

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK; CHAD BUCK;
and SHAMBER FLORE;
ST. VINCENT CATHOLIC
CHARITIES,

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the
Michigan Department of Health
and Human Services; JOOYUEN
CHANG, in her official capacity as
the Executive Director of the
Michigan Children's Services
Agency; DANA NESSEL, in her
official capacity as Michigan
Attorney General; ALEX AZAR, in
his official capacity as Secretary of
Health and Human Services;
UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,

Defendants.

No. 1:19-cv-00286

HON. ROBERT J. JONKER

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION

St. Vincent will lose its adoption contract on Sept. 30 unless it receives judicial relief. That will have serious consequences for the children St. Vincent serves, the families who partner with it, and the State's child welfare system. Plaintiffs' motion demonstrated that the State's actions violate the Free Exercise and Free Speech Clauses and that injunctive relief is necessary.

In its response, the State minimizes the good work done by St. Vincent, makes irrelevant or foreclosed legal arguments, and fails to grapple with the stakes in this case: the closure of a religious agency that has served Michiganders for decades, a closure that would occur before Plaintiffs have the opportunity for their claims to be heard.

Michigan claims its private settlement was a consent decree, but that argument is foreclosed by binding precedent and Michigan's own actions. Michigan claims it is penalizing St. Vincent under a generally applicable policy, but acknowledges that it permits exceptions. Michigan claims it is not compelling speech, but does not dispute that in order to continue providing adoptions and foster care, St. Vincent must provide written

analysis and recommendations contrary to St. Vincent's religious beliefs about marriage.

The federal government's response simply points the blame at Michigan, calling into question Michigan's reliance on federal law to shield its unconstitutional actions.

None of these arguments change what the law requires: a preliminary injunction should be granted to preserve the status quo and protect children and families while this case proceeds.

ARGUMENT

I. Plaintiffs are likely to succeed on the merits.

A. Plaintiffs are likely to succeed on their Free Exercise claims.

Strict scrutiny applies because Michigan has (1) created discretion to grant case-by-case exemptions, (2) selectively enforced its policies, and (3) targeted religious exercise for disfavored treatment. Prelim. Inj. Mem., ECF No. 6 at PageID.199. Any one failure triggers strict scrutiny; here, all three occurred.

Discretionary exemptions. Michigan admits that its contracts permit case-by-case exemptions. When the government has unconstrained discretion to grant "individualized exemptions," that is

“the antithesis of a neutral and generally applicable policy[.]” *Ward v. Polite*, 667 F.3d 727, 740 (6th Cir. 2012). Here, there are no binding constraints on the State’s authority to grant exemptions—they can be granted for “the reasons outlined in the Children’s Foster Care Manual (FOM) or upon the written approval of the County Director, the Children’s Services Agency Director, or the Deputy Director.” State Br., ECF No. 34 at PageID.946.

The State’s sole defense is that such discretion is only used in “unforeseen circumstances.” *Id.* But the State cites no guidelines or any written criteria limiting how this exemption is used. *See id.*; Bladen Decl., ECF 34-4 at PageID.1001-1003. The State’s willingness to grant exceptions for other reasons, but not for religion, triggers strict scrutiny. “[G]reater discretion in the hands of governmental actors makes the action taken pursuant thereto more, not less, constitutionally suspect.” *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1299 (10th Cir. 2004).

Selective Enforcement. Michigan fails to rebut the showing that its nondiscrimination provisions are being selectively enforced against religious organizations. ECF No. 6 at PageID.201. A selectively enforced policy is subject to strict scrutiny. *Ward*, 667 F.3d at 738.

Numerous non-religious agencies specialize in serving particular populations. ECF No. 6 at PageID.181-182, 203-204. The State claims these agencies comply with non-discrimination policies, but doesn't even claim to have investigated their compliance. *See id.* at PageID.203-204; Neitman Decl., ECF No. 34-3 at PageID.976-978. The fact that only religious agencies have been targeted for investigation and compliance demonstrates selective enforcement. Worse, the State says it investigated religious agencies due to complaints filed with the State—but those complaints were filed by a state official. ECF No. 34-3 at PageID.974-975; ECF No. 34-4 PageID.994.

The State also does not rebut the fact that state contractors (like Boys to Men Group Home and Ruth Ellis Center) “discriminate” on the basis of protected characteristics. ECF No. 6 at PageID.203-204. Their only response is that these are “child caring institutions, not CPAs.” ECF No. 34 at PageID.944. The State does not dispute that these organizations contract with the State to serve children, nor does it dispute that these organizations discriminate based on characteristics protected under the State's non-discrimination policy. *Id.* While not serving in an *identical*

capacity, there is no principled reason to treat their actions differently from those of St. Vincent.

Religious Targeting. Finally, the State argues that it is merely engaging in neutral enforcement of a long-standing policy. ECF No. 34-4 at PageID.994. This argument cannot be squared with the express discrimination in the State's recent announcements, ECF No. 6 at Page.ID.208-209; ECF No. 6-1 at PageID.238, nor with its own prior actions. The State acknowledges that the Department was aware of St. Vincent's religious policies in 2017, yet it did not attempt to terminate its contracts or even require a corrective action plan. *Id.* at PageID.994, 996. In fact, it *renewed* its foster care contract with St. Vincent in September 2018, more than a year after it admits to knowing of St. Vincent's religious practices. Seyka Decl., Ex. C.

Also in October 2018, the State represented in court: "Regarding the claim that the Department 'is aware of certain child placing agencies' refusal to accept same-sex couples,' the Department admits that some child-placing agencies have a sincerely held religious belief that prevents them from licensing or adopting to same-sex couples, which is protected

by PA 53.” Answer at PageID.1189, *Dumont v. Gordon*, No. 2:17-cv-13080 (E.D. Mich. Sept. 28, 2018), ECF No. 52.

This year, the State (1) switched its position in the *Dumont* litigation, (2) threatened new enforcement actions against St. Vincent, (3) issued DHS communications forbidding the actions taken by St. Vincent in compliance with its religious beliefs, and (4) required new training for child welfare workers on this issue. ECF No. 6 at PageID.196, PageID.207-208; Seyka Decl., Ex. B. This is evidence of state action targeting a disfavored religious practice.

The targeting is particularly acute since Michigan is penalizing activities outside its contracts. Michigan’s foster and adoption contracts do not list home studies as a “service,” and St. Vincent finances those studies through a separate cost center. ECF No. 6-1 at PageID.233-234.

Michigan’s new enforcement policy is coupled with statements by Attorney General Nessel evincing the same sort of religious targeting that the Supreme Court condemned in *Masterpiece*. Nessel has stated that the “AG’s office can always be used as a bully pulpit in order to educate on [LGBT] issues,” and further explained that religious communities like Catholic Charities should be “educate[d]” “as much as

possible” about “the importance of accepting LGBTQ people” because “there are a lot of religious organizations that have changed their views on this over the course of time.”¹ Nessel also described Michiganders who supported the law protecting St. Vincent as “hate mongers.”² Nessel has even accused those who supported Michigan’s protections for faith-based foster care and adoption providers of “dislik[ing] gay people more than [they] care about the needs of foster kids.”³ Such “hostility [i]s inconsistent with the First Amendment’s guarantee that our laws be applied in a manner that is neutral toward religion.” *Masterpiece Cakeshop v. Colorado Civil Rights Comm’n*, 138 S. Ct. 1719, 1732 (2018).

This distinguishes the case from *Fulton*, where the most inflammatory statements came from the mayor, whom the court said did not play “a direct role, or even a significant role, in the process.” *Fulton v. City of Philadelphia*, 922 F.3d 140, 157 (3d Cir. 2019). Nessel’s role is both direct

¹ Kate Opalewski, *Q&A with Mich. Democratic Attorney General Candidate Dana Nessel*, PRIDESOURCE (Jan. 10, 2018), <https://pridesource.com/article/dana-nessel-qa/>.

² Fox 2 Detroit, *Opponents say adoption bill discriminates against gays and lesbians* (Mar. 4, 2015), <http://www.fox2detroit.com/news/opponents-say-adoption-bill-discriminates-against-gays-and-lesbians>.

³ Rick Pluta, *Faith-based adoption bills headed to House floor*, MICHIGAN RADIO (Mar. 4, 2015), <https://www.michiganradio.org/post/faith-based-adoption-bills-headed-house-floor>.

and significant. In *Fulton*, the court also stated there was “no evidence of any foster care agencies discriminating in ways that would violate the Fair Practices Ordinance prior to this controversy.” *Id.* at 158. But here, there is evidence that the State knowingly permitted religious exceptions, and that it permits non-religious exceptions today.

In response, Michigan claims that Nessel is immune from suit. While that is incorrect (as Plaintiffs will discuss in their opposition to the motion to dismiss), even if Nessel were personally immune from suit, her actions still serve as evidence of religious targeting by the government in the same way that an immune prosecutor’s statements might serve as evidence to attack the underlying conviction.⁴ The human rights commissioners in Colorado may have enjoyed *personal* immunity, but the Supreme Court still looked to their statements to invalidate the actions of *the commission* in *Masterpiece*. 138 S. Ct. at 1729.

Finally, the State raises various irrelevant arguments. Defendants first question the standing of the Bucks and Shamber Flore, but do not question St. Vincent’s standing. “[O]nly one plaintiff needs to have

⁴ See, e.g., *United States v. Carter*, 236 F.3d 777, 783 (6th Cir. 2001) (remanding based upon “prosecutor’s remarks at trial”).

standing in order for the suit to move forward.” *Parson v. U.S. Dep’t of Justice*, 801 F.3d 701, 710 (6th Cir. 2015). Plaintiffs will address this further in response to the State’s motion to dismiss, but it is no bar to granting injunctive relief.

The State also questions the logic of St. Vincent’s religious beliefs, asking why St. Vincent could serve a non-Catholic couple but not a same-sex couple. ECF No. 34 at PageID.953. It is not the place of the State, or the Court, to determine whether Plaintiffs’ religious beliefs are valid, only whether they are sincere. *Hernandez v. Comm’r of Internal Revenue*, 490 U.S. 680, 699 (1989) (“It is not within the judicial ken to question the validity of particular litigants’ interpretations of those creeds.”). And Defendants have not questioned Plaintiffs’ sincerity. Catholic has no theological bar to certifying the home of an opposite-sex married couple of another faith.

B. Plaintiffs are likely to succeed on their Free Speech claims.

Michigan has attempted to compel St. Vincent’s speech, and has threatened to exclude it entirely from foster care and public adoption if it does not comply. ECF No. 6 at PageID.214-217. Michigan claims that

St. Vincent is only evaluating applicants according to state criteria—it need only “check a box.” ECF No. 34 at PageID.952-53.

Even this were purely factual speech, it may not be compelled. In *NIFLA v. Becerra*, the Supreme Court struck down a required notice which stated: “California has public programs that provide immediate free or low-cost access to comprehensive family planning services To determine whether you qualify, contact the county social services office” 138 S. Ct. 2361, 2369 (2018). This was undoubtedly factual speech about the state’s offerings, not the opinions of the provider. Yet it was still impermissible: “By compelling individuals to speak a particular message, such notices alter the content of their speech.” *Id.* at 2371 (internal quotation omitted).

Similarly, in *Riley*, the Supreme Court invalidated a requirement that professional fundraisers state “the average percentage of gross receipts actually turned over to charities.” 487 U.S. at 786. As the Court explained, “Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech.” *Id.* at 795.

Michigan’s new policy must also face strict scrutiny because it places unconstitutional conditions on St. Vincent’s conduct. Michigan attempts

to distinguish *AOSI* and *FCC v. League of Women Voters* on the basis that those involved private speech, while a home study is a “public function.” But “public function” is a term of art that does not apply here: “The public function test requires that the private entity exercise powers which are traditionally exclusively reserved to the state, such as holding elections or eminent domain.” *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992) (internal citation omitted). Home studies are not a power exclusively reserved to the state; Michigan concedes that “most adoption services in Michigan are privatized.” ECF 34-2 at PageID.967. And the State makes claims about generalized administrative costs, but does not rebut the fact that St. Vincent does not bill the State for home studies, and St. Vincent pays for recruiting and home studies from its own pocket, through a separate cost center. ECF No. 6-1 at PageID.233.

Nor does Michigan respond on the bigger issue: St. Vincent will be completely excluded from providing foster care and adoptions to children in the child welfare system unless it pledges allegiance to the State’s new policy. ECF No. 6 at PageID.218. “[I]f a party objects to a condition on” government funding, her ordinary “recourse is to decline the funds.” *Agency for Int’l Dev. v. AOSI*, 570 U.S. 205, 214 (2013). But this argument

only works when the contractor *can* “decline the funds” and continue the activity. When funding is tied to the authority to do “what would be illegal otherwise,” then that condition is “akin to an occupational license.” *Dep’t of Tex., Veterans of Foreign Wars of the U.S. v. Tex. Lottery Comm’n*, 760 F.3d 427, 436-37 (5th Cir. 2014) (en banc). Here, Michigan concedes that agencies “must be licensed by the Department in order to provide foster care and adoption services.” ECF No. 34-3 at PageID.973.

St. Vincent cannot simply decline the funds and continue providing foster care and adoptions for those children on “its own time and dime.” *AOSI*, 570 U.S. at 218. Child welfare agencies cannot “declin[e] the subsidy and finance[e] their own unsubsidized program,” *Rust v. Sullivan*, 500 U.S. 173, 199 n.5 (1991). Therefore, Michigan’s unconstitutional conditions must face strict scrutiny.

Nor do Michigan’s arguments succeed as a matter of fact. The home study requires subjective, written analyses of a variety of factors—indeed, the State acknowledges as much. ECF No. 34 at PageID.953. The State protests this is not “religious speech,” and attaches various declarations attesting that this is all about state criteria. *Id.*

While the State is free to believe that providing this written assessment and certification does not conflict with Catholic teaching, that is not the State's judgment to make. *See supra*. St. Vincent has testified that the mandated speech is inconsistent with its religious beliefs. ECF No. 6-1 at PageID.231. Nor is this belief unusual or newly-minted: the serial closure of Catholic adoption and foster agencies in Boston; San Francisco; Washington, DC; and the entire state of Illinois illustrate that this issue has serious theological implications for the agencies involved.⁵

C. The State's policy fails strict scrutiny.

Michigan's perfunctory arguments are insufficient to carry its heavy burden under strict scrutiny. As Plaintiffs explained in their opening memorandum, the compelling-interest test requires courts to "scrutiniz[e] the asserted harm of granting specific exemptions to particular religious claimants—in other words, to look to the marginal interest in enforc[ement]." *Burwell v. Hobby Lobby*, 573 U.S. 682, 726-27

⁵ *See Discrimination Against Catholic Adoption Services*, United States Conference of Catholic Bishops (last visited June 12, 2019) <http://www.usccb.org/issues-and-action/religious-liberty/discrimination-against-catholic-adoption-services.cfm> (listing examples).

(2014) (internal quotation marks and citation omitted). The State merely asserts a broad interest in anti-discrimination; it fails to explain the specific harms in allowing St. Vincent to continue its religious exercise.

As a third party, Proposed Intervenors attempt to do the State's homework. They suggest that exempting St. Vincent could deter same-sex couples who wish to foster. Invr. Br. in Opp'n, ECF No. 35 at PageID.1145 n.11. But they offer only speculation and hearsay to back up that supposition. Even "plausible hypotheses are not enough to satisfy strict scrutiny," *Contractors Ass'n of E. Pa. v. City of Phila.*, 6 F.3d 990, 1008 (3d Cir. 1993), and "ambiguous proof will not suffice." *Brown v. Entm't Merchs. Ass'n*, 564 U.S. 786, 800 (2011). Michigan cannot show that excluding faith-based agencies is the least restrictive means of accomplishing its interests. As Plaintiffs have shown, the prior referral policy was correlated with *more* children going to permanency from foster care, *more* children finding placements, and *fewer* children entering the foster care system. ECF No. 6-13

D. Complying with the Free Exercise Clause does not violate the Establishment or the Equal Protection Clauses.

Potential Intervenors argue that that the State is *required* by the Establishment and Equal Protection Clauses to exclude St. Vincent. But

under the Establishment Clause, the Supreme Court has long recognized that religious accommodations are permissible. *See, e.g., Corp. of Presiding Bishop of Church of Jesus Christ of Latter-day Saints v. Amos*, 483 U.S. 327, 339 (1987) (upholding Title VII exemption for religious organizations). Where there is a system of “private choice,” the actions of religious participants do not violate the Establishment Clause. *Zelman v. Simmons-Harris*, 536 U.S. 639, 662 (2002); *see also Freedom from Religion Found. v. McCallum*, 324 F.3d 880, 883–84 (7th Cir. 2003) (upholding government-funded halfway house program with religious contractors). Allowing a policy exemption to one private charity receiving public funds—among the many agencies foster parents may choose—follows *Zelman* and *McCallum*.⁶

The Equal Protection argument ignores the distinction between government action and private action. “[A] State normally can be held

⁶ Proposed Intervenor also argue that Michigan’s policy does not burden Plaintiffs’ Free Exercise rights. In *Teen Ranch v. Udow*, the Sixth Circuit found an Establishment Clause violation because there was no “true private choice” and Teen Ranch “coerc[ed] children into participating in religious activities.” 479 F.3d 403, 406, 409 (6th Cir. 2007). Unlike the children in *Teen Ranch*, adult prospective adoptive parents have a system of true private choice. It is no surprise that the brief Free Exercise analysis found no violation in light of this Establishment Clause violation. *Id.* at 409-10.

responsible for a private decision only when it has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). That would not be implicated by the State permitting (especially under protest) private choices contrary to its general policy stances.

E. Plaintiffs’ claims against the Federal Defendants are proper and ripe.

Relief is also proper against the Federal Defendants. The Federal Defendants’ brief is most remarkable for what it does not say: it does not say that Michigan was under any threat of federal enforcement if it did not penalize religious agencies; to the contrary, it disclaims plans to enforce and suggests that St. Vincent is correct that such enforcement would violate the Constitution and RFRA. State Br. in Opp’n, ECF No. 33 at PageID.802.

The Federal Defendants’ arguments turn on their claim that they *might* not enforce the law. But the State is already attempting to enforce that same law against St. Vincent. As a result, Plaintiffs’ claims are ripe. The State seeks to penalize St. Vincent *now*, and taking the State at its word, it does so to comply with federal law.

Federal Defendants rely on inapplicable cases. In *Simon v. East Kentucky Welfare Rights Organization [EKWRO]*, 426 U.S. 26 (1976), plaintiffs had not “establish[ed]” that the relevant hospitals “[we]re dependent upon [charitable] contributions.” *Id.* at 44. Here, the State’s child welfare program is ‘dependent’ on federal funds, and Michigan identifies federal law as a reason for its policy. In *Adult Video Association v. U.S. Department of Justice*, 71 F.3d 563 (6th Cir. 1995), it was “far from clear that any harm [would] occur.” *Id.* at 568. Here, the harm is clear and is already occurring.

Plaintiffs can further address any similar challenges Federal defendants raise in a motion to dismiss or other briefing. But the arguments here are no bar to a preliminary injunction, particularly an injunction against the State.

F. The *Dumont* settlement agreement was not a consent decree.

The State begins its opposition by arguing that the *Dumont* settlement was a “consent decree,” (a term it uses 20 times). This argument is foreclosed by binding precedent, the terms of the order, and the actions of the parties to the settlement.

An order is only a consent decree if the court order “incorporate[s] the parties’ terms.” *Pedreira v. Sunrise Children’s Servs.* 802 F.3d 865, 871 (6th Cir. 2015). Here, the Eastern District did not incorporate the settlement agreement’s terms into its dismissal order. The court was never even *asked* to incorporate those terms into a consent decree. Proposed Order at PageID.1464-1467, *Dumont v. Gordon*, 17-cv-13080 (E.D. Mich. Mar. 22, 2019), ECF No. 82. Instead, at the request of the settling parties, the court dismissed the case “pursuant to the terms of the Settlement Agreement,” citing *RE/MAX Int’l v. Realty One* 271 F.3d 633 (6th Cir. 2001).⁷ The Sixth Circuit has held that “[t]he phrase ‘pursuant to the terms of the [s]ettlement’ ***fails to incorporate*** the terms of the [s]ettlement agreement into the order.” *Id.* at 642 (emphasis added). Notably, the Court included this language, and the citation to *RE/MAX*, at the request of the State, which submitted it in a proposed order.⁸ Thus, the Eastern District’s order—entered in the precise form

⁷ Order on Stip. of Dismissal at PageID.1469, *Dumont v. Gordon*, No. 2:17-cv-13080 (E.D. Mich. Mar. 22, 2019), ECF No. 83.

⁸ Proposed Order at PageID.1464-1467, *Dumont v. Gordon*, 17-cv-13080 (E.D. Mich. Mar. 22, 2019), ECF No. 82.

requested by the State—makes clear that the settlement agreement is *not* incorporated into the order and therefore cannot be a consent decree.

That is presumably why Michigan has not used the term “consent decree” in its communications about the settlement,⁹ and other parties to that settlement (Proposed Intervenor here) *still* refrain from using that term today.¹⁰ The court clearly did not think it was entering a consent decree as it (a) issued the dismissal order within the hour, and (b) did not hold any hearing over the merits of the agreement, which would have been required for a consent decree.¹¹ Simply put, the resolution of *Dumont* was just a settlement agreement, and no one anywhere called it a consent decree until the State’s (but not Proposed Intervenor’s) recent pleadings in this Court.

Their settlement contract does not and cannot bind Plaintiffs here, who did not join it: “It goes without saying that a contract cannot bind a nonparty.” *E.E.O.C. v. Waffle House*, 534 U.S. 279, 294 (2002). Moreover,

⁹ See, e.g., Announcement, ECF No. 37-2 at PageID.1424; Seyka Decl. Ex. B (training materials).

¹⁰ See Mot. to Intervene, ECF No. 18 (“settlement agreement” appears two times, “consent decree” zero times); Proposed Br. in Opposition, ECF No. 37 (“settlement agreement” appears 17 times, “consent decree” zero times).

¹¹ See, Order on Stip. of Dismissal, *Dumont*, ECF No. 83.

by its own terms, it is only valid to the extent not “prohibited by law or court order.” Order on Stip. of Dismissal at PageID.1445, *Dumont*, ECF No. 83. Should the Court enter an order inconsistent with that agreement, the agreement simply would not apply in that circumstance. The State cannot shield its constitutional violations behind a private contract that is not binding upon Plaintiffs, is not binding upon Federal Defendants, and *expressly* does not bind State Defendants to the extent this Court, or any other, enters an injunction against them.

II. The remaining preliminary injunction factors are satisfied.

“The purpose of a preliminary injunction is simply to preserve the status quo[.]” *United States v. Edward Rose & Sons*, 384 F.3d 258, 261 (6th Cir. 2004). St. Vincent merely seeks to preserve a status quo that has been successful for decades, allowing St. Vincent to serve thousands of children in need.

Irreparable harm. Plaintiffs’ harms are irreparable as a matter of law: Defendants do not dispute that a violation of Plaintiffs’ constitutional rights is always irreparable. *See* ECF No. 6 at PageID.222; ECF No. 34 at PageID.956. They are also irreparable as a matter of fact: St. Vincent’s contract is up for renewal September 30, and the effects of

the State's new policy are already being felt. Sekya Decl. at ¶¶3-5. Avoiding such harm is the purpose of a preliminary injunction.

Public interest. Defendants also do not contest the fact that “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Here, the public interest in protecting Plaintiffs is even stronger. Closing down St. Vincent without a full hearing on the merits of this case is not in the best interest of the children the State serves. Roach Report at 5. And keeping St. Vincent open does nothing to prevent same-sex couples who want to adopt from adopting. Strachan Report at 11-12; ECF No. 6 at PageID.223.

Balance of the hardships. The balance of the hardships tips overwhelmingly in favor of St. Vincent, as it will be forced to close its adoption and foster programs if the State is permitted to apply its unconstitutional policy. The State fails to respond; Proposed Intervenors argue that same-sex couples will suffer stigma if St. Vincent is allowed to continue its religious adoption ministry. Plaintiffs’ expert speaks to her awareness of many same-sex couples being able to foster children without obstacles. Strachan Report at 11-12. Thus, there is no hard

evidence of deterrent effect, much less widespread effects. This is insufficient to overcome the certainly impending harms if St. Vincent is shut down. *See* ECF No. 6 at PageID.173-176.

Finally, Proposed Intervenors argue that an injunction is “unprecedented” and would “forever eliminate the State’s power to enforce its contracts.” ECF No. 35 at PageID.1144. Not so. The State cannot use government contracts to restrict constitutional rights. *See Bd. of County Comm’rs v. Umbehr*, 518 U.S. 668, 685-686 (1996). Nor can it choose to offer contracts or grants in a discriminatory way. *Trinity Lutheran Church of Columbia v. Comer*, 137 S. Ct. 2012, 2024 (2017). Removing such unconstitutional barriers is the appropriate remedy.

CONCLUSION

The motion for preliminary injunction should be granted.

Dated: June 12, 2019

Respectfully submitted,

/s/ Lori Windham

Lori Windham

Mark Rienzi

Nicholas Reaves

The Becket Fund for Religious Liberty

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Suite 700

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Counsel for Plaintiffs

CERTIFICATE OF COMPLIANCE

This memorandum complies with the word limit of L. Civ. R. 7.2(c) because, excluding the parts exempted by L. Civ. R. 7.2(c), it contains 4,298 words. The word count was generated using Microsoft Word 2019.

/s/ Lori Windham

Lori H. Windham

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lwindham@becketlaw.org

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which sends an electronic notification to all counsel who have entered an appearance on the Docket.

/s/ Lori Windham

Lori H. Windham

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Counsel for Plaintiffs

EXHIBIT 1

Mr. Steven Roach
1625 West Washington
Springfield, IL 62702
(217) 523-9201
roach@cc.dio.org

Re: *Buck, et al. v. Gordon, et al.*
U.S. District Court for the Western District of Michigan
No. 1:19-cv-00286

EXPERT REPORT

Pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, I submit this expert report on behalf of Plaintiffs St. Vincent Catholic Charities (“St. Vincent”), Chad and Melissa Buck, and Shamber Flore. This report is submitted on behalf of these Plaintiffs only.

1. Statement of Qualifications:

I have personal experience partnering with the state of Illinois to provide exemplary foster care and adoption services as a private charity. For more than 33 years, I have worked for Catholic Charities in Illinois. I now serve as the Executive Director of Catholic Charities for the Diocese of Springfield. For over 40 years, the Illinois Department of Children & Family Services partnered with Catholic Charities across the State to provide foster care and adoption services. During this time, Catholic Charities provided effective care and both interim and permanent loving

homes for tens of thousands of vulnerable children. The State publicly declared that our partnership should serve as a national model; and Catholic Charities agencies across the State ranked among the highest in providing positive outcomes for children, according to the State's own evaluation system. Furthermore, the Council on Accreditation verified that my agency, Catholic Charities of the Diocese of Springfield, met the most respected best practice standards in the industry.

I have firsthand experience and knowledge as to how the foster care and adoption system can serve or, alternatively, fail to serve vulnerable children. I also have firsthand experience and knowledge regarding the closure of a Catholic foster and adoption agency as a result of a state's decision to stop partnering with that agency, and what effect this has on the children served by the state's foster care and adoption system because I unfortunately went through that process with my organization. Michigan, like Illinois, partners with private child placing agencies to care for children in need. Accordingly, my experience in Illinois is similar to, and can provide insight into, the likely result in Michigan should St. Vincent Catholic Charities and other Catholic agencies across the State be forced to close.

A true and correct statement of my work and qualifications is attached hereto. I have received no fees for the preparation of this report.

2. Statement of Data and Other Information Considered in Forming Opinions:

In preparation for this report, I relied upon my experience as a longtime employee of Catholic Charities in Illinois and as the Executive Director of Catholic Charities for the Diocese of Springfield, as well as my training and knowledge as a foster care and adoption provider in the State of Illinois. I also relied upon reputable studies, cited throughout this report, that support my knowledge and experiences.

3. Statement of Basis for Opinions Expressed:

The opinions expressed in this report are based upon my knowledge, training, skills, experience, and observations as a longtime employee and the current Executive Director of Catholic Charities of the Diocese of Springfield.

4. Opinions:

In my opinion, the closure of St. Vincent would harm vulnerable children and undermine Michigan's child welfare system. First, it would cause caseworker disruption. This disruption would directly harm the foster children placed with St. Vincent who have learned to trust and depend on their caseworkers. Second, the closure would exacerbate the already chronic shortage of quality foster and adoptive homes for children. This would lead to longer waits for adoptions, increased reliance upon group homes and institutional settings, and would increase the number of children aging out of the system without a permanent family. The closure of

St. Vincent would have negative effects on vulnerable children.

A. Caseworker Disruption Harms Foster Children

Caseworker disruption creates a serious harm for children in the foster care system. Children learn to trust and depend on their caseworker throughout their journey to either family reunification or an adoptive home. Foster children, particularly those who experience multiple moves or extended periods of uncertainty, will learn to trust and depend on their caseworker more than anyone else. Sometimes, the caseworker is the *only* person the child trusts. The closure of St. Vincent would disrupt these important relationships and cause trauma for children who have already experienced disruption and uncertainty.

Studies show that caseworker disruption also dramatically decreases the likelihood of a child finding permanent placement. A 2005 study from Milwaukee County, Wisconsin found that children had a 74.5% chance of achieving timely permanency if they had only one caseworker during their time in the system.¹ However, children who were forced to switch to a second caseworker had only a 17.5% chance of achieving timely permanency.² And those who experienced six or more caseworkers had only a 0.1% chance.³ Similarly, a 2008 study by the

¹ Connie Flower et al., *Review of Turnover in Milwaukee County Private Agency Child Welfare Ongoing Case Management Staff* 4 (Jan. 2005), https://www.uh.edu/socialwork/_docs/cwep/national-iv-e/turnoverstudy.pdf.

² *Id.*

³ *Id.*

University of Minnesota School of Social Work found a correlation between caseworker turnover and increased placement disruptions.⁴ These studies comport with my personal experiences in the field.

If St. Vincent closes, its caseworkers will have to find new jobs, and the children it serves will have to transfer to other agencies, meaning that those children will have to adjust to new agencies and new caseworkers and are likely to suffer further trauma as a result. This will end the one relationship many of those children have come to trust and depend on. The loss of caseworker familiarity with foster children and families also decreases the likelihood that children will be placed with siblings or reunited with prior foster families with whom they have already bonded. This disruption will lead to even further uncertainty, reduce the likelihood of sibling reunification, and dramatically decrease their odds of finding permanent homes in a timely manner, if at all.

⁴ Annette Semanchin Jones, Susan J. Wells, *PATH/Wisconsin - Bremer Project: Preventing Placement Disruptions in Foster Care* iv (Jan.15, 2008), http://caschw.umn.edu/wp-content/uploads/2013/12/Path_BremerReport.pdf.

B. There is a Chronic Shortage of Quality Foster and Adoptive Homes for Children

The United States faces a chronic shortage of quality foster and adoptive homes, and Michigan is no exception. This shortage has been exacerbated by the opioid crisis. This leads to several adverse outcomes for children. This includes more placements in group or institutional settings, rather than individual family homes, which are considered the best placement for most children. It includes longer waits for children in need of adoptive families and the overuse of existing foster homes, which can cause foster parent burnout and increased turnover in the system. And it includes higher numbers of children who “age out” of the foster care system without ever finding a permanent family. Children who age out, on average, fare much worse than children who end up in loving foster homes. One in five will become homeless at age 18, only half are employed, and less than 3% graduate from college—not to mention the increased likelihood of an unplanned pregnancy and of suffering from PTSD.⁵ When an effective agency with a long history of recruiting thousands of foster and adoptive parents is forced to close, the result is fewer homes for children and an increased likelihood of negative outcomes for children in the system. I have seen this harm firsthand in the state of Illinois.

⁵ Wayne Winston Sharp, *The Human, Social, And Economic Cost of Aging Out of Foster Care*, Adoption Advocate (May 2015), <https://www.adoptioncouncil.org/files/large/c29246a29debe09>.

According to one survey, Illinois has had the most significant decrease in available foster homes between 2012 and 2017 of any state that made this data available. Illinois lost 1,547 foster homes in that time period, meaning these homes no longer available for foster children.⁶ This data is consistent with my own observations and experience.

Both my personal experience and the studies discussed above confirm that similar harms will occur in Michigan if agencies like St. Vincent are forced to close. While other agencies may be able to absorb their immediate caseload, transferring children from one agency to another causes unnecessary trauma and disruption for children and is not in their best interest. Worse still, the loss of St. Vincent—an agency that has effectively recruited foster families for decades—will mean fewer foster and adoptive families overall. Some prospective parents St. Vincent *would* have recruited will instead choose not to foster or adopt. Some will be less likely to join the system because there is no longer an agency that shares their religious beliefs. Faith-based agencies like St. Vincent are effective in recruiting through churches or other ministries, and recruitment will decline as the number of agencies investing in such outreach declines. You cannot replace the numerous benefits of a faith-based adoption agency by merely transferring the children in their care elsewhere.

⁶ *Foster Care Housing Crisis*, Chronicle of Social Change, Appendix A at 13-14, <https://chronicleofsocialchange.org/wp-content/uploads/2017/10/The-Foster-Care-Housing-Crisis-10-31.pdf>.

The impact will be multiplied if it is not only St. Vincent, but multiple Catholic agencies throughout the State who are forced to close their doors.

According to the United States Department of Health & Human Services, there are almost 12,000 children currently in need of a permanent home in the state of Michigan.⁷ Approximately 600 of these children will be forced out of the foster care system without a family—a direct result of the State’s chronic shortage of quality foster and adoptive homes.⁸ This will cause immediate and lasting harm to some of the State’s most vulnerable children, leaving many without the necessary skills, resources, or support they need to be successful. Children will suffer because they were failed by the system on which they depend.

⁷ U.S. Department of Health & Human Services, *Children’s Bureau*, <https://cwoutcomes.acf.hhs.gov/cwodatasite/pdf/michigan.html>.

⁸ Child Trends, *Transition-Age Youth in Foster Care in Michigan*, https://www.childtrends.org/wp-content/uploads/2017/09/Transition-Age-Youth_Michigan.pdf; Kristi Tanner, *More than 900 Michigan foster care youth age out*, Detroit Free Press (Jan. 31, 2015) <https://www.freep.com/story/opinion/contributors/raw-data/2015/01/31/michigan-foster-care-youth/22621127/>.

5. List of Cases Testified to At Trial or by Deposition as an Expert:

I have never testified as an expert in court.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.



Name



Date

Mr. Steven Roach
Executive Director
Catholic Charities of the
Diocese of Springfield in Illinois
1625 West Washington
Springfield, IL 62702
(217) 523-9201
roach@cc.dio.org

Steven Roach is the Executive Director of Catholic Charities in the Diocese of Springfield in Illinois where he has held that position for the last 20 years. For 33 years, Mr. Roach has worked for Catholic Charities agencies and institutions across Illinois including the communities of Chicago, Rockford, Springfield and Alton. Throughout his entire career, Mr. Roach has developed and managed child welfare programs that serve abused and neglected children. In the 1990's, Mr. Roach developed the Catholic Charities *Treatment Foster Care Program* and the Catholic Children's Home *Learning Independence For Tomorrow (L.I.F.T.)* program which have provided stable and effective placements for hundreds of DCFS children who are wards of the State of Illinois.

During his tenure as executive director, Mr. Roach directed the agency to its first ever national accreditation through the Council On Accreditation (C.O.A.) of New York and under his leadership annual giving to Catholic Charities has increased by over 400%. Mr. Roach has continually developed a wide array of social service programs including the Catholic Charities *Legal Services Program (CCLS)*, the *St. Francis Community Clinic*, the *St. Anne's Residence*, the Catholic Charities *Mobile Food Pantry* program and the brand new *Health Connect* program through a partnership with St. Mary's Hospital in Decatur.

Mr. Roach has served as Chairman for the Social Services Department of the Catholic Conference of Illinois, as a board member of the Illinois Catholic Health Association and as a member of the Catholic Charities USA Social Policy Committee in Washington, D.C. Mr. Roach also serves as the Director for Community Services for the Diocese of Springfield in Illinois supervising the Office for Pro-Life Activities & Special Ministries. In 2002, Mr. Roach received the *Magnificat* Award from the Springfield Diocese for "outstanding service to God & Neighbor." A graduate of Marquette Catholic High School in Alton, Mr. Roach holds a Bachelor's Degree in Psychology and a Master's Degree in Business Management. Mr. Roach is married with three children and currently resides in Godfrey, Illinois where he is a member of St. Mary's Parish.

EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

MELISSA BUCK; CHAD BUCK;
ST. VINCENT CATHOLIC
CHARITIES; and SHAMBER
FLORE,

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the
Michigan Department of Health
and Human Services; HERMAN
MCCALL, in his official capacity
as the Executive Director of the
Michigan Children's Services
Agency; DANA NESSEL, in her
official capacity as Michigan
Attorney General; ALEX AZAR, in
his official capacity as Secretary of
Health and Human Services; U.S.
DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Defendants.

No. 1:19-cv-00286

HON. ROBERT J. JONKER

DECLARATION OF ANDREA SEYKA

1. My name is Andrea Seyka. I am over the age of 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I

have not been convicted of a felony or been convicted of a crime of dishonesty. I have personal knowledge of all of the contents of this declaration.

2. I am the Chief Executive Officer of St. Vincent Catholic Charities (“St. Vincent”) in Lansing, Michigan. I have served in that position for roughly 12 years. Prior to that, I served as Chief Financial Officer from 1999 to 2006, then as Chief Operating Officer from 2006 through 2007. Prior to joining St. Vincent, I spent ten years working in public and private accounting. I received a bachelor’s degree in accounting from Michigan State University and earned the designation of Certified Public Accountant (CPA) in 1990.

3. After the State of Michigan announced that it would no longer work with agencies like St. Vincent, several of my agency’s employees have come to me asking about the future of our ministry. We have an excellent staff who provide important services to the families and children we serve. But ever since the Attorney General’s announcement, the anxiety level among staff has been high. We have already lost two

staff members due in part to concern over the agency's future, and others fear that the agency may have to close.

4. I have also been approached by current families with questions about the State's new, hostile, position, with many expressing their support for our agency but also their concern regarding what this might mean for the agency and for the services many of these families rely on daily. St. Vincent's adoption contract with the State is also set to expire at the end of September 2019, adding further uncertainty given the State's public statements about its partnership with St. Vincent. Foster care and adoption are difficult enough without an additional cloud of uncertainty.

5. An order from this Court that St. Vincent may continue operating throughout the duration of this litigation, while not completely resolving the case, will significantly reduce the immediate uncertainty and anxiety experienced by staff and foster and adoptive families. It will also reassure everyone that this agency will continue serving children in need for at least the immediate future.

6. Our services assist hundreds of children each year and are a crucial source of support for the Lansing community. Without preliminary relief from the Court, it is possible that our agency could lose the crucial support necessary to continue serving children in need and be forced to close down its foster and adoption programs before litigation is complete.

7. The attached Communication Issuance No. 19-041 (Ex. A) was received by St. Vincent on April 10, 2019, from the State of Michigan.

8. The attached slides (Ex. B) are part of a training session certain St. Vincent staff were required by the State of Michigan to complete by the end of June 2019.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 11, 2019.

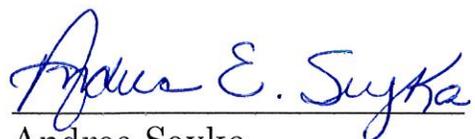

Andrea Seyka

EXHIBIT A

 <p>Children's Services Agency</p> <p>Communication Issuance</p> <p>19-041</p>	Subject/Title	Settlement Agreement – Dumont v. MDHHS
	Type	<input checked="" type="checkbox"/> Informational Memorandum <input checked="" type="checkbox"/> Program Instruction <input type="checkbox"/> Policy Guide
	Issuance Date	04/10/2019
	Obsolete Date	N/A
	Contact Name	Office of Child Welfare Policy & Programs
	Email	Child-Welfare-Policy@michigan.gov
	Due Date	N/A
	Due to	N/A
	Distribution	<input checked="" type="checkbox"/> CSA Central Office Managers/Staff <input checked="" type="checkbox"/> MDHHS BSC and County Directors <input checked="" type="checkbox"/> MDHHS Juvenile Justice Managers/Staff <input checked="" type="checkbox"/> MDHHS Child Welfare Managers/Staff <input checked="" type="checkbox"/> Native American Tribes <input checked="" type="checkbox"/> Office of Workforce Development and Training <input checked="" type="checkbox"/> Private Agency Child Welfare Managers/Staff <input checked="" type="checkbox"/> Private Residential Abuse/Neglect Managers/Staff <input checked="" type="checkbox"/> Private Residential Juvenile Justice Managers/Staff <input type="checkbox"/> Other:

On March 22, 2019, MDHHS entered into a settlement agreement with the plaintiffs in a lawsuit pertaining to non-discrimination in the delivery of foster care and adoption services. The settlement agreement requires MDHHS to:

- Release a public announcement regarding the department's non-discrimination provision.
- Include specific language pertaining to non-discrimination in all Adoption and Placement Agency Foster Care (PAFC) Services Contracts/Subcontracts and applicable policies.
- Include in all Adoption Services Contracts/Subcontracts and all PAFC Services Contracts/Subcontracts a requirement that agencies comply with the MDHHS non-discrimination statement.
- Investigate reports of alleged non-compliance with the non-discrimination provision.
- Initiate contract action when violations occur or when an agency expresses unwillingness to comply.
- Provide ongoing training regarding MDHHS contract obligations and enforcement, settlement agreement obligations, and mechanisms to report alleged non-compliance.
- Maintain a link on the MDHHS website to the Division of Child Welfare Licensing (DCWL) Online Complaint Form.

Adoption and PAFC Services contracts prohibit discrimination *“against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability”* in the provision of services under contract with MDHHS.

In every case, regardless of whether the individual or couple being considered has identified a particular child for foster or adoptive placement, policies and practices prohibited under the non-discrimination provision include, among others:

- Turning away or referring to another contracted Child Placing Agency (CPA) an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.
- Refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.
- Refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the CPA for services under a contract or a subcontract.
- Refusing to place a child accepted by the CPA for services under a contract or a subcontract with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child.

MDHHS is required to investigate allegations of non-compliance with the non-discrimination provision and enforce the contract/subcontracts when violations are established. If MDHHS determines a CPA has committed a contract violation, it will provide the agency with notice and a reasonable opportunity to implement a MDHHS-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services in compliance with the non-discrimination provision. If the agency refuses to comply or fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, MDHHS will terminate the agency's contract. MDHHS must also require all contractors to enforce the non-discrimination provision with any subcontractors.

If a MDHHS employee or contractor employee is aware of a violation or suspected violation of these non-discrimination provisions, a complaint should be made and utilizing the Division of Child Welfare Licensing (DCWL) Online Complaint Form accessible on the MDHHS website:
https://www.michigan.gov/mdhhs/0,5885,7-339-71551_27716-82239--,00.html

Applicable contracts and policies will be updated to reflect these requirements. Additionally, training regarding these provisions is required to be completed by all MDHHS and private agency child welfare staff by June 30, 2019. A recorded webinar to complete this requirement is available on the learning management system, *Non-discrimination Settlement Agreement Training*. Completion of training will be monitored.

Questions regarding the settlement provisions can be directed to: Child-Welfare-Policy@michigan.gov.

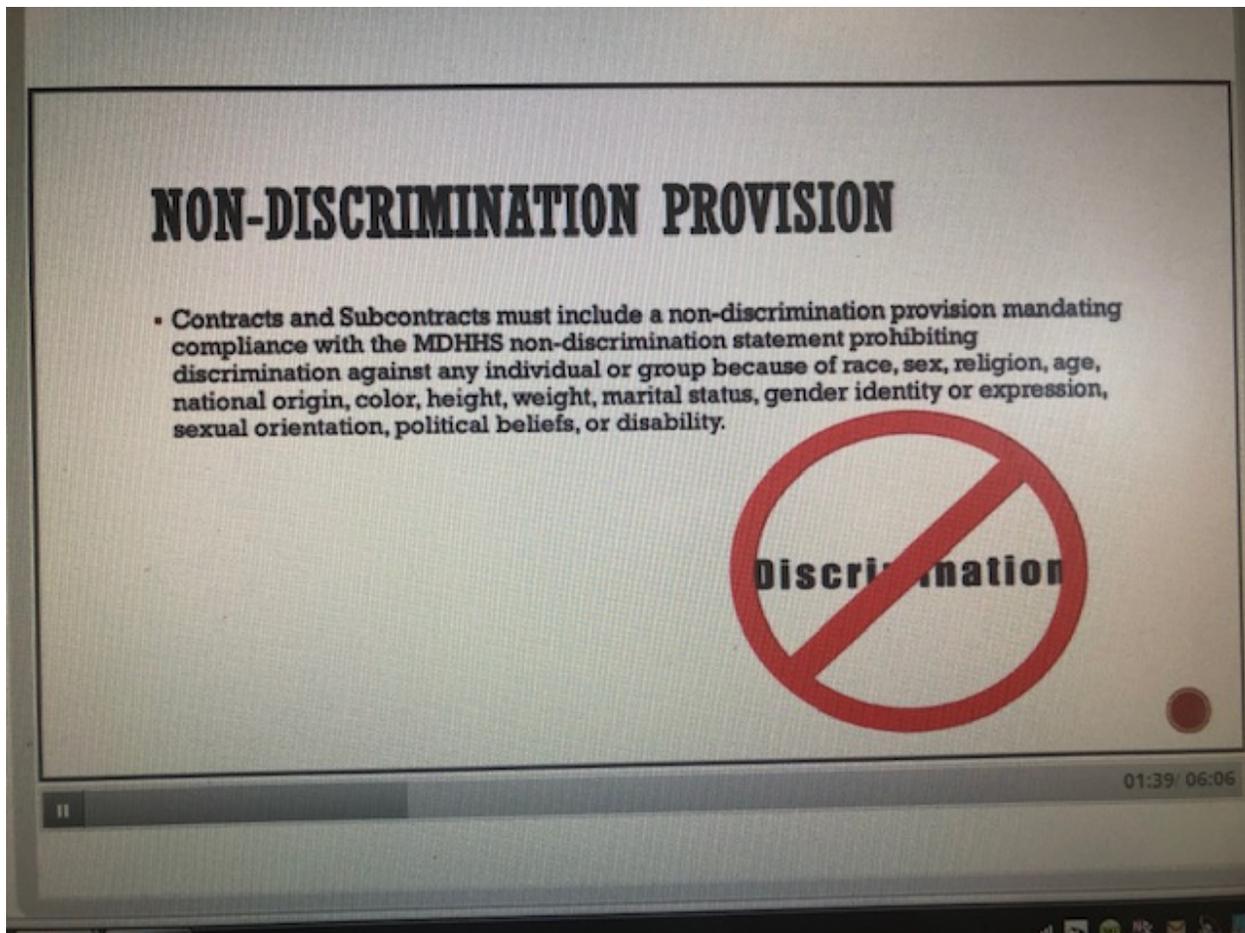
EXHIBIT B

LITIGATION OVERVIEW



- In March 2019, MDHHS entered into a settlement agreement with the plaintiffs in a lawsuit pertaining to non-discrimination in the delivery of foster care and adoption services.
- The Settlement Agreement requires MDHHS to:
 - Release a Public Announcement regarding the Department's non-discrimination provision.
 - Include specific language pertaining to non-discrimination in all Adoption and PAFC services Contracts/Subcontracts and in applicable policies.
 - Include in all Adoption Services Contracts/Subcontracts and all PAFC Services Contracts/Subcontracts a requirement that agencies comply with the MDHHS non-discrimination statement.
 - Investigate reports of alleged non-compliance with the non-discrimination provision.
 - Initiate contract action when violations are established, or an agency expresses unwillingness to comply with the non-discrimination provision.
 - Provide ongoing training regarding MDHHS contract obligations and enforcement, settlement agreement obligations, and mechanisms to report alleged non-compliance.
 - Maintain a link on the Department website to the Division of Child Welfare Licensing (DCWL) Online Complaint Form.

00:56 / 06:00



NON-DISCRIMINATION IN CONTRACTS & POLICIES



- Unless prohibited by law or court order, policies and practices prohibited under the Non-Discrimination provision include, in each case, without regard to whether such individual or couple has identified any particular child for foster placement or adoption:
 - Turning away or referring to another contracted Child Placing Agency an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the Child Placing Agency for services under a Contract or a Subcontract;
 - Refusing to provide orientation or training to an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the Child Placing Agency for services under a Contract or a Subcontract;
 - Refusing to perform a home study or process a foster care licensing application or an adoption application for an otherwise potentially qualified LGBTQ individual or same-sex couple that may be a suitable foster or adoptive family for any child accepted by the Child Placing Agency for services under a Contract or a Subcontract;
 - Refusing to place a child accepted by the Child Placing Agency for services under a Contract or a Subcontract with an otherwise qualified LGBTQ individual or same-sex couple suitable as a foster or adoptive family for the child.



ENFORCEMENT OF NON-DISCRIMINATION

- MDHHS is required to enforce the non-discrimination provision against a Child Placing Agency that it determines is in violation of, or is unwilling to comply with, such provisions, up to and including termination of the Contracts in accordance with the termination provisions included in the Contract/Subcontract.
 - An investigation will be initiated by MDHHS when made aware of an alleged licensing or contract violation.
 - If MDHHS determines a Child Placing Agency has committed a contract violation, it will provide the Child Placing Agency with notice and a reasonable opportunity to implement a MDHHS-approved corrective action plan mandating immediate, regular, and continuous provision of foster care case management services or adoption services, as applicable, in compliance with the non-discrimination provision.
 - If the Child Placing Agency fails to demonstrate compliance after a reasonable opportunity to implement the approved corrective action plan, MDHHS will terminate the Child Placing Agency's contracts.
- MDHHS shall require all Contractors to enforce the non-discrimination provision against any Subcontractors.



REPORTING ALLEGED NON-COMPLIANCE

- If an MDHHS employee or contractor is aware of a violation or suspected violation of these non-discrimination provisions, a complaint should be made utilizing the Division of Child Welfare Licensing (DCWL) Online Complaint Form accessible on the MDHHS website: https://www.michigan.gov/mdhhs/0,5885,7-339-71551_27716-82239--,00.html

QUESTIONS

- Questions regarding the settlement provisions can be directed to: Child-Welfare-Policy@michigan.gov



EXHIBIT C



St. Vincent Catholic Charities

PROVIDING HELP. CREATING HOPE.

2800 W. Willow • Lansing, MI 48917 • Office: (517) 323-4734 • www.stvcc.org

**STVCC/DHHS
FOSTER CARE
10-1-18/9-30-21
Contract
+ 0 Amendments**



Capital Area United Way



Equal Housing Opportunity
Equal Opportunity Employer

Contract ___ Grant ___ Proposal ___ MOU ___ Agreement ___ Application
 ___ Independent Contractor ___ Insurance ___ Vendor ___ University

Routing/Scanned Date/Time: 8-22-18 2:57

Contract Period: 10-1-18 / 9-30-21

New: Amendment ___ Renewal: ___

ON PK'S GRID (PK)

___ STVCC Public Drive/AGENCY FUNDING SOLICITATIONS/Year/Program/Add Folder
 for each funding request – (Each Writer to place their requests here)

Program Providing Service: FC

Services To Be Provided: just a care services

Funding Source: DNHS

Federal (Circle): YES NO If YES, Fed. Department: ___

Contract Name and/or Number: SAFC 19-33001

CFDA # (If Federal): —

Dollar Amount/Rate Per Unit: \$ 3,000,000 Total

to Bonnie
 8/28/18
 4:32 PM
 acc. 8/29/18

Comments:
 Due: 8-31-18 NEW contract

*

<u>Reviewed:</u>	<u>Name</u>	<u>Date - 2018</u>
Dir of Fac/Info Systems:	Bob Graham _____	_____
Dir of Refugee Services:	Judi Harris _____	_____
Dir of Immigration Law Clinic:	Lesley Glennon _____	_____
Dir of Clinical Services:	Jose Carrera _____	_____
Dir of CS/Child Services:	Gina Snoeyink _____ ✓	<u>8-23</u>
Dir of Development/CR	Tamara Watson _____	_____
Dir of Admin. Services:	Maria Zdybel _____	_____
Dir of Accting/Fin Rept:	Scott McClure _____ ✓	<u>8-28</u>
Assoc. Dir of Com. Engage	Ali Pirich Busque _____	_____
CEO:	Andrea Seyka _____ ✓	_____
Grants Mgr:	Phyllis E. Kitchell _____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

RECEIVED

Michigan Department of Health and Human Services
 Bureau of Grants and Purchasing (BGP)
 PO Box 30037, Lansing, MI 48909
 Or
 235 S. Grand Avenue, Suite 1201, Lansing, MI 48933

AUG 28 2018

OCP

CONTRACT NUMBER: MA18000000920
 Between
MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES
 And

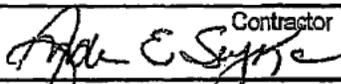
CONTRACTOR		PRIMARY CONTACT	EMAIL
St. Vincent Catholic Charities		Andrea Seyka	REDACTED
CONTRACTOR ADDRESS			TELEPHONE
2800 West Willow, Lansing, MI, 48917-1833			REDACTED
STATE CONTACT	NAME	TELEPHONE	EMAIL
Contract Administrator	Sarah Goad	REDACTED	
BGP Analyst	Bonnie Fineis	REDACTED	

CONTRACT SUMMARY			
SERVICE DESCRIPTION	PAFC19-33001 Placing Agency Foster Care (PAFC)		
GEOGRAPHIC AREA	Statewide		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
3 years	October 1, 2018	September 30, 2021	2
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$3,000,000.00	
CONTRACT TYPE	Per Diem		

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

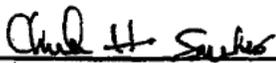
The undersigned have the lawful authority to bind the Contractor and MDHHS to the terms set forth in this Contract. Section 291 of the fiscal year 2016 Omnibus Budget, PA 84 of 2015, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Contract, 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 Contract 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:
 St. Vincent Catholic Charities

 Contractor

 Signature of Director or Authorized Designee
 ANDREA E. SEYKA
 Print Name
 8/28/18
 Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES


 Signature of Director or Authorized Designee
 Christine H. Sanches
 Print Name
 09/24/18
 Date

Anticipated Total Contract Value: \$3,000,000.00

This Contract will be in effect from the date of MDHHS signature through September 30, 2021. No service will be provided and no costs to the state will be incurred before October 1, 2018, or the effective date of the Contract, whichever is later. Throughout this Contract, the date of MDHHS signature or October 1, 2018, whichever is later, shall be referred to as the begin date.

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

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

a. Eligible Clients

- 1) Children for whom the family court has issued an order which makes the Michigan Department of Health and Human Services responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with MDHHS.

- 2) Children for whom the Kent County family court has issued an order which makes the Michigan Department of Health and Human Services responsible for the child's placement, care and supervision and the child has returned home in seven days or less from the removal date.

OR

Youth extending or entering/re-entering the Young Adult Voluntary Foster Care Program (YAVFC)-Youth must have been in out-of-home placement after being referred or committed to MDHHS for care and supervision and is currently receiving foster care services and is at least 18 years old, but less than 21 years old or exited foster care/YAVFC

after reaching 18 years old, but less than 21 years old and resides in Kent county.

b. Determination of Eligibility

If MDHHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within one hour of receipt of the referral. If a need for placement is imminent, MDHHS may make referrals for placement concurrently to other contracted providers. Contractor may not transfer a foster care case to another child placing agency. After acceptance of a foster care referral, the Contractor may not refer the case back to the Department except for the reasons outlined in the Children's Foster Care Manual (FOM) or upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

1.2. Referrals

a. The Contractor accepts a referral from MDHHS by doing either of the following:

- 1) Submitting to MDHHS a written Contract to perform the services related to the particular child or particular individuals that the Department referred to the Contractor; or
- 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.

b. Upon placement, MDHHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), the Case Referral and Acceptance - Individual Service Contract (DHS-3600) and all known information about the child and family.

1.3. Legal or Court Related

MDHHS shall involve the Contractor, to the extent allowed by law, in matters relating to any legal or court activities concerning the child while in the Contractor's care. If the Contractor is to be involved in the court proceedings, MDHHS shall provide the Contractor with written reports for court use upon request, subject to confidentiality requirements imposed by statute.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

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

Contact email address: SeykaA@stvcc.org

2.2. Requests for Information

The Contractor may be required to meet and communicate with MDHHS representatives and from time to time MDHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the MDHHS' obligations under statute and/or Dwayne B. v. Snyder, et al., 2:06-cv-13548, herein referred to as the Implementation, Sustainability, and Exit Plan (ISEP).

The Contractor shall make available to MDHHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

2.3. Geographic Area

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

2.4. Licensing Requirements

The MDHHS Division of Child Welfare Licensing (DCWL) is the licensing agency for Child Placing Agencies (CPA). A license is issued to a certain person or organization at a specific location, is non-transferable, and remains the property of the Department. Therefore, a child placing agency must be established at a specific location.

The Contractor shall ensure that, for the duration of this Contract, it shall maintain a license for those program areas and services that are provided for in this Contract. If the Contractor fails to comply with this section, MDHHS may terminate this Contract for default.

The Contractor is licensed to provide service under this Contract under the following license number: CB330201019

2.5. Location of Facilities

The Contractor shall provide services described herein at the following location(s):

2800 West Willow, Lansing, MI, 48917-1833

Direct foster care services shall be provided in client, relative caregiver, and foster parent homes.

2.6. Program Focus and Name

Placement Agency Foster Care (PAFC) is a program that provides a comprehensive and coordinated set of activities designed to place and supervise children in out of home placement.

Foster care supervision includes the provision of services as throughout this Contract and when necessary the referral for additional services that will enhance the child's and the family's functioning and ameliorate the conditions that caused the child's removal from parental custody.

Foster care supervision includes developing and implementing a treatment plan and service Contract to comply with the Foster Care Manual which facilitates permanency planning according to the following guidelines:

- . Reunification
- . Adoption
- . Guardianship
- . Permanent Placement with a Fit and Willing Relative.
- . Another Planned Permanent Living Arrangement (AAPLA)

2.7. Provider Numbers

MiSACWIS Provider Number: 10400303

Bridges Provider Number: 6356725

2.8. Credentials

The Contractor shall assure that all staff performing functions under this Contract, including contractor employees, volunteers and/or subcontractors, are appropriately screened, credentialed, and trained in accordance with licensing rule. Additional staff requirements are identified in Section 2.10 d. of this Contract.

2.9. Compliance Requirements

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Service Requirements Manual (SRM), Interstate Compact (ICM), Native

American Affairs (NAA) and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).

- b. Throughout the term of this Contract, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments (including interim policy bulletins) and applicable Administrative Codes to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

MDHHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/mdhhs>. Administrative Codes are published at on the following internet link: http://michigan.gov/lara/0,4601,7-154-35738_5698-118524-,00.html

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

- d. The Contractor shall provide services within the framework of Michigan's Child Welfare Practice Model, MiTEAM. The Contractor shall utilize the skills of engagement, assessment, teaming and mentoring in partnering and building relationships with families and children by exhibiting empathy, professionalism, genuineness and respect. Treatment planning shall be from the perspective of family/child centered practice.
- e. The contractor shall ensure all directives and services ordered by the court are completed to the satisfaction of the court within the timeframes ordered.
- f. The Contractor shall ensure worker participation in the department's federally-required Random Moment Time Study (RMTS) in order to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount of worker time that can be charged to various funding sources. Failure to ensure workers meet RMTS training requirements and provide timely and accurate RMTS survey responses may result in recoupment of funding or other corrective actions, as set forth in this Contract.

- g. The Contractor shall assure the coordination of all services based on an assessment of the parent's needs. The Contractor shall utilize Care Connect 360 (CC360) to assure the coordination and provision of all treatment services required based on an assessment of each child's needs and shall execute and comply with the terms of the CC360 Data Use Contract. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

The Contractor shall designate an individual to act as a point of contact for the Health Liaison Officer (HLO) and forward the individual's name to the Health Analyst within the central office MDHHS Child Welfare Medical Unit. The point of contact shall be familiar with current case assignments and have authority to ensure follow-up by the Contractor's staff.

- h. Under 1973, PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Contract limits or expands the application of this Public Act.
- i. Compliance with MDHHS Implementation, Sustainability, and Exit Plan

The Contractor shall ensure compliance with all applicable provisions and requirements of Dwayne B. v. Snyder, et al., 2:06-cv-13548, Implementation Sustainability and Exit Plan.

- j. Prudent Parent Expectations

The Contractor shall ensure prudent parent expectations are followed as outlined in FOM 722-11, Prudent Parent Standard & Delegation of Parental Consent.

- k. Caseload Ratios

The Contractor shall maintain the following caseload ratios:

- 1) Foster care workers will have a caseload assigned to them of no more than thirteen (13) children, as their regular, ongoing caseload. A regular, ongoing caseload will be defined as the cases assigned to a specific worker for ongoing casework responsibility, not cases being temporarily covered for the purposes of worker leave or

departure. Even in cases of temporary coverage, an assigned caseload shall not exceed fifteen (15) children at any time. A mixed caseload comprised of more than one program type shall not exceed the prorated total equal to one full caseload.

- 2) Foster care/social services supervisors shall supervise no more than five (5) foster care/social services staff at any time.

In addition, PAFC's will work collaboratively with DHHS in the following ways:

- 1) DHHS and PAFC partners will work with Public Consulting Group (PCG) in completing the establishment of fair rates.
- 2) DHHS and PAFC's will work collaboratively to establish a joint protocol for an annual rate review process and will engage in said process.

Additional Compliance Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- b. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.
- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.
- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.
- k. Fostering Connections to Success Act of 2008
- l. Preventing Sex Trafficking and Strengthening Families Act, Federal PL 113-183
- m. Social Security Act, 42 USC-671(a)(20)

- n. Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Security Policy located on the following link: <https://www.fbi.gov/services/cjis/cjis-security-policy-resource-center>
- o. 2017 Public Acts 246 through 255, Michigan Opioid Laws

Compliance with ICWA Requirements

The Contractor shall provide case management services in accordance with the "Active-Efforts" requirements established in the ICWA; Public Law 95-608 being 25 U.S.C 1901 *et seq.* These requirements include but are not limited to the following:

- a. Establish an American Indian child as a member of a Tribe in accordance with ICWA and as defined in the MDHHS Native American Affairs (NAA) manual.
- b. Provide "Active Efforts" case management services in with in accordance with ICWA and as defined in the NAA manual.
- c. Provide placement of American Indian children in accordance with "Placement Priorities" as established in ICWA and defined in the NAA manual.
- d. Provide "Expert Witness" testimony in accordance with ICWA and as defined in the NAA manual.
- e. Provide services to American Indian families within the context of their culture and ethnicity. Maintaining knowledge in the following:
 - 1) How culture and rituals influence parenting decisions.
 - 2) Determine what services and supports will be most effective.
 - 3) Knowledge and respect of tribal practices.

2.10. Services to be Provided

a. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by MDHHS.

b. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the MDHHS retaining placement care and custody

- 1) The Contractor shall provide the following services to children in trial reunification:

- a) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7B.
- b) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
- c) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
- d) Continue case worker visit expectations as required in FOM 722-6H.
- e) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7B.
- f) Continue assessing and monitoring of the case plan and safety plan.

c. Staff Training

1) Child Welfare Training: Requirements

- a) The Contractor shall ensure that staff hired or promoted to a foster care social services position complete the Office of Workforce Development and Training (OWDT) foster care Pre-Service Institute (PSI) training within 112 days.
- b) Staff transferring to a foster care social service position from another children's services position that has successfully completed the PSI training in that program, shall attend and complete OWDT-foster care private agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.
- c) The Contractor shall ensure that first line supervisors hired or promoted to a foster care supervisor position complete OWDT foster care New Supervisor Institute (NSI) within 112 days of hire/promotion.
- d) Supervisors transferring to a foster care supervisor position that has successfully completed the NSI, shall attend and complete the OWDT foster care NSI PSTT within six months of assuming the foster care supervisor position.
- e) Staff who conduct any functions related to the certification of foster homes must attend and pass the five-day class on certifying foster homes, investigating and handling complaints against foster homes.
- f) Supervisors who have not attended certification training as a certification staff person are to attend the five-day certification and

complaint investigation training prior to supervising the certification of foster homes.

- g) All social service and certification workers must complete a minimum of 32 in-service training hours per calendar year. All first line social service and certification supervisors must complete a minimum of 16 in-service training hours per calendar year.
- h) The Contractor shall follow the requirements in MDHHS policy Services Requirements Manual 103 "Staff Qualifications and Training."

2) OWDT: Registration Process

- a) The Contractor shall register staff for training through the Learning Management System (LMS). In some cases, OWDT will provide a form to be completed and provided to OWDT, who will then perform the registration function within LMS.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff directly for in-service training. To cancel or change training registration, the Contractor will need to make the changes in the LMS directly, unless the trainee was registered by OWDT. The Contractor will need to contact the help desk at MDHHSTraining@michigan.gov for changes to registrations completed by OWDT.
- c) All training completed externally shall be added to the LMS so that it may be included in in-service training hour calculations. The name of the training, a short description, the total number of hours spent in training, and the completion date must be documented in LMS. All qualified training shall be training that improves child welfare practice.
- d) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by OWDT at least seven days before the training commences.

3) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

4) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Contract to successfully

complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link: https://dhhs.michigan.gov/course212/Fingerprint_Security_Awareness_Training/story.html

5) In-Service Training

- a) The Contractor shall ensure that each individual social services staff receives a minimum of 32 hours of qualifying in-service training on an annual basis.
- b) The Contractor shall ensure that each individual social service supervisor receives a minimum of 16 hours of qualifying in-service training on an annual basis.
- c) The Contractor shall ensure that each individual certification worker receives a minimum of 32 hours of qualifying in-service training on an annual basis (SRM103).
- d) The Contractor shall ensure that each individual certification supervisor receives a minimum of 16 hours of qualifying in-service training on an annual basis (SRM 103).

All qualified training shall be training that improves child welfare practice.

d. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct care and supervision of MDHHS. Facilitation of licensure includes but is not limited to the following activities:

- 1) Accept referrals of unlicensed relative caregivers from MDHHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process as outlined in foster care policy.
- 2) On forms provided by MDHHS, and when requested by MDHHS, the Contractor shall report to MDHHS a minimum of monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

e. Adoption and Foster Care Analysis Reporting System Requirements

The Contractor shall enter all child and family information into the Michigan Statewide Automated Child Welfare System (MISACWIS) to enable MDHHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section 3.1 f. of this Contract.

f. MITEAM Requirements

- 1) The Contractor shall designate a Program Manager, Supervisor or child welfare staff person in each office location to act as a MITEAM Liaison with MDHHS to:
 - a) Participate in Practice Support Trainings and Practice Support Networking Meetings.
 - b) Convey the MITEAM Specialist information and activities to agency administration.
 - c) Be responsible for contributing to policy and program development and sustainment.
 - d) Maintain knowledge and expertise of all policies and programs impacting the local office.
 - e) Gather and analyze information to identify local trends where case practice may be negatively impacted by policies, procedures or programs.
 - f) Recommend modifications to policies and procedures that would better assist caseworkers in achieving identified outcomes.
 - g) Consult with their assigned MITEAM Analyst in MDHHS Central Office.
 - h) Respond to questions and share updates related to MITEAM.
 - i) Advocate for MITEAM and the importance of continued growth around caseworker's knowledge and skills to improve safety, permanency and well-being.
 - j) Compile reports completed by supervision, complete MITEAM Liaison Report and send the report to the assigned MITEAM Analyst, on the schedule determined by MDHHS.

- 2) The Contractor shall ensure that all child welfare caseworkers:
 - a) Complete each training module on the MITEAM Virtual Learning Site, located at <https://michigan.csod.com/client/Michigan/default.aspx>
 - i. In the order recommended,
 - ii. Including participation in the Individual Field Application Exercises discussed with their supervisor,
 - iii. Complete the caseworker self-assessment exercise as conducted by their supervisor, and
 - iv. Join in the Enhanced MITEAM Training Cycle activities according to the schedule set by MDHHS.

- v. Staff hired during the Enhanced MITEAM Training Cycles shall join in the training as scheduled and develop a plan with their supervisor, to complete missed modules and activities as stated above.
 - vi. For each staff person hired after the Enhanced MITEAM Cycles have ended, develop a plan to complete modules and activities as stated above.
 - b) Apply the MITEAM competencies and Key Caseworker Activities during everyday contact with team members, including families and professionals.
 - c) Have their competencies reviewed by their supervisor using the MITEAM Fidelity Tool.
- 3) The Contractor shall ensure that all child welfare supervisors and/or program managers:
- a) Complete each training module on the MITEAM Virtual Learning Site, located at <https://michigan.csod.com/client/Michigan/default.aspx>
 - i. In the order recommended, and
 - ii. Join the Enhanced MITEAM Training Cycle activities according to the schedule set by MDHHS.
 - b) Apply the MITEAM competencies during every day contact with staff and team members, including families and professionals.
 - c) Conduct the caseworker self-assessment exercise with each caseworker on their staff.
 - d) Ensure each staff person hired during the Enhanced MITEAM Training Cycles joins the training as scheduled and develop a plan, to complete missed modules and activities as stated above.
 - e) Ensure each staff person hired after the Enhanced MITEAM Training Cycles have ended, develops a plan to complete modules and activities as stated above.
 - f) Review competencies as demonstrated by their staff using the MITEAM Fidelity Tool.
- 4) The Contractor shall ensure that the child welfare director:
- a) Review each training module on the MITEAM Virtual Learning Site, located at <https://michigan.csod.com/client/michigan/default.aspx>
 - i. In the order recommended, and
 - ii. Encourage supervision and staff participation in the Enhanced MITEAM Training Cycle activities according to the schedule set by MDHHS.
 - b) Support the practice of applying MITEAM competencies during everyday contact with staff and team members, including families and professionals.

2.11. Key Performance Indicator Outcomes

During the period of this Contract, the Contractor shall work toward the achievement of the Key Performance Indicators (KPI) listed below. For purposes of the annual contract compliance reviews, compliance with KPIs shall be assessed based on the prior twelve months indicator of the most recent Children's Services Agency – Monthly Management Report in which the Contractor's review occurs.

If a Contractor is not meeting the KPIs listed below, the Contractor shall include in its annual assessment and written plan (as required by R 400.12207, Staff Responsibilities) specific activities the Contractor shall complete to demonstrate improvement in the KPI measures. The Contractor shall submit the written plan to the Contractor's Child Welfare Services and Support Analyst by October 1st of each year.

Official KPI data shall come from MDHHS via MiSACWIS. The Contractor shall conduct validation activities on an ongoing basis to assure the KPI measures have been entered in MiSACWIS accurately. The Contractor shall be responsible for ensuring accurate and timely data entry into MiSACWIS.

a. Medical – Initial

No fewer than 85% of children supervised by the Contractor will have an initial medical examination within 30 days of removal (ISEP Item 6.43).

b. Medical – Periodic (Well Child)

Following an initial medical examination, at least 95% of children supervised by the Contractor shall receive periodic medical examinations and screenings according to the guidelines set forth by the American Academy of Pediatrics (ISEP Item 6.47).

c. Medical – Yearly (14 Months)

Following an initial medical examination, at least 95% of children supervised by the Contractor shall receive yearly (up to 14 months from the previous exam) medical examinations and screenings (FOM 801 Policy).

d. Dental - Initial

No fewer than 90% of children supervised by the Contractor shall have an initial dental examination within 90 days of removal unless the child has had an exam within six months prior to placement or the child is less than four years of age (ISEP Item 6.44).

e. Dental – Yearly

No fewer than 95% of children supervised by the Contractor shall have a dental examination at least every 12 months (FOM 801 Policy).

f. Worker-Child Visits

No fewer than 95% of children supervised by the Contractor will be visited by their assigned worker in accordance with guidelines in the ISEP (ISEP Item 6.39).

g. Worker-Parent Visits

No fewer than 85% of the children supervised by the Contractor with a permanency goal of reunification, the child's caseworker shall have face-to-face contacts with the child's parent(s) in accordance with the guidelines in the ISEP (ISEP Item 6.40).

h. Parent-Child Visits

No fewer than 85% of children supervised by the Contractor with a goal of reunification shall have at least twice-monthly visitation with their parent(s) in accordance with the guidelines in FOM 722-061 Policy.

i. Children's Foster Care Service Plans – Timely Case Plans

No fewer than 95% of children supervised by the Contractor shall have an initial service plan completed within 30 days of entry into foster care and quarterly thereafter in accordance with the guidelines in the ISEP (ISEP Items 6.31 and 6.32).

j. Children's Foster Care Timely Case Service Plan Approvals

No fewer than 95% of children supervised by the Contractor shall have a case service plan approved within 14 days of case worker submission to the supervisor for review (FOM 722-09 Policy).

k. Supervisor Oversight

No fewer than 95% of children supervised by the Contractor shall meet at least monthly with each assigned case worker to review the status and progress of each case on the workers caseload (ISEP Item 6.30)

2.12. Audit Requirements

Contractor/Vendor Relationship

This Contract constitutes a contractor/vendor relationship with MDHHS. The Contractor must immediately report to the MDHHS Bureau of Audit any audit findings of fraud, an Going Concern, financial statement misstatements, or accounting irregularities, including noncompliance with provisions of this Contract.

2.13. Financial Audit Requirements

a. Required Audit or Audit Exemption Notice

Contractors must submit to the Department either a Single Audit, Financial Statement Audit, or Audit Exemption Notice as described below. If submitting a Single Audit or Financial Statement Audit, Contractors must also submit a Corrective Action Plan for any audit findings that impact MDHHS-funded programs, and management letter (if issued) with a response.

1) Single Audit

Contractors that are a non-profit organization and that expend \$750,000 or more in federal awards during the Contractor's fiscal year, must submit a Single Audit to the Department, regardless of the amount of funding received from the Department. The Single Audit must comply with the requirements of Title 2 Code of Federal Regulations, Subpart F.

2) Financial Statement Audit

Contractors exempt from the Single Audit requirements with fiscal years that receive \$750,000.00 or more in **total funding** from the Department in State and Federal grant funding must submit to the Department a Financial Statement Audit prepared in accordance with generally accepted auditing standards (GAAS).

3) Audit Exemption Notice

Contractors exempt from the Single Audit and Financial Statement Audit requirements (1 and 2 above) must submit an Audit Exemption Notice that certifies these exemptions. The template and further instructions are available at <http://www.michigan.gov/mdhhs> by selecting Inside MDHHS menu, then MDHHS Audit, then Audit Reporting.

b. Due Date and Where to Send

The required audit and any other required submissions (i.e. Corrective Action Plan and management letter with a response), or Audit Exemption Notice must be submitted to the Department within nine months after the end of the Contractor's fiscal year by e-mail to the Department at MDHHS-AuditReports@michigan.gov. The required submissions must be in PDF files and compatible with Adobe Acrobat (read only). The subject line must state the agency name and fiscal year end. The Department reserves the right to request a hard copy of the audit materials if for any reason the electronic submission process is not successful.

c. Penalty

- 1) If the Contractor does not submit the required Single Audit or Financial Statement Audit, including any management letter and applicable corrective action plans within nine months after the end of the Contractor's fiscal year, the Department may withhold from the current funding an amount equal to five percent of the audit year's contract funding (not to exceed \$200,000) until the required filing is received by the Department. The Department may retain the amount withheld as a penalty if delinquency reached 120 days past due. The Department may terminate the contract if the Contractor is 180 days delinquent in meeting the audit requirements.
- 2) Failure to submit the Audit Exemption Notice, when required, may result in withholding from the current funding an amount equal to one percent of the audit year's funding until the Audit Exemption Notice is received.

d. Other Audits

The Department or federal agencies may also conduct or arrange for "agreed upon procedures" or additional audits to meet their needs.

2.14. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this Contract to MDHHS clients for the reporting period. Costs for non-MDHHS children are not to be included. Reports will be submitted using a template provided by MDHHS. The financial reports shall be submitted annually, and will be due November 30 of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by MDHHS. Reports shall be submitted electronically to MDHHS-Foster-Care-Audits@michigan.gov with the subject line: PAFC Cost Report.

Failure to meet reporting responsibilities as identified in this Contract may result in MDHHS withholding payments until receipt of annual financial cost report. MDHHS may withhold from current payments an amount equal to five percent of the Contractor's reporting year MDHHS revenue (not to exceed \$60,000) until the required filing is received by the Department. MDHHS may retain withheld funds as a penalty if delinquency reaches sixty (60) days past due. MDHHS may terminate the contract if the Contractor is ninety (90) days delinquent in submitting the required annual financial cost report.

2.15. Service Documentation

The Contractor agrees to maintain program records required by MDHHS, program statistical records required by MDHHS, and to produce program narrative and statistical data at times prescribed by, and on forms furnished by, MDHHS.

2.16. Private Agency MISACWIS

The Contractor shall ensure that private agency staff has access to the Michigan Statewide Automated Child Welfare Information System (MISACWIS) through a web-based interface, henceforth referred to as the "MISACWIS application." The Contractor shall ensure that staff follow the MISACWIS requirements for CPA contracts which are found at [http://www.michigan.gov/documents/dhs/Private_Agency MISACWIS for C PA Contracts 464663 7.pdf](http://www.michigan.gov/documents/dhs/Private_Agency_MISACWIS_for_CPA_Contracts_464663_7.pdf)

For all agency assigned cases in MISACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MISACWIS.

2.17. Billing

The Contractor shall submit through the MISACWIS system the bi-weekly roster for any child in the Contractor's care per the instructions within the MISACWIS system. The billing shall only indicate the units of service provided by the Contractor and shall be submitted to MDHHS within 30 days from the end of the billing period.

No original request for payment submitted by the Contractor more than one year after the close of the two week billing period during which services were provided shall be honored for payment.

When the Contractor's financial records reveal that payment for a child has not been provided by MDHHS within 30 days of receiving all necessary documentation, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned MDHHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 30 days of the written notice must be reported to the MDHHS County Director for immediate resolution. The Contractor will apprise MDHHS Office of Child Welfare Services and Support of any ongoing, unresolved payment concerns.

2.18. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to MDHHS under this Contract shall not be financed by any source other than MDHHS under the terms of this Contract. If funding is received through any other source, the Contractor agrees

to deduct from the amount billed to MDHHS the greater of either the fee amounts, or the actual costs of the services provided.

The Contractor may not accept reimbursement from a client unless the Contract specifically authorizes such reimbursement in the "Contractor Responsibility" Section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Contract, the Contractor shall deduct these fees from billings to MDHHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case MDHHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

2.19. Recovery of Funding and Repayment of Debts

a. Recovery of Funding

If the Contractor fails to comply with requirements as set forth in this Contract, or fails to submit a revised payment request within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may require the Contractor to reimburse payments made under this Contract to which MDHHS has determined that the Contractor was not entitled. If the Contractor becomes aware of any situation involving payments received under this Contract to which the Contractor was not entitled, the overpayment amount must be repaid to MDHHS within 30 days of the Contractor becoming aware. The Contractor is liable for any cost incurred by MDHHS in the recovery of any funding.

Upon notification by MDHHS that repayment is required, or upon any other awareness of an overpayment to the Contractor, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold future payments made under this or any other Contract(s), between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' Contracts with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Other Amounts due MDHHS

By entering into this Contract, the Contractor agrees to honor all prior repayment Contracts established by MDHHS with the Contractor or Contractor's predecessors. In the absence of a repayment Contract for amounts due MDHHS, the Contractor agrees to make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Contract is executed. If any of these required payments are made more than 30 days past the due date, MDHHS may reduce or withhold future payments made under this or any other Contract(s) between MDHHS and the Contractor.

The payment reduction will be made either at the amount originally established in the repayment Contract or at an amount not less than 5% of any outstanding balance effective on the date this Contract is executed.

2.20 Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to MDHHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to MDHHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in a review of the contract agency's violations by a designated Administrative Review Team, which shall include the Director of CSA and the Director of DCWL or its successor agency, that shall consider mitigating and aggravating circumstances to determine the appropriate corrective action up to and included license revocation and contract termination.

2.21 The Division of Child Welfare Licensing (DCWL)

DCWL shall be responsible for review of the Contractor's compliance with the Contract and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze and comment on all activities covered within the terms of the Contract or court order. If the ACR or Special Investigation reveals that the Contractor has not complied with the requirements of this Contract or court order, the following procedures shall be implemented:

- a. DCWL shall notify the Contractor of the Contract or court noncompliance. This notification shall occur verbally during an exit conference, and be followed with a written report of the findings. The Contractor may request a meeting to discuss and examine the identified Contract or court noncompliance.
- b. Following the identification of the Contract or court noncompliance, DCWL will request the Contractor submit a Corrective Action Plans (CAP) to DCWL within 15 days of receiving the written report of findings.
- c. After the Contractor's CAP has been reviewed and approved by DCWL, the Contractor's compliance with the CAP shall be reviewed in accordance with time frames established by DCWL in the written notification of acceptance of the CAP.
- d. Based on the severity or repeated nature of cited violations, a recommendation may be made by DCWL at any time to place a moratorium on new placements with the contractor or to cancel the contract. If either recommendation is made, a meeting will be convened with the director of the contracted agency, the division director of DCWL and the CSA director or designee to provide the contractor with the opportunity to provide documented information on why the moratorium or cancellation of the contract should not occur.
- e. If a moratorium on new placements is put into place, it shall be for a minimum of 90 days to allow the contractor to remedy cited violations and comply with any agreed on CAP. If the cited violations are not corrected during the period of the moratorium or additional serious violations are cited, consideration shall be given to cancellation of the agency's contract. Final decisions regarding the cancellation of a contract shall be made by the CSA director.

2.22 Corrective Action Requirements

If a program review by MDHHS reveals a lack of compliance with the requirements of this Contract, the Contractor shall:

- a. Meet with MDHHS to discuss the noncompliance.
- b. Prepare a corrective action plan within 30 days of receiving MDHHS' written findings.
- c. Achieve compliance within 60 days of receipt of MDHHS' approval of the corrective action plan (unless other time frames are agreed to in writing by MDHHS) or MDHHS' may terminate this Contract, subject to the standard contract terms.

2.23 Criminal Background Check

As a condition of this Contract, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Contract, conduct or cause to be conducted for each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with:

- a. Clients under this Contract, or who has access to client information, an Internet Criminal History Access Tool (ICHAT) check and a National and State Sex Offender Registry check.

Information about ICHAT can be found at <http://apps.michigan.gov/ichat>.

The Michigan Public Sex Offender Registry web address is <http://www.mipsor.state.mi.us>.

The National Sex Offender Public Website address is <http://www.nsopw.gov>.

- b. Children under this Contract, a Central Registry (CR) check.

Information about CR can be found at http://www.michigan.gov/mdhhs/0,5885,7-339-73971-7119_50648_48330-180331--,00.html

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Contract to timely notify the Contractor in writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Contract or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Contract, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for

each determination. As indicated in CPA Licensing Rule R400.12212 the Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Contract.

If MDHHS determines that an individual provided services under this Contract for any period prior to completion of the required checks as described above, MDHHS may require repayment of that individual's salary, fringe benefits, and all related costs of employment for the period that the required checks had not been completed.

3. MDHHS RESPONSIBILITIES

3.1. Payments

MDHHS shall open and process payment within 30 days of placement, with payment authorization effective the date of the child's placement with the Contractor.

- a. The entire rate paid to the Contractor for board and care, clothing and allowance shall be paid by the Contractor to the foster families providing the family foster care.
- b. The Contractor's administrative rate(s) for services provided under this Contract shall be:

Bridges Provider Number 6356725
 MiSACWIS Provider Number 10400303

<u>Service Code</u>	<u>Per Diem Rate</u>	<u>Effective Date</u>
780	\$ 46.20	10-1-17
782 (IL)	\$ 46.20	10-1-17
TR	\$ 46.20	10-1-17
0838	*\$2.50	10-1-17

Boiler Plate 515
 (BP 515) Admin Rate \$46.20 10-1-18

*The above rate is only to be used for American Indian Children

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section 2., CONTRACTOR RESPONSIBILITIES, the per diem

administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

- c. The Contractor shall be paid for family foster care services specified in this Contract at a board and care rate established by MDHHS. A determination of care rate may be established by MDHHS in accordance with the FOM when extraordinary care or expense is required of the foster parent. Special rates must have the approval of the Director of MDHHS' local office responsible for the supervision of the child for whom foster care is provided.
- d. Payment for additional service costs not included in the per diem rate may be authorized in accordance with the FOM.

When the Contractor's financial records reveal that a payment for a child has not been provided by MDHHS within 90 days of their acceptance of the child for case management services, the Contractor will contact the MDHHS County Director in writing seeking payment resolution. The Contractor shall apprise MDHHS of any concerns over a payment amount that cannot be reconciled at the staff level within 90 days.

- e. Upon placement, MDHHS shall ensure that the child(ren) has adequate clothing as defined by the Clothing Inventory Checklist (DHS-3377) or shall reimburse the Contractor up to the approved limit allowed for clothing.
- f. Inability of MDHHS to comply with the federal reporting requirements of AFCARS due to failure of the Contractor to fulfill AFCARS related reporting requirements shall result in a three percent reduction in the Contractor's administrative rate for the six month period subsequent to the due date of the AFCARS report to the Federal government.

g. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in the Implementation, Sustainability and Exit Plan according to the following schedule:

- 1) Completion of the Child Welfare Caseworker Training
Payment will be \$6,000.00 total, calculated on a per diem basis, for completion of OWDT-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.
- 2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000.00 total, calculated on a per diem basis, for completion of the OWDT-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training

Payment will be \$1,500.00 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

All Supervisors hired on or after January 1, 2017 must complete the Supervisor Training and pass the competency evaluation.

4) Completion of the Child Welfare Transfer Training

The two-week foster care PSTT shall be completed within six months of hire. Payment will be \$2,800.00 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

- h. For all Contractor staff hired on or after May 1, 1998 attending required OWDT-PSI, CWC-PSI, PSTT, PRIDE and supervisor training, MDHHS-OWDT shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of OWDT attendance. MDHHS-OWDT does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage, parking and bridge toll with the following conditions:

- 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights (Sunday night through Thursday night) lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of OWDT in advance for a travel exception for weekend lodging.
- 2) For each mile of travel to a OWDT training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.

- 3) Parking shall be reimbursed at one-time daily parking or continuous daily metered parking, documented with a receipt.
- 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the OWDT web site for current reimbursement information for OWDT training at http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572-.00.html

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the MDHHS-5602 Payment Voucher that includes the following information:
 - a) Worker name
 - b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training.
- 2) The information must be submitted electronically to: MDHHS-FederalComplianceDivision@michigan.gov. The subject line shall read: Training Payment.

Training Travel Reimbursement

- 1) The Contractor must submit:
 - a) Certification letter on agency letterhead signed and dated by senior management to include:
 - Agency Federal ID Number/SIGMA Vendor Number
 - Exact trainee name as registered in the Learning Management System
 - Exact class name
 - Beginning and ending travel dates
 - Amount of reimbursement requested
 - b) OWDT travel expense worksheet or agency created travel expense sheet.
 - c) MapQuest printouts for each travel route. Submit the first page of the printout only – Page 1 – with total mileage traveled.

- d) All original receipts.
- e) Transcripts showing the training completed.

2) Please submit the above information by email to:

MDHHS-OWDTtrainingvouchers@michigan.gov

or by US Mail to:

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street – Building 3
Lansing, MI 48911

i. The Contractor shall be paid for Trial Reunifications services specified in the Contract not to exceed 180 days from the child's placement in the parental home.

1) The Contractor must submit the following on a monthly basis:

- a) A completed MDHHS-5602 Payment Request
- b) A case listing that contains the following child identifying information:
 - Placing Agency Provider ID
 - Agency Name
 - MiSACWIS log ID if known
 - Child last name
 - Child first name
 - Recipient ID
 - Foster Care case number
 - Billing start date
 - Billing end date
 - Number of days to pay
 - American Indian Y/N
 - Date of court order commencing the Trial Reunification
 - Date the foster care case was dismissed by the court and/or
 - Date the child reentered a foster care placement

2) The information must be submitted electronically to: MDHHS-trialreunificationpayments@michigan.gov.

j. BP 515 Additional Administrative Rate

BP 515 Additional Administrative Rate reimbursements must be made outside the MiSACWIS system and be tracked by the Kent County DHHS office.

MDHHS will verify and process payment to accounting for payment.

The Contractor must submit an invoice monthly for BP 515 Additional Administrative services for:

- f) Youth in Young Adult Voluntary Foster Care Youth and/or children in care seven days or less and placed in a non-paid living arrangement or child caring institution.

Payment Process

Each month the Contractor shall electronically submit a case listing on an Excel spreadsheet prepared by the Contractor that contains the following information:

- a) MiSACWIS provider ID
- b) Bridges provider ID
- c) Agency Name
- d) Child last name
- e) Child first name
- f) Child date of birth
- g) MiSACWIS person ID
- h) Legal Status
- i) Fund source during time of payment period
- j) Living arrangement of youth for which additional admin is requested
- k) Billing start date
- l) Billing end date
- m) Number of days to pay

Please submit the requested information electronically to:
DHS-KENTPayments@michigan.gov

The subject line shall read: (Agency Name/Billing Month) BP 515
Additional Administrative Rate

- k. The costs of all services provided under this Contract are included in the above rate(s) unless otherwise noted in this Contract.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Contract shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Conducting Interim or Renewal Licensing Studies and reports
- d. Reviewing and analyzing written plans and reports.

4. STANDARD TERMS

4.1 Duties of Contractor

Contractor must perform the services and provide the deliverables described in Sections 1 and 2 (the "Contract Activities"). An obligation to provide delivery of any commodity is considered a service and is an Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities, and meet operational standards, unless otherwise specified in Section 2.10 – Services to be Provided.

Contractor must:

- a. Perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry;
- b. Meet or exceed the performance and operational standards, and specifications of this Contract;
- c. Provide all Contract Activities in good quality, with no material defects;
- d. Not interfere with MDHHS's operations;
- e. Obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of this Contract;
- f. Cooperate with MDHHS, including MDHHS's quality assurance personnel, and any third party to achieve the objectives of this Contract;
- g. Return to MDHHS any State-furnished equipment or other resources in the same condition as when provided when no longer required for this Contract;
- h. Not make any media releases without prior written authorization from MDHHS;
- i. Assign to MDHHS any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of this Contract;
- j. Comply with all State physical and IT security policies and standards which will be made available upon request; and
- k. Provide MDHHS priority in performance of this Contract except as mandated by federal disaster response requirements.

Any breach under this provision is considered a material breach.

Contractor must also be clearly identifiable while on State property, by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

4.2 Notices

All notices and other communications required or permitted under this Contract 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

4.4 Reserved

4.5 Reserved

4.6 Insurance Requirements

Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must:

- a. Protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance;
- b. Be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and
- c. Be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Required Limits Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations</p> <p><u>Deductible Maximum:</u> \$50,000 Each Occurrence</p>	<p>Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or both CG 2010 07 04 and CG 2037 07 04.</p> <p>If the contractor will deal with</p>

	children, schools, or the cognitively impaired, coverage must not have exclusions or limitations related to sexual abuse and molestation liability.
Umbrella or Excess Liability Insurance	
<u>Minimal Limits:</u> \$4,000,000 General Aggregate	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Liability Insurance	

<p><u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate</p>	<p>Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.</p>
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If any of the required policies provide claims-made coverage, the Contractor must:

- a. Provide coverage with a retroactive date before the effective date of the Contract or the beginning of Contract Activities;
- b. Maintain coverage and provide evidence of coverage for at least three years after completion of the Contract Activities; and
- c. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Contract effective date, Contractor must purchase extended reporting coverage for a minimum of three years after completion of work.

Contractor must:

- a. Provide insurance certificates to the Contract Administrator, containing the Contract or purchase order number, at Contract formation and within 20 calendar days of the expiration date of the applicable policies;
- b. Require that subcontractors maintain the required insurances contained in this Section;
- c. Notify the Contract Administrator within five business days if any insurance is cancelled; and
- d. Waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

Contractors who are self-insured must provide the following:

- a. Proof of self-insurance from the Michigan Department of Insurance and Financial Services for auto liability.
- b. Proof of self-insurance from the Michigan Department of Licensing and Regulatory Affairs for worker's compensation and employer's liability.
- c. A copy of their most recent, independently audited financial statements.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract (including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State).

4.7. Reserved

4.8. Extended Purchasing Program

This contract is extended to MiDEAL members. MiDEAL members include local units of government, school districts, universities, community colleges, and nonprofit hospitals. A current list of MiDEAL members is available at www.michigan.gov/mideal. Upon written Contract between MDHHS and Contractor, this Contract may also be extended to: (a) State of Michigan employees and (b) other states (including governmental subdivisions and authorized entities).

If extended, Contractor must supply all Contract Activities at the established Contract prices and terms. MDHHS reserves the right to impose an administrative fee and negotiate additional discounts based on any increased volume generated by such extensions.

Contractor must submit invoices to, and receive payment from, extended purchasing program members on a direct and individual basis.

4.9. Independent Contractor

Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Contract. Contractor, its employees, and agents will not be considered employees of MDHHS. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not MDHHS, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor.

4.10. Subcontracting

Contractor may not delegate any of its obligations under this Contract without the prior written approval of MDHHS. Contractor must notify MDHHS prior to the proposed delegation, and provide MDHHS any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must:

- a. Be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities;
- b. Make all payments to the subcontractor; and

c. Incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

4.11 Staffing

MDHHS's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

4.12 Reserved

4.13 Assignment

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

4.14 Change of Control

Contractor will notify, at least 90 calendar days before the effective date, MDHHS of a change in Contractor's organizational structure or ownership. For purposes of this Contract, 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 Contract and all of its obligations under this Contract.

4.15 Reserved

4.16 Acceptance

Contract Activities are subject to inspection and testing by MDHHS within 30 calendar days of MDHHS's receipt of them ("State Review Period"), unless otherwise provided in Section 2.10 – Services to be Provided. If the Contract Activities are not fully accepted by MDHHS, MDHHS will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted, but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If MDHHS finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 4.23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to MDHHS. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to this Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, MDHHS may cancel the order in whole or in part. MDHHS, or a third party identified by MDHHS, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

4.17 Reserved

4.18 Reserved

4.19 Reserved

4.20 Terms of Payment

Invoices must conform to the requirements communicated from time-to-time by MDHHS. All undisputed amounts are payable within 45 days of MDHHS's receipt. Contractor may only charge for Contract Activities performed as specified in Section 2.10 – Services to be Provided. Invoices must include an itemized statement of all charges. MDHHS is exempt from State sales tax

for direct purchases and may be exempt from federal excise tax, if Services purchased under this Contract are for MDHHS's exclusive use. Notwithstanding the foregoing, all prices are inclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by MDHHS under this Contract.

MDHHS has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. MDHHS will notify Contractor of any dispute within a reasonable time. Payment by MDHHS will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by MDHHS constitutes a waiver of all claims by Contractor against MDHHS for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

MDHHS will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, MDHHS is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, MDHHS reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by MDHHS to Contractor under this Contract.

4.21 Reserved

4.22 Stop Work Order

MDHHS may suspend any or all activities under this Contract at any time. MDHHS will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, MDHHS will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Contract or purchase order. MDHHS will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

4.23 Termination for Cause

MDHHS may terminate this Contract for cause, in whole or in part, if Contractor, as determined by MDHHS:

- 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 MDHHS 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 Contract will not be construed to mean that other breaches are not material.

If MDHHS terminates this Contract under this Section, MDHHS 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 Contract, 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.

MDHHS will only pay for amounts due to Contractor for Contract Activities accepted by MDHHS on or before the date of termination, subject to MDHHS's right to set off any amounts owed by the Contractor for MDHHS's reasonable costs in terminating this Contract. The Contractor must pay all reasonable costs incurred by MDHHS in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs MDHHS incurs to procure the Contract Activities from other sources.

4.24 Termination for Convenience

MDHHS may immediately terminate this Contract in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities immediately, or (b) continue to perform the Contract Activities in accordance with Section 4.25, Transition Responsibilities. If MDHHS terminates this Contract for convenience, MDHHS will pay all reasonable costs, as determined by MDHHS, for MDHHS approved Transition Responsibilities.

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

4.25 Transition Responsibilities

Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by MDHHS (not to exceed 120 calendar

days), provide all reasonable transition assistance requested by MDHHS, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to MDHHS or its designees. Such transition assistance may include, but is not limited to:

- a. Continuing to perform the Contract Activities at the established Contract rates;
- b. Taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to MDHHS or MDHHS's designee;
- c. Taking all necessary and appropriate steps, or such other action as MDHHS may direct, to preserve, maintain, protect, or return to MDHHS all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of MDHHS;
- d. Transferring title in and delivering to MDHHS, at MDHHS's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and
- e. Preparing an accurate accounting from which MDHHS and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities").

This Contract will automatically be extended through the end of the transition period.

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, Contracts, representations, warranties, or insurance requirements contained in this Contract;
- 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).

MDHHS 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 MDHHS, demonstrate its financial ability to carry out these obligations.

MDHHS 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 MDHHS deems necessary. Contractor will not, without MDHHS'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, MDHHS 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 MDHHS may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

4.27 Infringement Remedies

If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense:

- a. Procure for MDHHS the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor,
- b. Replace or modify the same so that it becomes non-infringing; or
- c. Accept its return by MDHHS with appropriate credits to MDHHS against Contractor's charges and reimburse MDHHS for any losses or costs incurred as a consequence of MDHHS ceasing its use and returning it.

4.28 Limitation of Liability and Disclaimer of Damages

In no event will the state's aggregate liability to contractor under this contract, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this contract, exceed the maximum amount of fees payable under this

contract. MDHHS 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 MDHHS 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 Contract, 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 Contract.

4.30 Reserved

4.31 State Data

a. Ownership. MDHHS's data ("State Data," which will be treated by Contractor as Confidential Information) includes:

- 1) MDHHS's data collected, used, processed, stored, or generated as the result of the Contract Activities;
- 2) Personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Contract Activities, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements here listed; and,
- 3) Personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Contract Activities, which is defined under the Health Insurance Portability and Accountability Act (HIPAA) and its related rules and regulations. State Data is and will remain the sole and exclusive property of MDHHS and all right, title, and interest in the same is reserved by MDHHS.

This Section survives the termination of this Contract.

b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Contract Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Contract Activities. Contractor must:

- 1) Keep and maintain State Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Contract and applicable law to avoid unauthorized access, use, disclosure, or loss;
- 2) Use and disclose State Data solely and exclusively for the purpose of providing the Contract Activities, such use and disclosure being in accordance with this Contract, any applicable Statement of Work, and applicable law; and
- 3) Not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than MDHHS without MDHHS's prior written consent.

This Section survives the termination of this Contract.

c. Extraction of State Data. Contractor must, within five business days of MDHHS's request, provide MDHHS, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Contractor), an extract of the State Data in the format specified by MDHHS.

d. Backup and Recovery of State Data. Unless otherwise specified in Section 2.5 – Services to be Delivered, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Section 2.10 – Services to be Provided, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.

e. Loss or Compromise of Data. In the event of any act, error or omission, negligence, misconduct, or breach on the part of Contractor that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable:

- 1) Notify MDHHS as soon as practicable but no later than 24 hours of becoming aware of such occurrence;
- 2) Cooperate with MDHHS in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by MDHHS;

- 3) In the case of PII or PHI, at MDHHS's sole election, (i) with the approval and assistance of MDHHS notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five calendar days of the occurrence; or (ii) reimburse MDHHS for any costs in notifying the affected individuals;
- 4) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than 24 months following the date of notification to such individuals;
- 5) Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- 6) Pay for any costs associated with the occurrence, including but not limited to any costs incurred by MDHHS in investigating and resolving the occurrence, including reasonable attorney's fees associated with such investigation and resolution;
- 7) Without limiting Contractor's obligations of indemnification as further described in this Contract, indemnify, defend, and hold harmless MDHHS for any and all claims, including reasonable attorneys' fees, costs, and incidental expenses which may be suffered by, accrued against, charged to, or recoverable from MDHHS in connection with the occurrence;
- 8) Be responsible for recreating lost State Data in the manner and on the schedule set by MDHHS without charge to MDHHS; and,
- 9) Provide to MDHHS a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, not be tangentially used for any solicitation purposes, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor. MDHHS will have the option to review and approve any notification sent to affected individuals prior to its delivery. Notification to any other party, including but not limited to public media outlets, must be reviewed and approved by MDHHS in writing prior to its dissemination.

This Section survives termination or expiration of this Contract.

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 Contract.

a. Meaning of Confidential Information. For the purposes of this Contract, 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 Contract, 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 Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. 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 Contract;
- 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 MDHHS's Confidential Information in confidence.

At MDHHS's request, any employee of Contractor or any subcontractor may be required to execute a separate Contract 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 Contract 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 MDHHS, at the sole election of MDHHS, the immediate termination, without liability to MDHHS, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Contract 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 MDHHS following the timeframe and procedure described further in this Contract. Should Contractor or MDHHS determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within five calendar days from the date of

termination to the other party. However, MDHHS's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

4.33 Data Privacy and Information Security

- a. **Undertaking by Contractor.** Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:
- 1) Ensure the security and confidentiality of the State Data;
 - 2) Protect against any anticipated threats or hazards to the security or integrity of the State Data;
 - 3) Protect against unauthorized disclosure, access to, or use of the State Data;
 - 4) Ensure the proper disposal of State Data; and
 - 5) Ensure that all employees, agents, and subcontractors of Contractor, if any, comply with all of the foregoing. In no case will the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by MDHHS, and Contractor must at all times comply with all applicable State IT policies and standards, which are available to Contractor upon request.
- b. **Audit by Contractor.** No less than annually, Contractor must conduct a comprehensive independent third-party audit of its data privacy and information security program and provide such audit findings to MDHHS.
- c. **Right of Audit by the State.** Without limiting any other audit rights of MDHHS, MDHHS has the right to review Contractor's data privacy and information security program prior to the commencement of Contract Activities and from time to time during the term of this Contract. During the providing of the Contract Activities, on an ongoing basis from time to time and without notice, MDHHS, at its own expense, is entitled to perform, or to have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, upon request by MDHHS, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by MDHHS regarding Contractor's data privacy and information security program.
- d. **Audit Findings.** Contractor must implement any required safeguards as identified by MDHHS or by any audit of Contractor's data privacy and information security program.

- e. State's Right to Termination for Deficiencies. MDHHS reserves the right, at its sole election, to immediately terminate this Contract or a Statement of Work without limitation and without liability if MDHHS determines that Contractor fails or has failed to meet its obligations under this Section.

4.34 Reserved

4.35 Reserved

4.36. Records Maintenance, Inspection, Examination, and Audit

MDHHS or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain, and provide to MDHHS or its designee and the auditor general upon request, all financial and accounting records related to this Contract through the term of this Contract and for four years after the latter of termination, expiration, or final payment under this Contract 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, MDHHS and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and examine, copy, and audit all records related to this Contract. 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 Contract 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 Contract Activities in connection with this Contract.

4.37 Warranties and Representations

Contractor represents and warrants:

- a. Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use;
- b. All Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect;
- c. The Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party;

- d. Contractor must assign or otherwise transfer to MDHHS or its designee any manufacturer's warranty for the Contract Activities;
- e. The Contract Activities are merchantable and fit for the specific purposes identified in this Contract;
- f. The Contract signatory has the authority to enter into this Contract;
- g. All information furnished by Contractor in connection with this Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform MDHHS of any material adverse changes;
- h. All information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading and that;
- i. Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606.

A breach of this Section is considered a material breach of this Contract, which entitles MDHHS to terminate this Contract under Section 4.23, Termination for Cause.

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 Contract;
- b. Doing anything that creates an appearance of impropriety with respect to the award or performance of this Contract;
- 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 Contract.

Contractor must immediately notify MDHHS 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 Contract Activities in connection with this Contract.

4.39 Compliance with Laws

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

4.40 Reserved

4.41 Reserved

4.42 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 Contract.

4.43 Unfair Labor Practice

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

4.44 Governing Law

This Contract 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 Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract 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.

4.45 Non-Exclusivity

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

4.46 Force Majeure

Neither party will be in breach of this Contract 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, MDHHS may immediately contract with a third party.

4.47. Dispute Resolution

The parties will endeavor to resolve any Contract dispute in accordance with this provision. 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 MDHHS's right to terminate this Contract.

4.48 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without prior written MDHHS approval, and then only in accordance with the explicit written instructions of MDHHS.

4.49 Website Incorporation

MDHHS is not bound by any content on Contractor's website unless expressly incorporated directly into this Contract.

4.50 Entire Contract

This Contract is the entire Contract of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and Contracts between the parties for the Contract Activities.

4.51 Severability

If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves

the same or similar objectives. The remaining Contract will continue in full force and effect.

4.52 Waiver

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

4.53 Survival

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

4.54 Contract Modification

This Contract may not be amended except by signed Contract between the parties. Notwithstanding the foregoing, no subsequent Statement of Work or amendment executed after the effective date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

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

4.55 Reserved

4.56 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Assurance is hereby given to MDHHS that the Contractor will comply with Federal Regulation, 2 CFR part 180 and certifies to the best of its knowledge and belief that it, its employees and its subcontractors:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. Have not within a three-year period preceding this Contract been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in section 2, and;
- d. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Contract.

The Contractor certifies to the best of its knowledge that within the past three years, the Contractor has not;

- a. Failed to substantially perform a state contract, Contract, or subcontract according to its terms, conditions, and specifications within specified time limits.
- b. Refused to provide information or documents required by a contract or Contract including, but not limited to information or documents necessary for monitoring contract performance.
- c. Failed to respond to requests for information regarding contract or Contract compliance, or accumulated repeated substantiated complaints regarding performance of a contract or Contract.
- d. Failed to perform a state contract, Contract, or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

The Contractor shall include Section 4.56 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform MDHHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, MDHHS may immediately terminate this Contract.

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the

decision to debar without a hearing. The debarment period may be of any length up to eight years.

5. ADDENDUM – FEDERAL PROVISIONS

The provisions in this addendum may apply if the purchase will be paid for in whole or in part with funds obtained from the federal government. If any provision below is not required by federal law for this Contract, then it does not apply and must be disregarded. If any provision below is required to be included in this Contract by federal law, then the applicable provision applies and the language is not negotiable. If any provision below conflicts with the State's terms and conditions, including any attachments, schedules, or exhibits to the State's Contract, the provisions below take priority to the extent a provision is required by federal law; otherwise, the order of precedence set forth in the Contract applies. Hyperlinks are provided for convenience only; broken hyperlinks will not relieve Contractor from compliance with the law.

A. Federally Assisted Construction Contracts

If this contract is a "federally assisted construction contract" as defined in 41 CRF Part 60-1.3, and except as otherwise may be provided under 41 CRF Part 60, then during performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the

compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965; and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

B. Davis-Bacon Act (Prevailing Wage)

If applicable, the Contractor (and its subcontractors) for **prime construction contracts** in excess of \$2,000 must comply with the Davis-Bacon Act (40 USC 3141-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

C. Copeland "Anti-Kickback" Act

If applicable, the Contractor must comply with the Copeland "Anti-Kickback" Act (40 USC 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"), which prohibits the Contractor and subrecipients from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

D. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and involves the employment of mechanics or laborers, the Contractor must comply with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), as applicable.

E. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal "funding agreement" as defined under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

F. Clean Air Act

If this Contract is **in excess of \$150,000**, the Contractor must comply with all applicable standards, orders, and regulations issued under the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act (33 USC 1251-1387). Violations must be reported to the federal awarding agency and the regional office of the Environmental Protection Agency.

G. Debarment and Suspension

A "contract award" (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in

accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

H. Byrd Anti-Lobbying Amendment

If this Contract exceeds \$100,000, bidders and the Contractor must file the certification required under 31 USC 1352.

I. Procurement of Recovered Materials

Under 2 CFR 200.322, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

EXHIBIT 3

Karen Strachan
10479 West Old M-78
Haslett, MI 48840
(517) 204-2949
kstrachank@gmail.com

Re: Buck, et al. v. Gordon, et al.
U.S. District Court for the Western District of Michigan
No. 1:19-CV-00286

EXPERT REPORT

Pursuant to Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure, I submit this expert report on behalf of Plaintiffs St. Vincent Catholic Charities (“St. Vincent”), Chad and Melissa Buck, and Shamber Flore.

1. Statement of Qualifications:

I have extensive experience with the Michigan child welfare system. I am currently a trainer for foster, adoptive, and kinship parents and work with DHHS, Ennis Center, and multiple foster agencies to develop and provide training. I have completed the PRIDE Train the Trainer certification from the State of Michigan. Together with other experienced foster parents, I created a support group for parents, provided training for members of that support group, and travel to other counties to provide training to support groups in those locations. In addition, I have 22 years of experience as a foster parent, fostering more than 40 children and adopting 11

children. For a number of years, our foster home was an intensive foster home serving primarily teenagers and older children who were difficult to place or who had been removed from other foster homes. For the last decade, we have also cared for younger children.

I also have personal experience as a foster child who was placed in an institutional placement and aged out of the foster care system without being adopted. A true and correct copy of my *curriculum vitae* setting forth my qualifications is attached hereto as **Exhibit A**. I have received no fees for the preparation of this report.

2. **Statement of Data and Other Information Considered in Forming Opinions:**

In preparation for this report, I relied upon my experience in training and supporting foster parents in several different counties and agencies, my experiences working with St. Vincent as a trainer, my experiences as a foster parent, and my experiences as a foster child.

3. **Statement of Basis for Opinions Expressed:**

The opinions expressed in this report are based upon my knowledge, training, skills, experience and observations as an instructor and trainer for foster parents, a foster and adoptive parent, and a former foster child.

4. **Opinions:**

In my opinion, St. Vincent provides excellent care for children and families and

fills an important need in the Michigan child welfare system. As a result of St. Vincent's work, foster and pre-adoptive parents are able to provide more stability for children and serve more children.

If St. Vincent were to close, the consequences for families and children would be devastating, and the closure would weaken Michigan's child welfare system. Specifically, the loss of the agency would take away an important resource and source of support for foster families, eliminate an agency which provides excellent retention services for foster and adoptive families, eliminate an agency which works hard to place sibling groups and older children, likely decrease the pool of available foster parents, and disrupt placements and permanency with serious consequences for children.

A. St. Vincent's Support for Foster and Adoptive Parents

Part of my work as a trainer for foster parents is to help them understand their own needs and teach them how to ensure that they and their families receive the support they need. When I train foster families, I tell them that the most important thing they can do is to "put on their oxygen mask"—make sure that they have the resources they need to succeed and serve their children. Based upon my 22 years of experience and my many discussions with foster and adoptive parents, I have learned that foster and adoptive parents are able to serve longer and are more likely to stick with difficult situations if they receive the support they need from their agency. That

support includes: the agency demonstrates that it cares about the foster parents, the agency knows the parents and their families personally, the agency gives parents someone to talk to in order to help them “process the process” of child welfare, and the agency helps foster parents create the resources they need, such as a supportive network of others who have similar experiences.

St. Vincent provides all of these services to the foster and adoptive parents it serves with a high standard of excellence. My experience and observation is that St. Vincent staff demonstrate the agency’s care for foster and adoptive parents, take the time to get to know the parents and their children, provide them with support groups, and help them to develop relationships with other foster and adoptive parents. Doing so helps not just the parents, but also the children currently in their care, and other children who may come into those homes in the future.

For example, St. Vincent caseworkers take seriously their obligation to be available after hours to help families. Foster children often face difficulties in the evening or after visits with birth parents, which generally happen after school hours. When my foster children faced difficulties, I knew I could reach out to my caseworker and quickly receive help, even contact a therapist when that is what my children needed. Many of these contacts occurred on evenings and weekends. Through my work as a trainer, I have learned from other foster parents that this is not always the case with some agencies. Although agencies are expected to be

available around the clock, parents at some other agencies experience delayed responses to emails or calls made after hours, or may have to reach out to a supervisor in order to receive an answer. By contrast, St. Vincent licensing workers reach out proactively to find out how parents and foster children are faring and attempt to resolve problems before they become serious.

St. Vincent also mandates that its foster parents attend at least one support group meeting. This support group is open to any families working with other agencies, as well, including same-sex couples. This is a unique support group that provides a very valuable resource for parents in the tri-county area. This group helps parents to build connections with other foster and adoptive parents and allows those with experience to teach and mentor those who are new to the system. I have participated in and led those support groups. As a result, I have learned about the difficulties that foster families face and the proactive approach that St. Vincent takes to support those families.

When foster parents receive support and guidance, they are more likely to have success with difficult placements, more likely to take in additional foster children, and more likely to successfully complete the adoption process.

B. Recruitment and Retention of Foster and Adoptive Parents by St. Vincent

Through my work with St. Vincent and my work as a trainer, I have observed St. Vincent's efforts to support and retain foster and adoptive parents in the foster

care system. I believe that St. Vincent does an exceptional job in retaining foster homes. As a result, couples who work with St. Vincent have a higher rate of moving forward with foster care than average, and are very motivated to continue with foster care. Many of those who leave St. Vincent do so not because they are dissatisfied or burned out, but because they have successfully adopted children and their families are full.

I have observed, both as a foster parent and through my support group, how St. Vincent's support for foster families helps to bring more families into the child welfare system. One way St. Vincent recruits new families is through word of mouth: families who have worked with the agency reach out to other families and encourage them to consider foster parenting and to reach out to St. Vincent for more information. Another way St. Vincent recruits new families is through churches; St. Vincent and parents who work with it reach out to churches and people in their religious community to encourage families to consider fostering or adopting.

Through my work as a foster mother and as a trainer, I am often asked to assist foster families who are struggling with a placement or who are having difficulties with their agency. I advise foster parents on how to communicate with their foster agencies to ensure they receive the support they need. I also join meetings between the foster parents, licensing workers, supervisors, or other agency personnel to resolve problems. My observation is that St. Vincent does an exceptional job of

addressing foster parent concerns and providing support to foster parents. When a foster parent approaches St. Vincent with a concern, St. Vincent responds with a service-oriented approach which seeks to help and support the parent and maintain the foster care placement. This attitude and approach on the part of St. Vincent comes from senior supervisors and reaches down to the individual case or licensing worker, and this approach is consistent even when the agency experiences turnover among licensing workers and caseworkers. This is not always the case with other agencies. Through my experience as a trainer, I have observed that other agencies are not always as responsive to parent needs and parents working with other agencies sometimes seek my guidance on how to address their concerns and communicate effectively with their agencies.

Based upon my experiences as a foster parent and my observations and experiences working with other foster parents, I believe that the support St. Vincent provides to foster and adoptive parents makes the parents more likely to stick with difficult placements and leads them to continue serving as foster parents for longer than they would without such support. This increases stability for children and means more homes are available for children. I also believe that St. Vincent's exceptional recruiting and retaining work mean that they bring more families into the foster pool than would otherwise participate.

C. Consequences to Individual Families and Placements

When I train foster families, I tell them that the second most important thing they can do is ensure that they have a strong attachment to their foster children. Foster children suffer serious attachment difficulties due to the broken relationships with their birth families, and that breach of trust can impact children's ability to form successful attachments and relationships for the rest of their lives. I train foster parents to work on building that attachment and repairing trust with foster children because every time that relationship is broken, the children experience further erosion of trust and further difficulties building close relationships. If St. Vincent were to close, then the delicate relationships among foster families—including potential adoptive placements—would be disrupted. Without the support that families receive from St. Vincent, without the relationships they have depended upon, families would be forced to make the difficult decision to either move to another agency or stop fostering altogether. For families who move, they would face disruption and uncertainty due to the need to build relationships with new licensing workers, new case workers, and a new agency. The licensing process is completed by working with an agency; it can be arduous and takes many months to complete. Families build relationships with agencies through the licensing process, and those relationships would be lost if the agency closed down. Some licensed families may feel that to change agencies at that point is too difficult; they might decide they can

no longer continue to serve as foster parents, meaning that the children in their homes would face disruption, and that an important resource would no longer be available for children in need of a foster home.

Many of these difficulties would also apply in the adoption context. Since many families adopting children from foster care serve as foster parents first—including to children they may not adopt—those families face the same risk of disruption. Families who have already undergone the lengthy licensing or home study process would have difficult decisions to make about how and whether to begin the process again of building relationships with new social workers and transferring to a new, unknown agency. Some families may also be hesitant to transfer to an agency who does not share their faith-based mission.

If St. Vincent were to close, my opinion based upon my years of observation and experience with the child welfare system is that it would create disruption and uncertainty for foster families, additional trauma for children, and would likely reduce the number of available foster and adoptive families to provide homes for children in need. This would aggravate an already acute shortage of foster families. As the shortage increases, more siblings are separated, and more children are put in or left in placements that are not ideal for those children.

D. Placement for Special Needs Children and Older Children

As a foster parent, I have specialized in working with older children, and many of my foster and adopted children have special needs.

My experience is that St. Vincent works hard to place sibling groups together, including larger sibling groups, and is more successful in this regard than average agencies. I am also aware of their work to find homes for older children currently in institutional placements. Older children are generally harder to place. But St. Vincent's staff works to find homes and mentors for teens, and is more successful in this regard than average agencies. The agency works to connect older children with foster parents and relies upon staff members' experience to determine whether a family will be a good fit for a particular child and whether the placement is likely to be successful.

I have also observed that faith-based families who work with St. Vincent also feel called to care for children, whatever their circumstances. My experience has been that families who work with St. Vincent are more likely than average to care for children with disabilities, or large sibling groups.

If St. Vincent were to close, Michigan would lose a resource that helps to find placements for children and sibling groups who are particularly difficult to place.

E. Consequences to the Child Welfare System

Finally, it is my opinion that if St. Vincent were to close, there would be consequences not just for the children and families they serve, but to Michigan's

child welfare system as a whole. In my many years of experience with the Michigan child welfare system, it has been my observation that there are never enough foster homes or adoptive homes to meet the need. This leads to children aging out of the foster system without ever being adopted.

The struggles faced by children who age out of foster care without ever being adopted are well documented. Those children are less likely to finish high school, less likely to find employment, and more likely to face a variety of struggles as they transition to adult life without the support of a loving family.

During my time as a foster parent and trainer of foster parents, I have also observed that more foster homes are becoming overfull and it has become increasingly difficult to place siblings together. In years past, it was easier to find homes to take larger sibling groups. But now foster parents are already serving several children and are simply unable to take more than one or two additional children into their homes, leading to sibling separations. The loss of an agency that works hard to place older children would be a serious loss to Michigan's child welfare system.

Additionally, when DHHS is unable to locate a foster home for a child, the child may have to be placed in a less preferred placement, such as a group home, an institution, or an emergency shelter. I have observed children struggling with the disruption caused by placement in emergency shelters. I have both witnessed and

personally experienced the difficulties that children face when they must be placed into an institutional placement, not because they need specialized care, but because there are simply not enough homes available. I do not believe that allowing St. Vincent to make referrals based on its religious beliefs prevents same-sex couples from fostering or adopting. Every month, I usually have at least one same-sex couple in my training class, if not more. These couples make great contributions to our foster care system, and those couples who want to help children simply work with an agency who is better suited to meet their needs than St. Vincent. I have never had any of these couples express to me that St. Vincent's religious beliefs have discouraged or prevented them from fostering or adopting, or created any sort of obstacle to them providing a home for children. And in my opinion, closing St. Vincent's program would do absolutely nothing to help these same-sex couples, who already have options to foster or adopt.

I have also observed agencies refer couples elsewhere for non-religious reasons, including for issues like location. I have not observed those sorts of referrals to create an obstacle for parents who want to help children in need.

If St. Vincent were to close, then fewer homes would be available in an already overburdened system, leading to adverse consequences for foster and pre-adoptive children.

5. **List of Cases Testified to At Trial or by Deposition as an Expert:**

I have never previously testified as an expert witness.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

June 11, 2019



Karen Strachan

Exhibit A

Karen Strachan

(517) 204-2949

kstrachank@gmail.com

SKILLS

- Public Speaking
- Problem Solving
- Crisis Communication
- Case Worker Training
- Foster Parent Training
- Developing Training Materials
- Interpersonal Relationship Mediation
- Foster Parenting
- Foster and Bio Parent Mentoring and Coaching
- Adoptive Parenting

PROFESSIONAL PROFILE

Ennis Center for Children PRIDE Trainer for Multi-County Area March 2018 to Current.

Utilize PRIDE training materials, combined with real life experience examples, in sixteen-hour trainings. Help prepare adults going through the foster care and adoption licensing programs, or new foster parents, to provide an effective and healthy foster home. Training includes topics such as attachment and discipline, grief and loss, creating a safe home, overview of what to expect when children come in from CPS and expectations of how the children may feel or react, communicating with the courts, reconciliation and feelings that may arise when the children are reunited with their biological families, developing support networks and resources, navigating relationships with child welfare workers and agencies, and many more areas that foster parents will experience and need the tools to navigate in a healthy and positive manner.

PRIDE Trainer for Various Organizations 2015 to 2018. Mid- Michigan Area.

Provide PRIDE training in three, eight-hour class sessions.

- Department of Health and Human Services. 2017 to 2018. Eaton County, MI. www.michigan.gov/mdhhs.
- Department of Health and Human Services. 2017 to 2018. Gratiot County, MI. www.michigan.gov/mdhhs.
- Department of Health and Human Services. 2016 to 2018. Shiawassee County, MI. www.michigan.gov/mdhhs.
- Child and Family Charities. 2015 to 2018. Lansing, MI. www.childandfamily.org.
- St. Vincent Catholic Charities. 2015 to 2018. Lansing, MI. www.stvcc.org.

Parenting Classes for Various Organizations 2013 to Current. Mid- Michigan Area.

Teaching various, personally designed, foster and adoptive parenting classes for a variety of organizations. Classes include, but are not limited to: creative parenting techniques, discipline and how to switch your perspective to create a positive environment (how to teach and train rather than punishing), how to prepare for a new foster child and best help them adjust to your home, grief and loss experiences for the foster parent and how one might feel when a child is reconciled with their biological family in order to keep the foster home healthy and able to continue to foster, creating a safe home through showing how to establish appropriate boundaries and personal spaces, how to work with birth parents through establishing a rapport and helping them to be the best parents they can be, how to help keep your family healthy and able to continue fostering, how to build spousal relationships to keep them strong in fostering, how to help your birth children and adoptive children feel equally special, dynamics that keep your family growing and healthy, how to mediate

communication difficulties within the system, how to incorporate the community and resources to help meet the needs of the children and create support networks, and other trainings.

- Department of Health and Human Services. 2015 to Current. Shiawassee County, MI. www.michigan.gov/mdhhs.
- Child and Family Charities. 2014 to Current. Lansing, MI. www.childandfamily.org.
- St. Vincent Catholic Charities. 2014 to Current. Lansing, MI. www.stvcc.org.
- Annual Fall Conference Coalition, Various Organizations. September 2013, 2015 and 2016. Mason, MI.
 - Agencies from various counties come together (been going on for over twenty years). There are numerous classes available, each two hours making it possible for recipients to receive up to six hours of required training.
- Department of Health and Human Services Parent Support Group. 2016. Gratiot County, MI. www.michigan.gov/mdhhs.
- Perry Church of the Nazarene. December 2014 to March 2015. Perry, MI. www.perrynazarene.com.
- Child Advocacy Center (C.A.C.). June 2014. Owosso, MI. cap-council.org.
- The Shiawassee County Heads Annual Conference. June 2014. Shiawassee County, MI.
 - Probation officers, judges, caseworkers, mental health, foster care and adoption department heads. Speech was on how they make an impact and difference in the life of others. What foster children, parents and foster parents experience through their process.

Mentoring, Coaching and Consulting for Foster and Adoptive Parents

2002 to Current. Mid- Michigan Area.

Mentored, Coached and Consulted for numerous foster and adoptive families and their children to help them problem solve and come up with strategies to strengthen their relationships. Assist parents seeking help with how to best communicate and overcome obstacles within the home. Meet with parents and children to demonstrate positive and effective strategies and techniques in message delivery and personal development. Provide therapeutic respite for families and training for homes struggling with behavioral and trauma issues. Assist in transitioning the children back into their homes, while also training parents on utilizing the effective parenting strategies established, in order to maintain continuity with new skills and strengthen the relationships in the family. Provide parents with books and videos that are useful in furthering their education of foster care and adoption.

Licensed Foster and Adoptive Parent for St. Vincent Catholic Charities

June 1997 to 2018. Lansing, MI. www.stvcc.org.

Fostered nearly forty children and adopted eleven children over the past twenty years. Licensed as a Specialized Intensive Foster Group Home while available through the State of Michigan. Work with teams of counselors, therapists and caseworkers to assess and aid emotional, psychological and physical needs of traumatized, special needs children ranging in age from newborn to twenty years of age. Compose and implement behavioral development programs. Mentor and coach biological parents to help families reunite when in the best interest of the children.

EDUCATION, HONORS & CERTIFICATIONS

P.R.I.D.E. Train the Trainer Certification, 2015

State of Michigan, Lansing, MI

Licensed Registered Nurse (RN), 1993

State of Michigan, Lansing, MI

**Associate's Degree Applied Science Nursing,
1993**

Lansing Community College, Lansing, MI

Graduated Summa Cum Laude

Phi Beta Kappa Honor Society

Licensed Practical Nurse (LPN), 1992

State of Michigan, Lansing, MI

Paramedic License, 1988

State of Michigan, Lansing, MI

Associate's Degree Applied Science

Emergency Medicine, 1988

Lansing Community College, Lansing, MI

Graduated Summa Cum Laude

Phi Beta Kappa Honor Society

EXHIBIT 4

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MELISSA BUCK; CHAD BUCK;
and SHAMBER FLORE;
ST. VINCENT CATHOLIC
CHARITIES,

Plaintiffs,

v.

ROBERT GORDON, in his official
capacity as the Director of the
Michigan Department of Health
and Human Services; JOOYUEN
CHANG, in her official capacity as
the Executive Director of the
Michigan Children's Services
Agency; DANA NESSEL, in her
official capacity as Michigan
Attorney General; ALEX AZAR, in
his official capacity as Secretary of
Health and Human Services

Defendants,

No. 1:19-cv-00286

SUPPLEMENTAL DECLARATION OF GINA SNOEYINK

1. My name is Gina Snoeyink. I am over the age of 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have not been convicted of a felony or been convicted of a crime of

dishonesty. I have personal knowledge of all of the contents of this declaration.

2. I am the Director of Children's Services at St. Vincent Catholic Charities ("St. Vincent") in Lansing, Michigan. I have served in that position for nearly six years. Prior to that, I served as a Children's Services Program Director and Mental Health Therapist at St. Vincent since 2003. I received a master's degree in social work from Michigan State University in 2003, and I received a Bachelor of Social Work from Northern Michigan University in 2002.

3. St. Vincent immediately places all children within its care on MARE. The only children in St. Vincent's care who are *not* available for adoption are those for whom there is (or likely will be soon) an identified home for that child, such as a home with a relative. These children are placed on MARE but a hold is placed on their profile pending their potential placement with a relative or another previously identified adoptive home.

4. If a child in St. Vincent's care had a relative in a same-sex relationship who came forward wanting to adopt that child before she child was made available on MARE, St. Vincent would simply work with the State to transfer the child's case to the agency who is licensing that couple. This is St. Vincent's policy and something St. Vincent has done in the past for unmarried couples and would do for a similarly situated same-sex couple.

I declare under penalty of perjury that the foregoing is true and correct.

June 12, 2019

A handwritten signature in cursive script, reading "Gina Snoeyink", written over a horizontal line.

Gina Snoeyink