

## **AGREEMENT**

**THIS AGREEMENT** is entered into as of \_\_\_\_\_, between the **COUNTY OF TULARE**, referred to as COUNTY, and **FAMILY SERVICES OF TULARE COUNTY, INC.**, a California Corporation, referred to as CONTRACTOR, with reference to the following:

A. COUNTY wishes to retain the services of CONTRACTOR for the purpose of providing a supervised visitation program for the benefit of Child Welfare Services' clients who are reunifying with their children; and

B. CONTRACTOR has the experience and qualifications to provide the services COUNTY requires pertaining to the COUNTY'S Child Welfare Services; and

C. CONTRACTOR is willing to enter into this Agreement with COUNTY upon the terms and conditions set forth herein.

### **ACCORDINGLY, IT IS AGREED:**

1. **TERM:** This Agreement shall become effective as of July 1, 2010 and shall expire at 11:59 PM on June 30, 2011 unless otherwise terminated as provided in this Agreement.
2. **SERVICES TO BE PERFORMED:** See attached **EXHIBIT A**
3. **PAYMENT FOR SERVICES:** See attached **EXHIBIT B**.
4. **INDEPENDENT CONTRACTOR STATUS:**

(a) This Agreement is entered into by both parties with the express understanding that CONTRACTOR will perform all services required under this Agreement as an independent contractor. Nothing in this Agreement shall be construed to constitute the CONTRACTOR or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b) CONTRACTOR agrees to advise everyone it assigns or hires to perform any duty under this agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, CONTRACTOR shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over

CONTRACTOR as to how the services will be performed. As CONTRACTOR is not COUNTY'S employee, CONTRACTOR is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

1. Withhold FICA (Social Security) from CONTRACTOR'S payments.
2. Make state or federal unemployment insurance contributions on CONTRACTOR'S behalf.
3. Withhold state or federal income tax from payments to CONTRACTOR.
4. Make disability insurance contributions on behalf of CONTRACTOR.
5. Obtain unemployment compensation insurance on behalf of CONTRACTOR.

(c) Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of CONTRACTOR to assure compliance with this Agreement.

5. **COMPLIANCE WITH LAW:** CONTRACTOR shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to CONTRACTOR'S employees, CONTRACTOR shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

6. **GOVERNING LAW:** This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

7. **RECORDS AND AUDIT:** CONTRACTOR shall maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, CONTRACTOR shall maintain complete and accurate records with respect to any payments to employees or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, CONTRACTOR shall make such records available within Tulare County to the Auditor of Tulare County and to his agents and representatives, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of final payment under this Agreement.

**8. CONFLICT OF INTEREST:**

(a) CONTRACTOR agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest, with certain narrow exceptions.

(b) CONTRACTOR agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

**9. INSURANCE:** Prior to approval of this Agreement by COUNTY, CONTRACTOR shall file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in **EXHIBIT C** attached.

**10. INDEMNIFICATION:** CONTRACTOR shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CONTRACTOR or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CONTRACTORS failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

**11. TERMINATION:**

(a) Without Cause: County will have the right to terminate this Agreement

without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination. County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. County will not pay lost anticipated profits or other economic loss. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this Agreement. No sanctions will be imposed.

(b) With Cause: This Agreement may be terminated by either party should the other party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) material misrepresentation, either by CONTRACTOR or anyone acting on CONTRACTOR's behalf, as to any matter related in any way to COUNTY's retention of CONTRACTOR, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of CONTRACTOR to competently provide the services under this Agreement, or expose the COUNTY to an unreasonable risk of liability.

County will pay to the CONTRACTOR the compensation earned for work performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from CONTRACTOR of any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR by the date of termination in accordance with this Agreement. County will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If this Agreement is terminated and the expense of finishing the CONTRACTOR's scope of work exceeds the unpaid balance of the agreement, the

CONTRACTOR must pay the difference to the County. Sanctions taken will be possible rejection of future proposals based on specific causes of non performance.

(c) **Effects of Termination:** Expiration or termination of this Agreement shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where CONTRACTOR's services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the CONTRACTOR.

(d) **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of COUNTY for which CONTRACTOR's services are to be performed, may immediately suspend performance by CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

12. **LOSS OF FUNDING:** It is understood and agreed that if the funding is either discontinued or reduced for this project for the COUNTY, that the COUNTY shall have the right to terminate this Agreement. In such event, the affected party shall provide the other party with at least thirty (30) days prior written notice of such termination.

13. **FORM DE-542:** If CONTRACTOR is an individual, CONTRACTOR acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTOR's full name, social security number, address, the date this contract was executed, the total amount of the contract, the contract's expiration date or whether it is ongoing. CONTRACTOR agrees to cooperate with COUNTY to make such information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY's option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

14. **NOTICES:**

(a) Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

**COUNTY:**  
CONTRACT UNIT  
TULARE COUNTY HEALTH & HUMAN SERVICES AGENCY  
5957 S. Mooney Boulevard  
Visalia, CA 93277

**With A Copy To:**

**Fax No.:** 559-737-4059  
**Phone No.:** 559-737-4686

**CONTRACTOR:**  
FAMILY SERVICES OF TULARE COUNTY, INC.  
815 West Oak Street  
Visalia, CA 93291  
**Fax No.:** \_\_\_\_\_  
**Phone No.:** 559-741-7310

(b) Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

15. **ASSIGNMENT/SUBCONTRACTING:** Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of CONTRACTOR and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by CONTRACTOR without the prior written consent of COUNTY.

16. **DISPUTE RESOLUTION:** If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.

17. **FURTHER ASSURANCES:** Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

18. **CONSTRUCTION:** This Agreement reflects the contributions of all undersigned parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any alleged uncertainty or ambiguity.

19. **HEADINGS:** Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

20. **NO THIRD-PARTY BENEFICIARIES INTENDED:** Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

21. **WAIVERS:** The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

22. **EXHIBITS AND RECITALS:** The recitals and the exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

23. **CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY:** This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.

24. **ENTIRE AGREEMENT REPRESENTED:** This Agreement represents the entire agreement between CONTRACTOR and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

25. **ASSURANCES OF NON-DISCRIMINATION:** CONTRACTOR shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

(a) It is recognized that both the Contractor and the County have the responsibility to protect County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, Contractor agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities.

The County, in its sole discretion, has the right to require Contractor to replace any employee who provides services of any kind to County pursuant to this Agreement with other employees where County is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this Agreement with or without cause as provided for herein.



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**THE PARTIES**, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

**COUNTY OF TULARE**

Date: \_\_\_\_\_ BY \_\_\_\_\_  
Chairman, Board of Supervisors

ATTEST: JEAN M. ROUSSEAU  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By \_\_\_\_\_  
Deputy Clerk

**FAMILY SERVICES OF TULARE COUNTY, INC.**

Date: 7-12-10 By [Signature]  
TITLE Executive Director

Date: \_\_\_\_\_ By [Signature]  
TITLE Fiscal Officer

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form  
County Counsel

By [Signature]  
Deputy 20101032

Date 7/14/10

Family Services of Tulare County  
815 W. Oak Avenue  
Visalia, CA 93291  
(559) 741-7310  
karen.cooper@fstc.net

FY 2010/2011

Exhibit A

**Grant Services to be charged against**

Child Welfare Services	001-142-4020-2150
CWS ARRA Funds	001-142-4021-2150

**Intensive Supervised Visitation Centers Program**

Family Services of Tulare County will organize and be responsible for a Supervised Visitation Center program in Tulare County. The supervised visitation service will be for the benefit of Child Welfare Services' clients who are reunifying with their children. The services and rates may be modified by mutual written consent of both parties. Reimbursement for services is contingent upon receipt of state and/or federal funds for this purpose.

Visitation is very important as this allows the parent and the child to see each other and maintain their relationship. Intensive visitation during the first four months is very crucial to reunification. Studies show that the more a parent and child can visit, the sooner they can be reunified together. It is especially important when an infant is involved as parents need to be allowed multiple visitation opportunities in order to bond together. Also, supervised visitations are an opportunity for trained staff to monitor all interaction between the child and parent and provide feedback to CWS. This gives CWS objective information regarding the parent-child relationship and interaction.

Family Services of Tulare County will:

1. Organize the Supervised Visitation Program
2. Work with participating Family Resource Centers to ensure locations are appropriate for supervised visitations
3. Hire a full time visitation coordinator
4. Hire and maintain appropriate staff to conduct supervised visitations
5. Train staff and Family Resource Centers on evidence based supervised visitation practice
6. Conduct background checks on all staff hired
7. Accept Child Welfare Services referrals for supervised visitations
8. Coordinate supervised visitations with participating Family Resource Centers
9. Ensure that the supervised visitations are conducted appropriately
10. Adhere to the Child Welfare Services, Supervised Visitation Policy including completing appropriate forms and returning to Child Welfare Services timely
11. Collect and maintain data on the clients served by the Supervised Visitation Program and provide this information to Child Welfare Services as requested
12. Attend meetings and participate in meetings with Child Welfare Service as needed

Family Services of Tulare County  
815 W. Oak Avenue  
Visalia, CA 93291  
(559) 741-7310

Exhibit A Page 2

**Target Population**

Contractor agrees to provide services for the benefit of dependent children and their families to be able to reunify and comply with visitation court orders. Supervised visitations services will be provided to children who have been newly placed into foster care (within the first three months of placement), however; CWS may choose to refer a child who has been in foster care longer. The intent is for the supervised visitation service to be provided for up to four months, however; CWS may make acceptations on an individual basis.

**Referral Process and Client Contact**

The "Supervised Visitation Referral Form" will be used as a basis for offer and acceptance of program referrals. Contractor shall acknowledge receipt of referral to CWS within 24 hours. Contractor shall contact referral and schedule first visitation, this visitation shall occur within 72 hours of receipt of referral.

Family Services of Tulare County  
815 W. Oak Avenue  
Visalia, CA 93291  
(559) 741-7310

**Exhibit B**  
**FY 2009/2010**

**Payment Amount and Fee Schedule**

The maximum amount payable for this agreement is \$ 233,250. Supervised visits shall be provided at the rate of \$25.00 per hour with a maximum of 7800 hours.

	<b>Rate</b>	<b>Hours</b>	<b>Total</b>
Supervised Visitation	\$25.00	7800	\$195,000

In addition, Contractor will be allowed to invoice for the cost of a full time Program Coordinator to run this program. The cost for this position (salary and benefits) is \$38,250.

Contractor shall submit detailed monthly invoices to the County within 45 days from the date of service. Payment for service shall be on a reimbursement basis for adequately documented costs in accordance with cost principles and standards of OMB circular A-87.

**Exhibit "C"**  
**INSURANCE REQUIREMENTS**

*CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property, which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees or subcontractors, if applicable.*

**A. Minimum Scope & Limits of Insurance**

1. Coverage at least as broad as Commercial General Liability Insurance of \$1,000,000 combined single limit per occurrence. If the annual aggregate applies it must be no less than \$2,000,000.
2. Comprehensive Automobile Liability Insurance (if applicable) of \$1,000,000 per occurrence.
3. Workers' Compensation and Employer's Liability Insurance as required by law.
4. Professional Errors and Omissions Insurance of \$1,000,000.

**B. Specific Provisions of the Certificate**

1. The Certificate of Insurance for General Liability, Comprehensive Automobile Liability Insurance and Professional Errors and Omissions Insurance have to meet the following requirements:
  - a. *Name the COUNTY, Its officers, agents, employees and volunteers, individually and collectively, as additional insured by endorsement to the policy.*
  - b. *State that such Insurance for additional insureds shall apply as primary insurance and any other insurance maintained by COUNTY shall be excess.*
  - c. *Provide that coverage shall not be suspended, voided, canceled, reduced in coverage, or otherwise materially changed except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.*
2. The Certificate of Insurance for Workers Compensation, should include the following:
  - a. *Waiver of Subrogation. Contractor waives all rights against the County and its agents, officers, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability by endorsement to the policy.*

**C. Deductibles and Self-Insured Retentions**

The COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

**D. Acceptability of Insurance**

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A (-) from a company admitted to do business in California, any waiver of these standards are subject to approval by the County Risk Manager or County Risk Manager's designee.

**E. Verification of Coverage**

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.



**CERTIFICATE OF CORPORATE RESOLUTION  
AUTHORIZING PROJECT APPLICATIONS AND AGREEMENT/CONTRACT SIGNATURE  
AUTHORITY.**

I, Sharon Fisher, President of the Board of Directors of Family Services of Tulare County organized and existing under the laws of California and having its principal place of business at Visalia, California, hereby certify that the following is a true copy of a resolution adopted by the Board of Directors of the Corporation at a meeting convened and held on March 23, 2010 at which a quorum was present and voting throughout and that such resolution is now in full force and effect and is in accordance with the provisions of the charter and by-laws of the Corporation.

RESOLVED: That the Corporation approves Applications for contracts or agreements as was or will be submitted to the County of Tulare:

RESOLVED: That the Executive Director and Financial Officer of the Corporation are hereby authorized to sign on behalf of the Corporation any applications, contracts, forms or agreements with the County of Tulare.

RESOLVED FURTHER: That the Executive Director and Financial Officer are hereby authorized and directed to certify to any interested party that this resolution has been duly adopted, is in full force and effect, and is in accordance with the provisions of the by-laws of the Corporation.

I further certify that this Corporation is duly organized and existing, and has the power to take the action called for by the foregoing resolution.

DIRECTORS

Sharon Fisher  
\_\_\_\_\_  
President

3/29/10  
\_\_\_\_\_  
Date

Colton Richards  
\_\_\_\_\_  
Vice President

3/29/10  
\_\_\_\_\_  
Date

Patty Wagner  
\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

Bess Stuber  
\_\_\_\_\_  
Treasurer

3/31/10  
\_\_\_\_\_  
Date

Witness my hand seal of this corporation on this 26<sup>th</sup> day of March, 2010.  
(month) (year)