

**FUNDING AGREEMENT  
BETWEEN THE COUNTY OF SAN BERNARDINO  
AND CHILDREN'S FUND, INCORPORATED**

This Funding Agreement ("Agreement") between the County of San Bernardino on behalf of the Sheriff's Department (the "County") and Children's Fund, Incorporated (the "Children's Fund"), is entered into effective April 9, 2013 ("Effective Date"). The County and the Children's Fund are sometimes hereinafter referred to individually as "party" and collectively as "parties."

**I. RECITALS**

- A. The Children's Fund is an independent non-profit organization that, in addition to the services provided to the County, also provides an ancillary benefit to the County through community based programs and special projects with the goal of assisting needy and at-risk children and youth, including without limitation, the prevention of child abuse and neglect in the County.
- B. For the last 24 years, the Children's Fund, working in conjunction with the County's Children's Network, has partnered with the County by raising private funds to fill gaps in public resources. These funds have been used to provide goods and services to needy and at-risk children and youth serviced by the County.
- C. To enhance the fundraising marketing efforts of the Children's Fund, the County has provided resources to assist the Children's Fund with its administrative costs.
- D. The County and the Children's Fund desire to continue to collaborate in the use of private funds to provide resources for needy and at risk children and youth serviced by the County. However, in light of dwindling resources, the County and the Children's Fund recognize that other avenues of funding will be needed to support the Children's Fund's future administrative costs.
- E. As a first step, on September 28, 2010, the parties entered into a long-term non-financial Memorandum of Understanding (MOU) to establish general guidelines for the parties' continued collaborative efforts, including a process for setting goals and objections.
- F. As a next step, the Children's Fund will begin to transition its administrative costs to other funding sources by contracting directly with county departments (such as the Sheriff's Department) as well as other child-serving agencies throughout San Bernardino County.

NOW, THEREFORE, in consideration of the terms and conditions set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each party, the parties hereby agree as follows:

**II. INCORPORATION OF RECITALS**

The Recitals are incorporated into the terms and conditions as though fully set forth herein.

### III. TERM

- A. This Agreement shall commence on the Effective Date and shall expire June 30, 2013, but may be terminated earlier by mutual written agreement of the parties. Sheriff John McMahon, or his successor (collectively referred to herein as "Sheriff") has the authority to exercise the County's rights with respect to any termination of this Agreement. No party's termination of this Agreement shall relieve them of their obligations under this Agreement that have accrued as of the date of termination.

### IV. FISCAL PROVISIONS

- A. Reimbursement. The County shall reimburse the Children's Fund one dollar (\$1) for every three dollars (\$3) that the Children's Fund invests in physicians' services provided by Loma Linda University Medical Center at the Children's Assessment Center during the term of this Agreement. Physician services will be provided to evaluate and treat children suspected of being victims of physical and/or sexual abuse. The maximum amount to be reimbursed by the County shall not exceed \$73,334, and shall be subject to the availability of funds to the County. In the event that the County anticipates its inability to reimburse the Children's Fund under this Agreement, the County shall immediately notify the Children's Fund of its inability to meet its reimbursement obligations. In this event, the County shall specify with accuracy the amount by which it will be unable to meet its reimbursement obligations under this Agreement and how long the inability will exist. The maximum dollar amount to be reimbursed by the County does not place a limit on the amount of Children's Fund's total annual investment. Reimbursement shall only be made for investments occurring in the then current fiscal year. Reimbursements shall not be made for investments that do not impact needy and at-risk children and youth serviced by the County. The consideration to be paid to the Children's Fund, as provided herein, shall be in full payment for all of the Children's Fund's services and expenses incurred pursuant to this Agreement.

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- B. Monthly Financial Report. For each calendar month, the Children's Fund shall provide the County with a Monthly Financial Report detailing its investments in County programs/projects. Goods donated on behalf of the Children's Fund to County serviced children and youth, may be submitted in the Monthly Financial Report based on the fair market value of the donated item(s).

Monthly financial reports shall be submitted by the 10<sup>th</sup> calendar day of the month, following the month of service, to the following:

San Bernardino County Sheriff's Department  
Bureau of Administration, Contracts Unit  
655 East Third Street  
San Bernardino, CA 92415-0061

- C. Basis of Payments. The County shall reimburse the Children's Fund based on the provisions of this Agreement and the Monthly Financial Reports submitted by the Children's Fund. The County reserves the right to reduce or withhold reimbursement for any disputed investment(s) until such time as the dispute is resolved. In the event that the County decides to withhold reimbursement for any disputed investment, the County shall provide written notice of the withheld payment to the Children's Fund within ten (10) days of its decision to withhold reimbursement payments. Additional documents may be requested in an effort to resolve any items in dispute.

- D. Electronic Funds Transfers. The Children's Fund shall accept all payments from the County via electronic funds transfers (EFT) directly deposited into the Children's Fund's designated checking or other bank account. The Children's Fund shall promptly comply with the directions and accurately complete forms provided by the County required to process EFT payments.
- E. Funding Obligations. Notwithstanding anything herein or in the MOU to the contrary, for purposes of clarity, nothing in this Agreement obligates the Children's Fund to fund or invest in physicians' services provided by Loma Linda University Medical Center at the Children's Assessment Center.

## **V. INDEMNIFICATION**

- A. The Children's Fund agrees to indemnify, defend and hold harmless the County and its authorized officers, directors, representatives, affiliates, successor and assigns, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising from the Children's Fund's negligent acts, errors or omissions and for any costs or expenses incurred by the County on account of any claim therefore, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the County.
- B. The County agrees to indemnify, defend and hold harmless the Children's Fund and its authorized officers, directors, representatives, affiliates, successor and assigns, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising from the County's negligent acts, errors or omissions and for any costs or expenses incurred by the Children's Fund on account of any claim therefore, except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of the Children's Fund.

## **VI. MUTUAL RESPONSIBILITIES**

- A. The County and the Children's Fund agree they will establish mutually satisfactory methods, procedures and forms for the exchange of such information as may be necessary in order that each party may perform its duties and functions under this Agreement; and appropriate procedures to ensure all information is safeguarded from improper disclosure in accordance with applicable State and Federal laws and regulations.
- B. The County and the Children's Fund agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through the County and the Children's Fund's mutual chain of command, as deemed necessary.

## **VII. GENERAL PROVISIONS**

- A. Independent Capacity. Nothing in this Agreement shall create any partnership, joint venture or agency relationship between the County and the Children's Fund. The County and the Children's Fund, and their agents and employees, shall act in an independent capacity and not as officers, employees or agents of the other.
- B. Notices. All notices required to be given under this Agreement shall be in writing and delivered to the other party by personal service or by registered or certified mail. The addresses of the parties hereto, until further notice, are as follows:

San Bernardino County Sheriff's Department  
Bureau of Administration, Wendy Britt  
655 East Third Street  
San Bernardino, CA 92415-0061

Children's Fund, Inc.  
Erin Phillips, President and CEO  
348 W. Hospitality Lane, Suite #110  
San Bernardino, CA 92408

The Children's Fund shall notify the County of any change in mailing and/or service address.

- C. Legally Binding Obligations. Upon execution of this Agreement, the County and the Children's Fund understand and agree that the obligations hereunder shall be deemed to create legally binding obligations.
- D. Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of San Bernardino, California.
- E. Construction and Interpretation. This Agreement has been arrived at through negotiations and each party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.
- F. Amendments. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall be valid only when they have been reduced to writing, duly signed and approved by the parties as an amendment to this Agreement.
- G. Compliance with Law. In performing their respective obligations under this Agreement, the parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.
- H. Third Party Beneficiaries. This Agreement shall not create any right or interest in any non-party or in any member of the public as a third party beneficiary.
- I. Conflicts. In the event of conflicts among the terms of this Agreement and the MOU entered into by the County of San Bernardino and the Children's Fund on September 28, 2010, this Agreement shall take precedence over the MOU as to all matters covered under this Agreement.
- J. Breach. If any party fails to fulfill their respective obligations agreed to under this Agreement, that party shall be in breach of this Agreement. The other party must notify the party in breach by U.S.P.S. registered mail or Federal Express. The party in breach will then have fifteen (15) days to remedy. If, at the end of fifteen (15) days, the party continues to be in breach of this Agreement, the non-breaching party may unilaterally terminate this Agreement effective upon the breaching party's receipt of the non-breaching party's written notice of termination.
- K. No Transfer. The rights and obligations created by this Agreement are personal to the parties hereto, and may not be assigned, transferred or delegated without the express written consent of the other party, which consent may be withheld for any reason. Notwithstanding the foregoing, this section shall not prevent any party from assigning rights or delegating duties to a successor entity by merger or acquisition, provided that the after such transaction the assigning party owns a majority interest in and controls such successor entity.

- L. Confidentiality. Each party (the “Receiving Party”) expressly undertakes to retain in confidence all information and know-how transmitted to it by the other party (the “Protected Party”) that the Protected Party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought to, in good faith, be treated as proprietary and/or confidential, and will make no use of such information and know-how except under the terms and during the existence of this Agreement. However, a Receiving Party shall not have an obligation to maintain the confidentiality of information that (i) it received rightfully from another party prior to its receipt from the Protected Party; (ii) the Protected Party has disclosed to a third party without any obligation to maintain such information in confidence; or (iii) is independently and lawfully developed by the Receiving Party. Further, the Receiving Party may disclose confidential information as required by governmental or judicial order, provided it gives the Protected Party prompt written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. The provisions of this section extend to Receiving Party’s employees and assignees and Receiving Party shall only make such information available to employees and assignees on a “need-to-know” basis.
- M. Further Assurances. Each party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement.
- N. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one document.
- O. Time of Essence. Time and strict and punctual performance are of the essence with respect to each provision of this Agreement.
- P. Headings. The headings of the sections of this Agreement have been included only for convenience, and shall not be deemed in any manner to modify or limit any of the provisions of this Agreement, or be used in any manner in the interpretation of this Agreement.
- Q. Partial Invalidity. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this Agreement.
- R. Successors-in-Interest and Assigns. Subject to any restriction on transferability contained in this Agreement, this Agreement shall be binding upon and shall inure to the benefit of the successors-in-interest and permitted assigns of each party to this Agreement. Nothing in this paragraph shall create any rights enforceable by any person not a party to this Agreement, except for the rights of the successors-in-interest and assigns of each party to this Agreement, unless such rights are expressly granted in this Agreement to other specifically identified persons.
- S. Waiver. Any waiver of a default under this Agreement must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be subscribed by their duly authorized officers on their behalf.

**CHILDREN’S FUND, INC.**

**COUNTY OF SAN BERNARDINO**

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Erin Phillips,  
President and CEO  
Children’s Fund, Inc.

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Janice Rutherford, Chair  
Board of Supervisors  
County of San Bernardino

SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Laura Welch, Clerk of the Board of Supervisors of the County of San Bernardino.

By \_\_\_\_\_  
*Deputy*