



State of New Hampshire

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Office of the Child Advocate

Moira O'Neill
Director

March 20, 2019

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord NH 03301

REQUESTED ACTION

Pursuant to RSA 4:8 Gifts to the State, **retroactively** authorize the Director of the Office of the Child Advocate, to accept a gift in an amount not to exceed \$24,000.00 from Casey Family Programs, Seattle Washington to implement the Systems Learning Review (SLR) model for conducting critical incident reviews, and to provide oversight, coaching, and feedback from Collaborative Safety, LLC, 8161 Hwy 100 #206, Nashville TN. Implementation took place February 25th, 2019 in Keene NH and February 26th, 2019 in Concord NH. Ongoing technical assistance will be available through December 31, 2019.

EXPLANATION

With apology, this request is **retroactive** as Casey Family Programs experienced administrative delays in contract completion with their vendor. In order to ensure pro-active system improvement, the OCA maintained the original schedule for System Learning Reviews in February as planned, despite the fact the contract was not completed until just days prior and the OCA did not receive a copy of the agreement until March 13, 2019 (see attached).

The Office requests authorization to **retroactively** accept a gift from Casey Family Programs, a national organization whose mission is to provide and improve and ultimately prevent the need for foster care. Casey Family Programs partners with child welfare systems, families, policymakers, courts and American Indian tribes to support practices and policies that safely reduce the need for foster care, increase the safety and success of children and strengthen the resilience of families.

This gift will support the NH Office of the Child Advocate to implement the System Learning Review (SLR) model for conducting critical incident reviews and will provide oversight, coaching and feedback to staff and leadership in fidelity of the model. This process establishes a comprehensive, collaborative, multidisciplinary systemic analysis of critical incidents and other unexpected child outcomes. It will facilitate identification and improvement of systemic issues that may be limiting the department's ability to provide more successful child outcomes. It situates the Office to effectively monitor incidents and identify system improvements in accordance with oversight duties pursuant to RSA 170-G:18.

System Learning Review draws from the same sciences that safety-critical industries such as aviation and nuclear power use to improve systems and develop a culture of safety. It engages agency leadership, frontline staff, and other key stakeholders on safety science principles, supporting safety advancement and system change using an approach that moves away from a culture of blame and toward a culture of accountability. The principles of safety in aviation and nuclear power apply equally to child welfare where results of failure are no less catastrophic.

The Office of the Child Advocate wishes for approval to retroactively accept these gifts. Your favorable action on these items would be appreciated.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Moira O'Neill', with a long horizontal flourish extending to the right.

Moira O'Neill
Director

MO/kk

Attachments: Services Agreement, Collaborative Safety, LLC., 3/13/19 E-mail communication CFP-OCA

**SERVICES AGREEMENT
COLLABORATIVE SAFETY, LLC**

THIS SERVICES AGREEMENT (Agreement) is entered into as of the Effective Date, by and between Casey Family Programs (CFP), a Washington nonprofit corporation, and Collaborative Safety, LLC (Service Provider), a Tennessee limited liability company. CFP and Service Provider are sometimes referred to individually as a Party and collectively as the Parties. In consideration of the terms of this Agreement, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions under which Service Provider will provide services in furtherance of CFP's 2020 goals, strategies, and initiatives.

2. Services and Reports.

2.1. Services. Service Provider shall provide such services and/or deliverables as described in the schedule(s) (Schedule(s)) attached hereto and incorporated by reference (Services). This Agreement may be amended from time to time to include additional Schedules, which shall be signed by the Parties. A description of all Services, applicable due dates, and fee/payment provisions shall be set forth in each Schedule. Service Provider acknowledges that timely completion of each Service is material to the Agreement.

2.2. Reports. If Service Provider will be providing Services in more than one jurisdiction, Service Provider shall submit to CFP a bi-annual Progress Report in a form provided by CFP.

3. Payment/Use of Funds.

3.1. Payment for Services. CFP shall pay Service Provider for the Services in accordance with each Schedule and/or amendment. CFP shall not pay Service Provider more than the maximum amounts set forth in each Schedule and/or amendment.

3.2. Payment Terms. CFP shall pay Service Provider within thirty (30) days after receipt by CFP of an invoice and any additional information requested by CFP. Notwithstanding the foregoing, Service Provider shall not be entitled to payment for an invoice if the Services billed have not been performed according to this Agreement.

3.3. Use of Funds. CFP is an organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code (Code) and is a private operating foundation within the meaning of Section 4942(j)(3) of the Code. Service Provider shall not use CFP Funds to engage in any activity in connection with the Services that jeopardizes CFP's tax status as a private operating foundation. In particular, no CFP Funds shall be used: to carry on propaganda, to attempt to influence legislation, to participate in any political campaign on behalf of or in opposition to any candidate for public office, to make grants to individuals on a non-objective basis, or for any non-charitable or non-educational purpose.

3.4. Records, Review, and Audit. Service Provider must identify CFP Funds on its books for ease of reference and verification. Service Provider shall keep records of all receipts and expenditures arising under this Agreement, as well as copies of reports submitted to CFP, for at least four (4) years following expiration of the Term. At CFP's own expense, CFP may conduct an independent financial and/or programmatic evaluation or audit of the expenditures of CFP Funds. This Section shall survive any termination or expiration of this Agreement.

4. Term and Termination.

4.1. Term. The term of this Agreement shall commence as of February 1, 2019 (Effective Date) and terminate on December 31, 2019 (Term), unless sooner terminated as provided in Section 4.2.

4.2. Termination. This Agreement may be terminated by CFP at any time during the Term by written notice (including e-mail).

4.3. Effect of Termination. Upon receipt of notice of termination from CFP, Service Provider shall not incur any additional expense or perform any Service without the prior written approval of CFP. Should CFP terminate this Agreement, Service Provider shall be entitled to payment only for Services satisfactorily performed by Service Provider to the date of termination.

5. Warranties.

5.1. Standard. Service Provider warrants that the Services performed by Service Provider, its employees, agents, and subcontractors will be of a high quality and performed in a professional manner in accordance with industry standards and practice, and in compliance with all applicable laws and regulations, including but not limited to all applicable licensing requirements. Service Provider further warrants that the qualifications of Service Provider, its employees, agents, and subcontractors, as represented to CFP, are true and correct. Service Provider also warrants that the Services will meet the requirements of this Agreement.

5.2. Right to Use. Service Provider warrants that (a) CFP's exercise of any and all rights in the Materials (as defined in Section 9) granted herein does not infringe upon or misappropriate any third party's copyright, patent, trade secret or other intellectual property rights, or any right of publicity or privacy; and (b) the Materials are and shall be (i) original work developed by Service Provider, its employees, agents and/or subcontractors, except as to third-party rights that have been identified and licensed in accordance with Section 9.3; (ii) not libelous or otherwise defamatory; (c) the Materials have not been, and prior to CFP's publication of them will not be, published or otherwise made publicly available, in whole or in part; and (d) the Materials are not subject to any pending or, to Service Provider's knowledge, threatened challenge or claim to the contrary of any of the foregoing representations.

6. Indemnification. Service Provider shall indemnify and defend CFP, its directors, officers, employees, agents, representatives, and affiliates for all losses, damages, claims, actions, costs, and liabilities of any kind (including attorneys' fees), including those claimed by third parties, caused by or arising from acts or omissions of Service Provider, its employees, agents, or subcontractors in any way connected to the Services or this Agreement. This Section shall survive any termination or expiration of this Agreement.

7. Exchange of Confidential Information. In connection with the Agreement, Service Provider may receive, review, or otherwise have access to CFP proprietary and/or confidential information or materials, including those regarding children, youth, or families, including but not limited to case files, reports, financial information, or other data furnished, prepared, assembled or used by or in furtherance of the Services, and/or names, addresses, physical and mental health data about an individual, family history and like information (collectively, Confidential Information). Service Provider warrants and agrees that such Confidential Information shall not be made available to any outside person or entity without prior written approval by CFP, except as may be required by law. Service Provider shall: (a) share any

Confidential Information only with those employees with an absolute need to know to perform the Services; (b) hold CFP's Confidential Information in strict confidence; (c) hold individual's Confidential Information confidential in accordance with applicable statutes, rules, and regulations; and (d) use all Confidential Information only as necessary to perform the Services. In the event that the Confidential Information contains social security numbers or other personally identifying information, Service Provider shall utilize best practice methods (e.g. encryption of electronic records where feasible, and/or manual redaction) to protect the confidentiality of such information. In the event of any violation of this Section, in addition to any other rights and remedies, CFP is entitled to seek immediate injunctive relief. This Section shall survive any termination or expiration of this Agreement.

8. Criminal Background Check. A current criminal background search for any criminal record, release from incarceration that occurred within the past seven (7) years shall be conducted on each person proposed to provide Services under this Agreement. For purposes of this Section, "criminal record" includes any (i) arrest resulting in the filing of formal charges which are still pending, or (ii) conviction of a felony or misdemeanor, or (iii) other adverse court orders such as injunctions or restraining orders. Any report of a criminal record shall be submitted to CFP before such person commences services. Throughout the term of this Agreement, Service Provider has an obligation to notify CFP of any new criminal charge, criminal conviction, or adverse court order against any person providing Services under this Agreement, and Casey has the right to request an additional background search as a condition to any person continuing to provide Services. CFP, in its sole discretion, shall determine whether to accept or continue to accept the services of a person with a criminal record or release from incarceration. The decision of CFP to decline the services of such person at any time shall not be deemed or construed in any way as a directive to Service Provider to terminate such person's employment.

9. Intellectual Property.

9.1. Materials. As used in this Agreement, "Materials" means any and all works of authorship created or developed pursuant to this Agreement by Service Provider or any of its agents, employees, or subcontractors. Materials may also include text, video, illustration, compilation, software, and/or any other medium or format. CFP is and will be the sole and exclusive owner of all right, title, and interest in and to the Materials, including all copyrights and other intellectual property rights therein. Service Provider shall create the Materials as "work made for hire" as defined in Section 101 of the Copyright Act of 1976. CFP shall hold and retain all intellectual property rights, including copyrights, trademarks, and moral rights (IP Rights), in all Materials created by CFP or Service Provider, or jointly created by CFP and Service Provider. Service Provider hereby grants, transfers, conveys, and assigns to CFP all of its rights, title, and interest to/in all Materials. To the extent any work does not qualify as, or otherwise fails to be, work made for hire, Service Provider hereby does grant, assign, transfer, and otherwise convey to CFP, irrevocably and in perpetuity, throughout the universe, all of its right, title, and interest in and to such work. At CFP's request and expense, Service Provider will sign documents and take any other action reasonably necessary to evidence, perfect, or protect CFP's IP Rights in the Materials with the United States Copyright Office and/or the U.S. Patent and Trademark Office. This Section shall survive any termination or expiration of this Agreement.

9.2. Pre-Existing Work. To the extent that either party has created, written or otherwise documented any work of authorship prior to the date of this Agreement ("Pre-Existing Work") and contributes such Pre-Existing Works for use in the performance of this Agreement, that party shall retain its intellectual property rights in such Pre-Existing Work, subject to a perpetual, nonexclusive, royalty-free, irrevocable, worldwide license which is hereby granted to the other party to use such Pre-Existing Work for purposes consistent with and subject to the provisions of this Agreement. Prior to or concurrently with

the delivery of any Materials to CFP, Service Provider shall specifically identify the existence and location of any of Service Provider's Pre-Existing Work incorporated in the Materials. This Section shall survive any termination or expiration of this Agreement.

9.3. Third-Party Rights. Prior to or concurrently with the delivery of any Materials to CFP, Service Provider shall provide prompt written notice to CFP of any presently existing proprietary right of a third party used or incorporated in the Materials, including licenses and other contractual permissions and agreements executed by: (a) all third parties with ownership or licensed rights in any materials or works of authorship used or incorporated in the Materials, including all modifications, amendments, supplements and waivers; and (b) all third parties whose name, image, likeness, signature, voice, identity or property is identified or depicted in the Materials. At CFP's request and in its sole discretion, Service Provider shall provide CFP with true and complete copies of all valid, binding and enforceable third party proprietary licenses, contractual permissions and agreements as more fully described above, so that CFP, and its licensees, successors and assigns, may exercise rights in the Materials as contemplated in this Agreement, including all intellectual property, publicity and privacy rights, without incurring any payment or other obligation to, or otherwise violating any right of, any such person.

10. Insurance. Service Provider warrants that it carries the following insurance: (i) commercial general liability coverage of \$1,000,000-\$2,000,000 aggregate; (ii) if professional services are being rendered, professional liability coverage of \$1,000,000 per occurrence and \$2,000,000 aggregate; (iii) property coverage in an amount necessary to cover its property used in connection with the Services; and (iv) Workers Compensation Coverage that meets state statutory limits as well as \$1,000,000 of employer's liability coverage per occurrence. If operating a motor vehicle in connection with the Services, Service Provider warrants that it carries automobile liability insurance coverage of at least \$1,000,000.

11. Public Commentary/Publication/Use of CFP's Name. Service Provider shall not make any public statements, representations, or commentary (Public Commentary) on behalf of CFP without CFP's prior review and written approval. CFP approval of any Public Commentary or Materials may be conditioned upon attribution to or recognition of CFP. Service Provider shall advise CFP of any requests for Public Commentary and explicitly communicate to the requesting party that any such Public Commentary solely represents the views and/or opinions of Service Provider, and do not represent those of CFP. CFP shall review and approve Materials prior to publication or dissemination. Service Provider shall not use CFP's name for advertising and/or promotional purposes without CFP's prior written approval.

12. Independent Contractor. Service Provider is an independent contractor of CFP. This Agreement shall not create the relationship of employer and employee, a partnership, an agency, joint venture or other relationship between CFP and Service Provider. Service Provider shall be solely liable for the wages, employment taxes, fringe benefits, work schedules, and work conditions of its employees, agents, and subcontractors, and shall indemnify CFP from any claim or loss relating to the same. Service Provider warrants that all representations Service Provider has made to CFP in connection with Service Provider's Independent Contractor status are true and correct. In the event a governmental authority determines Service Provider was a de facto CFP employee, Service Provider relinquishes any claim to any CFP benefit plans, out-of-pocket liability due to any absence of worker's compensation coverage, or monies in excess of the Agreement fee as outlined in the Schedule(s).

13. General

13.1. Applicable Law. This Agreement shall be governed by and construed under the laws of the State of Washington without reference to its conflicts of law principles.

13.2. Dispute Resolution. The Parties agree to use their best efforts to resolve through discussion and negotiation and to their mutual satisfaction any disagreement arising in the performance of this Agreement. In the event a dispute arises from or relates to this Agreement and the Parties are unable to settle the dispute between them, the dispute shall be referred to a mutually agreeable mediator within twenty (20) days of a written request for mediation submitted by either Party. The Parties will share the costs of mediation equally.

13.3. Cooperation in the Event of Litigation. Service Provider shall cooperate with CFP in the event that CFP is sued in connection with this Agreement. This cooperation includes, but is not limited to, Service Provider producing any files or documentation requested by the CFP in connection with CFP's defense of the lawsuit, as well as Service Provider making employee witnesses available to testify in lawsuits related to the Agreement. This Section shall survive any termination or expiration of this Agreement.

13.4. Notices. All notices or other communications shall be in writing and delivered to the address indicated on the Agreement. Such address may be changed by notice to the other Party in accordance with this Section.

13.5. Subcontracting. Service Provider shall not delegate the performance of its obligations under this Agreement (Subcontract) to any other person or entity without prior written approval from CFP. Any such Subcontract shall incorporate by reference the terms and conditions of this Agreement. Service Provider shall remain primarily liable and shall be responsible for the performance of each permitted subcontractor and each subcontractor's employees, and for their compliance with this Agreement, as though they were Service Provider's own employees.

13.6. Assignment. Service Provider shall not assign this Agreement or its interest therein without CFP's prior written consent. Any purported assignment in violation of this Section shall be null and void. This Agreement is binding upon and inures to the benefit of the Parties and their successors and permitted assignees.

13.7. No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to nor shall be construed to confer upon any person or entity any remedy or claim under or by reason of this Agreement as third-party beneficiaries or otherwise. The terms and conditions of this Agreement are for the sole and exclusive benefit of the Parties to this Agreement.

13.8. Entire Agreement/Modification. This document, including all Schedules and other attachments, contains the entire agreement of the Parties regarding the subject matter described in this Agreement, and all other promises, representations, understandings, arrangements, and prior agreements are merged into and superseded by this Agreement. This Agreement may only be modified by a written agreement of the Parties signed by an authorized representative of each Party.

13.9. No Interpretation against Drafter. The terms and conditions of this Agreement were negotiated by Parties of equal bargaining strength and any rule that ambiguities are to be construed against the drafter shall not apply.

13.10. Waiver. The failure by any Party to insist upon strict performance by a party of any provision of this Agreement shall not operate or be construed as a subsequent waiver of that or any other provision by the other Party or parties.

13.11. Survival. The conditions, obligations, and warranties contained in this Agreement that by their nature or that the Parties intend to survive the completion of the performance of the Agreement shall survive the expiration or termination of the Agreement.

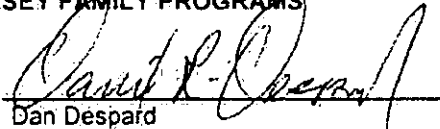
13.12. Counterparts. For the convenience of the Parties, this Agreement may be executed, delivered and received in counterpart originals, including by means of facsimile or email transmission, and such counterparts, taken together, shall constitute a single instrument.

13.13. Severability. If any provision of this Agreement is construed by a court or arbitrator to be invalid or unenforceable, that construction shall not affect the remainder of this Agreement, which is to be given full force and effect without regard to the invalid or unenforceable provision.

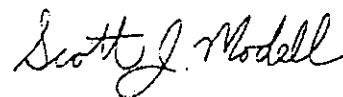
13.14. Signature Authority. Each Party represents that the individual signing this Agreement on its behalf has the authority to do so and to so legally bind the Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CASEY FAMILY PROGRAMS

By: 
Dan Despard
Sr. Director - Strategic Consulting

COLLABORATIVE SAFETY, LLC

By: 

Notice Address:

Casey Family Programs
2001 8th Avenue, Suite 2700
Seattle, WA 98121
Attn: Diane Gillian, Project Manager,
Telephone: 206-378-4600
Fax: 866-270-5425
Email: DGillian@casey.org

Send invoices to: SI-Invoices@casey.org

Scott J. Modell, Ph.D.
Founder

Notice Address:

Collaborative Safety, LLC
8161 Hwy 100 # 206
Nashville, TN 37221
Attn: Scott J. Modell
Telephone: 916-548-5041
E-mail: sm@collaborative-safety.com
nh@collaborative-safety.com

**SCHEDULE 1
SCOPE OF WORK AND PAYMENT
COLLABORATIVE SAFETY, LLC**

Background on Casey Family Programs (CFP) Strategies and Outcomes. Services under this Schedule contribute to the programmatic outcomes CFP seeks to achieve as part of its efforts in the state of New Hampshire to achieve a safe reduction in the number of youth in foster care and build communities of hope. CFP has entered into a Child Welfare Initiative Agreement with New Hampshire Division for Children, Youth, and Families (DCYF) to advance the efforts to achieve a 50% safe reduction in the number of youth in foster care in New Hampshire. In 2019, CFP and DCYF are collaborating on:

Strategy	
Child Maltreatment Fatalities	
Detail Name	Decreasing CAN Fatalities
Detail Description	Continue work to revise critical incident review process begun in 2018.

Purpose. Service Provider will support the New Hampshire Office of the Child Advocate (OCA) and DCYF review team to implement the System Learning Review (SLR) model for conducting critical incident reviews, and will provide oversight, coaching, and feedback to DCYF staff and leadership.

Outcomes. Services under this Schedule align with CFP's 2020 Goal of safely reducing the number of youth in foster care by 50% by increasing the exits/entries ratio, decreasing the occurrences of repeat maltreatment, and decreasing re-entries into care. Specific outcomes for New Hampshire, as measured via AFCARS, are:

- **Decrease Maltreatment Recurrence:** Decrease the percent of all children involved in a substantiated incident of maltreatment who experience a second substantiated incident within 6 months.
- **Decrease Re-Entry into Care:** Decrease the number of children who achieve timely permanency within 12 months and re-enter care within the subsequent 12 months.

Performance Measures. Service Provider's performance will be measured against key performance measures in connection with this Schedule, which are agreed to by the Parties as follows:

- OCA and DCYF leadership and staff continue to increase understanding of safety science and are making a shift to a safety culture approach.
- DCYF leadership will continue to adopt and refine a new model for conducting critical incident reviews.

Service Provider agrees to report to CFP on its progress in achieving the Performance Measures identified in this Schedule.

Services. Service Provider will provide the following Services under this Schedule:

Services/Tasks	Detailed Description	Due Date
Systems Learning Review (SLR) model implementation support	<p>Service Provider will work with the OCA and DCYF review team to implement the Systems Learning Review (SLR) model; a process designed to provide an in-depth, systematic analysis of critical incidents in order to identify and improve upon issues that may be limiting the agency's ability to reduce child fatalities and improve outcomes.</p> <p>Service Provider will provide on-site consultation to assist with:</p> <ul style="list-style-type: none"> • Reinforcing concepts shared in the Executive Safety Institute (ESI) regarding how to use safety science to review work from a systems approach. 	Ongoing throughout the term of the Agreement

Services/Tasks	Detailed Description	Due Date
	<ul style="list-style-type: none"> Oversight for the critical incident review process using the SLR model. Providing technical assistance, coaching, and feedback to reviewers. Conducting a debrief session with OCA, DCYF leadership, and CFP Strategic Consultant on the process, and offer suggestions/recommendations to ensure fidelity and effective use of the SLR model. 	
Final Report	Provide a final report to CFP that provides an assessment of the Services provided to DCYF, progress toward meeting performance measures, and any other information requested by CFP.	By December 31, 2019

Service Provider acknowledges and agrees that no data containing personally identifying information or Confidential Information, as defined in the Agreement, will be accepted onto CFP's systems in connection with the Services under this Schedule. Service Provider shall enter into its own separate confidentiality and data-sharing agreement with DCYF, as necessary, in connection with the Services under this Schedule. CFP shall have no liability regarding Service Provider's access to DCYF's data, regardless of whether CFP funds are used in connection with the work effort.

Fees. Payment for Services under this Schedule will be made at the rate of \$12,000 per day. Total compensation for all Services under this Schedule shall not exceed \$24,000.

No Expenses. CFP shall not pay for any expenses or out-of-pocket costs.

Invoices. Service Provider shall submit itemized invoices monthly to SI-Invoices@casey.org that at a minimum identify:

- Detailed description of Services provided
- Name of person providing the Services
- Date of Service for each Service provided
- Number of hours or other unit of measure for each Service provided
- Charge for each Service rendered
- Service Provider's name, address, phone number and tax ID number
- Any additional information that CFP requests.

Payment shall not be approved until all documents or reports required by CFP have been submitted to and approved by CFP.

Notices. All notices or other communications concerning this Schedule shall be in writing and delivered to the below address.

Notice Address:
Casey Family Programs
2001 8th Ave., Suite 2700
Seattle, WA 98121
Attn: Diane Gillian, Project Manager
Telephone: 206-378-4600
Fax: 866-270-5425
Email: DGillian@casey.org

Notice Address:
Collaborative Safety, LLC
8161 Hwy 100 # 206
Nashville, TN 37221
Attn: Scott J. Modell
Telephone: 916-548-5041
E-mail: sm@collaborative-safety.com
nh@collaborative-safety.com

Send invoices to: SI-Invoices@casey.org