

AMENDMENT TWO TO AGREEMENT

BETWEEN

COUNTY OF ORANGE

AND

BOYS AND GIRLS CLUBS OF TUSTIN

AND

THE RAISE FOUNDATION

FOR THE PROVISION OF FAMILY RESOURCE CENTER SERVICES

~~This AGREEMENT, entered into this 1st date of July, 2020, which date is particularized for purpose of reference only,~~ *THIS AMENDMENT TWO, made and entered into upon execution of all necessary signatures, is to that certain AGREEMENT Number FCJ0420 between the parties hereto, hereinafter referred to as the "Agreement" and* is by and between the COUNTY OF ORANGE, hereinafter referred to as "COUNTY," and Boys and Girls Clubs of Tustin, a California non-profit corporation and The Raise Foundation, a California non-profit corporation, hereinafter collectively referred to as "TUSTIN FAMILY RESOURCE CENTER" or "CONTRACTOR." Boys and Girls Clubs of Tustin and The Raise Foundation, may each also be referred to as "Contractor Partner Agencies." COUNTY and CONTRACTOR may be referred to individually as "Party" and collectively as "the Parties."

W I T N E S S E T H

WHEREAS, *on July 1, 2020,* COUNTY ~~desires to contract with~~ *and* CONTRACTOR *entered into an Agreement* for the provision of Family Resource Center Services, *for the term of July 1, 2020, through June 30, 2023; and*

~~WHEREAS, such services are authorized and provided pursuant to the Adoptions and Safe Families Act of 1997 (Public Law 105-89), California Welfare and Institutions Code Sections 16600-16605, All County Letter (ACL) No. 01-20, ACL No. 03-12, ACL No. 14.12, and the Child and Family Services Improvement and Innovation Act; and~~ *WHEREAS, on August 1, 2020, COUNTY*

and CONTRACTOR modified the Agreement to add Network Security and Privacy Liability Insurance;

WHEREAS, AMENDMENT ONE was issued to increase funding for the provision of additional Family Resource Center Services to clients; amend Subparagraph 21.1 of the Agreement; and amend Subparagraphs 4.15, 5.1.3, 5.4.2, 5.7.2, 6.4, 8.6, 14.1, 14.4, and Paragraph 15 of Exhibit A of the Agreement; and add Subparagraph 5.8 to Exhibit A of the Agreement;

WHEREAS, COUNTY desires to extend the Agreement for an additional two (2) years from July 1, 2023, through June 30, 2025; amend Paragraphs 1, 13, and Subparagraphs 21.1 and 21.2 of the Agreement; and amend Subparagraphs 14.1, 14.3, and 14.4 of Exhibit A of the Agreement;

WHEREAS, CONTRACTOR agrees to ~~render-continue to provide~~ such services ~~on-under~~ the terms and conditions ~~hereinafter set forth:~~ *in this Agreement; and*

ACCORDINGLY, THE PARTIES AGREED AS FOLLOWS:

1. Paragraph 1 of the Agreement is hereby amended to read as follows:

1. **TERM**

The term of this Agreement shall commence on July 1, 2020, and terminate on June 30, ~~2023~~2025, unless earlier terminated pursuant to the provisions of Paragraph 42 of this Agreement; however, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including, but not limited to, obligations with respect to indemnification, audits, reporting, and accounting.

2. Paragraph 13 of the Agreement is hereby amended to read as follows:

13. **INSURANCE**

13.1 Prior to the provision of services under this Agreement, CONTRACTOR agrees to ~~purchase-carry~~ all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy COUNTY that the insurance provisions of this Agreement have been complied with. CONTRACTOR agrees to keep such insurance coverage *current, provide* Certificates of Insurance and endorsements ~~on—deposit—with~~*to* ADMINISTRATOR during the entire term of this Agreement. ~~In addition, all~~

~~subcontractors performing work on behalf of CONTRACTOR pursuant to this Agreement shall obtain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR.~~

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

13.3 All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any ~~self-insured retention (SIR) in an amount~~ *SIRs* in excess of fifty thousand dollars (\$50,000) shall specifically be approved by the COUNTY's Risk Manager, or designee, ~~upon review of CONTRACTOR's current audited financial report.~~ *COUNTY reserves the right to require current audited financial reports from CONTRACTOR. If CONTRACTOR is self-insured, CONTRACTOR will indemnify COUNTY for any and all claims resulting or arising from CONTRACTOR's services in accordance with the indemnity provision stated in this Agreement.* ~~If CONTRACTOR's SIR is approved, CONTRACTOR, in addition to, and without limitation of, any other indemnity provision(s) in the Agreement, agrees to all of the following:~~

~~13.3.1 In addition to the duty to indemnify and hold COUNTY harmless against any and all liability, claim, demand or suit resulting from~~

~~CONTRACTOR's, its agent's, employee's or subcontractor's performance of this Agreement, CONTRACTOR shall defend COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and~~

~~13.3.2 CONTRACTOR's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and~~

~~13.3.3 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 CONTRACTOR's SIR provisions shall be interpreted as though CONTRACTOR was an insurer and COUNTY was the insured.~~

13.4 If CONTRACTOR fails to maintain insurance acceptable to COUNTY for the full term of this Agreement, COUNTY may terminate this Agreement.

13.5 Qualified Insurer

13.5.1 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).~~

13.6 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.

13.7 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 <i>or scheduled</i> , non-owned, and hired vehicles	\$1,000,000 per occurrence <i>combined single limit each accident</i>
Workers' Compensation	Statutory
Employer's Liability Insurance	\$1,000,000 per occurrence <i>accident or disease</i>
<i>Network Security & Privacy Liability</i>	<i>\$1,000,000 per claims-made</i>
Professional Liability Insurance	\$1,000,000 per claims <i>claims-made or occurrence</i> \$1,000,000 aggregate
Sexual Misconduct Liability	\$1,000,000 per occurrence
<i>13.7.1 Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.</i>	

13.8 Required Coverage Forms

13.8.1 Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01 or a substitute form providing liability coverage at least as broad.

13.8.2 Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20 or a substitute form providing coverage at least as broad.

13.9 Required Endorsements

13.9.1 Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

13.9.1.1 An Additional Insured endorsement using ISO form CG 20 26 04 13, or a form at least as broad, naming the County of Orange, its elected and appointed officials, officers, agents and employees, as Additional Insureds or provide blanket

coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

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

13.9.2 The Network Security & Privacy Liability policy shall contain the following endorsements which shall accompany the Certificate of Insurance:

13.9.2.1 An Additional Insured endorsement naming the County of Orange, its elected and appointed officials, officers, agents and employees as Additional Insureds for its vicarious liability.

13.9.2.2 A primary and non-contributory endorsement evidencing that the CONTRACTOR's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

- 13.10 The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

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

- 13.12 CONTRACTOR shall *provide thirty (30) days prior written notice to the COUNTY of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to* ~~notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment~~ of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the COUNTY may suspend or terminate this Agreement.
- 13.13 If CONTRACTOR's Professional Liability *and/or Network Security & Privacy Liability* policy is a "~~claims-made~~*Claims-Made*" policy(ies), CONTRACTOR shall agree to ~~maintain Professional Liability coverage for two (2) years following completion of this Agreement.~~*the following:*
- 13.13.1 The retroactive date must be shown and must be before the date of the Agreement or the beginning of the Agreement services.*
 - 13.13.2 Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Agreement services.*
 - 13.13.3 If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement services, CONTRACTOR must purchase an extended reporting period for a minimum of three (3) years after expiration or earlier termination of the Agreement.*
- 13.14 The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).
- 13.15 Insurance certificates should be mailed to COUNTY at the address indicated in Paragraph 10 of this Agreement.

- 13.16 If CONTRACTOR fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/County Procurement Office or ADMINISTRATOR, award may be made to the next qualified proponent.
- 13.17 COUNTY expressly retains the right to require CONTRACTOR to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
- 13.18 COUNTY shall notify CONTRACTOR in writing of changes in the insurance requirements. If CONTRACTOR does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to CONTRACTOR, and COUNTY shall be entitled to all legal remedies.
- 13.19 The procuring of such required policy or policies of insurance shall not be construed to limit CONTRACTOR's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

3. Subparagraph 21.1 of the Agreement is hereby amended to read as follows:

21.1 Maximum Contractual Obligation

The maximum obligation of COUNTY under this Agreement shall not exceed the amount of \$~~970,800~~*1,712,400*, or actual allowable costs, whichever is less. The estimated annual amount for each twelve (12) month period is as follows:

21.1.1 Year One: \$300,000 for July 1, 2020, through June 30, 2021;

21.1.2 Year Two: \$300,000 for July 1, 2021, through June 30, 2022;

21.1.3 Year Three: \$370,800 for July 1, 2022, through June 30, 2023;

21.1.4 Year Four: \$370,800 for July 1, 2023, through June 30, 2024; and

21.1.5 Year Five: \$370,800 for July 1, 2024, through June 30, 2025.

4. Subparagraph 21.2 of the Agreement is hereby amended to read as follows:

21.2 Allowable Costs

During the term of this Agreement, COUNTY shall pay CONTRACTOR monthly in arrears, for actual allowable costs incurred and paid by CONTRACTOR pursuant to this Agreement, as defined in Title 2 CFR Part 200, or as approved by ADMINISTRATOR. However, COUNTY, in its sole discretion, may pay CONTRACTOR for anticipated allowable costs that will be incurred by CONTRACTOR for *the month of June 2021* *during the term of the contract*, during the month of such anticipated expenditure.

5. Subparagraph 14.1 of Exhibit A of the Agreement is hereby amended to read as follows:

14.1 For the ~~three (3)~~ *five (5)* COUNTY fiscal years (July 1 through June 30) included during the term of this Agreement, the maximum budget for services provided pursuant to Exhibit A of this Agreement shall not exceed ~~\$970,800~~ *1,712,400*.

6. Subparagraph 14.3 of Exhibit A of the Agreement is hereby amended to read as follows:

14.3 The budget specified in Subparagraph 14.4 below shall be for the period of July 1, 2020, through June 30, ~~2023~~ *2025*. Each period shall be defined as follows:

14.3.1 Year One shall be for the period of July 1, 2020, through June 30, 2021.

14.3.2 Year Two shall be for the period of July 1, 2021, through June 30, 2022.

14.3.3 Year Three shall be for the period of July 1, 2022, through June 30, 2023.

14.3.4 Year Four shall be for the period of July 1, 2023, through June 30, 2024.

14.3.5 Year Five shall be for the period of July 1, 2024, through June 30, 2025.

7. Subparagraph 14.4 of Exhibit A of the Agreement is hereby amended to read as follows:

14.4 The budget for services provided pursuant to Exhibit A of this Agreement is set forth as follows:

<u>FRC Services</u>	YEAR ONE	YEAR TWO	YEAR THREE	<i>YEAR FOUR</i>	<i>YEAR FIVE</i>
Direct Service Costs ⁽¹⁾	\$289,404	\$289,404	\$357,084	<i>\$357,084</i>	<i>\$357,084</i>
Indirect Costs ⁽²⁾	\$ 10,596	\$ 10,596	\$ 13,716	<i>\$ 13,716</i>	<i>\$ 13,716</i>

**TOTAL MAXIMUM
OBLIGATION:**

\$300,000 \$300,000 \$370,800 \$370,800 \$370,800

- (1) Direct Service Costs are costs that are incurred and specifically allocable to the provision of services identified in this Agreement. Employee Benefits include contributions to 401k or retirement plans; health insurance; dental insurance; life insurance; long-term disability insurance; payroll taxes such as FICA, Federal Unemployment Tax, State Unemployment Tax, and Workers' Compensation Tax, based on the currently prevailing rates; and expense for accrued vacation time payout, for a separated employee, limited to the actual vacation time accrued during the fiscal year in which the expense is claimed, minus the actual vacation time used by the employee during said fiscal year.
- (2) Indirect Costs are costs that are incurred for an organization's common objectives and that cannot be readily identified with a particular final cost objective.
8. The Parties agree that separate copies of this Amendment may be signed by each of the Parties, and this Amendment will have the same force and effect as if the original had been signed by all Parties.
9. All other terms and conditions of the Agreement shall remain the same and in full force and in effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment Two to Agreement on the date set forth opposite their signatures. If Contractor is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, the President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: BOYS AND GIRLS CLUBS OF TUSTIN

Print Name

Title

Signature

Date

Contractor: THE RAISE FOUNDATION

Print Name

Title

Signature

Date

County of Orange, a political subdivision of the State of California

Deputized Designee Signature:

Print Name

Title Deputy Purchasing Agent

Signature

Date

APPROVED AS TO FORM

COUNTY COUNSEL

COUNTY OF ORANGE, CALIFORNIA

Print Name

Deputy County Counsel
Title

Signature

Date