased exceeds an aggregate amount of \$5,000.00 shall be considered a fixed asset.
  - This shall not apply to equipment and furniture costing less than \$5,000 per unit that has been budgeted under an existing approved contract.
- For projects where there is a Fixed Asset in connection with an infrastructure investment, the infrastructure costs shall be incorporated into the Fixed Asset contract.
- A portion of the loan amount ~~should~~shall be forgiven for each year the grant recipient remains in business, and continues operation of the program for which the asset was purchased or the infrastructure investment was made, as follows:
  - **FIXED ASSETS:**
    - Loan amounts ~~should~~shall be forgiven based on the useful life of the asset, as determined by IRS guidelines. Any property that does not have an established "class life", shall be 7 years, per the IRS guidelines.

- The maximum time for the forgivable loan shall be 10 years.
- **INFRASTRUCTURE INVESTMENTS:**
  - Loan amounts \$50,000 and under ~~should~~shall be forgiven at the rate of \$5,000/year.
  - Loan amounts over \$50,000 ~~should~~shall be forgiven at the rate of 10% per year, unless otherwise determined by the Commission. At its sole discretion, the Commission may require collateral to be secured for loans over \$50,000.
- If the grant recipient ceases operations (of their business or the program for which the asset was purchased) prior to the loan being fully forgiven as specified above, repayment of the remaining grant funds will be required. ~~or, in the case of a fixed asset, return of the asset.~~
  - In the case of infrastructure investment projects, in order to satisfy the debt the Commission may look to any collateral that had been required to secure the loan.
- The Commission may seek the services of a third-party for the up-front evaluation of the loan request, in accordance with established guidelines. Potential third parties might include a credit union, local banks or the Ventura County Community Foundation.
- Final approval shall rest with the Commission for new contractors, in accordance with the Commission's procurement policies. For existing funded programs, whereby the request facilitates implementation of the approved scope of work and is within the approved budget, approval for requests up to \$50,000 shall rest with the Executive Director, and approval for requests over \$50,000 shall rest with the Commission.
- Once the loan is approved, Commission staff will do on-going monitoring of the project and loan.

**Fixed Asset Contract Provisions**

*Initial Section (establishes public purpose)*

**WHEREAS**, COMMISSION selected CONTRACTOR, after a public request for proposals process, to render certain services, in particular to operate the {Name of Program}, hereinafter called "**Program**" for fiscal year 20XX-XX;

**WHEREAS**, COMMISSION has determined {quality child care is vital to assuring school readiness for children and that there is a shortage of affordable child care in Ventura County and, therefore, a public purpose is served through increasing child care options for the parents and children of this county.}

*Contract Language for Real Property*

**4.12 FIXED ASSET PROVISION.** Fixed assets are those tangible assets of significant value having a utility which extends beyond the current year that are broadly classified as land, buildings and improvements, and equipment. Significant value is defined as a cost of \$5,000.00 or more.

4.12.1 COMMISSION shall structure grant funds for the purchase of fixed assets of \$5,000.00 or more as a no-interest, forgivable loan. COMMISSION shall consider those items costing less than \$5,000.00 per unit, but whose total cost for units purchased for the Program exceeds an aggregate amount of \$5,000.00, to qualify for this provision.

4.12.2 COMMISSION shall forgive a portion of the loan amount for each year CONTRACTOR remains in business and continues operation of the Program for which the fixed asset was purchased as follows:

4.12.2.1 The loan amount of {\$xx,xxx for Name of Program shall be forgiven at the rate of \$x,xxxx per year for xx years}

4.12.3 **DEFAULT.** In the event CONTRACTOR, prior to the loan being forgiven in full, violates the provisions of this contract, including significantly reducing or ceasing the operation of the Program for which the asset was purchased, then CONTRACTOR will (1) repay the remaining unforgiven portion of the loan, and (2) pay interest on the remaining unforgiven portion of the loan at a yearly rate of 6.5 percent, compounded daily, calculated from the date of this contract. The repayment and the interest shall be due within 30 days following CONTRACTOR'S cessation of the program.

4.12.4 CONTRACTOR agrees to execute a Deed of Trust, granting and conveying to (the Trustee), in trust, with power of sale, the following property located in Ventura County, California:\_\_\_\_\_. Contractor agrees to name the Children and Families First Commission of Ventura County as the beneficiary of the Deed of Trust.

4.12.5 CONTRACTOR cannot sell, lease, encumber, or transfer title to the asset without prior written Commission approval. If the CONTRACTOR commits any of these acts without prior written Commission approval, then the Commission may, at its option, treat such an act as CONTRACTOR significantly reducing or ceasing operation of the Program for which the asset was purchased, as described in paragraph 4.12.3. CONTRACTOR must then (1) repay the remaining unforgiven portion of the loan, and (2) pay interest on the remaining unforgiven portion of the loan at a yearly rate of 6.5 percent, compounded daily, calculated from the date this contract was executed. The repayment and the interest shall be due within 30 days following CONTRACTOR'S cessation of the program.

~~4.12.6 Funds for the purchase of a fixed asset shall be paid by the Commission directly to the supplier of the asset.~~

## Fixed Asset Contract Provisions

*Contract Language for fixed assets unrelated to real property and unrelated to automobiles*

**4.12 FIXED ASSET PROVISION.** Fixed assets are those tangible assets of significant value having a utility which extends beyond the current year that are broadly classified as land, buildings and improvements, and equipment. Significant value is defined as a cost of \$5,000.00 or more.

4.12.1 COMMISSION shall structure grant funds for the purchase of fixed assets of \$5,000.00 or more as a no-interest, forgivable loan. COMMISSION shall consider those items costing less than \$5,000.00 per unit, but whose total cost for units purchased for the Program exceeds an aggregate amount of \$5,000.00, to qualify for this provision.

4.12.2 COMMISSION shall forgive a portion of the loan amount for each year CONTRACTOR remains in business and continues operation of the Program for which the fixed asset was purchased as follows:

4.12.2.1 The loan amount of {\$xx,xxx for Name of Program shall be forgiven at the rate of \$x,xxx per year for xx years, the accepted service life for name/description of asset}

*Insert when the fixed asset is a modular building:*

4.12.2.2 It is further understood and agreed by the parties that if CONTRACTOR should at some point elect to conduct all or part of the Program in facilities other than the fixed assets purchased with the loaned funds, and use part or all of the fixed assets for other purposes, such action shall not be deemed a violation of the provisions of this contract, and/or require repayment or trigger other remedies as provided for in section 4.12.3, if CONTRACTOR continues the Program at the same or a higher level, or without significant reduction. In other words, so long as the Program is continued at the same or a higher level, or without significant reduction, the loan amount shall continue to be forgiven at the rate of \$xx,xxx per year until it is fully forgiven. If the Program should be discontinued or reduced significantly at any point, the full amount of the loan remaining unforgiven at that point shall be due and payable pursuant to section 4.12.3 and the Commission's other rights and remedies shall fully apply.

4.12.3 **DEFAULT.** In the event CONTRACTOR, prior to the loan being forgiven in full, violates the provisions of this contract, including significantly reducing or ceasing the operation of the Program for which the asset was purchased, the CONTRACTOR will (1) repay the remaining unforgiven portion of the loan, and (2) pay interest on the remaining unforgiven portion of the loan at a yearly rate of 6.5 percent, compounded daily, calculated from the date of this contract. The repayment and the interest shall be due within 30 days following CONTRACTOR's cessation of the program.

**COMMISSION also has the right to repossess [the asset] in the event that CONTRACTOR, prior to the loan being forgiven in full, violates the provisions of this contract, including significantly reducing or ceasing the operation of the Program for which the asset was purchased and fails to repay within 30 days following CONTRACTOR's cessation of the program the unforgiven portion of the loan and the interest due on the unforgiven portion of the loan. COMMISSION has the right to sell, lease or otherwise, dispose of [the asset] to recover the debt owed by CONTRACTOR, but CONTRACTOR will remain liable to COMMISSION for any deficiency still owed to COMMISSION after disposal of the asset.**

4.12.4 CONTRACTOR cannot sell, lease, encumber, or transfer title to the asset without prior written Commission approval. If the CONTRACTOR commits any of these acts without prior written Commission approval, then the Commission may, at its option, treat such an act as CONTRACTOR significantly reducing or ceasing operation of the Program for which the asset was purchased, as described in paragraph 4.12.3. CONTRACTOR must

## Fixed Asset Contract Provisions

then (1) repay the remaining unforgiven portion of the loan, and (2) pay interest on the remaining unforgiven portion of the loan at a yearly rate of 6.5 percent, compounded daily, calculated from the date this contract was executed. The repayment and the interest shall be due within 30 days following CONTRACTOR'S cessation of the program.

~~4.12.5 Funds for the purchase of a fixed asset shall be paid by the Commission directly to the supplier of the asset.~~

4.12.6 SECURITY AGREEMENT. CONTRACTOR grants COMMISSION a security interest in [the asset] as security for this loan. CONTRACTOR agrees to execute a financing statement evidencing COMMISSION's security interest in [the asset].

<i>Contract Language for fixed assets related to vehicles</i>
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**4.12 FIXED ASSET PROVISION.** Fixed assets are those tangible assets of significant value having a utility which extends beyond the current year that are broadly classified as land, buildings and improvements, and equipment. Significant value is defined as a cost of \$5,000.00 or more.

4.12.1 COMMISSION shall structure grant funds for the purchase of fixed assets of \$5,000.00 or more as a no-interest, forgivable loan. COMMISSION shall consider those items costing less than \$5,000.00 per unit, but whose total cost for units purchased for the Program exceeds an aggregate amount of \$5,000.00, to qualify for this provision.

4.12.2 COMMISSION shall forgive a portion of the loan amount for each year CONTRACTOR remains in business and continues operation of the Program for which the fixed asset was purchased as follows:

4.12.2.1 The loan amount of {\$xx,xxx for Name of Program} shall be forgiven at the rate of \$x,xxxx per year for xx years, the accepted service life for name/description of asset

4.12.3 DEFAULT. In the event CONTRACTOR, prior to the loan being forgiven in full, violates the provisions of this Agreement, including significantly reducing or ceasing the operation of the Program for which the vehicles were purchased, then the CONTRACTOR will (1) repay the remaining unforgiven portion of the loan, and (2) pay interest on the remaining unforgiven portion of the loan at the daily periodic rate of .01708 percent, which corresponds to an annual percentage rate of 6.5 percent, calculated from the date of this Agreement. The repayment and the interest shall be due within 30 days following CONTRACTOR's default.

On the occurrence of any event of default and failure by CONTRACTOR to repay within 30 days of default the unforgiven portion of the loan and the interest due on the unforgiven portion of the loan, and at any later time, COMMISSION as the secured party may exercise any of the rights and remedies at law or in equity possessed by COMMISSION.

COMMISSION's rights include the right to repossess the vehicles with or without legal process and the right to sell, lease or otherwise dispose of the vehicles, without notice and without having the vehicles present at the place of sale, lease or disposition, at a public place to recover the debt owed by CONTRACTOR. CONTRACTOR shall be liable not only for the unforgiven portion of the loan plus interest but also for any costs incurred by COMMISSION in exercising its rights, including reasonable attorney's fees and expenses for retaking, repairing and disposing of the vehicles. CONTRACTOR shall remain liable to COMMISSION for any deficiency still owed to COMMISSION after disposal of the vehicles. On repossession of the vehicles, COMMISSION may, without liability, take possession of all property found in the vehicles and store the property for CONTRACTOR.

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4.12.4 SECURITY AGREEMENT. CONTRACTOR shall retain possession of the vehicles. CONTRACTOR grants COMMISSION a security interest in the vehicles as security for this loan and agrees that the "Children and Families First Commission of Ventura County" is the legal owner of the vehicles until the loan is forgiven in full. CONTRACTOR shall execute any documents necessary to reflect COMMISSION's legal ownership of the vehicles and to establish and perfect COMMISSION's security interest.

### 4.12.5 ADDITIONAL PROVISIONS.

4.12.5.1 USE OF VEHICLES. CONTRACTOR agrees to use, maintain, license, and register the vehicles in accordance with all applicable laws; to use the vehicles only for operation of the Program for which the vehicles were purchased; to maintain the vehicles in good repair; and to house them in a suitable shelter. CONTRACTOR agrees not to use or permit the vehicles to be used (a) for hire, or in any race, test or contest, (b) in any manner that exceeds the insurance coverage or would affect, forfeit or suspend insurance coverage, (c) in any manner contrary to law or contrary to the operation of the Program for which the vehicles were purchased, or (d) in any manner that is injurious to the vehicles. CONTRACTOR further agrees not to make or permit the making of any material modification of the vehicles.

4.12.5.2 RISK OF LOSS. CONTRACTOR assumes all risks of loss of the vehicles, and CONTRACTOR shall not be released from any obligation as a result of any loss, damage or disrepair to the vehicles.

4.12.5.3 INSURANCE. CONTRACTOR agrees to keep the vehicles insured with a company, and in the form acceptable to and with loss payable to COMMISSION, against loss or damage by fire, theft and collision, and by causes insured against by comprehensive insurance, in amounts not less than the unforgiven balance under this Agreement, and to deliver all policies to COMMISSION.

4.12.5.4 LIENS. CONTRACTOR agrees to keep the vehicles free from all liens, taxes, fees and encumbrances.

4.12.5.5 INSPECTION. On prior notice to CONTRACTOR, COMMISSION shall have the right to inspect the vehicles at any reasonable time. CONTRACTOR also agrees to establish on demand the correctness of all information and representations made by CONTRACTOR in connection with the Agreement.

4.12.5.6 SALE OF VEHICLES. CONTRACTOR agrees not to sell or attempt to sell or otherwise convey or dispose of any interest in the vehicles until the entire balance of the loan has been forgiven in full or the unforgiven portion of the loan plus applicable interest and any costs owed to COMMISSION has been paid in full.

4.12.5.7 INDEMNIFICATION. CONTRACTOR agrees to pay COMMISSION the costs incurred by COMMISSION if COMMISSION, at its option, makes any payment or performs any act required to be undertaken by CONTRACTOR, and any necessary payment to COMMISSION shall be secured by the Agreement.

4.12.5.8 APPOINTMENT AS ATTORNEY. CONTRACTOR irrevocably appoints COMMISSION as CONTRACTOR's attorney-in-fact to make claims, receive payments, and execute and endorse all instruments for payments, for loss of or damage to the vehicles, or for the return of premiums on policies issued in connection with the vehicles, and to sign, in the name of CONTRACTOR, any certificate of ownership, registration card, application, affidavit or document

## Fixed Asset Contract Provisions

necessary to register or transfer any right, title or interest of CONTRACTOR in and to the vehicles.

4.12.5.9 NON-WAIVER. COMMISSION's acceptance of partial or delinquent payments or the failure of COMMISSION to promptly exercise any right or remedy provided in this Agreement or by law does not constitute a waiver of any obligation of CONTRACTOR and does not constitute a modification of this Agreement.

~~4.12.6 Funds for the purchase of a fixed asset shall be paid by the Commission directly to the supplier of the asset.~~

<i>Contract Language for infrastructure projects</i>
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**4.12 INFRASTRUCTURE INVESTMENT PROVISION.** Infrastructure investments projects are those costs of significant value having a utility which extends beyond the current year that are broadly defined as interior and/or exterior improvements to facilities or land or site preparation. Significant value is defined as a cost of \$5,000.00 or more.

4.12.1 COMMISSION shall structure grant funds for the costs of infrastructure investment projects of \$5,000.00 or more as a no-interest, forgivable loan. COMMISSION shall consider the total cost for the project when it exceeds an aggregate amount of \$5,000.00, to qualify for this provision.

4.12.2 COMMISSION shall forgive a portion of the loan amount for each year CONTRACTOR remains in business and continues operation of the Program for which the infrastructure investment was made as follows:

4.12.2.1 The loan amount of {\$xx,xxx for Name of Project shall be forgiven at the rate of \$x,xxxx per year for xx years }

4.12.3 **DEFAULT.** In the event CONTRACTOR, prior to the loan being forgiven in full, violates the provisions of this contract, including significantly reducing or ceasing the operation of the Program for which the infrastructure investment was made, the CONTRACTOR will (1) repay the remaining unforgiven portion of the loan, and (2) pay interest on the remaining unforgiven portion of the loan at a yearly rate of 6.5 percent, compounded daily, calculated from the date of this contract. The repayment and the interest shall be due within 30 days following CONTRACTOR's cessation of the program.