

1 AGREEMENT FOR PROVISION OF
2 FAMILY SUPPORT SERVICES
3 BETWEEN
4 COUNTY OF ORANGE
5 AND
6 BOYS TOWN CALIFORNIA, INC.
7 JULY 1, 2017 THROUGH JUNE 30, 2020
8

9 THIS AGREEMENT entered into this 1st day of July 1, 2017 (effective date), is by and between the
10 COUNTY OF ORANGE, a political subdivision of State of California (COUNTY) and BOYS TOWN
11 CALIFORNIA, INC., a California nonprofit corporation (CONTRACTOR). COUNTY and
12 CONTRACTOR may sometimes be referred to herein individually as "Party" or collectively as
13 "Parties." This Agreement shall be administered by the County of Orange Health Care Agency
14 (ADMINISTRATOR).
15

16 **W I T N E S S E T H:**
17

18 WHEREAS, COUNTY wishes to contract with CONTRACTOR for the provision of Family
19 Support Services described herein to the residents of Orange County; and

20 WHEREAS, CONTRACTOR is agreeable to the rendering of such services on the terms and
21 conditions hereinafter set forth:

22 NOW, THEREFORE, in consideration of the mutual covenants, benefits, and promises contained
23 herein, COUNTY and CONTRACTOR do hereby agree as follows:

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REFERENCED CONTRACT PROVISIONS

Term: July 1, 2017 through June 30, 2020

Period One means the period from July 1, 2017 through June 30, 2018

Period Two means the period from July 1, 2018 through June 30, 2019

Period Three means the period from July 1, 2019 through June 30, 2020

Maximum Obligation:

Period One Maximum Obligation: \$ 282,000

Period Two Maximum Obligation: 280,000

Period Three Maximum Obligation: 280,000

TOTAL MAXIMUM OBLIGATION: \$ 842,000

Basis for Reimbursement: Actual Cost

Payment Method: Monthly in Arrears

CONTRACTOR DUNS Number: 02-066-1281

CONTRACTOR TAX ID Number: 76-0720675

Notices to COUNTY and CONTRACTOR:

COUNTY: County of Orange
Health Care Agency
Contract Services
405 West 5th Street, Suite 600
Santa Ana, CA 92701-4637

CONTRACTOR: Boys Town California, Inc.
2223 Wellington Avenue, Suite #350
Santa Ana, California 92701
Lawren Ramos, Executive Director
Lawren.ramos@boystown.org

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I. ACRONYMS

The following standard definitions are for reference purposes only and may or may not apply in their entirety throughout this Agreement:

- A. ARRA American Recovery and Reinvestment Act
- B. CCC California Civil Code
- C. CCR California Code of Regulations
- D. CEO County Executive Office
- E. CFR Code of Federal Regulations
- F. CHPP COUNTY HIPAA Policies and Procedures
- G. COI Certificate of Insurance
- H. CRN Crisis Response Network
- I. DHCS Department of Health Care Services
- J. DRS Designated Record Set
- K. GAAP General Accepted Accounting Principles
- L. HCA Health Care Agency
- M. HHS Health and Human Services
- N. HIPAA Health Insurance Portability and Accountability Act of 1996, Public Law 104-191
- O. HSC California Health and Safety Code
- P. ISO Insurance Services Office
- Q. MHSA Mental Health Services Act
- R. NPP Notice of Privacy Practices
- S. OIG Office of Inspector General
- T. OMB Office of Management and Budget
- U. OPM Federal Office of Personnel Management
- V. PC State of California Penal Code
- W. PEI Prevention and Early Intervention
- X. PHI Protected Health Information
- Y. PII Personally Identifiable Information
- Z. P&P Policy and Procedure
- AA. PRA Public Record Act
- AB. SIR Self-Insured Retention
- AC. SFTS Safe from the Start
- AD. TOT Train the Trainer
- AE. USC United States Code
- AF. VPE Violence Prevention Education
- AG. WIC State of California Welfare and Institutions Code

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II. ALTERATION OF TERMS

A. This Agreement, together with Exhibits A, B, and C attached hereto and incorporated herein, fully expresses the complete understanding of COUNTY and CONTRACTOR with respect to the subject matter of this Agreement.

B. Unless otherwise expressly stated in this Agreement, no addition to, or alteration of the terms of this Agreement or any Exhibits, whether written or verbal, made by the parties, their officers, employees or agents shall be valid unless made in the form of a written amendment to this Agreement, which has been formally approved and executed by both parties.

III. ASSIGNMENT OF DEBTS

Unless this Agreement is followed without interruption by another Agreement between the parties hereto for the same services and substantially the same scope, at the termination of this Agreement, CONTRACTOR shall assign to COUNTY any debts owing to CONTRACTOR by or on behalf of persons receiving services pursuant to this Agreement. CONTRACTOR shall immediately notify by mail each of these persons, specifying the date of assignment, the County of Orange as assignee, and the address to which payments are to be sent. Payments received by CONTRACTOR from or on behalf of said persons, shall be immediately given to COUNTY.

IV. COMPLIANCE

A. COMPLIANCE PROGRAM - ADMINISTRATOR has established a Compliance Program for the purpose of ensuring adherence to all rules and regulations related to federal and state health care programs.

1. ADMINISTRATOR shall provide CONTRACTOR with a copy of the policies and procedures relating to ADMINISTRATOR’s Compliance Program, Code of Conduct and access to General Compliance and Annual Provider Trainings.

2. CONTRACTOR has the option to provide ADMINISTRATOR with proof of its own Compliance Program, Code of Conduct and any Compliance related policies and procedures. CONTRACTOR’s Compliance Program, Code of Conduct and any related policies and procedures shall be verified by ADMINISTRATOR’s Compliance Department to ensure they include all required elements by ADMINISTRATOR’s Compliance Officer as described in this Paragraph IV (COMPLIANCE). These elements include:

- a. Designation of a Compliance Officer and/or compliance staff.
- b. Written standards, policies and/or procedures.
- c. Compliance related training and/or education program and proof of completion.
- d. Communication methods for reporting concerns to the Compliance Officer.
- e. Methodology for conducting internal monitoring and auditing.
- f. Methodology for detecting and correcting offenses.

1 g. Methodology/Procedure for enforcing disciplinary standards.

2 3. If CONTRACTOR does not provide proof of its own Compliance program to
3 ADMINISTRATOR, CONTRACTOR shall acknowledge to comply with ADMINISTRATOR's
4 Compliance Program and Code of Conduct, the CONTRACTOR shall submit to the
5 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement a signed
6 acknowledgement that CONTRACTOR shall comply with ADMINISTRATOR's Compliance Program
7 and Code of Conduct.

8 4. If CONTRACTOR elects to have its own Compliance Program, Code of Conduct and any
9 Compliance related policies and procedures review by ADMINISTRATOR, then CONTRACTOR shall
10 submit a copy of its compliance Program, code of Conduct and all relevant policies and procedures to
11 ADMINISTRATOR within thirty (30) calendar days of execution of this Agreement.
12 ADMINISTRATOR's Compliance Officer, or designee, shall review said documents within a
13 reasonable time, which shall not exceed forty five (45) calendar days, and determine if
14 CONTRACTOR's proposed compliance program and code of conduct contain all required elements to
15 the ADMINISTRATOR's satisfaction as consistent with the HCA's Compliance Program and Code of
16 Conduct. ADMINISTRATOR shall inform CONTRACTOR of any missing required elements and
17 CONTRACTOR shall revise its compliance program and code of conduct to meet
18 ADMINISTRATOR's required elements within thirty (30) calendar days after ADMINISTRATOR's
19 Compliance Officer's determination and resubmit the same for review by the ADMINISTRATOR.

20 5. Upon written confirmation from ADMINISTRATOR's Compliance Officer that the
21 CONTRACTOR's compliance program, code of conduct and any Compliance related policies and
22 procedures contain all required elements, CONTRACTOR shall ensure that all Covered Individuals
23 relative to this Agreement are made aware of CONTRACTOR's compliance program, code of conduct,
24 related policies and procedures and contact information for the ADMINISTRATOR's Compliance
25 Program.

26 B. SANCTION SCREENING – CONTRACTOR shall screen all Covered Individuals employed or
27 retained to provide services related to this Agreement semi-annually to ensure that they are not
28 designated as Ineligible Persons, as pursuant to this Agreement. Screening shall be conducted against
29 the General Services Administration's Excluded Parties List System or System for Award Management,
30 the Health and Human Services/Office of Inspector General List of Excluded Individuals/Entities, and
31 the California Medi-Cal Suspended and Ineligible Provider List and/or any other list or system as
32 identified by the ADMINISTRATOR.

33 1. For purposes of this Paragraph IV (COMPLIANCE), Covered Individuals includes all
34 employees, interns, volunteers, contractors, subcontractors, agents, and other persons who provide
35 health care items or services or who perform billing or coding functions on behalf of
36 ADMINISTRATOR. Notwithstanding the above, this term does not include part-time or per-diem
37 employees, contractors, subcontractors, agents, and other persons who are not reasonably expected to

1 work more than one hundred sixty (160) hours per year; except that any such individuals shall become
2 Covered Individuals at the point when they work more than one hundred sixty (160) hours during the
3 calendar year. CONTRACTOR shall ensure that all Covered Individuals relative to this Agreement are
4 made aware of ADMINISTRATOR’s Compliance Program, Code of Conduct and related policies and
5 procedures (or CONTRACTOR’s own compliance program, code of conduct and related policies and
6 procedures if CONTRACTOR has elected to use its own).

7 2. An Ineligible Person shall be any individual or entity who:

8 a. is currently excluded, suspended, debarred or otherwise ineligible to participate in
9 federal and state health care programs; or

10 b. has been convicted of a criminal offense related to the provision of health care items or
11 services and has not been reinstated in the federal and state health care programs after a period of
12 exclusion, suspension, debarment, or ineligibility.

13 3. CONTRACTOR shall screen prospective Covered Individuals prior to hire or engagement.
14 CONTRACTOR shall not hire or engage any Ineligible Person to provide services relative to this
15 Agreement.

16 4. CONTRACTOR shall screen all current Covered Individuals and subcontractors semi-
17 annually to ensure that they have not become Ineligible Persons. CONTRACTOR shall also request that
18 its subcontractors use their best efforts to verify that they are eligible to participate in all federal and
19 State of California health programs and have not been excluded or debarred from participation in any
20 federal or state health care programs, and to further represent to CONTRACTOR that they do not have
21 any Ineligible Person in their employ or under contract.

22 5. Covered Individuals shall be required to disclose to CONTRACTOR immediately any
23 debarment, exclusion or other event that makes the Covered Individual an Ineligible Person.
24 CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual providing
25 services directly relative to this Agreement becomes debarred, excluded or otherwise becomes an
26 Ineligible Person.

27 6. CONTRACTOR acknowledges that Ineligible Persons are precluded from providing
28 federal and state funded health care services by contract with COUNTY in the event that they are
29 currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency.
30 If CONTRACTOR becomes aware that a Covered Individual has become an Ineligible Person,
31 CONTRACTOR shall remove such individual from responsibility for, or involvement with, COUNTY
32 business operations related to this Agreement.

33 7. CONTRACTOR shall notify ADMINISTRATOR immediately if a Covered Individual or
34 entity is currently excluded, suspended or debarred, or is identified as such after being sanction
35 screened. Such individual or entity shall be immediately removed from participating in any activity
36 associated with this Agreement. ADMINISTRATOR will determine appropriate repayment from, or
37 sanction(s) to CONTRACTOR for services provided by ineligible person or individual.

1 CONTRACTOR shall promptly return any overpayments within forty-five (45) business days after the
2 overpayment is verified by ADMINISTRATOR.

3 C. GENERAL COMPLIANCE TRAINING – ADMINISTRATOR shall make General
4 Compliance Training available to Covered Individuals.

5 1. CONTRACTORS that have acknowledged to comply with ADMINISTRATOR’s
6 Compliance Program shall use its best efforts to encourage completion by all Covered Individuals;
7 provided, however, that at a minimum CONTRACTOR shall assign at least one (1) designated
8 representative to complete the General Compliance Training when offered.

9 2. Such training will be made available to Covered Individuals within thirty (30) calendar
10 days of employment or engagement.

11 3. Such training will be made available to each Covered Individual annually.

12 4. ADMINISTRATOR will track training completion while CONTRACTOR shall provide
13 copies of training certification upon request.

14 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
15 compliance training. ADMINISTRATOR shall provide instruction on group training completion while
16 CONTRACTOR shall retain the training certifications. Upon written request by ADMINISTRATOR,
17 CONTRACTOR shall provide copies of the certifications.

18 D. SPECIALIZED PROVIDER TRAINING – ADMINISTRATOR shall make Specialized
19 Provider Training, where appropriate, available to Covered Individuals.

20 1. CONTRACTOR shall ensure completion of Specialized Provider Training by all Covered
21 Individuals relative to this Agreement.

22 2. Such training will be made available to Covered Individuals within thirty (30) calendar
23 days of employment or engagement.

24 3. Such training will be made available to each Covered Individual annually.

25 4. ADMINISTRATOR will track online completion of training while CONTRACTOR shall
26 provide copies of the certifications upon request.

27 5. Each Covered Individual attending a group training shall certify, in writing, attendance at
28 compliance training. ADMINISTRATOR shall provide instructions on completing the training in a
29 group setting while CONTRACTOR shall retain the certifications. Upon written request by
30 ADMINISTRATOR, CONTRACTOR shall provide copies of the certifications.

31 E. MEDICAL BILLING, CODING, AND DOCUMENTATION COMPLIANCE STANDARDS

32 1. CONTRACTOR shall take reasonable precaution to ensure that the coding of health care
33 claims, billings and/or invoices for same are prepared and submitted in an accurate and timely manner
34 and are consistent with federal, state and county laws and regulations. This includes compliance with
35 federal and state health care program regulations and procedures or instructions otherwise
36 communicated by regulatory agencies including the Centers for Medicare and Medicaid Services or
37 their agents.

1 2. CONTRACTOR shall not submit any false, fraudulent, inaccurate and/or fictitious claims
2 for payment or reimbursement of any kind.

3 3. CONTRACTOR shall bill only for those eligible services actually rendered which are also
4 fully documented. When such services are coded, CONTRACTOR shall use proper billing codes which
5 accurately describes the services provided and must ensure compliance with all billing and
6 documentation requirements.

7 4. CONTRACTOR shall act promptly to investigate and correct any problems or errors in
8 coding of claims and billing, if and when, any such problems or errors are identified.

9 5. CONTRACTOR shall promptly return any overpayments within forty-five (45) business
10 days after the overpayment is verified by the ADMINISTRATOR.

11 F. Failure to comply with the obligations stated in this Paragraph IV (COMPLIANCE) shall
12 constitute a breach of the Agreement on the part of CONTRACTOR and ground for COUNTY to
13 terminate the Agreement. Unless the circumstances require a sooner period of cure, CONTRACTOR
14 shall have thirty (30) calendar days from the date of the written notice of default to cure any defaults
15 grounded on this Paragraph IV (COMPLIANCE) prior to ADMINITRATOR's right to terminate this
16 Agreement on the basis of such default.

17
18 **V. CONFIDENTIALITY**

19 A. CONTRACTOR shall maintain the confidentiality of all records, including billings and any
20 audio and/or video recordings, in accordance with all applicable federal, state and county codes and
21 regulations, as they now exist or may hereafter be amended or changed.

22 B. Prior to providing any services pursuant to this Agreement, all members of the Board of
23 Directors or its designee or authorized agent, employees, consultants, subcontractors, volunteers and
24 interns of the CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the
25 confidentiality of any and all information and records which may be obtained in the course of providing
26 such services. This Agreement shall specify that it is effective irrespective of all subsequent
27 resignations or terminations of CONTRACTOR members of the Board of Directors or its designee or
28 authorized agent, employees, consultants, subcontractors, volunteers and interns.

29
30 **VI. COST REPORT**

31 A. CONTRACTOR shall submit separate Cost Reports for Period One, Period Two and Period
32 Three, or for a portion thereof, to COUNTY no later than sixty (60) calendar days following the period
33 for which they are prepared or termination of this Agreement. CONTRACTOR shall prepare the
34 individual and/or consolidated Cost Report in accordance with all applicable federal, state and
35 COUNTY requirements, GAAP and the Special Provisions Paragraph of this Agreement.
36 CONTRACTOR shall allocate direct and indirect costs to and between programs, cost centers, services,
37 and funding sources in accordance with such requirements and consistent with prudent business

1 practice, which costs and allocations shall be supported by source documentation maintained by
2 CONTRACTOR, and available at any time to ADMINISTRATOR upon reasonable notice. In the event
3 CONTRACTOR has multiple Agreements for mental health services that are administered by HCA,
4 consolidation of the individual Cost Reports into a single consolidated Cost Report may be required, as
5 stipulated by ADMINISTRATOR. CONTRACTOR shall submit a consolidated Cost Report to
6 COUNTY no later than five (5) business days following approval by ADMINISTRATOR of all
7 individual Cost Reports to be incorporated into a consolidated Cost Report.

8 1. If CONTRACTOR fails to submit an accurate and complete individual and/or consolidated
9 Cost Report within the time period specified above, ADMINISTRATOR shall have sole discretion to
10 impose one or both of the following:

11 a. CONTRACTOR may be assessed a late penalty of five hundred dollars (\$500) for each
12 business day after the above specified due date that the accurate and complete individual and/or
13 consolidated Cost Report is not submitted. Imposition of the late penalty shall be at the sole discretion
14 of the ADMINISTRATOR. The late penalty shall be assessed separately on each outstanding individual
15 and/or consolidated Cost Report due COUNTY by CONTRACTOR.

16 b. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
17 pursuant to any or all agreements between COUNTY and CONTRACTOR until such time that the
18 accurate and complete individual and/or consolidated Cost Report is delivered to ADMINISTRATOR.

19 2. CONTRACTOR may request, in advance and in writing, an extension of the due date of
20 individual and/or consolidated Cost Report setting forth good cause for justification of the request.
21 Approval of such requests shall be at the sole discretion of ADMINISTRATOR and shall not be
22 unreasonably denied.

23 3. In the event that CONTRACTOR does not submit an accurate and complete individual
24 and/or consolidated Cost Report within one hundred and eighty (180) calendar days following the
25 termination of this Agreement, and CONTRACTOR has not entered into a subsequent or new
26 agreement for any other services with COUNTY, then all amounts paid to CONTRACTOR by
27 COUNTY during the term of the Agreement shall be immediately reimbursed to COUNTY.

28 B. The individual and/or consolidated Cost Report prepared for each period shall be the final
29 financial and statistical report submitted by CONTRACTOR to COUNTY, and shall serve as the basis
30 for final settlement to CONTRACTOR for that period. CONTRACTOR shall document that costs are
31 reasonable and allowable and directly or indirectly related to the services to be provided hereunder. The
32 individual and/or consolidated Cost Report shall be the final financial record for subsequent audits, if
33 any.

34 C. Final settlement shall be based upon the actual and reimbursable costs for services hereunder,
35 less applicable revenues and any late penalty, not to exceed COUNTY's Maximum Obligation as set
36 forth in the Referenced Contract Provisions of this Agreement. CONTRACTOR shall not claim
37 expenditures to COUNTY which are not reimbursable pursuant to applicable federal, state and

COUNTY laws, regulations and requirements. Any payment made by COUNTY to CONTRACTOR, which is subsequently determined to have been for an unreimbursable expenditure or service, shall be repaid by CONTRACTOR to COUNTY in cash, or other authorized form of payment, within thirty (30) calendar days of submission of the individual and/or consolidated Cost Report or COUNTY may elect to reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

D. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Agreement, less applicable revenues and late penalty, are lower than the aggregate of interim monthly payments to CONTRACTOR, CONTRACTOR shall remit the difference to COUNTY. Such reimbursement shall be made, in cash, or other authorized form of payment, with the submission of the Cost Report. If such reimbursement is not made by CONTRACTOR within thirty (30) calendar days after submission of the Cost Report, COUNTY may, in addition to any other remedies, reduce any amount owed CONTRACTOR by an amount not to exceed the reimbursement due COUNTY.

E. If the Cost Report indicates the actual and reimbursable costs of services provided pursuant to this Agreement, less applicable revenues and late penalty, are higher than the aggregate of interim monthly payments to CONTRACTOR, COUNTY shall pay CONTRACTOR the difference, provided such payment does not exceed the Maximum Obligation of COUNTY.

F. All Cost Reports shall contain the following attestation, which may be typed directly on or attached to the Cost Report:

"I HEREBY CERTIFY that I have executed the accompanying Cost Report and supporting documentation prepared by _____ for the cost report period beginning _____ and ending _____ and that, to the best of my knowledge and belief, costs reimbursed through this Agreement are reasonable and allowable and directly or indirectly related to the services provided and that this Cost Report is a true, correct, and complete statement from the books and records of (provider name) in accordance with applicable instructions, except as noted. I also hereby certify that I have the authority to execute the accompanying Cost Report.

Signed _____
Name _____
Title _____
Date _____"

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VII. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONTRACTOR certifies 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. Have not within a three-year period preceding this Agreement 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.

3. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in Subparagraph A.2. above.

4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

5. Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction unless authorized by the State of California.

6. Shall include without modification, the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion Lower Tier Covered Transaction," (i.e., transactions with sub-grantees and/or contractors) and in all solicitations for lower tier covered transactions in accordance with 2 CFR Part 376.

B. The terms and definitions of this paragraph have the meanings set out in the Definitions and Coverage sections of the rules implementing 51 F.R. 6370.

VIII. DELEGATION, ASSIGNMENT AND SUBCONTRACTS

A. CONTRACTOR may not delegate the obligations hereunder, either in whole or in part, without prior written consent of COUNTY. CONTRACTOR shall provide written notification of CONTRACTOR's intent to delegate the obligations hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to the effective date of the delegation. Any attempted assignment or delegation in derogation of this paragraph shall be void.

B. CONTRACTOR may not assign the rights hereunder, either in whole or in part, without the prior written consent of COUNTY.

1. If CONTRACTOR is a nonprofit organization, any change from a nonprofit corporation to any other corporate structure of CONTRACTOR, including a change in more than fifty percent (50%) of the composition of the Board of Directors within a two (2) month period of time, shall be deemed an

1 assignment for purposes of this paragraph, unless CONTRACTOR is transitioning from a community
2 clinic/health center to a Federally Qualified Health Center and has been so designated by the Federal
3 Government. Any attempted assignment or delegation in derogation of this subparagraph shall be void.

4 2. If CONTRACTOR is a for-profit organization, any change in the business structure,
5 including but not limited to, the sale or transfer of more than ten percent (10%) of the assets or stocks of
6 CONTRACTOR, change to another corporate structure, including a change to a sole proprietorship, or a
7 change in fifty percent (50%) or more of Board of Directors or any governing body of CONTRACTOR
8 at one time shall be deemed an assignment pursuant to this paragraph. Any attempted assignment or
9 delegation in derogation of this subparagraph shall be void.

10 3. If CONTRACTOR is a governmental organization, any change to another structure,
11 including a change in more than fifty percent (50%) of the composition of its governing body (i.e. Board
12 of Supervisors, City Council, School Board) within a two (2) month period of time, shall be deemed an
13 assignment for purposes of this paragraph. Any attempted assignment or delegation in derogation of
14 this subparagraph shall be void.

15 4. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
16 CONTRACTOR shall provide written notification of CONTRACTOR's intent to assign the obligations
17 hereunder, either in whole or part, to ADMINISTRATOR not less than sixty (60) calendar days prior to
18 the effective date of the assignment.

19 5. Whether CONTRACTOR is a nonprofit, for-profit, or a governmental organization,
20 CONTRACTOR shall provide written notification within thirty (30) calendar days to
21 ADMINISTRATOR when there is change of less than fifty percent (50%) of Board of Directors or any
22 governing body of CONTRACTOR at one time.

23 C. CONTRACTOR's obligations undertaken pursuant to this Agreement may be carried out by
24 means of subcontracts, provided such subcontracts are approved in advance, in writing by
25 ADMINISTRATOR, meet the requirements of this Agreement as they relate to the service or activity
26 under subcontract, and include any provisions that ADMINISTRATOR may require.

27 1. After approval of a subcontract, ADMINISTRATOR may revoke the approval of a
28 subcontract upon five (5) calendar days' written notice to CONTRACTOR if the subcontract
29 subsequently fails to meet the requirements of this Agreement or any provisions that
30 ADMINISTRATOR has required.

31 2. No subcontract shall terminate or alter the responsibilities of CONTRACTOR to COUNTY
32 pursuant to this Agreement.

33 3. ADMINISTRATOR may disallow, from payments otherwise due CONTRACTOR,
34 amounts claimed for subcontracts not approved in accordance with this paragraph.

35 4. This provision shall not be applicable to service agreements usually and customarily
36 entered into by CONTRACTOR to obtain or arrange for supplies, technical support, and professional
37 services provided by consultants.

IX. EMPLOYEE ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it shall fully comply with all federal and state statutes and regulations regarding the employment of aliens and others and to ensure that employees, subcontractors, and consultants performing work under this Agreement meet the citizenship or alien status requirement set forth in federal statutes and regulations. CONTRACTOR shall obtain, from all employees, subcontractors, and consultants performing work hereunder, all verification and other documentation of employment eligibility status required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 USC §1324 et seq., as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain all such documentation for all covered employees, subcontractors, and consultants for the period prescribed by the law.

X. EQUIPMENT

A. Unless otherwise specified in writing by ADMINISTRATOR, Equipment is defined as all property of a Relatively Permanent nature with significant value, purchased in whole or in part by ADMINISTRATOR to assist in performing the services described in this Agreement. “Relatively Permanent” is defined as having a useful life of one year or longer. Equipment which costs \$5,000 or over, including freight charges, sales taxes, and other taxes, and installation costs are defined as Capital Assets. Equipment which costs between \$600 and \$5,000, including freight charges, sales taxes and other taxes, and installation costs, or electronic equipment that costs less than \$600 but may contained PHI or PII, are defined as Controlled Equipment. Controlled Equipment includes, but is not limited to phones, tablets, audio/visual equipment, computer equipment, and lab equipment. The cost of Equipment purchased, in whole or in part, with funds paid pursuant to this Agreement shall be depreciated according to GAAP.

B. CONTRACTOR shall obtain ADMINISTRATOR’s prior written approval to purchase any Equipment with funds paid pursuant to this Agreement. Upon delivery of Equipment, CONTRACTOR shall forward to ADMINISTRATOR, copies of the purchase order, receipt, and other supporting documentation, which includes delivery date, unit price, tax, shipping and serial numbers. CONTRACTOR shall request an applicable asset tag for said Equipment and shall include each purchased asset in an Equipment inventory.

C. Upon ADMINISTRATOR’s prior written approval, CONTRACTOR may expense to COUNTY the cost of the approved Equipment purchased by CONTRACTOR. To “expense,” in relation to Equipment, means to charge the proportionate cost of Equipment in the fiscal year in which it is purchased. Title of expensed Equipment shall be vested with COUNTY.

D. CONTRACTOR shall maintain an inventory of all Equipment purchased in whole or in part with funds paid through this Agreement, including date of purchase, purchase price, serial number, model and type of Equipment. Such inventory shall be available for review by ADMINISTRATOR,

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1 and shall include the original purchase date and price, useful life, and balance of depreciated Equipment
2 cost, if any.

3 E. CONTRACTOR shall cooperate with ADMINISTRATOR in conducting periodic physical
4 inventories of all Equipment. Upon demand by ADMINISTRATOR, CONTRACTOR shall return any
5 or all Equipment to COUNTY.

6 F. CONTRACTOR must report any loss or theft of Equipment in accordance with the procedure
7 approved by ADMINISTRATOR and the Notices Paragraph of this Agreement. In addition,
8 CONTRACTOR must complete and submit to ADMINISTRATOR a notification form when items of
9 Equipment are moved from one location to another or returned to COUNTY as surplus.

10 G. Unless this Agreement is followed without interruption by another agreement between the
11 parties for substantially the same type and scope of services, at the termination of this Agreement for
12 any cause, CONTRACTOR shall return to COUNTY all Equipment purchased with funds paid through
13 this Agreement.

14 H. CONTRACTOR shall maintain and administer a sound business program for ensuring the
15 proper use, maintenance, repair, protection, insurance, and preservation of COUNTY Equipment.

16
17 **XI. FACILITIES, PAYMENTS AND SERVICES**

18 A. CONTRACTOR agrees to provide the services, staffing, facilities, and supplies in accordance
19 with this Agreement. COUNTY shall compensate, and authorize, when applicable, said services.
20 CONTRACTOR shall operate continuously throughout the term of this Agreement with at least the
21 minimum number and type of staff which meet applicable federal and state requirements, and which are
22 necessary for the provision of the services hereunder.

23 B. In the event that CONTRACTOR is unable to provide the services, staffing, facilities, or
24 supplies as required, ADMINISTRATOR may, at its sole discretion, reduce the Maximum Obligation
25 for the appropriate Period as well as the Total Maximum Obligation. The reduction to the Maximum
26 Obligation for the appropriate Period as well as the Total Maximum Obligation shall be in an amount
27 proportionate to the number of days in which CONTRACTOR was determined to be unable to provide
28 services, staffing, facilities or supplies.

29
30 **XII. INDEMNIFICATION AND INSURANCE**

31 A. Upon notice of claims, demands, or liability of any kind or nature, including but not limited to
32 personal injury or property damage, arising from or related to the services, products, or other
33 performance provided by CONTRACTOR, pursuant to this Agreement, CONTRACTOR shall offer to
34 provide a joint legal defense to COUNTY. COUNTY shall be given the opportunity to approve, in
35 writing, the attorney, firm, or firms retained for that joint legal defense. If COUNTY determines, in
36 good faith, that the attorney, firm, or firms retained by CONTRACTOR's Insurance Company are
37 unsatisfactory, and COUNTY and CONTRACTOR's Insurance Company cannot reach an agreement on

1 attorney, firm or firms to provide a joint defense, COUNTY may then select its own separate attorney,
2 firm, or firms to defend COUNTY. CONTRACTOR shall be liable to COUNTY for the reasonable
3 attorney fees incurred by COUNTY. If judgment is entered against CONTRACTOR and COUNTY by
4 a court of competent jurisdiction because of the concurrent active negligence of COUNTY or its
5 representatives, CONTRACTOR and COUNTY agree that liability will be apportioned as determined
6 by the court, with CONTRACTOR only owing COUNTY the proportional share of COUNTY' attorney
7 fees if COUNTY is separately represented pursuant to this clause. Neither Party shall request a jury
8 apportionment.

9 B. Prior to the provision of services under this Agreement, CONTRACTOR agrees to purchase all
10 required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary
11 to satisfy COUNTY that the insurance provisions of this Agreement have been complied with.
12 CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements
13 on deposit with COUNTY during the entire term of this Agreement. In addition, all subcontractors
14 performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance
15 subject to the same terms and conditions as set forth herein for CONTRACTOR.

16 C. CONTRACTOR shall ensure that all subcontractors performing work on behalf of
17 CONTRACTOR pursuant to this Agreement shall be covered under CONTRACTOR's insurance as an
18 Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for
19 CONTRACTOR. CONTRACTOR shall not allow subcontractors to work if subcontractors have less
20 than the level of coverage required by COUNTY from CONTRACTOR under this Agreement. It is the
21 obligation of CONTRACTOR to provide notice of the insurance requirements to every subcontractor
22 and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of
23 insurance must be maintained by CONTRACTOR through the entirety of this Agreement for inspection
24 by COUNTY representative(s) at any reasonable time.

25 D. All SIRs and deductibles shall be clearly stated on the COI. If no SIRs or deductibles apply,
26 indicate this on the COI with a zero (0) by the appropriate line of coverage. Any SIR or deductible in an
27 amount in excess of \$50,000 (\$5,000 for automobile liability) shall specifically be approved by the
28 CEO/Office of Risk Management upon review of CONTRACTOR's current audited financial report. If
29 CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any
30 other indemnity provision(s) in this Agreement, agrees to all of the following:

31 1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all
32 liability, claim, demand or suit resulting from CONTRACTOR's, its agents, employee's or
33 subcontractor's performance of this Agreement, CONTRACTOR shall defend the COUNTY at its sole
34 cost and expense with counsel approved by Board of Supervisors against same; and

35 2. CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any
36 duty to indemnify or hold harmless; and

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3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the CONTRACTOR's SIR provision shall be interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

E. If CONTRACTOR fails to maintain insurance as required in this Paragraph XII (INDEMNIFICATION AND INSURANCE) for the full term of this Agreement, such failure shall constitute a breach of CONTRACTOR's obligation hereunder and ground for COUNTY to terminate this Agreement.

F. QUALIFIED INSURER

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

2. If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

G. The policy or policies of insurance maintained by CONTRACTOR shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence

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1 H. REQUIRED COVERAGE FORMS

2 1. The Commercial General Liability coverage shall be written on ISO form CG 00 01, or a
3 substitute form providing liability coverage at least as broad.

4 2. The Business Automobile Liability coverage shall be written on ISO form CA 00 01,
5 CA 00 05, CA 00 12, CA 00 20, or a substitute form providing coverage at least as broad.

6 I. REQUIRED ENDORSEMENTS

7 1. The Commercial General Liability policy shall contain the following endorsements, which
8 shall accompany the COI:

9 a. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least
10 as broad naming the County of Orange, its elected and appointed officials, officers, employees, and
11 agents as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY**
12 **WRITTEN AGREEMENT.**

13 b. A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at
14 least as broad evidencing that the CONTRACTOR’s insurance is primary and any insurance or self-
15 insurance maintained by the County of Orange shall be excess and non-contributing.

16 J. All insurance policies required by this Agreement shall waive all rights of subrogation against
17 the County of Orange, its elected and appointed officials, officers, agents and employees when acting
18 within the scope of their appointment or employment.

19 K. The Workers’ Compensation policy shall contain a waiver of subrogation endorsement waiving
20 all rights of subrogation against the County of Orange, its elected and appointed officials, officers,
21 agents and employees, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN**
22 **AGREEMENT.**

23 L. CONTRACTOR shall notify COUNTY in writing within thirty (30) days of any policy
24 cancellation and within ten (10) days for non-payment of premium and provide a copy of the
25 cancellation notice to COUNTY. Failure to provide written notice of cancellation shall constitute a
26 breach of CONTRACTOR’s obligation hereunder and ground for COUNTY to terminate this
27 Agreement.

28 M. If CONTRACTOR’s Professional Liability is a “Claims Made” policy, CONTRACTOR shall
29 agree to maintain coverage for two (2) years following the completion of the Agreement.

30 N. The Commercial General Liability policy shall contain a “severability of interests” clause also
31 known as a “separation of insureds” clause (standard in the ISO CG 0001 policy).

32 O. COUNTY expressly retains the right to require CONTRACTOR to increase or decrease
33 insurance of any of the above insurance types throughout the term of this Agreement. Any increase or
34 decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to
35 adequately protect COUNTY.

36 P. COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If
37 CONTRACTOR does not deposit copies of acceptable COIs and endorsements with COUNTY

1 incorporating such changes within thirty (30) calendar days of receipt of such notice, such failure shall
2 constitute a breach of CONTRACTOR's obligation hereunder and ground for termination of this
3 Agreement by COUNTY.

4 Q. The procuring of such required policy or policies of insurance shall not be construed to limit
5 CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of
6 this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

7 R. SUBMISSION OF INSURANCE DOCUMENTS

8 1. The COI and endorsements shall be provided to COUNTY as follows:

9 a. Prior to the start date of this Agreement.

10 b. No later than the expiration date for each policy.

11 c. Within thirty (30) calendar days upon receipt of written notice by COUNTY regarding
12 changes to any of the insurance types as set forth in Subparagraph G, above.

13 2. The COI and endorsements shall be provided to the COUNTY at the address as specified in
14 the Referenced Contract Provisions of this Agreement.

15 3. If CONTRACTOR fails to submit the COI and endorsements that meet the insurance
16 provisions stipulated in this Agreement by the above specified due dates, ADMINISTRATOR shall
17 have sole discretion to impose one or both of the following:

18 a. ADMINISTRATOR may withhold or delay any or all payments due CONTRACTOR
19 pursuant to any and all Agreements between COUNTY and CONTRACTOR until such time that the
20 required COI and endorsements that meet the insurance provisions stipulated in this Agreement are
21 submitted to ADMINISTRATOR.

22 b. CONTRACTOR may be assessed a penalty of one hundred dollars (\$100) for each late
23 COI or endorsement for each business day, pursuant to any and all Agreements between COUNTY and
24 CONTRACTOR, until such time that the required COI and endorsements that meet the insurance
25 provisions stipulated in this Agreement are submitted to ADMINISTRATOR.

26 c. If CONTRACTOR is assessed a late penalty, the amount shall be deducted from
27 CONTRACTOR's monthly invoice.

28 4. In no cases shall assurances by CONTRACTOR, its employees, agents, including any
29 insurance agent, be construed as adequate evidence of insurance. COUNTY will only accept valid COIs
30 and endorsements, or in the interim, an insurance binder as adequate evidence of insurance coverage.

31
32 **XIII. INSPECTIONS AND AUDITS**

33 A. ADMINISTRATOR, any authorized representative of COUNTY, any authorized representative
34 of the State of California, the Secretary of the United States Department of Health and Human Services,
35 the Comptroller General of the United States, or any other of their authorized representatives, shall have
36 access to any books, documents, and records, including but not limited to, financial statements, general
37 ledgers, relevant accounting systems, medical and participant records, of CONTRACTOR that are

1 directly pertinent to this Agreement, for the purpose of responding to a beneficiary complaint or
2 conducting an audit, review, evaluation, or examination, or making transcripts during the periods of
3 retention set forth in the Records Management and Maintenance Paragraph of this Agreement. Such
4 persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this
5 Agreement, and the premises in which they are provided.

6 B. CONTRACTOR shall actively participate and cooperate with any person specified in
7 Subparagraph A. above in any evaluation or monitoring of the services provided pursuant to this
8 Agreement, and shall provide the above-mentioned persons adequate office space to conduct such
9 evaluation or monitoring.

10 C. AUDIT RESPONSE

11 1. Following an audit report, in the event of non-compliance with applicable laws and
12 regulations governing funds provided through this Agreement, COUNTY may terminate this Agreement
13 as provided for in the Termination Paragraph or direct CONTRACTOR to immediately implement
14 appropriate corrective action. A plan of corrective action shall be submitted to ADMINISTRATOR in
15 writing within thirty (30) calendar days after receiving notice from ADMINISTRATOR.

16 2. If the audit reveals that money is payable from one party to the other, that is, reimbursement
17 by CONTRACTOR to COUNTY, or payment of sums due from COUNTY to CONTRACTOR, said
18 funds shall be due and payable from one party to the other within sixty (60) calendar days of receipt of
19 the audit results. If reimbursement is due from CONTRACTOR to COUNTY, and such reimbursement
20 is not received within said sixty (60) calendar days, COUNTY may, in addition to any other remedies
21 provided by law, reduce any amount owed CONTRACTOR by an amount not to exceed the
22 reimbursement due COUNTY.

23 D. CONTRACTOR shall retain a licensed certified public accountant, who will prepare and file
24 with ADMINISTRATOR, an annual, independent, organization-wide audit of related expenditures as
25 may be required during the term of this Agreement.

26 E. CONTRACTOR shall forward to ADMINISTRATOR a copy of any audit report within
27 fourteen (14) calendar days of receipt. Such audit shall include, but not be limited to, management,
28 financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the
29 cost of such operation or audit is reimbursed in whole or in part through this Agreement.

30 31 **XIV. LICENSES AND LAWS**

32 A. CONTRACTOR, its officers, agents, employees, affiliates, and subcontractors shall, throughout
33 the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates,
34 accreditations, waivers, and exemptions necessary for the provision of the services hereunder and
35 required by the laws, regulations and requirements of the United States, the State of California,
36 COUNTY, and all other applicable governmental agencies. CONTRACTOR shall notify
37 ADMINISTRATOR immediately and in writing of its inability to obtain or maintain, irrespective of the

1 pendency of any hearings or appeals, permits, licenses, approvals, certificates, accreditations, waivers
2 and exemptions. Said inability shall be cause for termination of this Agreement.

3 B. ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS

4 1. CONTRACTOR agrees to furnish to ADMINISTRATOR within thirty (30) calendar days
5 of the award of this Agreement:

6 a. In the case of an individual contractor, his/her name, date of birth, social security
7 number, and residence address;

8 b. In the case of a contractor doing business in a form other than as an individual, the
9 name, date of birth, social security number, and residence address of each individual who owns an
10 interest of ten percent (10%) or more in the contracting entity;

11 c. A certification that CONTRACTOR has fully complied with all applicable federal and
12 state reporting requirements regarding its employees;

13 d. A certification that CONTRACTOR has fully complied with all lawfully served Wage
14 and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply.

15 2. Failure of CONTRACTOR to timely submit the data and/or certifications required by
16 Subparagraphs 1.a., 1.b., 1.c., or 1.d. above, or to comply with all federal and state employee reporting
17 requirements for child support enforcement, or to comply with all lawfully served Wage and Earnings
18 Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement;
19 and failure to cure such breach within sixty (60) calendar days of notice from COUNTY shall constitute
20 grounds for termination of this Agreement.

21 3. It is expressly understood that this data will be transmitted to governmental agencies
22 charged with the establishment and enforcement of child support orders, or as permitted by federal
23 and/or state statute.

24 C. CONTRACTOR shall comply with all applicable governmental laws, regulations, and
25 requirements as they exist now or may be hereafter amended or changed. These laws, regulations, and
26 requirements shall include, but not be limited to, the following:

- 27 1. ARRA of 2009.
- 28 2. WIC, Division 5, Community Mental Health Services.
- 29 3. WIC, Division 6, Admissions and Judicial Commitments.
- 30 4. WIC, Division 7, Mental Institutions.
- 31 5. HSC, §§1250 et seq., Health Facilities.
- 32 6. PC, §§11164-11174.3, Child Abuse and Neglect Reporting Act.
- 33 7. CCR, Title 9, Rehabilitative and Developmental Services.
- 34 8. CCR, Title 17, Public Health.
- 35 9. CCR, Title 22, Social Security.
- 36 10. CFR, Title 42, Public Health.
- 37 11. CFR, Title 45, Public Welfare.

- 12. USC Title 42. Public Health and Welfare.
- 13. Federal Social Security Act, Title XVIII and Title XIX Medicare and Medicaid.
- 14. 42 USC §12101 et seq., Americans with Disabilities Act of 1990.
- 15. 42 USC §1857, et seq., Clean Air Act.
- 16. 33 USC 84, §308 and §§1251 et seq., the Federal Water Pollution Control Act.
- 17. 31 USC 7501.70, Federal Single Audit Act of 1984.
- 18. Policies and procedures set forth in Mental Health Services Act.
- 19. Policies and procedures set forth in DHCS Letters.
- 20. HIPAA privacy rule, as it may exist now, or be hereafter amended, and if applicable, 31 USC 7501 – 7507, as well as its implementing regulations under 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

XV. LITERATURE, ADVERTISEMENTS, AND SOCIAL MEDIA

A. Any written information or literature, including educational or promotional materials, distributed by CONTRACTOR to any person or organization for purposes directly or indirectly related to this Agreement must be approved at least thirty (30) days in advance and in writing by ADMINISTRATOR before distribution. For the purposes of this Agreement, distribution of written materials shall include, but not be limited to, pamphlets, brochures, flyers, newspaper or magazine ads, and electronic media such as the Internet.

B. Any advertisement through radio, television broadcast, or the Internet, for educational or promotional purposes, made by CONTRACTOR for purposes directly or indirectly related to this Agreement must be approved in advance at least thirty (30) days and in writing by ADMINISTRATOR.

C. If CONTRACTOR uses social media (such as Facebook, Twitter, YouTube or other publicly available social media sites) in support of the services described within this Agreement, CONTRACTOR shall develop social media policy and procedures and have them available to ADMINISTRATOR upon reasonable notice. CONTRACTOR shall inform ADMINISTRATOR of all forms of social media used to either directly or indirectly support the services described within this Agreement. CONTRACTOR shall comply with COUNTY Social Media Use Policy and Procedures as they pertain to any social media developed in support of the services described within this Agreement. CONTRACTOR shall also include any required funding statement information on social media when required by ADMINISTRATOR.

D. Any information as described in Subparagraphs A. and B. above shall not imply endorsement by COUNTY, unless ADMINISTRATOR consents thereto in writing.

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XVI. MAXIMUM OBLIGATION

A. The Total Maximum Obligation of COUNTY for services provided in accordance with this Agreement, and the separate Maximum Obligations for each period, are as specified in the Referenced Contract Provisions of this Agreement, except as allowed for in Subparagraph B. below.

B. ADMINISTRATOR may amend the Maximum Obligation by an amount not to exceed ten percent (10%) of Period One funding for this Agreement.

XVII. MINIMUM WAGE LAWS

A. Pursuant to the United States of America Fair Labor Standards Act of 1938, as amended, and State of California Labor Code, §1178.5, CONTRACTOR shall pay no less than the greater of the federal or California Minimum Wage to all its employees that directly or indirectly provide services pursuant to this Agreement, in any manner whatsoever. CONTRACTOR shall require and verify that all its contractors or other persons providing services pursuant to this Agreement on behalf of CONTRACTOR also pay their employees no less than the greater of the federal or California Minimum Wage.

B. CONTRACTOR shall comply and verify that its contractors comply with all other federal and State of California laws for minimum wage, overtime pay, record keeping, and child labor standards pursuant to providing services pursuant to this Agreement.

C. Notwithstanding the minimum wage requirements provided for in this clause, CONTRACTOR, where applicable, shall comply with the prevailing wage and related requirements, as provided for in accordance with the provisions of Article 2 of Chapter 1, Part 7, Division 2 of the Labor Code of the State of California (§§1770, et seq.), as it exists or may hereafter be amended.

XVIII. NONDISCRIMINATION

A. EMPLOYMENT

1. During the term of this Agreement, CONTRACTOR and its Covered Individuals shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Additionally, during the term of this Agreement, CONTRACTOR and its Covered Individuals shall require in its subcontracts that subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of his/her race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status.

2. CONTRACTOR and its Covered Individuals shall not discriminate against employees or applicants for employment in the areas of employment, promotion, demotion or transfer; recruitment or

1 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection
2 for training, including apprenticeship.

3 3. CONTRACTOR shall not discriminate between employees with spouses and employees
4 with domestic partners, or discriminate between domestic partners and spouses of those employees, in
5 the provision of benefits.

6 4. CONTRACTOR shall post in conspicuous places, available to employees and applicants for
7 employment, notices from ADMINISTRATOR and/or the United States Equal Employment
8 Opportunity Commission setting forth the provisions of the Equal Opportunity clause.

9 5. All solicitations or advertisements for employees placed by or on behalf of
10 CONTRACTOR and/or subcontractor shall state that all qualified applicants will receive consideration
11 for employment without regard to race, religious creed, color, national origin, ancestry, physical
12 disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender
13 identity, gender expression, age, sexual orientation, or military and veteran status. Such requirements
14 shall be deemed fulfilled by use of the term EOE.

15 6. Each labor union or representative of workers with which CONTRACTOR and/or
16 subcontractor has a collective bargaining agreement or other contract or understanding must post a
17 notice advising the labor union or workers' representative of the commitments under this
18 Nondiscrimination Paragraph and shall post copies of the notice in conspicuous places available to
19 employees and applicants for employment.

20 B. SERVICES, BENEFITS AND FACILITIES – CONTRACTOR and/or subcontractor shall not
21 discriminate in the provision of services, the allocation of benefits, or in the accommodation in facilities
22 on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental
23 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender
24 expression, age, sexual orientation, or military and veteran status in accordance with Title IX of the
25 Education Amendments of 1972 as they relate to 20 USC §1681 - §1688; Title VI of the Civil Rights
26 Act of 1964 (42 USC §2000d); the Age Discrimination Act of 1975 (42 USC §6101); Title 9, Division
27 4, Chapter 6, Article 1 (§10800, et seq.) of the California Code of Regulations; and Title II of the
28 Genetic Information Nondiscrimination Act of 2008, 42 USC 2000ff, et seq. as applicable, and all other
29 pertinent rules and regulations promulgated pursuant thereto, and as otherwise provided by state law and
30 regulations, as all may now exist or be hereafter amended or changed. For the purpose of this
31 Nondiscrimination paragraph, Discrimination includes, but is not limited to the following based on one
32 or more of the factors identified above:

- 33 1. Denying a participant or potential participant any service, benefit, or accommodation.
- 34 2. Providing any service or benefit to a participant which is different or is provided in a
35 different manner or at a different time from that provided to other participants.
- 36 3. Restricting a participant in any way in the enjoyment of any advantage or privilege enjoyed
37 by others receiving any service or benefit.

1 4. Treating a participant differently from others in satisfying any admission requirement or
2 condition, or eligibility requirement or condition, which individuals must meet in order to be provided
3 any service or benefit.

4 5. Assignment of times or places for the provision of services.

5 C. COMPLAINT PROCESS – CONTRACTOR shall establish procedures for advising all
6 participants through a written statement that CONTRACTOR’s and/or subcontractor’s participants may
7 file all complaints alleging discrimination in the delivery of services with CONTRACTOR,
8 subcontractor, and ADMINISTRATOR or COUNTY’s Patient Rights Office.

9 1. Whenever possible, problems shall be resolved informally and at the point of service.
10 CONTRACTOR shall establish an internal informal problem resolution process for participants not able
11 to resolve such problems at the point of service. Participants may initiate a grievance or complaint
12 directly with CONTRACTOR either orally or in writing.

13 a. COUNTY shall establish a formal resolution and grievance process in the event
14 informal processes do not yield a resolution.

15 b. Throughout the problem resolution and grievance process, participant rights shall be
16 maintained, including access to the Patients’ Rights Office at any point in the process. Clients shall be
17 informed of their right to access the Patients’ Rights Office at any time.

18 2. Within the time limits procedurally imposed, the complainant shall be notified in writing as
19 to the findings regarding the alleged complaint and, if not satisfied with the decision, may file an appeal.

20 D. PERSONS WITH DISABILITIES – CONTRACTOR and/or subcontractor agree to comply
21 with the provisions of §504 of the Rehabilitation Act of 1973, as amended, (29 USC 794 et seq., as
22 implemented in 45 CFR 84.1 et seq.), and the Americans with Disabilities Act of 1990 as amended (42
23 USC 12101 et seq.; as implemented in 29 CFR 1630), as applicable, pertaining to the prohibition of
24 discrimination against qualified persons with disabilities in all programs or activities; and if applicable,
25 as implemented in Title 45, CFR, §84.1 et seq., as they exist now or may be hereafter amended together
26 with succeeding legislation.

27 E. RETALIATION – Neither CONTRACTOR nor subcontractor, nor its employees or agents shall
28 intimidate, coerce or take adverse action against any person for the purpose of interfering with rights
29 secured by federal or state laws, or because such person has filed a complaint, certified, assisted or
30 otherwise participated in an investigation, proceeding, hearing or any other activity undertaken to
31 enforce rights secured by federal or state law.

32 F. In the event of non-compliance with this Paragraph or as otherwise provided by federal and
33 state law, this Agreement may be canceled, terminated or suspended in whole or in part and
34 CONTRACTOR or subcontractor may be declared ineligible for further contracts involving federal,
35 state or county funds.

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XIX. NOTICES

A. Unless otherwise specified, all notices, claims, correspondence, reports and/or statements authorized or required by this Agreement shall be effective:

1. When written and deposited in the United States mail, first class postage prepaid and addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR;

2. When faxed, transmission confirmed;

3. When sent by Email; or

4. When accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or other expedited delivery service.

B. Termination Notices shall be addressed as specified in the Referenced Contract Provisions of this Agreement or as otherwise directed by ADMINISTRATOR and shall be effective when faxed, transmission confirmed, or when accepted by U.S. Postal Service Express Mail, Federal Express, United Parcel Service, or other expedited delivery service.

C. CONTRACTOR shall notify ADMINISTRATOR, in writing, within twenty-four (24) hours of becoming aware of any occurrence of a serious nature, which may expose COUNTY to liability. Such occurrences shall include, but not be limited to, accidents, injuries, or acts of negligence, or loss or damage to any COUNTY property in possession of CONTRACTOR.

D. For purposes of this Agreement, any notice to be provided by COUNTY may be given by ADMINISTRATOR.

XX. NOTIFICATION OF DEATH

A. Upon becoming aware of the death of any person served pursuant to this Agreement, CONTRACTOR shall immediately notify ADMINISTRATOR.

B. All Notifications of Death provided to ADMINISTRATOR by CONTRACTOR shall contain the name of the deceased, the date and time of death, the nature and circumstances of the death, and the name(s) of CONTRACTOR's officers or employees with knowledge of the incident.

1. TELEPHONE NOTIFICATION – CONTRACTOR shall notify ADMINISTRATOR by telephone immediately upon becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement; provided, however, weekends and holidays shall not be included for purposes of computing the time within which to give telephone notice and, notwithstanding the time limit herein specified, notice need only be given during normal business hours.

2. WRITTEN NOTIFICATION

a. NON-TERMINAL ILLNESS – CONTRACTOR shall hand deliver, fax, and/or send via encrypted email to ADMINISTRATOR a written report within sixteen (16) hours after becoming aware of the death due to non-terminal illness of any person served pursuant to this Agreement.

//

1 b. TERMINAL ILLNESS – CONTRACTOR shall notify ADMINISTRATOR by written
2 report hand delivered, faxed, sent via encrypted email, and/or postmarked and sent via U.S. Mail within
3 forty-eight (48) hours of becoming aware of the death due to terminal illness of any person served
4 pursuant to this Agreement.

5 C. If there are any questions regarding the cause of death of any person served pursuant to this
6 Agreement who was diagnosed with a terminal illness, or if there are any unusual circumstances related
7 to the death, CONTRACTOR shall immediately notify ADMINISTRATOR in accordance with this
8 Notification of Death Paragraph.

9
10 **XXI. NOTIFICATION OF PUBLIC EVENTS AND MEETINGS**

11 A. CONTRACTOR shall notify ADMINISTRATOR of any public event or meeting funded in
12 whole or part by the COUNTY, except for those events or meetings that are intended solely to serve
13 participants or occur in the normal course of business.

14 B. CONTRACTOR shall notify ADMINISTRATOR at least thirty (30) business days in advance
15 of any applicable public event or meeting. The notification must include the date, time, duration,
16 location and purpose of public event or meeting. Any promotional materials or event related flyers must
17 be approved by ADMINISTRATOR prior to distribution.

18
19 **XXII. RECORDS MANAGEMENT AND MAINTENANCE**

20 A. CONTRACTOR, its officers, agents, employees and subcontractors shall, throughout the term
21 of this Agreement, prepare, maintain and manage records appropriate to the services provided and in
22 accordance with this Agreement and all applicable requirements.

23 B. CONTRACTOR shall implement and maintain administrative, technical and physical
24 safeguards to ensure the privacy of PHI and prevent the intentional or unintentional use or disclosure of
25 PHI in violation of the HIPAA, federal and state regulations and/or CHPP. CONTRACTOR shall
26 mitigate to the extent practicable, the known harmful effect of any use or disclosure of PHI made in
27 violation of federal or state regulations and/or COUNTY policies.

28 C. CONTRACTOR’s participant, client, and/or patient records shall be maintained in a secure
29 manner. CONTRACTOR shall maintain participant, client, and/or patient records and must establish
30 and implement written record management procedures.

31 D. CONTRACTOR shall retain all financial records for a minimum of seven (7) years from the
32 commencement of the contract, unless a longer period is required due to legal proceedings such as
33 litigations and/or settlement of claims.

34 E. CONTRACTOR shall make records pertaining to the costs of services, participant fees, charges,
35 billings, and revenues available at one (1) location within the limits of the County of Orange.

36 F. CONTRACTOR shall ensure all HIPAA (DRS) requirements are met. HIPAA requires that
37 clients, participants and/or patients be provided the right to access or receive a copy of their DRS and/or

1 request addendum to their records. Title 45 CFR §164.501, defines DRS as a group of records
2 maintained by or for a covered entity that is:

3 1. The medical records and billing records about individuals maintained by or for a covered
4 health care provider;

5 2. The enrollment, payment, claims adjudication, and case or medical management record
6 systems maintained by or for a health plan; or

7 3. Used, in whole or in part, by or for the covered entity to make decisions about individuals.

8 G. CONTRACTOR may retain participant, client, and/or patient documentation electronically in
9 accordance with the terms of this Agreement and common business practices. If documentation is
10 retained electronically, CONTRACTOR shall, in the event of an audit or site visit:

11 1. Have documents readily available within forty-eight (48) hour notice of a scheduled audit
12 or site visit.

13 2. Provide auditor or other authorized individuals access to documents via a computer
14 terminal.

15 3. Provide auditor or other authorized individuals a hardcopy printout of documents, if
16 requested.

17 H. CONTRACTOR shall ensure compliance with requirements pertaining to the privacy and
18 security of PII and/or PHI. CONTRACTOR shall notify COUNTY immediately by telephone call plus
19 email or fax upon the discovery of a Breach of unsecured PHI and/or PII.

20 I. CONTRACTOR may be required to pay any costs associated with a Breach of privacy and/or
21 security of PII and/or PHI, including but not limited to the costs of notification. CONTRACTOR shall
22 pay any and all such costs arising out of a Breach of privacy and/or security of PII and/or PHI.

23 J. CONTRACTOR shall retain all participant, client, and/or patient medical records for seven (7)
24 years following discharge of the participant, client and/or patient, with the exception of non-
25 emancipated minors for whom records must be kept for at least one (1) year after such minors have
26 reached the age of eighteen (18) years, or for seven (7) years after the last date of service, whichever is
27 longer.

28
29 **XXIII. RESEARCH AND PUBLICATION**

30 CONTRACTOR shall not utilize information and data received from COUNTY or developed as a
31 result of this Agreement for the purpose of personal publication.

32 //
33 //
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35 //
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XXIV. SEVERABILITY

If a court of competent jurisdiction declares any provision of this Agreement or application thereof to any person or circumstances to be invalid or if any provision of this Agreement contravenes any federal, state or county statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall remain valid, and the remaining provisions of this Agreement shall remain in full force and effect, and to that extent the provisions of this Agreement are severable.

XXV. SPECIAL PROVISIONS

A. CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Making cash payments to intended recipients of services through this Agreement.
2. Lobbying any governmental agency or official. CONTRACTOR shall file all certifications and reports in compliance with this requirement pursuant to Title 31, USC, §1352 (e.g., limitation on use of appropriated funds to influence certain federal contracting and financial transactions).
3. Fundraising.
4. Purchase of gifts, meals, entertainment, awards, or other personal expenses for CONTRACTOR's staff, volunteers, or members of the Board of Directors or governing body.
5. Reimbursement of CONTRACTOR's members of the Board of Directors or governing body for expenses or services.
6. Making personal loans to CONTRACTOR's staff, volunteers, interns, consultants, subcontractors, and members of the Board of Directors or governing body, or its designee or authorized agent, or making salary advances or giving bonuses to CONTRACTOR's staff.
7. Paying an individual salary or compensation for services at a rate in excess of the current Level I of the Executive Salary Schedule as published by the OPM. The OPM Executive Salary Schedule may be found at www.opm.gov.
8. Severance pay for separating employees.
9. Paying rent and/or lease costs for a facility prior to the facility meeting all required building codes and obtaining all necessary building permits for any associated construction.
10. Supplanting current funding for existing services.

B. Unless otherwise specified in advance and in writing by ADMINISTRATOR, CONTRACTOR shall not use the funds provided by means of this Agreement for the following purposes:

1. Funding travel or training (excluding mileage or parking).
2. Making phone calls outside of the local area unless documented to be directly for the purpose of participant care.
3. Payment for grant writing, consultants, certified public accounting, or legal services.
4. Purchase of artwork or other items that are for decorative purposes and do not directly contribute to the quality of services to be provided pursuant to this Agreement.

1 5. Purchasing or improving land, including constructing or permanently improving any
2 building or facility, except for tenant improvements.

3 6. Providing inpatient hospital services or purchasing major medical equipment.

4 7. Satisfying any expenditure of non-federal funds as a condition for the receipt of federal
5 funds (matching).

6 8. Purchase of gifts, meals, entertainment, awards, or other personal expenses for
7 CONTRACTOR's participants.

8
9 **XXVI. STATUS OF CONTRACTOR**

10 CONTRACTOR is, and shall at all times be deemed to be, an independent contractor and shall be
11 wholly responsible for the manner in which it performs the services required of it by the terms of this
12 Agreement. CONTRACTOR is entirely responsible for compensating staff, subcontractors, and
13 consultants employed by CONTRACTOR. This Agreement shall not be construed as creating the
14 relationship of employer and employee, or principal and agent, between COUNTY and CONTRACTOR
15 or any of CONTRACTOR's employees, agents, consultants, or subcontractors. CONTRACTOR
16 assumes exclusively the responsibility for the acts of its employees, agents, consultants, or
17 subcontractors as they relate to the services to be provided during the course and scope of their
18 employment. CONTRACTOR, its agents, employees, consultants, or subcontractors, shall not be
19 entitled to any rights or privileges of COUNTY's employees and shall not be considered in any manner
20 to be COUNTY's employees.

21
22 **XXVII. TERM**

23 A. The term of this Agreement shall commence as specified in the Referenced Contract Provisions
24 of this Agreement or the execution date, whichever is later. This Agreement shall terminate as specified
25 in the Referenced Contract Provisions of this Agreement unless otherwise sooner terminated as provided
26 in this Agreement; provided, however, CONTRACTOR shall be obligated to perform such duties as
27 would normally extend beyond this term, including but not limited to, obligations with respect to
28 confidentiality, indemnification, audits, reporting and accounting.

29 B. Any administrative duty or obligation to be performed pursuant to this Agreement on a
30 weekend or holiday may be performed on the next regular business day.

31
32 **XXVIII. TERMINATION**

33 A. Either party may terminate this Agreement, without cause, upon thirty (30) calendar days'
34 written notice given the other party.

35 B. Unless otherwise specified in this Agreement, COUNTY may terminate this Agreement upon
36 five (5) calendar days' written notice if CONTRACTOR fails to perform any of the terms of this

37 //

1 Agreement. At ADMINISTRATOR's sole discretion, CONTRACTOR may be allowed up to thirty
2 (30) calendar days for corrective action.

3 C. COUNTY may terminate this Agreement immediately, upon written notice, on the occurrence
4 of any of the following events:

- 5 1. The loss by CONTRACTOR of legal capacity.
- 6 2. Cessation of services.
- 7 3. The delegation or assignment of CONTRACTOR's services, operation or administration to
8 another entity without the prior written consent of COUNTY.
- 9 4. The neglect by any physician or licensed person employed by CONTRACTOR of any duty
10 required pursuant to this Agreement.
- 11 5. The loss of accreditation or any license required by the Licenses and Laws Paragraph of
12 this Agreement.
- 13 6. The continued incapacity of any physician or licensed person to perform duties required
14 pursuant to this Agreement.
- 15 7. Unethical conduct or malpractice by any physician or licensed person providing services
16 pursuant to this Agreement; provided, however, COUNTY may waive this option if CONTRACTOR
17 removes such physician or licensed person from serving persons treated or assisted pursuant to this
18 Agreement.

19 D. CONTINGENT FUNDING

- 20 1. Any obligation of COUNTY under this Agreement is contingent upon the following:
 - 21 a. The continued availability of federal, state and county funds for reimbursement of
22 COUNTY's expenditures, and
 - 23 b. Inclusion of sufficient funding for the services hereunder in the applicable budget(s)
24 approved by the Board of Supervisors.
- 25 2. In the event such funding is subsequently reduced or terminated, COUNTY may suspend,
26 terminate or renegotiate this Agreement upon thirty (30) calendar days' written notice given
27 CONTRACTOR. If COUNTY elects to renegotiate this Agreement due to reduced or terminated
28 funding, CONTRACTOR shall not be obligated to accept the renegotiated terms.

29 E. In the event this Agreement is suspended or terminated prior to the completion of the term as
30 specified in the Referenced Contract Provisions of this Agreement, ADMINISTRATOR may, at its sole
31 discretion, reduce the Maximum Obligation of this Agreement in an amount consistent with the reduced
32 term of the Agreement.

33 F. In the event this Agreement is terminated by either party pursuant to Subparagraphs B., C. or D.
34 above, CONTRACTOR shall do the following:

- 35 1. Comply with termination instructions provided by ADMINISTRATOR in a manner which
36 is consistent with recognized standards of quality care and prudent business practice.

37 //

1 2. Obtain immediate clarification from ADMINISTRATOR of any unsettled issues of contract
2 performance during the remaining contract term.

3 3. Until the date of termination, continue to provide the same level of service required by this
4 Agreement.

5 4. If participants are to be transferred to another facility for services, furnish
6 ADMINISTRATOR, upon request, all participant information and records deemed necessary by
7 ADMINISTRATOR to effect an orderly transfer.

8 5. Assist ADMINISTRATOR in effecting the transfer of participants in a manner consistent
9 with participant’s best interests.

10 6. If records are to be transferred to COUNTY, pack and label such records in accordance
11 with directions provided by ADMINISTRATOR.

12 7. Return to COUNTY, in the manner indicated by ADMINISTRATOR, any equipment and
13 supplies purchased with funds provided by COUNTY.

14 8. To the extent services are terminated, cancel outstanding commitments covering the
15 procurement of materials, supplies, equipment, and miscellaneous items, as well as outstanding
16 commitments which relate to personal services. With respect to these canceled commitments,
17 CONTRACTOR shall submit a written plan for settlement of all outstanding liabilities and all claims
18 arising out of such cancellation of commitment which shall be subject to written approval of
19 ADMINISTRATOR.

20 9. Provide written notice of termination of services to each client being served under this
21 Agreement, within fifteen (15) calendar days of receipt of termination notice. A copy of the notice of
22 termination of services must also be provided to ADMINISTRATOR within the fifteen (15) calendar
23 day period.

24 G. The rights and remedies of COUNTY provided in this Termination Paragraph shall not be
25 exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement.

26
27 **XXIX. THIRD PARTY BENEFICIARY**

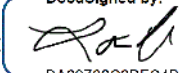
28 Neither party hereto intends that this Agreement shall create rights hereunder in third parties
29 including, but not limited to, any subcontractors or any participants provided services pursuant to this
30 Agreement.

31
32 **XXX. WAIVER OF DEFAULT OR BREACH**

33 Waiver by COUNTY of any default by CONTRACTOR shall not be considered a waiver of any
34 subsequent default. Waiver by COUNTY of any breach by CONTRACTOR of any provision of this
35 Agreement shall not be considered a waiver of any subsequent breach. Waiver by COUNTY of any
36 default or any breach by CONTRACTOR shall not be considered a modification of the terms of this
37 Agreement.

1 IN WITNESS WHEREOF, the parties have executed this Agreement, in the County of Orange,
2 State of California.

3
4 BOYS TOWN CALIFORNIA, INC.

5 DocuSigned by:
6 BY:  _____
7 BA69782C3BFC4B5...

DATED: 4/13/2017 _____

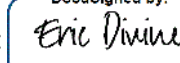
8
9 TITLE: Executive Director _____

10
11
12
13
14
15 COUNTY OF ORANGE

16
17
18 BY: _____
19 HEALTH CARE AGENCY

DATED: _____

20
21
22
23
24 APPROVED AS TO FORM
25 OFFICE OF THE COUNTY COUNSEL
26 ORANGE COUNTY, CALIFORNIA

27
28 DocuSigned by:
29 BY:  _____
30 C4E3686C1E6D4FD...
DEFUT I

DATED: 4/13/2017 _____

31
32
33
34
35 If the contracting party is a corporation, two (2) signatures are required: one (1) signature by the Chairman of the Board, the
36 President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer
37 or any Assistant Treasurer. If the contract is signed by one (1) authorized individual only, a copy of the corporate resolution
signature alone is required by ADMINISTRATOR.

EXHIBIT A
TO AGREEMENT FOR PROVISION OF
FAMILY SUPPORT SERVICES
WITH
BOYS TOWN CALIFORNIA, INC.
JULY 1, 2017 THROUGH JUNE 30, 2020

I. COMMON TERMS AND DEFINITIONS

The parties agree to the following terms and definitions, and to those terms and definitions which, for convenience, are set forth elsewhere in the Agreement.

A. Admission means completion of the entry and/or intake process for program Participants.

B. Assessment means a professional review and evaluation of an individual’s behavioral health needs and conditions in order to determine the most appropriate course of services.

C. At Risk means a state of high stressor and low protective factor that would increase likelihood of development of a mental illness.

D. Behavioral Health Condition means diminished cognitive, emotional, or social abilities, but not to the extent that the criteria for a mental disorder are met.

E. Booster Session means a one-time intervention with a Participant who is enrolled or have completed the parent training and needs further guidance with a specific presenting problem associated with parenting.

F. Early Intervention means the act of intervening, interfering or interceding at the manifestation of a Behavioral Health Condition, with the intent of measurably improving the condition or to prevent a Behavioral Health Condition from getting worse.

G. Engagement means the process by which a trusting relationship between a worker and Participant is established with the goal to link the Participant to appropriate services.

H. Enrollment means the data entry of Participant’s information the program’s Prevention and Intervention Database for purposes of record keeping, quality improvement, and outcome evaluation.

I. Evaluation means the systematic investigation of the value and impact of an intervention or program.

J. Evidence-based Practice means the range of treatment and services of well-documented effectiveness. An evidence-based practice has quantitative and qualitative data showing positive outcomes and has been subject to expert/peer review that has determined that a particular approach or strategy has a significant level of evidence of effectiveness.

K. Family Member means any traditional and/or non-traditional support system, significant other, or natural support designated by the Participant.

L. Intake means the initial meeting between a Participant and a worker to evaluate a Participant’s issue(s) of concern and determine how a program could best meet his/her needs.

1 M. Level of Well-being means the state of satisfaction, happiness, and/or in control that a
2 Participant feels about his/her present situation/condition as measured by a validated instrument/scale.

3 N. Linkage means when an individual is connected to programs or services through warm hand-off
4 or follow-up to ensure the connection is made.

5 O. Live Scan means the technique and the technology used by law enforcement agencies and
6 private facilities to capture fingerprints and palm prints electronically, without the need for the more
7 traditional method of ink and paper.

8 P. Media Events means culturally relevant activities conducted by CONTRACTOR which are
9 coordinated with and publicized by the media, including radio and TV appearances.

10 Q. MHSA means the law that provides funding for expanded community mental health services,
11 also known as Proposition 63.

12 R. Participant means an individual enrolled in a program who engages in activities aimed at
13 preventing and/or eliminating the development of Behavioral Health Condition.

14 S. PII means any information that could be readily used to identify a specific person, including but
15 not limited to: name, address, telephone number, email address, driver's license number, Social Security
16 number, bank account information, credit card information, or any combination of data that could be
17 used to identify a specific person, such as birth date, zip code, mother's maiden name and gender.

18 T. Prevention means the group or individual interventions that occur before the initial onset of a
19 Behavioral Health Condition. Prevention promotes positive cognitive, social, and emotional
20 development and encourages a state of well-being that allows the individuals to function well in the face
21 of changing and sometimes challenging circumstances.

22 U. PEI means the most recent County of Orange MHSA Prevention and Early Intervention Plan
23 approved by the Orange County MHSA Steering Committee and Board of Supervisors.

24 V. PHI means individually identifiable health information usually transmitted by electronic media
25 maintained in any medium as defined in the regulations or for an entity, such as a health plan,
26 transmitted or maintained in any other medium. It is created or received by a covered entity and relates
27 to the past, present, or future physical or Behavioral Health Condition of an individual, provision of
28 health care to an individual, or the past, present, or future payment for health care provided to an
29 individual.

30 W. Referral means an individual receives information or contacts for services or programs, or an
31 unsuccessful Linkage attempt.

32 X. Training means the action or method used to transfer skills and/or knowledge to a target
33 audience.

34 Y. TAY means Participants between sixteen (16) to twenty-five (25) years of age.

35 Z. Trauma-Exposed Individuals means those who are exposed to traumatic events or prolonged
36 traumatic conditions, including grief, loss and isolation, including those who are unlikely to seek help
37 from any traditional mental health service.

1 AA. Unduplicated Participant means an individual who is counted only once, despite how many
 2 programs the individual is enrolled in during a contractual agreement period. For example; if a
 3 Participant receives individual and group services, they can only be counted once.

4 AB. Units of Service means the number and/or type of activities the CONTRACTOR will fulfill
 5 during a contractual agreement period.

7 II. BUDGET

8 A. COUNTY shall pay CONTRACTOR in accordance with the Payments Paragraph in this
 9 Exhibit A to the Agreement and the following budgets, which are set forth for informational purposes
 10 only and may be adjusted by mutual agreement, in writing, by ADMINISTRATOR and
 11 CONTRACTOR.

	<u>PERIOD</u>	<u>PERIOD</u>	<u>PERIOD</u>	<u>TOTAL</u>
	<u>ONE</u>	<u>TWO</u>	<u>THREE</u>	
12 ADMINISTRATIVE COSTS				
15 Salaries	\$ 17,160	\$ 17,160	\$ 17,160	\$ 51,480
16 Benefits	<u>5,491</u>	<u>5,491</u>	<u>5,491</u>	<u>16,473</u>
17 SUBTOTAL ADMINISTRATIVE	\$ 22,651	\$ 22,651	\$ 22,651	\$ 67,953
18 COSTS				
19				
20 PROGRAM COSTS				
21 Salaries	\$182,650	\$182,650	\$182,650	\$547,950
22 Benefits	54,274	54,274	54,274	162,822
23 Services and Supplies	20,425	20,425	20,425	61,275
24 One time start-up costs	<u>2,000</u>	<u>0</u>	<u>0</u>	<u>2,000</u>
25 SUBTOTAL PROGRAM COSTS	\$259,349	\$257,349	\$257,349	\$774,047
26				
27 TOTAL GROSS COST	\$282,000	\$280,000	\$280,000	\$842,000
28				
29 REVENUE				
30 MHTSA	<u>\$282,000</u>	<u>\$280,000</u>	<u>\$280,000</u>	<u>\$842,000</u>
31 TOTAL REVENUE	\$282,000	\$280,000	\$280,000	\$842,000
32				
33 TOTAL MAXIMUM	\$282,000	\$280,000	\$280,000	\$842,000
34 OBLIGATION				
35 //				
36 //				
37 //				

1 B. BUDGET/STAFFING MODIFICATIONS – CONTRACTOR may request to shift funds
 2 between budgeted line items for the purpose of meeting specific program needs or for providing
 3 continuity of care to its Participants, by utilizing a Budget/Staffing Modification Request form provided
 4 by ADMINISTRATOR. CONTRACTOR shall submit a properly completed Budget/Staffing
 5 Modification Request to ADMINISTRATOR for consideration, in advance, which shall include a
 6 justification narrative specifying the purpose of the request, the amount of said funds to be shifted, and
 7 the sustaining annual impact of the shift as may be applicable to the current contract period and/or future
 8 contract periods. CONTRACTOR shall obtain written approval of any Budget/Staffing Modification
 9 Request(s) from ADMINISTRATOR prior to implementation by CONTRACTOR. Failure of
 10 CONTRACTOR to obtain written approval from ADMINISTRATOR for any proposed Budget/Staffing
 11 Modification Request(s) may result in disallowance of those costs.

12 C. FINANCIAL RECORDS – CONTRACTOR shall prepare and maintain accurate and complete
 13 financial records of its cost and operating expenses. Such records will reflect the actual cost of the type
 14 of service for which payment is claimed. Any apportionment of or distribution of costs, including
 15 indirect costs, to or between programs or cost centers of CONTRACTOR shall be documented, and will
 16 be made in accordance with GAAP.

17 D. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
 18 Budget Paragraph of this Exhibit A to the Agreement.

19 **III. PAYMENTS**

20
 21 A. COUNTY shall pay CONTRACTOR monthly, in arrears, the provisional amounts of \$23,500
 22 per month for Period One, the amount of \$23,333 for Period Two and Period Three, as specified in the
 23 Referenced Contract Provisions of the Agreement. All payments are interim payments only, and subject
 24 to Final Settlement in accordance with the Cost Report Paragraph of the Agreement for which
 25 CONTRACTOR shall be reimbursed for the actual cost of providing the services hereunder; provided,
 26 however, the total of such payments does not exceed COUNTY's Maximum Obligation as specified in
 27 the Referenced Contract Provisions of the Agreement and, provided further, CONTRACTOR's costs are
 28 reimbursable pursuant to COUNTY, state, and federal regulations. ADMINISTRATOR may, at its
 29 discretion, pay supplemental invoices for any month for which the provisional amount specified above
 30 has not been fully paid.

31 1. In support of the monthly invoice, CONTRACTOR shall submit an Expenditure and
 32 Revenue Report as specified in the Reports Paragraph of this Exhibit A to the Agreement.
 33 ADMINISTRATOR shall use the Expenditure and Revenue Report to determine payment to
 34 CONTRACTOR as specified in Subparagraphs A.2. and A.3., below.

35 2. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the
 36 provisional amount payments exceed the actual cost of providing services, ADMINISTRATOR may
 37 reduce payments to CONTRACTOR by an amount not to exceed the difference between the

1 year-to-date provisional amount payments to CONTRACTOR's and the year-to-date actual cost
2 incurred by CONTRACTOR.

3 3. If, at any time, CONTRACTOR's Expenditure and Revenue Reports indicate that the
4 provisional amount payments are less than the actual cost of providing services, ADMINISTRATOR
5 may authorize an increase in the provisional amount payment to CONTRACTOR by an amount not to
6 exceed the difference between the year-to-date provisional amount payments to CONTRACTOR and
7 the year-to-date actual cost incurred by CONTRACTOR.

8 B. CONTRACTOR's invoices shall be on a form approved or supplied by ADMINISTRATOR
9 and provide such information as is required by ADMINISTRATOR. Invoices are due the tenth (10th)
10 day of each month. Invoices received after the due date may not be paid within the same month.
11 Payments to CONTRACTOR should be released by COUNTY no later than thirty (30) calendar days
12 after receipt of the correctly completed invoice.

13 C. All invoices to COUNTY shall be supported at CONTRACTOR's facility, by source
14 documentation including, but not limited to, ledgers, journals, time sheets, invoices, bank statements,
15 canceled checks, receipts, receiving records, and records of services provided.

16 D. ADMINISTRATOR may withhold or delay any payment if CONTRACTOR fails to comply
17 with any provision of the Agreement.

18 E. COUNTY shall not reimburse CONTRACTOR for services provided beyond the expiration
19 and/or termination of the Agreement, except as may otherwise be provided under the Agreement, or
20 specifically agreed upon in a subsequent Agreement.

21 F. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
22 Payments Paragraph of this Exhibit A to the Agreement.

23 24 **IV. REPORTS**

25 **A. FISCAL**

26 1. CONTRACTOR shall submit monthly Expenditure and Revenue Reports to
27 ADMINISTRATOR. These reports shall be on a form acceptable to, or provided by,
28 ADMINISTRATOR and shall report actual costs and revenues for CONTRACTOR's program described
29 in the Services Paragraph of this Exhibit A to the Agreement. Any changes, modifications, or
30 deviations to any approved budget line item must be approved in advance and in writing by
31 ADMINISTRATOR and annotated on the monthly Expenditure and Revenue Report, or said cost
32 deviations may be subject to disallowance. Such reports shall be received by ADMINISTRATOR no
33 later than twenty (20) calendar days following the end of the month being reported.

34 2. CONTRACTOR shall submit Year-End Projection Reports to ADMINISTRATOR. These
35 reports shall be on a form acceptable to, or provided by, ADMINISTRATOR and shall report
36 anticipated year-end actual costs and revenues for CONTRACTOR's program described in the Services
37 Paragraph of this Exhibit A to the Agreement. Such reports shall include actual monthly costs and

1 revenue to date and anticipated monthly costs and revenue to the end of the fiscal year, and shall include
2 a projection narrative justifying the year-end projections. Year-End Projection Reports shall be
3 submitted in conjunction with the Monthly Expenditure and Revenue Reports.

4 B. STAFFING REPORT – CONTRACTOR shall submit monthly Staffing Reports to
5 ADMINISTRATOR. CONTRACTOR’s reports shall contain required information, and be on a form
6 acceptable to, or provided by ADMINISTRATOR. CONTRACTOR shall submit these reports no later
7 than twenty (20) calendar days following the end of the month being reported.

8 C. PROGRAMMATIC – CONTRACTOR shall submit monthly Programmatic reports to
9 ADMINISTRATOR. These reports shall be in a format approved by ADMINISTRATOR and shall
10 include but not limited to, descriptions of any performance objectives, outcomes, and or interim findings
11 as directed by ADMINISTRATOR. CONTRACTOR shall be prepared to present and discuss the
12 programmatic reports at the monthly meetings with ADMINISTRATOR, to include whether or not
13 CONTRACTOR is progressing satisfactorily and if not, specify what steps are being taken to achieve
14 satisfactory progress. Such reports shall be received by ADMINISTRATOR no later than twentieth
15 (20th) calendar day following the end of the month being reported.

16 D. ADDITIONAL REPORTS – Upon ADMINISTRATOR’s request, CONTRACTOR shall make
17 such additional reports as required by ADMINISTRATOR concerning CONTRACTOR's activities as
18 they affect the services hereunder. ADMINISTRATOR shall be specific as to the nature of information
19 requested and allow thirty (30) calendar days for CONTRACTOR to respond.

20 E. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
21 Reports Paragraph of this Exhibit A to the Agreement.

22
23 **V. SERVICES**

24 **A. FACILITIES**

25 1. CONTRACTOR shall maintain facility/(ies) for the provision of Family Support services
26 described herein at the following location(s), or any other location approved, in advance, in writing, by
27 ADMINISTRATOR. The facility shall include space to support the services identified within the
28 Agreement.

29 2223 Wellington Avenue, Suite 350
30 Santa Ana, CA 92701

31
32 2. CONTRACTOR shall maintain regularly scheduled service hours, Monday through Friday
33 8:00 a.m. – 5:00 p.m. throughout the year, and maintain the capability to provide services in the evening
34 hours and on weekends in order to accommodate Participants unable to participate during regular
35 business hours. CONTRACTOR’s holiday schedule shall be consistent with COUNTY’s holiday
36 schedule unless otherwise approved in advance and in writing by ADMINISTRATOR.

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1 3. CONTRACTOR shall also provide services in community-based facilities including but not
2 limited to school sites and centers throughout all regional areas of COUNTY, when appropriate for more
3 effective provision of services to the participant.

4 B. FAMILY SUPPORT SERVICES

5 1. CONTRACTOR shall provide culturally and linguistically appropriate family support
6 services to Orange County residents that are consistent with the COUNTY PEI Plan. CONTRACTOR
7 shall work collaboratively with community partners to ensure that cultural and linguistic needs are
8 outreached and met.

9 2. CONTRACTOR shall provide ongoing support to families struggling with behavioral
10 health conditions by building a network of contacts and mutual support. The goal of the family support
11 services is to establish a unified family support system for families and caretakers of those who have
12 behavioral health conditions. Family support services shall focus on supporting and educating families
13 about behavioral health issues to prevent the development of behavioral health conditions in other
14 members of the family. Family support services include: group support, weekly peer mentor support,
15 educational workshops, volunteer family mentor network and/or family matching.

16 3. CONTRACTOR shall focus on providing services to isolated, hard to reach groups
17 including, but not limited to: deaf and hard of hearing persons, visually impaired, veterans, LGBTQI,
18 ethnic, cultural and linguistic populations, and persons with limited English proficiency.

19 4. CONTRACTOR shall include, but not be limited to, the following services:

20 a. CONTRACTOR shall provide, at a minimum, monthly support groups educational
21 workshops on a variety of behavioral health topics, including, but not limited to, self-care, managing
22 mental health symptoms, substance abuse issues, adult and older adult issues, transitional age youth
23 problems, medication and health concerns and to address the needs of the families involved in the
24 program. Family support groups, Educational workshops, Self-Care trainings and individual support
25 sessions will occur at a minimum of once per month.

26 b. CONTRACTOR shall recruit and train consumer peer mentors to provide individual
27 support and interventions to assigned matched families. Peer mentors will be matched to families for up
28 to three (3) month period.

29 c. CONTRACTOR shall recruit an ongoing volunteer base of families either currently
30 engaged in the program or program graduates to act as volunteer family mentors to be matched with
31 current families.

32 d. CONTRACTOR shall provide practicing Self-Care trainings for group support
33 activities. These trainings will be available for individuals in the community. CONTRACTOR will
34 track the number of community Group Support Sessions.

35 e. CONTRACTOR shall strive to meet the following goals for their program:

36 1) Be responsive to the needs and concerns of all families involved in the program;
37 educating them on ways to increase resilience and support systems to encourage recovery.

2) Develop a Participant focused family support system that encourages individual and family voices in the direction and development of services; with particular focus on matching families with similar concerns to develop long term supportive relationships beyond the confines of this program.

3) Collaborate effectively with existing and developing community programs and organizations to facilitate a support network for families dealing with behavioral health issues.

C. UNITS OF SERVICE

1. CONTRACTOR shall achieve, track, and report, at a minimum, the following units of service:

Units of Service	Annual Contracted Units
Group Support Sessions	124
Total Participants in Group Support Sessions	1,240
Total Number of Individual Support Sessions	600
Family Matches	60
Total Unduplicated Participants in Family Matching Services	120

D. OUTCOME MEASURES

1. CONTRACTOR shall track and implement the following OUTCOME MEASURES.

2. CONTRACTOR shall measure outcomes using pre- and post- tests at the onset and termination of services, not including group support. Satisfaction and knowledge surveys will be completed to measure increases in knowledge and level of satisfaction of services. CONTRACTOR will ensure that all families in need of resources will receive referrals to community providers. CONTRACTOR shall, at a minimum, achieve the following outcomes:

a. On average, Participants will report a significant increase in social support.

b. On average, Parent/caregivers will report a significant increase in global health.

3. CONTRACTOR shall utilize ADMINISTRATOR approved forms to collect pertinent data, which would be entered and analyzed for Participant’s level of satisfaction, program management, and quality improvement purposes. In addition, CONTRACTOR shall utilize any data collection systems for tracking Participant enrollment, demographics, trends, and service utilization. CONTRACTOR shall provide the COUNTY with monthly data reports or as needed upon request.

4. CONTRACTOR shall develop a system to track and record the following demographics: number of individuals served based on age groups; race and ethnicity; primary language; culture such as lesbian, gay, bisexual, transgender, questioning, and intersex (LGBTQI), veterans, and others such as hearing impaired.

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1 5. CONTRACTOR shall provide the COUNTY with monthly data reports, or as needed upon
 2 request of ADMINISTRATOR.

3 6. CONTRACTOR shall, on an ongoing basis and in partnership with ADMINISTRATOR,
 4 develop, modify, and incorporate different and/or additional outcome measurements, as approved by
 5 ADMINISTRATOR.

6 7. CONTRACTOR shall conduct on-going evaluations of the program and provide analysis to
 7 ADMINISTRATOR on a regular basis and in a format approved by ADMINISTRATOR.

8 8. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
 9 Services Paragraph of this Exhibit A to the Agreement.

10
 11 **VI. STAFFING**

12 A. CONTRACTOR shall, at a minimum, provide the following staffing pattern expressed in
 13 Full-Time Equivalents (FTEs) continuously throughout the term of the Agreement. One (1) FTE shall
 14 be equal to an average of forty (40) hours work per week.

16	PROGRAM	<u>FTEs</u>
17	Administrative Assistant	<u>0.50</u>
18	ADMINISTRATION SUBTOTAL	0.50
19		
20	PROGRAM	
21	Director of Community Support	0.25
22	Peer Mentor	2.00
23	Child Care Educator	0.25
24	Community Education Supervisor	1.00
25	Mentor Supervisor	<u>1.00</u>
26	PROGRAM SUBTOTAL	4.50
27		
28	TOTAL FTEs	5.00

29
 30 B. CONTRACTOR shall make best effort to include bilingual/bicultural services to meet the
 31 diverse needs of the community threshold languages as determined by COUNTY. Whenever possible,
 32 bilingual/bicultural staff should be recruited and retained. Any staffing vacancies occurring at a time
 33 when bilingual and bicultural composition of the staffing does not meet the above requirement must be
 34 filled with bilingual and bicultural staff unless ADMINISTRATOR consents, in writing, to the filling of
 35 those positions with non-bilingual staff. Salary savings resulting from such vacant positions may not be
 36 used to cover costs other than salaries and employees benefits unless otherwise authorized in writing, in
 37 advance, by ADMINISTRATOR.

1 C. CONTRACTOR shall make its best effort to provide services pursuant to the Agreement in a
2 manner that is culturally and linguistically appropriate for the population(s) served. CONTRACTOR
3 shall maintain documents of such efforts which may include; but not be limited to: records of
4 participation in COUNTY-sponsored or other applicable training; recruitment and hiring P&Ps; copies
5 of literature in multiple languages and formats, as appropriate; and descriptions of measures taken to
6 enhance accessibility for, and sensitivity to, individuals who are physically challenged.

7 D. CONTRACTOR shall actively recruit and maintain a large pool of qualified volunteers,
8 especially those who speak other languages and those whose lives were impacted by Behavioral Health
9 Conditions and train them to be peer mentors.

10 E. CONTRACTOR is highly encouraged to augment the above paid staff with qualified and
11 trained volunteers and/or interns upon written approval of ADMINISTRATOR.

12 E. CONTRACTOR shall maintain personnel files for each staff member, both administrative and
13 programmatic, both direct and indirect, which shall include, but not be limited to, an application for
14 employment, qualifications for the position, documentation of bicultural/bilingual capabilities (if
15 applicable), pay rate and evaluations justifying pay increases.

16 F. CONTRACTOR shall establish clear Policy and Procedures pertaining to equipment usage
17 (e.g., cell phones, texting devices, and computers). The Policy and Procedures shall address at the
18 minimum the following:

- 19 1. Eligibility and selection criteria;
- 20 2. Staff's on-duty conduct and responsibilities;
- 21 3. Supervision plan of staff and equipment including emergency procedure; and
- 22 4. Confidentiality and records keeping.

23 G. CONTRACTOR shall notify ADMINISTRATOR, in writing, within seventy-two (72) hours, of
24 any staffing vacancies that occur during the term of the Agreement.

25 H. CONTRACTOR shall notify ADMINISTRATOR, in writing, at least seven (7) days in
26 advance, of any new staffing changes; including promotions, temporary FTE changes and internal or
27 external temporary staffing assignment requests that occur during the term of the Agreement.

28 I. CONTRACTOR shall ensure that all staff, albeit paid or unpaid, complete necessary training
29 prior to discharging duties associated with their titles and any other training necessary to assist the
30 CONTRACTOR and COUNTY to be in compliance with prevailing standards of practice as well as
31 State and Federal regulatory requirements.

32 J. CONTRACTOR shall provide ongoing supervision throughout all shifts to all staff, albeit paid
33 or unpaid, direct line staff or supervisors/directors, to enhance service quality and program
34 effectiveness. Supervision methods should include debriefings and consultation as needed, individual
35 supervision or one-on-one support, and team meetings. Supervision should be provided by a supervisor
36 who has extensive knowledge regarding mental health issues.

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1 K. CONTRACTOR and ADMINISTRATOR may mutually agree, in writing, to modify the
2 Staffing Paragraph of this Exhibit A to the Agreement.

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1 EXHIBIT B
2 TO AGREEMENT FOR PROVISION OF
3 FAMILY SUPPORT SERVICES
4 BETWEEN
5 COUNTY OF ORANGE
6 AND
7 BOYS TOWN CALIFORNIA, INC.
8 JULY 1, 2017 THROUGH JUNE 30, 2020
9

10 **I. BUSINESS ASSOCIATE CONTRACT**

11 **A. GENERAL PROVISIONS AND RECITALS**

12 1. The parties agree that the terms used, but not otherwise defined in the Common Terms and
13 Definitions Paragraph of Exhibit A, B, and C to the Agreement or in Subparagraph B below, shall have
14 the same meaning given to such terms under HIPAA, the HITECH Act, and their implementing
15 regulations at 45 CFR Parts 160 and 164 HIPAA regulations as they may exist now or be hereafter
16 amended.

17 2. The parties agree that a business associate relationship under HIPAA, the HITECH Act,
18 and the HIPAA regulations between the CONTRACTOR and COUNTY arises to the extent that
19 CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of
20 COUNTY pursuant to, and as set forth in, the Agreement that are described in the definition of
21 “Business Associate” in 45 CFR § 160.103.

22 3. The COUNTY wishes to disclose to CONTRACTOR certain information pursuant to the
23 terms of the Agreement, some of which may constitute PHI, as defined below in Subparagraph B.10, to
24 be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the
25 Agreement.

26 4. The parties intend to protect the privacy and provide for the security of PHI that may be
27 created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance
28 with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH
29 Act, and the HIPAA regulations as they may exist now or be hereafter amended.

30 5. The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA
31 regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by
32 other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.

33 6. The parties understand that the HIPAA Privacy and Security rules, as defined below in
34 Subparagraphs B.9 and B.14, apply to the CONTRACTOR in the same manner as they apply to the
35 covered entity (COUNTY). CONTRACTOR agrees therefore to be in compliance at all times with the
36 terms of this Business Associate Contract and the applicable standards, implementation specifications,
37 and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended,

1 with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed
2 pursuant to the Agreement.

3 B. DEFINITIONS

4 1. "Administrative Safeguards" are administrative actions, and policies and procedures, to
5 manage the selection, development, implementation, and maintenance of security measures to protect
6 electronic PHI and to manage the conduct of CONTRACTOR's workforce in relation to the protection
7 of that information.

8 2. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted
9 under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

10 a. Breach excludes:

11 1) Any unintentional acquisition, access, or use of PHI by a workforce member or
12 person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use
13 was made in good faith and within the scope of authority and does not result in further use or disclosure
14 in a manner not permitted under the Privacy Rule.

15 2) Any inadvertent disclosure by a person who is authorized to access PHI at
16 CONTRACTOR to another person authorized to access PHI at the CONTRACTOR, or organized health
17 care arrangement in which COUNTY participates, and the information received as a result of such
18 disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.

19 3) A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief
20 that an unauthorized person to whom the disclosure was made would not reasonably have been able to
21 retain such information.

22 b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or
23 disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach
24 unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised
25 based on a risk assessment of at least the following factors:

26 1) The nature and extent of the PHI involved, including the types of identifiers and the
27 likelihood of re-identification;

28 2) The unauthorized person who used the PHI or to whom the disclosure was made;

29 3) Whether the PHI was actually acquired or viewed; and

30 4) The extent to which the risk to the PHI has been mitigated.

31 3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy
32 Rule in 45 CFR § 164.501.

33 4. "DRS" shall have the meaning given to such term under the HIPAA Privacy Rule in 45
34 CFR § 164.501.

35 5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45
36 CFR § 160.103.

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1 6. "Health Care Operations" shall have the meaning given to such term under the HIPAA
2 Privacy Rule in 45 CFR § 164.501.

3 7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in
4 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance
5 with 45 CFR § 164.502(g).

6 8. "Physical Safeguards" are physical measures, policies, and procedures to protect
7 CONTRACTOR's electronic information systems and related buildings and equipment, from natural
8 and environmental hazards, and unauthorized intrusion.

9 9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually
10 Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

11 10. "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §
12 160.103.

13 11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy
14 Rule in 45 CFR § 164.103.

15 12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or
16 his or her designee.

17 13. "Security Incident" means attempted or successful unauthorized access, use, disclosure,
18 modification, or destruction of information or interference with system operations in an information
19 system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans,
20 "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by
21 CONTRACTOR.

22 14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of
23 electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.

24 15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in
25 45 CFR § 160.103.

26 16. "Technical safeguards" means the technology and the policy and procedures for its use that
27 protect electronic PHI and control access to it.

28 17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable,
29 unreadable, or indecipherable to unauthorized individuals through the use of a technology or
30 methodology specified by the Secretary of Health and Human Services in the guidance issued on the
31 HHS Web site.

32 18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45
33 CFR § 160.103.

34 C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:

35 1. CONTRACTOR agrees not to use or further disclose PHI COUNTY discloses to
36 CONTRACTOR other than as permitted or required by this Business Associate Contract or as required
37 by law.

1 2. CONTRACTOR agrees to use appropriate safeguards, as provided for in this Business
2 Associate Contract and the Agreement, to prevent use or disclosure of PHI COUNTY discloses to
3 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
4 other than as provided for by this Business Associate Contract.

5 3. CONTRACTOR agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR
6 Part 164 with respect to electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
7 creates, receives, maintains, or transmits on behalf of COUNTY.

8 4. CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is
9 known to CONTRACTOR of a Use or Disclosure of PHI by CONTRACTOR in violation of the
10 requirements of this Business Associate Contract.

11 5. CONTRACTOR agrees to report to COUNTY immediately any Use or Disclosure of PHI
12 not provided for by this Business Associate Contract of which CONTRACTOR becomes aware.
13 CONTRACTOR must report Breaches of Unsecured PHI in accordance with Subparagraph E below and
14 as required by 45 CFR § 164.410.

15 6. CONTRACTOR agrees to ensure that any Subcontractors that create, receive, maintain, or
16 transmit PHI on behalf of CONTRACTOR agree to the same restrictions and conditions that apply
17 through this Business Associate Contract to CONTRACTOR with respect to such information.

18 7. CONTRACTOR agrees to provide access, within fifteen (15) calendar days of receipt of a
19 written request by COUNTY, to PHI in a DRS, to COUNTY or, as directed by COUNTY, to an
20 Individual in order to meet the requirements under 45 CFR § 164.524. If CONTRACTOR maintains an
21 EHR with PHI, and an individual requests a copy of such information in an electronic format,
22 CONTRACTOR shall provide such information in an electronic format.

23 8. CONTRACTOR agrees to make any amendment(s) to PHI in a DRS that COUNTY directs
24 or agrees to pursuant to 45 CFR § 164.526 at the request of COUNTY or an Individual, within thirty
25 (30) calendar days of receipt of said request by COUNTY. CONTRACTOR agrees to notify COUNTY
26 in writing no later than ten (10) calendar days after said amendment is completed.

27 9. CONTRACTOR agrees to make internal practices, books, and records, including P&Ps,
28 relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on
29 behalf of, COUNTY available to COUNTY and the Secretary in a time and manner as determined by
30 COUNTY or as designated by the Secretary for purposes of the Secretary determining COUNTY's
31 compliance with the HIPAA Privacy Rule.

32 10. CONTRACTOR agrees to document any Disclosures of PHI COUNTY discloses to
33 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY,
34 and to make information related to such Disclosures available as would be required for COUNTY to
35 respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45
36 CFR § 164.528.

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1 11. CONTRACTOR agrees to provide COUNTY or an Individual, as directed by COUNTY, in
2 a time and manner to be determined by COUNTY, that information collected in accordance with the
3 Agreement, in order to permit COUNTY to respond to a request by an Individual for an accounting of
4 Disclosures of PHI in accordance with 45 CFR § 164.528.

5 12. CONTRACTOR agrees that to the extent CONTRACTOR carries out COUNTY's
6 obligation under the HIPAA Privacy and/or Security rules CONTRACTOR will comply with the
7 requirements of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation.

8 13. If CONTRACTOR receives Social Security data from COUNTY provided to COUNTY by
9 a state agency, upon request by COUNTY, CONTRACTOR shall provide COUNTY with a list of all
10 employees, subcontractors, and agents who have access to the Social Security data, including
11 employees, agents, subcontractors, and agents of its subcontractors.

12 14. CONTRACTOR will notify COUNTY if CONTRACTOR is named as a defendant in a
13 criminal proceeding for a violation of HIPAA. COUNTY may terminate the Agreement, if
14 CONTRACTOR is found guilty of a criminal violation in connection with HIPAA. COUNTY may
15 terminate the Agreement, if a finding or stipulation that CONTRACTOR has violated any standard or
16 requirement of the privacy or security provisions of HIPAA, or other security or privacy laws are made
17 in any administrative or civil proceeding in which CONTRACTOR is a party or has been joined.
18 COUNTY will consider the nature and seriousness of the violation in deciding whether or not to
19 terminate the Agreement.

20 15. CONTRACTOR shall make itself and any subcontractors, employees or agents assisting
21 CONTRACTOR in the performance of its obligations under the Agreement, available to COUNTY at
22 no cost to COUNTY to testify as witnesses, or otherwise, in the event of litigation or administrative
23 proceedings being commenced against COUNTY, its directors, officers or employees based upon
24 claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy,
25 which involves inactions or actions by CONTRACTOR, except where CONTRACTOR or its
26 subcontractor, employee, or agent is a named adverse party.

27 16. The Parties acknowledge that federal and state laws relating to electronic data security and
28 privacy are rapidly evolving and that amendment of this Business Associate Contract may be required to
29 provide for procedures to ensure compliance with such developments. The Parties specifically agree to
30 take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH
31 Act, the HIPAA regulations and other applicable laws relating to the security or privacy of PHI. Upon
32 COUNTY's request, CONTRACTOR agrees to promptly enter into negotiations with COUNTY
33 concerning an amendment to this Business Associate Contract embodying written assurances consistent
34 with the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other
35 applicable laws. COUNTY may terminate the Agreement upon thirty (30) days written notice in the
36 event:

37 //

1 a. CONTRACTOR does not promptly enter into negotiations to amend this Business
2 Associate Contract when requested by COUNTY pursuant to this subparagraph C; or

3 b. CONTRACTOR does not enter into an amendment providing assurances regarding the
4 safeguarding of PHI that COUNTY deems are necessary to satisfy the standards and requirements of
5 HIPAA, the HITECH Act, and the HIPAA regulations.

6 17. CONTRACTOR shall work with COUNTY upon notification by CONTRACTOR to
7 COUNTY of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph
8 B.2.a above.

9 D. SECURITY RULE

10 1. CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish
11 and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR
12 § 164.308, § 164.310, and § 164.312, with respect to electronic PHI COUNTY discloses to
13 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY.
14 CONTRACTOR shall develop and maintain a written information privacy and security program that
15 includes Administrative, Physical, and Technical Safeguards appropriate to the size and complexity of
16 CONTRACTOR's operations and the nature and scope of its activities.

17 2. CONTRACTOR shall implement reasonable and appropriate policies and procedures to
18 comply with the standards, implementation specifications and other requirements of 45 CFR Part 164,
19 Subpart C, in compliance with 45 CFR § 164.316. CONTRACTOR will provide COUNTY with its
20 current and updated policies upon request.

21 3. CONTRACTOR shall ensure the continuous security of all computerized data systems
22 containing electronic PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
23 maintains, or transmits on behalf of COUNTY. CONTRACTOR shall protect paper documents
24 containing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives,
25 maintains, or transmits on behalf of COUNTY. These steps shall include, at a minimum:

26 a. Complying with all of the data system security precautions listed under subparagraphs
27 E, below;

28 b. Achieving and maintaining compliance with the HIPAA Security Rule, as necessary in
29 conducting operations on behalf of COUNTY;

30 c. Providing a level and scope of security that is at least comparable to the level and scope
31 of security established by the OMB in OMB Circular No. A-130, Appendix III - Security of Federal
32 Automated Information Systems, which sets forth guidelines for automated information systems in
33 Federal agencies;

34 4. CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or
35 transmit ePHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same
36 restrictions and requirements contained in this Subparagraph D of this Business Associate Contract.

37 //

1 5. CONTRACTOR shall report to COUNTY immediately any Security Incident of which it
2 becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI in accordance with
3 Subparagraph E below and as required by 45 CFR § 164.410.

4 6. CONTRACTOR shall designate a Security Officer to oversee its data security program who
5 shall be responsible for carrying out the requirements of this paragraph and for communicating on
6 security matters with COUNTY.

7 E. DATA SECURITY REQUIREMENTS

8 1. Personal Controls

9 a. Employee Training. All workforce members who assist in the performance of
10 functions or activities on behalf of COUNTY in connection with Agreement, or access or disclose PHI
11 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
12 behalf of COUNTY, must complete information privacy and security training, at least annually, at
13 CONTRACTOR's expense. Each workforce member who receives information privacy and security
14 training must sign a certification, indicating the member's name and the date on which the training was
15 completed. These certifications must be retained for a period of six (6) years following the termination
16 of Agreement.

17 b. Employee Discipline. Appropriate sanctions must be applied against workforce
18 members who fail to comply with any provisions of CONTRACTOR's privacy P&Ps, including
19 termination of employment where appropriate.

20 c. Confidentiality Statement. All persons that will be working with PHI COUNTY
21 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
22 COUNTY must sign a confidentiality statement that includes, at a minimum, General Use, Security and
23 Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the
24 workforce member prior to access to such PHI. The statement must be renewed annually. The
25 CONTRACTOR shall retain each person's written confidentiality statement for COUNTY inspection
26 for a period of six (6) years following the termination of the Agreement.

27 d. Background Check. Before a member of the workforce may access PHI COUNTY
28 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
29 COUNTY, a background screening of that worker must be conducted. The screening should be
30 commensurate with the risk and magnitude of harm the employee could cause, with more thorough
31 screening being done for those employees who are authorized to bypass significant technical and
32 operational security controls. The CONTRACTOR shall retain each workforce member's background
33 check documentation for a period of three (3) years.

34 2. Technical Security Controls

35 a. Workstation/Laptop encryption. All workstations and laptops that store PHI COUNTY
36 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
37 COUNTY either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which

1 is 128bit or higher, such as AES. The encryption solution must be full disk unless approved by the
2 COUNTY.

3 b. Server Security. Servers containing unencrypted PHI COUNTY discloses to
4 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
5 must have sufficient administrative, physical, and technical controls in place to protect that data, based
6 upon a risk assessment/system security review.

7 c. Minimum Necessary. Only the minimum necessary amount of PHI COUNTY
8 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
9 COUNTY required to perform necessary business functions may be copied, downloaded, or exported.

10 d. Removable media devices. All electronic files that contain PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
12 must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives,
13 floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified
14 algorithm which is 128bit or higher, such as AES. Such PHI shall not be considered “removed from the
15 premises” if it is only being transported from one of CONTRACTOR’s locations to another of
16 CONTRACTOR’s locations.

17 e. Antivirus software. All workstations, laptops and other systems that process and/or
18 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
19 transmits on behalf of COUNTY must have installed and actively use comprehensive anti-virus software
20 solution with automatic updates scheduled at least daily.

21 f. Patch Management. All workstations, laptops and other systems that process and/or
22 store PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or
23 transmits on behalf of COUNTY must have critical security patches applied, with system reboot if
24 necessary. There must be a documented patch management process which determines installation
25 timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable
26 patches must be installed within thirty (30) calendar or business days of vendor release. Applications
27 and systems that cannot be patched due to operational reasons must have compensatory controls
28 implemented to minimize risk, where possible.

29 g. User IDs and Password Controls. All users must be issued a unique user name for
30 accessing PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,
31 or transmits on behalf of COUNTY. Username must be promptly disabled, deleted, or the password
32 changed upon the transfer or termination of an employee with knowledge of the password, at maximum
33 within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight
34 characters and must be a non-dictionary word. Passwords must not be stored in readable format on the
35 computer. Passwords must be changed every ninety (90) days, preferably every sixty (60) days.
36 Passwords must be changed if revealed or compromised. Passwords must be composed of characters
37 from at least three (3) of the following four (4) groups from the standard keyboard:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

h. Data Destruction. When no longer needed, all PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be wiped using the Gutmann or DoD 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission by COUNTY.

i. System Timeout. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.

j. Warning Banners. All systems providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY, or which alters such PHI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If such PHI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

l. Access Controls. The system providing access to PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must use role based access controls for all user authentications, enforcing the principle of least privilege.

m. Transmission encryption. All data transmissions of PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI in motion such as website access, file transfer, and E-Mail.

n. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting PHI COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains,

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1 or transmits on behalf of COUNTY that are accessible via the Internet must be protected by a
2 comprehensive intrusion detection and prevention solution.

3 3. Audit Controls

4 a. System Security Review. CONTRACTOR must ensure audit control mechanisms that
5 record and examine system activity are in place. All systems processing and/or storing PHI COUNTY
6 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
7 COUNTY must have at least an annual system risk assessment/security review which provides
8 assurance that administrative, physical, and technical controls are functioning effectively and providing
9 adequate levels of protection. Reviews should include vulnerability scanning tools.

10 b. Log Reviews. All systems processing and/or storing PHI COUNTY discloses to
11 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
12 must have a routine procedure in place to review system logs for unauthorized access.

13 c. Change Control. All systems processing and/or storing PHI COUNTY discloses to
14 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY
15 must have a documented change control procedure that ensures separation of duties and protects the
16 confidentiality, integrity and availability of data.

17 4. Business Continuity/Disaster Recovery Control

18 a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan
19 to enable continuation of critical business processes and protection of the security of PHI COUNTY
20 discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of
21 COUNTY kept in an electronic format in the event of an emergency. Emergency means any
22 circumstance or situation that causes normal computer operations to become unavailable for use in
23 performing the work required under this Agreement for more than 24 hours.

24 b. Data Backup Plan. CONTRACTOR must have established documented procedures to
25 backup such PHI to maintain retrievable exact copies of the PHI. The plan must include a regular
26 schedule for making backups, storing backup offsite, an inventory of backup media, and an estimate of
27 the amount of time needed to restore DHCS PHI or PI should it be lost. At a minimum, the schedule
28 must be a weekly full backup and monthly offsite storage of DHCS data. BCP for contractor and
29 COUNTY (e.g. the application owner) must merge with the DRP.

30 5. Paper Document Controls

31 a. Supervision of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
32 creates, receives, maintains, or transmits on behalf of COUNTY in paper form shall not be left
33 unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means
34 that information is not being observed by an employee authorized to access the information. Such PHI
35 in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in
36 baggage on commercial airplanes.

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1 b. Escorting Visitors. Visitors to areas where PHI COUNTY discloses to
2 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY is
3 contained shall be escorted and such PHI shall be kept out of sight while visitors are in the area.

4 c. Confidential Destruction. PHI COUNTY discloses to CONTRACTOR or
5 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY must be disposed of
6 through confidential means, such as cross cut shredding and pulverizing.

7 d. Removal of Data. PHI COUNTY discloses to CONTRACTOR or CONTRACTOR
8 creates, receives, maintains, or transmits on behalf of COUNTY must not be removed from the premises
9 of the CONTRACTOR except with express written permission of COUNTY.

10 e. Faxing. Faxes containing PHI COUNTY discloses to CONTRACTOR or
11 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall not be left
12 unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement
13 notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the
14 intended recipient before sending the fax.

15 f. Mailing. Mailings containing PHI COUNTY discloses to CONTRACTOR or
16 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY shall be sealed and
17 secured from damage or inappropriate viewing of PHI to the extent possible. Mailings which include
18 five hundred (500) or more individually identifiable records containing PHI COUNTY discloses to
19 CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY in
20 a single package shall be sent using a tracked mailing method which includes verification of delivery
21 and receipt, unless the prior written permission of COUNTY to use another method is obtained.

22 F. BREACH DISCOVERY AND NOTIFICATION

23 1. Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify
24 COUNTY of such Breach, however both parties agree to a delay in the notification if so advised by a
25 law enforcement official pursuant to 45 CFR § 164.412.

26 a. A Breach shall be treated as discovered by CONTRACTOR as of the first day on which
27 such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been
28 known to CONTRACTOR.

29 b. CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is
30 known, or by exercising reasonable diligence would have known, to any person who is an employee,
31 officer, or other agent of CONTRACTOR, as determined by federal common law of agency.

32 2. CONTRACTOR shall provide the notification of the Breach immediately to the COUNTY
33 Privacy Officer. CONTRACTOR's notification may be oral, but shall be followed by written
34 notification within 24 hours of the oral notification.

35 3. CONTRACTOR's notification shall include, to the extent possible:

36 a. The identification of each Individual whose Unsecured PHI has been, or is reasonably
37 believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;

1 b. Any other information that COUNTY is required to include in the notification to
2 Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify COUNTY or
3 promptly thereafter as this information becomes available, even after the regulatory sixty (60) day
4 period set forth in 45 CFR § 164.410 (b) has elapsed, including:

5 1) A brief description of what happened, including the date of the Breach and the date
6 of the discovery of the Breach, if known;

7 2) A description of the types of Unsecured PHI that were involved in the Breach (such
8 as whether full name, social security number, date of birth, home address, account number, diagnosis,
9 disability code, or other types of information were involved);

10 3) Any steps Individuals should take to protect themselves from potential harm
11 resulting from the Breach;

12 4) A brief description of what CONTRACTOR is doing to investigate the Breach, to
13 mitigate harm to Individuals, and to protect against any future Breaches; and

14 5) Contact procedures for Individuals to ask questions or learn additional information,
15 which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.

16 4. COUNTY may require CONTRACTOR to provide notice to the Individual as required in
17 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the
18 COUNTY.

19 5. In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation
20 of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that
21 CONTRACTOR made all notifications to COUNTY consistent with this Subparagraph F and as
22 required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or
23 disclosure of PHI did not constitute a Breach.

24 6. CONTRACTOR shall maintain documentation of all required notifications of a Breach or
25 its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.

26 7. CONTRACTOR shall provide to COUNTY all specific and pertinent information about the
27 Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit
28 COUNTY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as
29 practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of
30 the Breach to COUNTY pursuant to Subparagraph F.2 above.

31 8. CONTRACTOR shall continue to provide all additional pertinent information about the
32 Breach to COUNTY as it may become available, in reporting increments of five (5) business days after
33 the last report to COUNTY. CONTRACTOR shall also respond in good faith to any reasonable
34 requests for further information, or follow-up information after report to COUNTY, when such request
35 is made by COUNTY.

36 9. If the Breach is the fault of CONTRACTOR, CONTRACTOR shall bear all expense or
37 other costs associated with the Breach and shall reimburse COUNTY for all expenses COUNTY incurs

1 in addressing the Breach and consequences thereof, including costs of investigation, notification,
2 remediation, documentation or other costs associated with addressing the Breach.

3 G. PERMITTED USES AND DISCLOSURES BY CONTRACTOR

4 1. CONTRACTOR may use or further disclose PHI COUNTY discloses to CONTRACTOR
5 as necessary to perform functions, activities, or services for, or on behalf of, COUNTY as specified in
6 the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done
7 by COUNTY except for the specific Uses and Disclosures set forth below.

8 a. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary,
9 for the proper management and administration of CONTRACTOR.

10 b. CONTRACTOR may disclose PHI COUNTY discloses to CONTRACTOR for the
11 proper management and administration of CONTRACTOR or to carry out the legal responsibilities of
12 CONTRACTOR, if:

13 1) The Disclosure is required by law; or

14 2) CONTRACTOR obtains reasonable assurances from the person to whom the PHI
15 is disclosed that it will be held confidentially and used or further disclosed only as required by law or for
16 the purposes for which it was disclosed to the person and the person immediately notifies
17 CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has
18 been breached.

19 c. CONTRACTOR may use or further disclose PHI COUNTY discloses to
20 CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of
21 CONTRACTOR.

22 2. CONTRACTOR may use PHI COUNTY discloses to CONTRACTOR, if necessary, to
23 carry out legal responsibilities of CONTRACTOR.

24 3. CONTRACTOR may use and disclose PHI COUNTY discloses to CONTRACTOR
25 consistent with the minimum necessary policies and procedures of COUNTY.

26 4. CONTRACTOR may use or disclose PHI COUNTY discloses to CONTRACTOR as
27 required by law.

28 H. PROHIBITED USES AND DISCLOSURES

29 1. CONTRACTOR shall not disclose PHI COUNTY discloses to CONTRACTOR or
30 CONTRACTOR creates, receives, maintains, or transmits on behalf of COUNTY about an individual to
31 a health plan for payment or health care operations purposes if the PHI pertains solely to a health care
32 item or service for which the health care provider involved has been paid out of pocket in full and the
33 individual requests such restriction, in accordance with 42 USC § 17935(a) and 45 CFR § 164.522(a).

34 2. CONTRACTOR shall not directly or indirectly receive remuneration in exchange for PHI
35 COUNTY discloses to CONTRACTOR or CONTRACTOR creates, receives, maintains, or transmits on
36 behalf of COUNTY, except with the prior written consent of COUNTY and as permitted by 42
37 USC § 17935(d)(2).

1 I. OBLIGATIONS OF COUNTY

2 1. COUNTY shall notify CONTRACTOR of any limitation(s) in COUNTY's notice of
3 privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect
4 CONTRACTOR's Use or Disclosure of PHI.

5 2. COUNTY shall notify CONTRACTOR of any changes in, or revocation of, the permission
6 by an Individual to use or disclose his or her PHI, to the extent that such changes may affect
7 CONTRACTOR's Use or Disclosure of PHI.

8 3. COUNTY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI
9 that COUNTY has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction
10 may affect CONTRACTOR's Use or Disclosure of PHI.

11 4. COUNTY shall not request CONTRACTOR to use or disclose PHI in any manner that
12 would not be permissible under the HIPAA Privacy Rule if done by COUNTY.

13 J. BUSINESS ASSOCIATE TERMINATION

14 1. Upon COUNTY's knowledge of a material Breach or violation by CONTRACTOR of the
15 requirements of this Business Associate Contract, COUNTY shall:

16 a. Provide an opportunity for CONTRACTOR to cure the material Breach or end the
17 violation within thirty (30) business days; or

18 b. Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to
19 cure the material Breach or end the violation within (30) days, provided termination of the Agreement is
20 feasible.

21 2. Upon termination of the Agreement, CONTRACTOR shall either destroy or return to
22 COUNTY all PHI CONTRACTOR received from COUNTY or CONTRACTOR created, maintained,
23 or received on behalf of COUNTY in conformity with the HIPAA Privacy Rule.

24 a. This provision shall apply to all PHI that is in the possession of Subcontractors or
25 agents of CONTRACTOR.

26 b. CONTRACTOR shall retain no copies of the PHI.

27 c. In the event that CONTRACTOR determines that returning or destroying the PHI is not
28 feasible, CONTRACTOR shall provide to COUNTY notification of the conditions that make return or
29 destruction infeasible. Upon determination by COUNTY that return or destruction of PHI is infeasible,
30 CONTRACTOR shall extend the protections of this Business Associate Contract to such PHI and limit
31 further Uses and Disclosures of such PHI to those purposes that make the return or destruction
32 infeasible, for as long as CONTRACTOR maintains such PHI.

33 3. The obligations of this Business Associate Contract shall survive the termination of the
34 Agreement.

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EXHIBIT C
TO AGREEMENT FOR PROVISION OF
FAMILY SUPPORT SERVICES
BETWEEN
COUNTY OF ORANGE
AND
BOYS TOWN CALIFORNIA, INC.
JULY 1, 2017 THROUGH JUNE 30, 2020

I. PERSONAL INFORMATION PRIVACY AND SECURITY CONTRACT

Any reference to statutory, regulatory, or contractual language herein shall be to such language as in effect or as amended.

A. DEFINITIONS

1. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.

2. "Breach of the security of the system" shall have the meaning given to such term under the CIPA, Civil Code § 1798.29(d).

3. "CMPPA Agreement" means the CMPPA Agreement between the SSA and CHHS.

4. "DHCS PI" shall mean Personal Information, as defined below, accessed in a database maintained by the COUNTY or DHCS, received by CONTRACTOR from the COUNTY or DHCS or acquired or created by CONTRACTOR in connection with performing the functions, activities and services specified in the Agreement on behalf of the COUNTY.

5. "IEA" shall mean the Information Exchange Agreement currently in effect between the SSA and DHCS.

6. "Notice-triggering Personal Information" shall mean the personal information identified in California Civil Code § 1798.29(e) whose unauthorized access may trigger notification requirements under California Civil Code § 1709.29. For purposes of this provision, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering PI includes PI in electronic, paper or any other medium.

7. "PII" shall have the meaning given to such term in the IEA and CMPPA.

8. "PI" shall have the meaning given to such term in California Civil Code § 1798.3(a).

9. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of

1 participation with respect to health care providers participating in the program, and statutes or
2 regulations that require the production of information, including statutes or regulations that require such
3 information if payment is sought under a government program providing public benefits.

4 10. "Security Incident" means the attempted or successful unauthorized access, use, disclosure,
5 modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or
6 interference with system operations in an information system that processes, maintains or stores PI.

7 B. TERMS OF AGREEMENT

8 1. Permitted Uses and Disclosures of DHCS PI and PII by CONTRACTOR. Except as
9 otherwise indicated in this Exhibit, CONTRACTOR may use or disclose DHCS PI only to perform
10 functions, activities, or services for or on behalf of the COUNTY pursuant to the terms of the
11 Agreement provided that such use or disclosure would not violate the CIPA if done by the COUNTY.

12 2. Responsibilities of CONTRACTOR

13 CONTRACTOR agrees:

14 a. Nondisclosure. Not to use or disclose DHCS PI or PII other than as permitted or
15 required by this Personal Information Privacy and Security Contract or as required by applicable state
16 and federal law.

17 b. Safeguards. To implement appropriate and reasonable administrative, technical, and
18 physical safeguards to protect the security, confidentiality and integrity of DHCS PI and PII, to protect
19 against anticipated threats or hazards to the security or integrity of DHCS PI and PII, and to prevent use
20 or disclosure of DHCS PI or PII other than as provided for by this Personal Information Privacy and
21 Security Contract. CONTRACTOR shall develop and maintain a written information privacy and
22 security program that include administrative, technical and physical safeguards appropriate to the size
23 and complexity of CONTRACTOR's operations and the nature and scope of its activities, which
24 incorporate the requirements of Subparagraph (c), below. CONTRACTOR will provide COUNTY with
25 its current policies upon request.

26 c. Security. CONTRACTOR shall ensure the continuous security of all computerized
27 data systems containing DHCS PI and PII. CONTRACTOR shall protect paper documents containing
28 DHCS PI and PII. These steps shall include, at a minimum:

29 1) Complying with all of the data system security precautions listed in Subparagraph
30 E of the Business Associate Contract, Exhibit B to the Agreement; and

31 2) Providing a level and scope of security that is at least comparable to the level and
32 scope of security established by the Office of Management and Budget in OMB Circular No. A-130,
33 Appendix III-Security of Federal Automated Information Systems, which sets forth guidelines for
34 automated information systems in Federal agencies.

35 3) If the data obtained by CONTRACTOR from COUNTY includes PII,
36 CONTRACTOR shall also comply with the substantive privacy and security requirements in the
37 CMPPA Agreement between the SSA and the CHHS and in the Agreement between the SSA and

1 DHCS, known as the IEA. The specific sections of the IEA with substantive privacy and security
2 requirements to be complied with are sections E, F, and G, and in Attachment 4 to the IEA, Electronic
3 Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local
4 Agencies Exchanging Electronic Information with the SSA. CONTRACTOR also agrees to ensure that
5 any of CONTRACTOR's agents or subcontractors, to whom CONTRACTOR provides DHCS PII agree
6 to the same requirements for privacy and security safeguards for confidential data that apply to
7 CONTRACTOR with respect to such information.

8 d. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful
9 effect that is known to CONTRACTOR of a use or disclosure of DHCS PI or PII by CONTRACTOR or
10 its subcontractors in violation of this Personal Information Privacy and Security Contract.

11 e. CONTRACTOR's Agents and Subcontractors. To impose the same restrictions and
12 conditions set forth in this Personal Information and Security Contract on any subcontractors or other
13 agents with whom CONTRACTOR subcontracts any activities under the Agreement that involve the
14 disclosure of DHCS PI or PII to such subcontractors or other agents.

15 f. Availability of Information. To make DHCS PI and PII available to the DHCS and/or
16 COUNTY for purposes of oversight, inspection, amendment, and response to requests for records,
17 injunctions, judgments, and orders for production of DHCS PI and PII. If CONTRACTOR receives
18 DHCS PII, upon request by COUNTY and/or DHCS, CONTRACTOR shall provide COUNTY and/or
19 DHCS with a list of all employees, contractors and agents who have access to DHCS PII, including
20 employees, contractors and agents of its subcontractors and agents.

21 g. Cooperation with COUNTY. With respect to DHCS PI, to cooperate with and assist
22 the COUNTY to the extent necessary to ensure the DHCS's compliance with the applicable terms of the
23 CIPA including, but not limited to, accounting of disclosures of DHCS PI, correction of errors in DHCS
24 PI, production of DHCS PI, disclosure of a security Breach involving DHCS PI and notice of such
25 Breach to the affected individual(s).

26 h. Breaches and Security Incidents. During the term of the Agreement, CONTRACTOR
27 agrees to implement reasonable systems for the discovery of any Breach of unsecured DHCS PI and PII
28 or security incident. CONTRACTOR agrees to give notification of any beach of unsecured DHCS PI
29 and PII or security incident in accordance with Subparagraph F, of the Business Associate Contract,
30 Exhibit B to the Agreement.

31 i. Designation of Individual Responsible for Security. CONTRACTOR shall designate
32 an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for
33 carrying out the requirements of this Personal Information Privacy and Security Contract and for
34 communicating on security matters with the COUNTY.

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