



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
ISABELLA COUNTY

NICK LYON
DIRECTOR

July 23, 2015

Isabella County Board of Commissioners
200 N Main Street
Mt. Pleasant, MI 48858

Subject: Preventive Services for Families Position for the Work Session agenda of the Human Resources and Public Works Committee.

Dear Commissioners,

Preventive Services for Families (PSF) is designed to preserve and strengthen family functioning in order to prevent child abuse and neglect. Our Agency's goal is to assist families to recognize their potential to improve family functioning. By developing and maintaining a support network with friends, relatives, and the community, parents can provide a loving and nurturing home for their children. This program builds on the family's strengths to develop a plan with the family and teach them the needed skills to strengthen their family on their own. PSF promotes:

- strengths in families, and
- solutions with families, and
- successful families.

PSF is intended to help families who want help and/or have been identified at risk for child abuse/neglect, but where actual abuse/neglect is not presently occurring.

Early intervention in family problems related to abuse and neglect will help to improve family functioning, thereby resulting in fewer referrals to Children's Protective Services (CPS) and allowing additional children to remain in their homes.

Funding was previously provided in full by the State of Michigan. The cost of a full time Preventive Services for Families Worker for FY-2016 will be \$95,000.00. The Federal Government is able to pay half of the remaining cost of \$95,000.00 for a total of \$47,500.00. I propose that a total of \$47,500.00 be paid from the DHHS portion of the County Child Care Fund.

ALTERNATIVES

Without approval of funding for this program, we expect that the cost of expenditures from the County Child Care Fund will increase. All of our numbers including Children's Protective Services referrals and the number of children in Foster Care Placement continue to rise. The average County Child Care Fund cost of Foster Care Placement for June 2015 was \$44.64 per child per day.

The goal of the Preventive Services for Families position is to provide intensive services to Isabella County Families in order to reduce the risk of Foster Care Placement of children. The goal of reducing the County Child Care Fund expenditures will be achieved by reducing the number of children in Foster Care Placement.

The average caseload size of the Preventive Services for Families position is 20 families with intensive services provided to those families.

FINANCIAL IMPACT

This is not a request for additional funding. This is a request to pay for the cost of this full time position for the fiscal year beginning 10/01/2015 and ending 09/30/2016 from our DHHS portion of the County Child Care Fund. The amount will be \$45,700.00.

The average County Child Care Fund cost of Foster Care Placement for June 2015 was \$44.64 per child per day. If we can reduce the cost of foster care placements by 1024 days in the next 12 months, this will cover the cost to the county of the \$45,700.00. We expect even greater savings.

OTHER CONSIDERATIONS

I am requesting to have a State of Michigan contract for the Preventive Services for Families position approved and signed by the Isabella County Board of Commissioners for FY-2016.

RECOMMENDATION

Motion to approve.

Thank you,



Bob Lewis, Program Manager
Isabella County DHHS

State of Michigan
Department of Health & Human Services
Office of Contracts and Purchasing (OCP)
PO Box 30037, Lansing, MI 48909

Or
235 S. Grand Avenue, Suite 1201, Lansing, MI 48933

AGREEMENT NUMBER: DFA16-37002
Between
THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH & HUMAN SERVICES
And

CONTRACTOR		PRIMARY CONTACT	EMAIL
County of Isabella		Margaret McAvoy	mmcavoy@isabellacounty.org
CONTRACTOR ADDRESS			TELEPHONE
200 North Main, Mt. Pleasant, MI 48858			989-317-4078
STATE CONTACT	NAME	TELEPHONE	EMAIL
Contract Administrator	Bruce L. Makie	231-933-6715	fineisb@michigan.gov
OCP Analyst	Bonnie Fineis	517-373-4108	fineisb@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Donated Fund Agreement-Service Worker		
GEOGRAPHIC AREA	Isabella County		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
3 years	October 1, 2015	September 30, 2018	2
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	\$47,500.00		
CONTRACT TYPE	Revenue		

*The effective date of the contract shall be the date listed in the "Effective Date" box above, or the date of Department of Health & Human Services (DHHS) signature below, whichever is later.

The undersigned have the lawful authority to bind the Contractor and DHHS to the terms set forth in this Agreement. Section 291 of the fiscal year 2013 Omnibus Budget, PA 200 of 2012, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Agreement, are legally present to work in the United States. The Contractor shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on this Agreement is the Contractor's certification that verification has and will be performed. The Contractor's signature also certifies that the Contractor is not an Iran linked business as defined in MCL 129.312.

FOR THE CONTRACTOR:

County of Isabella

 Contractor

Signature of Director or Authorized Designee

George Green, Board of Commissioners Chairperson
 Print Name

 Date

FOR THE STATE:

DEPARTMENT OF HEALTH & HUMAN SERVICES

Signature of Director or Authorized Designee

 Lewis Roubal
 Print Name

 Date

Agreement Number: DFA16-37002

This Agreement will be in effect from the date of DHHS signature through September 30, 2018. No service will be provided and no costs to the state will be incurred before October 1, 2015, or the effective date of the Agreement, whichever is later. Throughout this Agreement, the date of DHHS signature or October 1, 2015, whichever is later, shall be referred to as the begin date.

	<u>Agreement Period</u>	<u>Amount</u>
Year 1	Begin date through September 30, 2018	\$47,500.00

1. PROGRAM REQUIREMENTS

Donated funds Agreement positions are to assist community partners and mutual clients by providing a non-traditional work environment whereby DHHS employees are located within a facility that provides services to the client.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes DHHS to use the contact information below to send Agreement related notifications/information. The Contractor shall provide DHHS with updated contact information if it changes.

Contact email address: mmcavoy@isabellacounty.org

2.2. Geographic Area

The Contractor shall provide services described herein in the following geographic area:

Isabella County

2.3. Location of Facilities

DHHS staff location(s):
Isabella County DHHS Office
1919 Parkland Drive, Mt. Pleasant, MI 48858

2.4. Reserved

2.5. Services to be Delivered

The Contractor shall:

- a. Provide to DHHS copies of all rules, regulations, procedures, and staff relations policies to which the DHHS employee is expected to adhere.

b. Agree to the following expectations:

- 1) Distribute all DHHS program applications to the assigned DHHS staff for action before distributing to any other entity contracted by the contractor.
- 2) Provide the assigned DHHS staff access to any medical records needed to determine eligibility for DHHS programs.
- 3) Follow all DHHS policies for completing and submitting applications and comply with all legal requirements.

2.6. Reserved

2.7. Payment

- a. The Contractor shall provide to DHHS the sum of \$47,500.00 as payment to DHHS for services performed in accordance with the terms of this Agreement exclusively during the period from the begin date to September 30, 2018.
- b. The Contractor shall send payment to:

State of Michigan
DHHS-Cashier Unit
PO Box 30802
Lansing, MI 48909-8302

All payments sent to DHHS shall include a reference to the DHHS contract number DFA16-37002.

- c. The Contractor guarantees that the funds paid to DHHS are not federal or state funds, except in such instances as the Federal Act authorizing expenditures of said funds permits their use for matching other federal funds. Furthermore, the Contractor guarantees that these donated funds have not been used as a match to obtain other federal funds.
- d. Payment to DHHS shall be made in accordance with the annual payment schedule below. The Contractor shall make final payments to DHHS no later than July 1 for each year of the agreement.

ANNUAL PAYMENT DUE DATES YEAR 1	AMOUNT OF PAYMENT YEAR 1
January 1, 2016	\$11,870.00
April 1, 2016	\$11,880.00
July 1, 2016	\$23,750.00

Agreement amounts will be adjusted annually to reflect the cost of Donated Fund positions impacted by changes in economic factors. Future years' payment schedules will be incorporated via amendment to this agreement each year.

- e. DHHS may vacate a position without penalty for 10 consecutive work days or less due to vacation, illness or position vacancy. If a vacancy exceeds 10 consecutive days, upon execution of an amendment, the amount owed by the Contractor shall be reduced on a prorated basis determined by DHHS and DHHS shall refund the amount due to the Contractor.
- f. If DHHS does not receive a scheduled payment from the Contractor within 10 business days of the due date, DHHS may terminate this agreement immediately upon written notification to the Contractor.

3. DHHS RESPONSIBILITIES

3.1. DHHS Responsibilities

DHHS shall:

- a. Assign one Service Worker, who is a full-time DHHS employee, at the location identified above to provide services consistent with their job classification per DHHS policy. The DHHS staff shall be deemed to be an employee of DHHS for all purposes, including workers' compensation, unemployment, social security and the payment of wages inclusive of holiday and vacations.

Hours worked will be Monday through Friday, either 8:00 a.m. to 4:30 p.m. with a 30 minute (half hour) lunch break, or 8:00 a.m. to 5:00 p.m. with a 60 minute (one hour) lunch break.

- b. Ensure that the employee shall be supervised by DHHS and shall be a duly trained and qualified employee prior to placement on-site at the location of facilities.
- c. Provide the employee with copies of the Contractor's applicable rules, regulations, procedures, and staff relations policies.
- d. Ensure that the on-site DHHS staff shall follow the rules of conduct, policies, and procedures of the Contractor while still enjoying the benefits and protections afforded under the Civil Service rules and their collective bargaining agreement.
- e. Provide DHHS staff with the following:
 - 1) DHHS staff travel/mileage reimbursement.

- 2) Desktop office supplies, including paper and printed material.
 - 3) Computer with VPN to access State systems, one per DHHS staff.
 - 4) Printer, one per DHHS staff.
- f. All funds paid to DHHS hereunder shall be under DHHS' exclusive administrative control.

3.2. Performance Evaluation and Monitoring

a. Outcome metrics:

- 1) Meet or exceed program Standard of Promptness (SOP)

b. Reporting Requirements:

- 1) Total applications by program received each year.
- 2) Total applications processed by program each month.
- 3) Monthly SOP per program as well as overall SOP

This report is to be submitted to the local DHHS office by the 10th day of the following month.

4. GENERAL PROVISIONS

4.1 Reserved

4.2 Notices

All notices and other communications required or permitted under this Agreement must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

4.3 Reserved

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4.13 Assignment

Contractor may not assign this Agreement to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Agreement to any other party. If the State determines that a novation of this Agreement to a third party is necessary, Contractor will agree to the novation, provide all necessary documentation and signatures, and continue to perform, with the third party, its obligations under this Agreement.

4.14 Change of Control

Contractor will notify, at least 90 calendar days before the effective date, the State of a change in Contractor's organizational structure or ownership. For purposes of this Agreement, a change in control means any of the following:

- a. A sale of more than 50% of Contractor's stock;
- b. A sale of substantially all of Contractor's assets;
- c. A change in a majority of Contractor's board members;
- d. Consummation of a merger or consolidation of Contractor with any other entity;
- e. A change in ownership through a transaction or series of transactions; or
- f. The board (or the stockholders) approves a plan of complete liquidation.

A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Agreement and all of its obligations under this Agreement.

4.15 Reserved

4.16 Reserved

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4.22 Reserved

4.23 Termination for Cause

The State may terminate this Agreement for cause, in whole or in part, if Contractor, as determined by the State:

- a. Endangers the value, integrity, or security of any location, data, or personnel;
- b. Becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor;
- c. Engages in any conduct that may expose the State to liability;
- d. Breaches any of its material duties or obligations; or
- e. Fails to cure a breach within the time stated in a notice of breach.

Any reference to specific breaches being material breaches within this Agreement will not be construed to mean that other breaches are not material.

If the State terminates this Agreement under this Section, the State will issue a termination notice specifying whether Contractor must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Contractor was not in breach of this Agreement, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 4.24, Termination for Convenience.

The State will only pay for amounts due to Contractor for Agreement Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Agreement. The Contractor must pay all reasonable costs incurred by the State in terminating this Agreement for cause, including administrative costs, attorneys' fees, court costs,

transition costs, and any costs the State incurs to procure the Agreement Activities from other sources.

4.24 Termination for Convenience

The State may immediately terminate this Agreement in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls.

The Contractor may terminate this Agreement upon 30 days written notice to DHHS at any time prior to the completion of the Agreement period.

In either instance, the total amount of the Agreement shall be prorated over the abbreviated term of the Agreement starting on the effective date and ending on the cancellation date. Any net amount due and owing by the Contractor to DHHS relative to the revised Agreement amount shall be paid by the Contractor to DHHS, or, conversely, any prepayment by the Contractor in excess of the revised Contract amount shall be refunded by DHHS to Contractor.

4.25 Reserved

4.26 General Indemnification

Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. Any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement;
- b. Any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party;
- c. Any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and
- d. Any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that

Contractor is materially prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Contractor will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

4.27 Reserved

4.28 Limitation of Liability

The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

4.29 Disclosure of Litigation, or Other Proceeding

Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "Proceeding") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of this Agreement, including:

- a. A criminal Proceeding;
- b. A parole or probation Proceeding;
- c. A Proceeding under the Sarbanes-Oxley Act;
- d. A civil Proceeding involving:
 - 1) A claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or
 - 2) A governmental or public entity's claim or written allegation of fraud; or
- e. A Proceeding involving any license that Contractor is required to possess in order to perform under this Agreement.

4.30 State Data

All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("State Data"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing purposes.

4.31 Reserved

4.32 Non-Disclosure of Confidential Information

The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Agreement.

a. Meaning of Confidential Information. For the purposes of this Agreement, the term "**Confidential Information**" means all information and documentation of a party that:

- 1) Has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party;
- 2) If disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and,
- 3) Should reasonably be recognized as confidential information of the disclosing party.

The term "Confidential Information" does not include any information or documentation that was:

- 1) Subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- 2) Already in the possession of the receiving party without an obligation of confidentiality;
- 3) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights;
- 4) Obtained from a source other than the disclosing party without an obligation of confidentiality; or,
- 5) Publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party).

For purposes of this Agreement, in all cases and for all matters, State Data is deemed to be Confidential Information.

- b. Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where:
- 1) Use of a subcontractor is authorized under this Agreement;
 - 2) The disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and
 - 3) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence.

At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. Cooperation to Prevent Disclosure of Confidential Information. Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Agreement or any Statement of Work corresponding to the breach or threatened breach.

e. Surrender of Confidential Information upon Termination. Upon termination of this Agreement or a Statement of Work, in whole or in part, each party must, within five calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Agreement. Should Contractor or the State determine that the return of any non-State Data Confidential Information is not feasible, such party must destroy the non-State Data Confidential Information and must certify the same in writing within five calendar days from the date of termination to the other party.

4.33 Reserved

4.34 Reserved

4.35 Reserved

4.36 Records Maintenance, Inspection, Examination, and Audit

The State or its designee may audit Contractor to verify compliance with this Agreement. Contractor must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to this Agreement through the term of this Agreement and for four years after the latter of termination, expiration, or final payment under this Agreement or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Agreement Activities are being performed, and examine, copy, and audit all records related to this Agreement. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Agreement must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Agreement Activities in connection with this Agreement.

4.37 Reserved

4.38 Conflicts and Ethics

Contractor will uphold high ethical standards and is prohibited from:

- a. Holding or acquiring an interest that would conflict with this Agreement;
- b. Doing anything that creates an appearance of impropriety with respect to the award or performance of this Agreement;
- c. Attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or
- d. Paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of this Agreement.

Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Agreement Activities in connection with this Agreement.

4.39 Compliance with Laws

Contractor must comply with all federal, state and local laws, rules and regulations.

4.40 Reserved

4.41 Nondiscrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Agreement.

4.42 Unfair Labor Practice

Under MCL 423.324, the State may void any Agreement with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

4.43 Governing Law

This Agreement is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or

arising out of this Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Agreement must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process.

4.44 Non-Exclusivity

Nothing contained in this Agreement is intended nor will be construed as creating any requirements contract with Contractor. This Agreement does not restrict the State or its agencies from acquiring similar, equal, or like Agreement Activities from other sources.

4.45 Force Majeure

Neither party will be in breach of this Agreement because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.

4.46 Dispute Resolution

The parties will endeavor to resolve any Agreement dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely, or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate this Agreement.

4.47 Reserved

4.48 Reserved

4.49 Reserved

4.50 Severability

If any part of this Agreement is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Agreement and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Agreement will continue in full force and effect.

4.51 Waiver

Failure to enforce any provision of this Agreement will not constitute a waiver.

4.52 Survival

The provisions of this Agreement that impose continuing obligations, including warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality, will survive the expiration or termination of this Agreement.

4.53 Entire Agreement and Modification

This Agreement is the entire agreement and replaces all previous agreements between the parties for the Agreement Activities. This Agreement may not be amended except by signed agreement between the parties.

The Contractor shall, upon request of DHHS and receipt of a proposed amendment, amend this Agreement, if and when required in the opinion of DHHS, due to the revision of federal or state laws or regulations.

4.54 Options to Renew

At the discretion of DHHS, this Agreement may be renewed in writing by an amendment not less than 30 days before its expiration. This Agreement may be renewed for up to two additional one-year periods.

4.55 Reserved

4.56 Inspection of Work Performed

The State's authorized representatives must at all reasonable times have the right to enter the Contractor's premises, or any other places where the DHHS employee is working and where services are being performed, and have access to work-in-progress. To the extent that the access will not interfere or jeopardize the safety or operation of the systems or facilities, the State's representatives must be allowed to inspect, monitor, or otherwise evaluate the work being performed. Contractor must provide facilities and assistance for the State's representatives.

4.57 Return of State Equipment/Resources

The Contractor must return to the State and State-furnished equipment, facilities, and other resources when no longer required for the Contract in the same condition as when provided by the State, reasonable wear and tear excepted. Any computer equipment or other resources funded or otherwise provided through this agreement by the State, is the property of the State and will revert to the State upon expiration or termination of the Agreement.