

No. 19-123

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IN THE  
**Supreme Court of the United States**

SHARONELL FULTON, ET AL.,  
*Petitioners,*

v.

CITY OF PHILADELPHIA, PENNSYLVANIA, ET AL.,  
*Respondents.*

**On Writ of Certiorari to the United States  
Court of Appeals for the Third Circuit**

**SUPPLEMENTAL APPENDIX TO CITY  
RESPONDENTS' BRIEF ON THE MERITS**

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*City Solicitor*

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JANE LOVITCH ISTVAN

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phia Commission on Human Relations*

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*(additional counsel listed on inside cover)*

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CITY OF PHILADELPHIA

LAW DEPARTMENT

One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

Marcel S. Pratt  
City Solicitor

Valerie M. Robinson  
Chair, Corporate and Tax Group

(215) 683-5031 (Direct Dial)

(215) 683-5069 (Facsimile)

August 8, 2018

Suzanne Hueston  
General Counsel  
Office of General Counsel  
Archdiocese of Philadelphia  
222 North 17th Street  
Philadelphia, Pennsylvania 19103-1299

Re: FY 2019 CSS Contract

Dear Suzanne —

Thank you for meeting with us on June 28, 2018 in the above matter. I am writing to memorialize our discussion and to clarify the next steps following our meeting.

This will confirm that in order to minimize disruption for those children and families currently being served by DHS and CSS, DHS is prepared to offer CSS a maintenance contract for the FY19 fiscal year. As DHS made clear at our meeting, this contract is not intended to address any matters in litigation, but rather to allow DHS and CSS to continue their work

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on behalf of these children and families during the litigation.

The City and CSS agree that services to children and families must remain paramount. Consequently, the City agrees that new cases may only be referred to CSS where the best interests of the child so demand, such as when a child shares a prior relationship with foster or pre-adoptive parents, or when siblings should be placed together in an existing home. These situations will require approval from the Commissioner, Deputy Commissioner or First Deputy Commissioner. We also agree that, under the newly contemplated contract, DHS will continue payment to CSS for the administration and maintenance of existing foster homes where children in DHS's care reside. As the number of children decreases, DHS is open to discussing any potential staffing challenges in the context of this maintenance contract.

Enclosed are the proposed scopes of work (collectively, the "Scope of Work") for this contract. Please note that the proposed scopes are for both general foster care and specialized behavior health due to the fact that CSS is serving some children who require the special above. Although CSS will not be opening new homes pursuant to this contract, CSS must maintain certification for existing homes licensed through your agency.

DHS sent the FY 2019 contract Award Letter to James Amato on or around June 11, 2018, which includes a proposed Rate Sheet and a not to exceed amount of \$2,400,000.00 for placement services. A copy of the letter is enclosed for your reference.

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Please let me know if your understanding is contrary to that written above or if you have additional questions or concerns. If you are in agreement with the above, please contact me at (215) 683-5031 or [Valerie.Robinson@phila.gov](mailto:Valerie.Robinson@phila.gov) so that we can begin next steps in entering into this maintenance contract.

Very truly yours,

/s/ Valerie M. Robinson

Valerie M. Robinson

Chair, Corporate and Tax Group

VMR

Enclosure (3)

cc: Cynthia Figueroa, Commissioner, Philadelphia Department of Human Services (w/encl)

Jessica Shapiro, First Deputy Commissioner, Philadelphia Department of Human Services (w/encl)

Kimberly Ali, Deputy Commissioner, Philadelphia Department of Human Services (w/encl)

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ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street  
Philadelphia, Pennsylvania 19103-1299  
Telephone (215) 587-0511  
Fax (215) 587-0512

OFFICE FOR GENERAL COUNSEL

October 25, 2018

Valerie Robinson  
Chair, Corporate and Tax Group  
City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Street  
Philadelphia, PA 19102

RE: Contract #19-20338 Catholic Social Services  
FY19 PA-Foster and Kinship Care Services

Dear Valerie:

I am writing to notify you that Catholic Social Services will be submitting Contract #19-20338 Catholic Social Services FY19 PA Foster and Kinship Care Services and affixing it with the required e-signature.

As your prior letter acknowledged, this contract is a maintenance contract and “is not intended to address any matters in litigation.” Nothing in this contract should be considered to be an admission or concession of any issue with regard to the parties’ ongoing litigation in *Fulton, et al. v. City of Philadelphia, et al*, Nos. 2:18-cv2075 (E.D. Pa.) (pending), 18-2574 (3d Cir.) (pending). CSS does not make any concessions of its legal claims nor arguments by entering into this contract. In particular, CSS notes that it is not currently recruiting nor certifying new foster fami-



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lies, since it is unable to place children with newly-certified families, and that this contract will not permit CSS to receive referrals to place children with such families.

CSS intends to continue to seek preliminary and permanent injunctive relief which would require the resumption of regular foster care referrals to CSS and the ability to resume operations under the pre-existing contract and/or to enter into a full contract with the City. CSS wishes to enter into a full contract like those the parties have entered into in prior years, but no such contract has been presented to it at this time.

Catholic Social Services is entering into this maintenance contract in order to be able to continue serving the children currently in its care, and nothing in this letter nor this contract should be construed to limit or surrender its right to continue litigating its pending claims. With these reservations and the concerns stated in its complaint and briefing in the ongoing litigation, CSS has sent the contract for signature.

Sincerely,

/s/ Suzanne Hueston

Suzanne Hueston, Esquire

SH/kb

cc: James Amato, Secretary for Catholic Social Services

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**City of Philadelphia**  
**Department of Human Services**

**Contract Number 19-20338**  
**(290) Foster and Kinship Care Services**

**CONFORMED**  
**PROVIDER AGREEMENT**  
**Department of Human Services**

**THIS PROVIDER AGREEMENT** is made as of November 2, 2018 by and between the City of Philadelphia (the “City”), by and through its **Department of Human Services** (“Department”) and **CATHOLIC SOCIAL SERVICES** (“Provider”), a nonprofit corporation, with its principal place of business at **222 NORTH 17<sup>TH</sup> STREET, PHILADELPHIA, PENNSYLVANIA 19103.**

**BACKGROUND**

The City and Provider desire that Provider render various services to the City, in accordance with the provisions of this Provider Agreement, the City of Philadelphia Professional Services Contract General Provisions for the Department of Human Services (the “General Provisions”), Cross Agency Response for Effective Services (“CARES”) Limited License Agreement (when applicable) and all of the other attachments, exhibits, and documents which together constitute the Contract Documents as defined in the General Provisions. A copy of the General Provisions is attached hereto and incorporated herein by

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reference. A copy of the CARES Limited License Agreement is available on the Provider Extranet (<https://dhscormect.phila.gov/dhscms/en-us/servicestandards.aspx>) and incorporated by reference. A copy of the applicable below referenced Performance and Service Standards formerly known as Service Description and Contract Requirements, Service Description, Performance Standards, Service Standards, Procedural Manuals and/or Guides (“Standards”) are available on the Provider Extranet (<https://dhscormect.phila.gov/dhscms/en-us/servicestandards.aspx>) and incorporated by reference.

WHEREAS, the City and Provider agree to enter into this maintenance contract for the 2019 fiscal year;

WHEREAS, the City and Provider agree that services to children and families must remain paramount;

WHEREAS, the City will continue payments to the Provider for the administration and maintenance of existing resource homes where children in DHS’s care reside;

WHEREAS, Provider will not be opening new resource homes pursuant to this contract subject to the exceptions referenced in the Scope of Services (PA-2); and

WHEREAS, Provider agrees to maintain certification of existing resource homes licensed through its agency.

In consideration of the mutual obligations set forth herein, and intending to be legally bound, the City and Provider covenant and agree as follows:

**ARTICLE I: GENERAL TERMS**

**1.1 Incorporation of Background.**

The Background is incorporated by reference herein.

**1.2 Definitions.**

Capitalized terms shall have the meanings set forth in the General Provisions.

**ARTICLE II: SERVICES AND MATERIALS**

**2.1 Services and Materials.**

Provider shall perform the Services and provide the Materials described in the Attachments listed below, which are attached hereto and incorporated herein by reference:

- (a) **PA-1: Service, Rate, Maximum Days/Units**
- (b) **PA-2: Scope of Services**

Provider shall perform the Services and provide the Materials described in the Exhibits listed below, which are available on the Provider Extranet and incorporated by reference:

- (c) **PA-3: IOC Fiscal Guidelines for Community Umbrella Agencies and Providers**
- (d) **PA-4: CARES Limited License Agreement**
- (e) **PA-5: Balanced and Restorative Justice Standards**

**ARTICLE III: TERM**

**3.1 Initial Term.**

The initial term of this Contract shall commence on **JULY 1, 2018** and shall terminate on **JUNE 30, 2019**, unless terminated earlier in accordance with the terms of the Contract.

**3.2 Additional Term(s).**

(a) This Contract may be amended by the City, in its sole discretion, in accordance with Section 2.2 (Additional Terms) of the General Provisions. Unless otherwise stated below, the terms and conditions applicable during the Initial Term shall be applicable during an Additional Term.

**ARTICLE IV: COMPENSATION**

**4.1 Amount.**

As compensation for the Services and Materials rendered and provided, the City covenants and agrees to pay to Provider in accordance with the following Attachments, which are attached hereto and incorporated by reference, subject to all limitations on the allowability of cost items imposed by the City of Philadelphia Cost Principles and Guidelines:

- (a) **Attachment PA-1: Service, Rate, Maximum Days/Units**
- (b) **Attachment PA-2: Scope of Services**

As compensation for the Services and Materials rendered and provided, the City covenants and agrees to pay to Provider in accordance with the following Exhibits, which are available on the Provider Extranet and incorporated by reference, subject to all limitations on the allowability of cost items imposed by the City of Philadelphia Cost Principles and Guidelines:

- (c) **Exhibit PA-3: IOC Fiscal Guidelines for Community Umbrella Agencies and Providers**
- (d) **Exhibit PA-4: CARES Limited License Agreement**

(e) **Exhibit PA-5: Balanced and Restorative Justice Standards**

Anything in this Contract to the contrary notwithstanding, in no event shall the amount certified by the Finance Department for Services and Materials during the Initial Term or any Additional Term exceed the maximum amount of **Two Million, Nine Hundred Thousand, One Hundred Ninety-Four Dollars (\$2,900,194.00)**.

**4.2 Manner of Payment.**

(a) Payment shall be made after Provider's timely submission of invoices to the Commissioner, in the number, form and content acceptable to the Commissioner by such additional supporting data and documentation as the Commissioner may require. All payments to the Provider are contingent upon satisfactory performance of the terms and conditions of this Contract. Provider shall submit its final invoice not more than sixty (60) days from completion of the Services and delivery of Materials. All payments to Provider shall be by checks drawn by the City Treasurer.

(b) The City reserves the right to withhold or offset against any funds payable to Provider for any invoices for which the Commissioner asserts a discrepancy exists or for Provider's failure to satisfactorily perform the terms of the Contract, as determined solely by the City.

**ARTICLE V: MISCELLANEOUS PROVISIONS**

**5.1 Notice.**

Any notice required or permitted to be given under the Contract shall be given in writing and shall be personally delivered by hand with receipt obtained,

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by a national overnight express carrier (such as Federal Express), by facsimile, by email, or sent by registered or certified United States mail, return receipt requested, addressed as follows:

**IF TO THE CITY:**

Attn: Cynthia F. Figueroa, Commissioner  
Department of Human Services  
1515 Arch Street, 8<sup>th</sup> Floor  
Philadelphia, PA 19102

Fax No.: 215-683-6023

Email: [dhscontractsnotice@phila.gov](mailto:dhscontractsnotice@phila.gov)

**IF TO PROVIDER:**

Attn: James Amato, Secretary Catholic Social  
Services  
Catholic Social Services  
222 N. 17<sup>th</sup> Street  
Philadelphia, PA 19103

Fax No.: 215-587-2479

Email: [jamato@chs-adphila.org](mailto:jamato@chs-adphila.org)

**5.2 Balanced and Restorative Justice (BARJ) Principles.**

Provider shall incorporate the principles of BARJ into Services provided hereunder. The key elements of BARJ are accountability, competency development and community protection, and Provider shall provide documented evidence of its efforts to give balanced attention to the protection of the community, the imposition of accountability for offences committed, and the development of competencies to enable

the child(ren) to become responsible and productive members of society.

**5.3 Performance Measurement and Quality Management.**

Quality and effectiveness are determined by the extent to which social programs and social services are successful in achieving positive changes in the lives of the people they serve. A commitment to quality and effectiveness requires that the City and Provider articulate desired outcomes and determine if services are moving clients towards them. To support the achievement of person-centered outcomes, the City will work with Provider in some or all of the following areas: developing performance standards for services where they do not currently exist; improving performance measurement through the refinement of indicators and data collection methodologies; assessing data quality and developing strategies to improve it when needed; developing strategies for enhanced involvement of key stakeholders, such as service recipients; and identifying strategies for ongoing Provider quality management activities. A quality improvement initiative will only succeed if it is done in partnership. To that end, City and Provider agree that their respective staffs will work together cooperatively to make services more responsive to the needs of the individuals being served. In its role as partner in this initiative, the City will offer training and technical assistance as deemed appropriate by the City. Provider agrees to participate in these training and technical assistance activities as well as meetings and other processes that support this initiative.



**5.4 Interpretation; Order of Precedence.**

In the event of a conflict or inconsistency between the terms of this Provider Agreement and any term, condition or provision contained in any Exhibit hereto, or any attachment to such Exhibit (including, without limitation, any proposal of Provider), the terms of this Provider Agreement shall control.

**5.5 Additional Provisions.**

Other provisions, including, without limitation, OEO participation commitments and any exceptions or modifications to the General Provisions of the Contract, are set forth in the following clause(s) and incorporated herein by reference:

(a) DHS is increasing its administrative efficiency through the use of electronic record keeping and data sharing technology. As these updates occur, the Department will continue to notify Providers of these technology requirement changes through written notices. Failure to comply with any DHS technology requirements (including, but not limited to the use of P-Web and P-DRIVE) may result in a financial penalty and/or a finding that an Event of Default has occurred.

**5.6 Acknowledgment of General Provisions.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Provider Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the General Provisions.

**5.7 Acknowledgment of CARES Limited License Agreement.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the CARES Limited License Agreement and acknowledges that by executing this Provider Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the CARES Limited License Agreement.

**5.8 Acknowledgment of Standards.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the applicable above referenced Standards which is available on the Provider Extranet and acknowledges that by executing this Provider Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the above-referenced Standards.

(SIGNATURE PAGE TO FOLLOW)

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IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by all of the Contract Documents, have caused the Contract to be executed by their respective duly authorized officers as of the date in the heading of this Provider Agreement.

APPROVED AS TO  
FORM

MARCEL S. PRATT,  
CITY SOLICITOR

Per: Crystal T. Espanol

Name: Crystal T. Espanol

Title: Deputy City Solicitor

**THE CITY OF  
PHILADELPHIA**

Through: **The Department of Human Services**

By: Cynthia Figueroa

Name: Cynthia Figueroa

Title: Commissioner

**CATHOLIC SOCIAL  
SERVICES**

By: James Amato

Name: James Amato

Title: Vice President

By: Franz Fruchwald

Name: Franz Fruchwald

Title: Assistant Treasurer

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**THE CITY OF PHILADELPHIA**

**PROFESSIONAL SERVICES CONTRACT**

**GENERAL PROVISIONS FOR DEPARTMENT  
OF HUMAN SERVICES CONTRACTS**

Revision Date: June 2018

\* \* \*

**ARTICLE III: PROVIDER'S DUTIES AND  
COVENANTS**

\* \* \*

3.21 **Rejection of Referral.** Provider shall not reject a child or family including, but not limited to, biological, kinship, foster, pre-adoptive, or adoptive parents, prospective foster or adoptive parents, for Services based upon the location or condition of the family's residence, their environmental or social condition, their actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, marital status or for any other reason if the profiles of such child or family are consistent with Applicable Law, Provider's Scope of Services, and DHS's applicable standards as listed in the Provider Agreement, unless an exception is granted by the Commis-

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sioner or the Commissioner's designee, in his/her sole discretion.

\* \* \*

**ARTICLE IX: INDEPENDENT CONTRACTOR;  
INDEMNIFICATION; LITIGATION  
COOPERATION**

9.1 **Independent Contractor.** Provider is an independent contractor and shall not in any way or for any purpose be deemed or intended to be an employee or agent of the City. Neither Provider nor its agents, employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

\* \* \*

**ARTICLE XV: ADDITIONAL  
REPRESENTATIONS AND COVENANTS OF  
PROVIDER RELATING TO CERTAIN  
APPLICABLE LAWS**

In addition to the representations, warranties and covenants made by Provider in Article IV, Provider further represents, warrants and covenants that, to the extent of their applicability to Provider, Provider is in compliance with the laws, ordinances, regulations and executive orders described below. By executing this Contract, Provider thereby certifies to such compliance. Provider further certifies that the representations, warranties, and covenants provided

pursuant to this Article shall continue to remain true throughout the Term of this Contract or any other period of time required by such laws. ***False statements to the City in or in connection with this Contract, in or pursuant to any representation or covenant made in this Article XV or otherwise, are subject to the penalties of 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities, which may include fines and imprisonment.*** In the event said representations, warranties, and covenants are or become untrue or inaccurate, Provider shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate. The provisions of this Article are not intended to limit the applicability of the other provisions of this Contract, including, without limitation, Provider's agreement to comply with all Applicable Law.

**15.1 Non-Discrimination; Fair Practices.** This Contract is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Contract, Provider shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Provider discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice

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of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familiar status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section 15.1, the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.

\* \* \*

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CITY OF PHILADELPHIA

LAW DEPARTMENT

One Parkway

1515 Arch Street

Philadelphia, PA 19102-1595

April 16, 2019

*Via E-mail and Hand Delivery*

Suzanne Hueston

General Counsel

Office of General Counsel

Archdiocese of Philadelphia

222 North 17th Street

Philadelphia, Pennsylvania 19103-1299

Re: FY2020 Catholic Social Services (“CSS”)

Placement Contract

Dear Suzanne:

I am writing to inform you that the City of Philadelphia Department of Human Services (“DHS”) has issued award letters for FY2020 to the foster care agencies with whom it contracts, including CSS. As specified, per the enclosed letter, DHS has offered CSS the same modified contract that the parties entered into for FY2019.

DHS remains willing to enter into a full foster care contract with CSS, as opposed to the maintenance contract currently in place, on the condition that CSS adhere to all requirements of that contract, including those relating to compliance with the City’s non-discrimination laws and policies. As we have previously explained, these laws and policies, as incorporated and rendered applicable by the City’s contract for full foster care services, require foster care agen-



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cies to consider and certify otherwise-qualified LGBTQ prospective foster parents on the same terms and conditions as such agencies consider and certify all other prospective foster parents.

If CSS wishes to enter into a full foster care contract with the City, and to comply with all contractual requirements, the City welcomes CSS' full participation as a foster care provider, and DHS will amend the FY20 award letter and contract accordingly.

Please do not hesitate to contact me at (215) 683-5031 or [Valerie.Robinson@phila.gov](mailto:Valerie.Robinson@phila.gov) if you have questions or concerns. I look forward to receiving confirmation from you on how your client would like to proceed and to the resolution of the contracting process for FY2020.

Very truly yours,

/s/ Valerie M. Robinson

Valerie M. Robinson

Chair, Corporate and Tax Group

Enclosure

cc: Cynthia Figueroa, Commissioner, Philadelphia Department of Human Services (w/encl)

Jessica Shapiro, First Deputy Commissioner, Philadelphia Department of Human Services (w/encl)

Kimberly Ali, Deputy Commissioner, Philadelphia Department of Human Services (w/encl)

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CITY OF PHILADELPHIA

DEPARTMENT OF HUMAN SERVICES  
1515 Arch Street, Philadelphia, PA 19102  
215-683-FDHS (4347)

Commissioner  
CYNTHIA F. FIGUEROA

First Deputy Commissioner  
JESSICA S. SHAPIRO

Deputy Commissioners  
Child Welfare Operations  
KIMBERLY ALI

Finance  
CHRISTOPHER SIMI

Juvenile Justice Services  
TIMENE FARLOW

Administration and Management  
VONGVILAY MOUNELASY

Performance Management and Technology  
LIZA RODRIGUEZ

Prevention  
WALESKA MALDONADO

April 15, 2019

James Amato, Secretary, Human Services  
Catholic Social Services  
222 North 17th Street, Room 328  
Philadelphia, PA 19103

**Re: FY 2020 Award Letter (290) SAA  
Child Welfare Operations Division  
Foster Care Services, \$1,646,626.00**

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Dear Secretary:

This letter is to provide you with information on the City of Philadelphia Department of Human Services' (hereinafter referred to as "DHS" or "Department") contract process for Fiscal Year 2020 beginning on July 1, 2019. The funding levels referenced above reflect the Department's budget constraints and priorities.

Consistent with the City's policy of non-discrimination and its prior notices to you to the same effect, DHS is offering CSS the same limited maintenance contract that CSS agreed to for FY2019. DHS will continue to make payment to CSS for the administration and maintenance of existing foster homes where children in DHS' care reside.

As was the case in FY2019, the FY2020 contract will allow for referrals of new child foster care placements only in limited authorized circumstances where a CSS placement is in the best interests of the child, such as when a child shares a prior relationship with the foster or pre-adoptive parents, or when siblings should be placed together. Also consistent with terms of the FY2019 contract, the FY2020 contract will provide time for the orderly transition of services, should that become necessary. As was the case in FY2019, the contract amount has been adjusted from prior years to reflect the volume of services projected under the FY2019 and FY2020 version of the contract.

Please be advised that DHS is not obligated to make any payment to your agency until after the execution and conformance of a formal written contract, containing such terms and conditions as are satisfactory to DHS; and provided that your agency

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has satisfied any conditions precedent to the start of work (e.g. insurance certificates or licenses) as required by the contract. Please review this letter and its attachments thoroughly as some of the information requested will be used to develop your agency's contract. If you have any questions about the content of this letter or its attachments, please contact your contract Conformance Manager. To obtain your Conformance Manager's contact information, you may call the Director of Contracts & Audit, Robert Hodge, at (215) 683-4200. Please email any questions to [dhscontracts@phila.gov](mailto:dhscontracts@phila.gov).

On behalf of the Department and the children and families we serve, I would like to express our thanks and appreciation for your commitment to providing high quality and effective services to Philadelphia's children and families. During this changing and challenging time the strength of the public/private partnership is critical as we work together toward the common goal of ensuring the overall safety and well-being of children and families in our City.

Sincerely,

/s/ Cynthia F. Figueroa

Cynthia F. Figueroa

Commissioner

cc: Valerie M. Robinson, Esquire  
Kimberly Ali, Deputy Commissioner  
Robert Hodge, Director of Contracts and Audit  
Rita Cairy, Contracts Administrator

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ARCHDIOCESE OF PHILADELPHIA

222 North Seventeenth Street  
Philadelphia, Pennsylvania 19103-1299  
Telephone (215) 587-0511  
Fax (215) 587-0512

OFFICE FOR GENERAL COUNSEL

August 29, 2019

Valerie Robinson  
Chair, Corporate and Tax Group  
City of Philadelphia Law Department  
1515 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19102

RE: Contract #19-20338-01 Catholic Social Services  
FY20 PA-Foster and Kinship Care Services

Dear Valerie:

Contract #19-20338-01 Catholic Social Services  
FY20 PA Foster and Kinship Care Services will be e-  
signed by Catholic Social Services and delivered to  
you shortly.

As with the FY19 contract, and as your FY19 letter  
acknowledged, this contract is a maintenance con-  
tract and “is not intended to address any matters in  
litigation.” Nothing in this contract should be consid-  
ered to be an admission or concession of any issue  
with regard to the parties’ ongoing litigation in  
*Fulton, et al. v. City of Philadelphia, et al*, Nos. 2:18-  
cv-2075 (E.D. Pa.) (pending), 18-2574 (3d Cir.), 19-  
123 (U.S.) (pending). CSS does not make any conces-  
sions of its legal claims nor arguments by entering  
into this contract. In particular, CSS notes that it is  
not currently recruiting nor certifying new foster

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families to care for foster children under this contract, since it is unable to place children with newly-certified families under this contract, and that this contract will not permit CSS to receive referrals to place children with such families.

As you are aware, CSS is continuing to seek injunctive relief which would require the resumption of regular foster care referrals to CSS and the ability to enter into a full contract with the City. CSS wishes to enter into a full contract on terms the parties have entered into in prior years, but no such contract has been presented to it at this time.

Catholic Social Services is entering into this maintenance contract in order to be able to continue serving the children currently in its care, and nothing in this letter nor this contract should be construed to limit or surrender its right to continue litigating its pending claims. With these reservations and the concerns stated in its complaint and briefing in the ongoing litigation, CSS has sent the contract for signature.

Sincerely,

/s/ Suzanne Hueston

Suzanne Hueston, Esquire

SH/kb

Enc.

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**City of Philadelphia  
Department of Human Services**

Contract Number **19-20338-01**  
Original Contract Number **19-20338**  
**290 – Foster and Kinship Care**

**CONFORMED**  
**STANDARD AMENDMENT AGREEMENT**

**THIS STANDARD AMENDMENT AGREEMENT** (“Amendment Agreement”) is made as of September 23, 2019 and effective July 1, 2019 (the “Effective Date”) by and between the City of Philadelphia (“the City”), by and through its **DEPARTMENT OF HUMAN SERVICES** (“Department”), and **CATHOLIC SOCIAL SERVICES** (“Provider”), a nonprofit corporation, with its principal place of business at **222 NORTH 17<sup>TH</sup> STREET, PHILADELPHIA, PENNSYLVANIA 19103.**

**BACKGROUND**

The City and Provider entered into a certain Contract, Contract Number **19-20338**, dated **November 2, 2018**, which includes the City of Philadelphia Professional Services Contract General Provisions for the Department of Human Services (the “General Provisions”), the Provider Agreement, Cross Agency Response for Effective Services (“CARES”) Limited License Agreement (when applicable), and any and all attachments, exhibits and documents thereto (collectively, the “Base Contract”), wherein Provider

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agreed to render various Services to the City in accordance therewith; and

WHEREAS, the City and Provider agree to enter into this maintenance contract for the 2020 fiscal year;

WHEREAS, the City and Provider agree that services to children and families must remain paramount;

WHEREAS, the City will continue payments to the Provider for the administration and maintenance of existing resource homes where children in DHS' care reside;

WHEREAS, Provider will not be opening new resource homes pursuant to this contract subject to the exceptions referenced in the Scope of Services (PA-2) of the Base Contract, as amended; and

WHEREAS, Provider agrees to maintain certification of existing resource homes licensed through its agency;

Hereinafter, the Base Contract and all prior amendments, if any, shall be referred to as the "Base Contract as Amended;" and

It is necessary to **INCREASE** the amount of compensation payable under the Base Contract as Amended by **One Million, Six Hundred Forty-Six Thousand, Six Hundred Twenty-Six Dollars (\$1,646,626.00)**, in order for Provider to continue to render the Services and provide the Materials specified in the Base Contract as Amended and this Amendment Agreement; and

The City and Provider have agreed to amend certain terms and conditions of the Base Contract as Amended, as set forth herein; and



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In consideration of the mutual obligations set forth herein, and each intending to be legally bound, the City and Provider covenant and agree as of the Effective Date as follows:

**ARTICLE I: AMENDMENTS TO THE CONTRACT**

With the exception of the following amendments set forth in this Amendment Agreement, and subject to councilmanic appropriation of funds, the terms and conditions of the Provider Agreement “as amended” shall be and remain in full force and effect:

**1.1 Incorporation of Background.**

The Background is incorporated by reference herein.

**1.2 Definitions.**

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Base Contract as Amended.

**1.3 Term.**

The term of the Base Contract as Amended is extended for an Additional Term commencing **JULY 1, 2019** and expiring **JUNE 30, 2020**.

**1.4 Compensation.**

As compensation for the Services and Materials being provided under this Contract, the City covenants and agrees to set the amount of compensation payable to Provider for the current contract term at **One Million, Six Hundred Forty-Six Thousand, Six Hundred Twenty-Six Dollars (\$1,646,626.00)**. Notwithstanding anything in the Contract to the contrary, in no event shall the amount certified by the Finance Department for Services and Materials

under the Contract, including this Amendment Agreement, exceed **Four Million, Five Hundred Forty-Six Thousand, Eight Hundred Twenty Dollars (\$4,546,820.00)**.

**1.5 Services and Materials.**

Section 2.1 of the Provider Agreement, is amended in accordance with the attachments listed below, which are attached to this Amendment Agreement and incorporated herein by reference.

(a) **S.A.A.-1: Service, Rate, Maximum Days/Units**

Section 2.1 of the Provider Agreement, is amended in accordance with the Exhibits listed below, which are available on the Provider Extra-net and incorporated herein by reference.

(b) **S.A.A.- 2: IOC Fiscal Guidelines for Community Umbrella Agencies and Providers**

(c) **S.A.A.- 3: CARES Limited License Agreement**

**1.6 Additional Provisions.**

Other provisions, including, without limitation, OEO participation commitments and any exceptions or modifications to the General Provisions of the Contract, are set forth in the following clause(s) and incorporated herein by reference:

(a) DHS is increasing its administrative efficiency through the use of electronic record keeping and data sharing technology. As these updates occur, the Department will continue to notify Providers of these technology requirement changes through written notices. Failure to comply with any DHS technology requirements (including, but not limited to the use of

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P-Web and P-DRIVE) may result in a financial penalty and/or a finding that an Event of Default has occurred.

(b) Section 15.1, “Non-Discrimination; Fair Practices,” of the General Provisions is amended to read as follows:

“In performing this Contract, Provider must comply with the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor’s Executive Order No. 04-86 (the “Executive Order”), as they may be amended from time to time. In addition, to the extent those provisions do not explicitly prohibit or cover certain types of discriminatory conduct, in performing this Contract, Provider has broader obligation under this Contract. In connection with providing any service or fulfilling any duty under this Contract, Provider shall not discriminate or permit discrimination against any individual on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information; domestic or sexual violence victim status; or Human Immunodeficiency Virus (“HIV”) infection status. In the event of any breach of this Section 15.1, the City may, in addition to any other rights or remedies available under this Contract, at law or in equity, suspend or terminate this Contract forthwith.”

(c) Section 15.1, “Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century Minimum Wage and Benefits Standard,” is amended to read as follows:

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(a) If Provider or any Subcontractor at any tier is an Employer subject to the requirements of Chapter 17-1300 of the Code, as that term is defined in Section 17-1302 and described in Section 17-1303 of the Code, then, absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, it shall provide and cause any subcontractors at any tier that are also Employers to provide their respective covered Employees with at least the minimum wage standard and minimum benefits standard and notice thereof, as required under applicable law. A summary of the current requirement is as follows:

(1) Term of Contract and Effective Date of Minimum Wage Rates.

- a) For contracts with a term of one year or less, the rate applicable on the effective date of the contract is the rate for the entire term of the contract.
- b) For renewals and amendments with a term of one year or less, the rate applicable on the effective date of the renewal or amendment is the rate for work performed during the term of the renewal or amendment and remains the rate throughout the term of the renewal or amendment.
- c) For contracts, renewals and amendments with a term longer than one year, the applicable rate on the effective date of the contract shall apply until the next June 30. On the next July 1, the new rate effective on that July 1 date shall apply during the period from July 1

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through the following June 30. Each July 1, the rate may increase.

(2) Minimum Wage Rates. Absent a waiver, an Employer subject to Chapter 17-1300 shall pay each Employee an hourly wage, excluding benefits, equal to:

Effective Date between April 19, 2019, and June 30, 2019, \$12.40;

Effective Date between July 1, 2019, and June 30, 2020, \$13.25;

Effective Date between July 1, 2020, and June 30, 2021, \$13.75;

Effective Date between July 1, 2021, and June 30, 2022, \$14.25;

Effective Date between July 1, 2022, and June 30, 2023, \$15.00; and

Effective Date starting July 1, 2023, and thereafter, \$15.00 multiplied by the CPI Multiplier, provided that the minimum wage shall not be less than the previous year's minimum wage. The CPI Multiplier is calculated annually by the City's Director of Finance by dividing the most recently published Consumer Price Index for all Urban Consumers All Items Index for Philadelphia, Pennsylvania, by the most recently published Consumer Price Index for all Urban Consumers ("CPI-U") of each calendar year. The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website.

(3) Minimum Benefits. Absent a waiver, if the Employer is subject to Chapter 17-1300, to the extent the employer provides health benefits to

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any of its employees, the Employer shall provide each full-time, non-temporary, non-seasonal covered Employee with health benefits at least as valuable as the least valuable health benefits that are provided to any other full-time employees of the Employer. The Employer shall also provide to each covered Employee at least the minimum number of earned sick leave days required by Section 17-1305(2) of the Code.

(b) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance and that of all covered Employers providing Services under the Contract with the requirements of Chapter 17-1300. Each covered Employer shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.

(c) Absent a waiver, if Provider is subject to Chapter 17-1300, Provider shall take such steps as are necessary to notify its covered Subcontractors of the requirements of this Section 14.10 and to cause such covered Subcontractors to notify lower-tier covered subcontractors of these requirements, including, without limitation, by incorporating this Section 14.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such covered Subcontractors.

(d) A Provider or Subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and a hearing before the Director of Finance or such other officer or agency designated by the Mayor,

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be suspended from receiving financial assistance from the City or from bidding on and/or participating in future City contracts, whether as a prime contractor or a subcontractor, for up to three (3) years. City Council may also initiate a similar suspension or debarment process. Such suspension or debarment shall be in addition to any of the other sanctions or remedies set forth in Chapter 17-1300 or this Contract.

(e) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, the failure of a Provider or Subcontractor at any tier subject to Chapter 171300 to comply with these provisions shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available at law or in equity.

(f) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 14.10 only, and the covered Employees of a Subcontractor at any tier that is also a covered Employer performing Services directly or indirectly under a Subcontract at any tier shall be deemed third-party beneficiaries of their Employer's representation, warranty, and covenant to Provider or such Subcontractors at any tier, as the case may be, under this Section 14.10.

(g) The City may grant a partial or total waiver of Chapter 17-1300 based on specific stipulated reasons elaborated in Section 17-1304 of the Code.

**1.7 Acknowledgment of General Provisions.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the General Provisions and acknowledges that by executing this Amendment Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the General Provisions.

**1.8 Electronic Payments.** Section 4.2, "Manner of Payment," of the Base Contract is amended to read in its entirety as follows:

Manner of Payment.

(a) Payment shall be made after Provider's timely submission of invoices to the Responsible Official, in the number, form and content acceptable to the Responsible Official, accompanied by such additional supporting data and documentation as the Responsible Official may require. All payments to Provider are contingent upon satisfactory performance of the terms and conditions of this Contract. Provider shall submit its final invoice not more than sixty (60) days from completion of the Services and delivery of Materials.

(b) All payments to the Provider under the Contract on or after July 1, 2019 shall be accomplished by deposits into the Provider's designated bank account by electronic means. Before any such City payments are made, Provider must supply the City with the information necessary for the City to initiate electronic payments by completing one of the electronic payment processing enrollment forms available on the City's vendor portal at <https://secure.phila.gov/finance/vendomayments>.



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(c) Payments to Provider before July 1, 2019 shall be made as described in paragraph (b) if Provider has registered according to the requirements of that paragraph or by checks drawn by the City Treasurer.

(d) The City reserves the right to withhold or offset against any funds payable to Provider for any invoice for which the Responsible Official asserts a discrepancy exists or for Provider's failure to satisfactorily perform the terms of the Contract, as determined solely by the City.

**1.9 Acknowledgment of Standards.**

Provider specifically acknowledges that Provider has read and understands the terms and conditions contained in the applicable above referenced Performance and Service Standards ("Standards") formerly known as Service Description and Contract Requirements, Service Description, Performance Standards, Service Standards, Procedural Manuals and/or Guides which are available on the Provider Extranet at (<https://dhsconnect.phila.gov/dhscms/en-us/servicesstandards.aspx>) which are incorporated to this Amendment Agreement by reference. Provider acknowledges that by executing this Amendment Agreement, Provider shall be legally bound by all of the terms of this Contract, including, but not limited to, those set forth in the Standards currently published on the Provider Extranet and any and all subsequent amendments.

**1.10 Electronic Signatures.**

The City and Provider agree to execute this Amendment Agreement electronically using the means of electronic signature provided below.

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(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound by all of the Contract Documents, have caused the Contract to be executed by their respective duly authorized officers as of the date in the heading of this Standard Amendment Agreement.

APPROVED AS TO  
FORM

MARCEL S. PRATT,  
CITY SOLICITOR

Per: Amanda Stewart  
House

Name: Amanda Stewart  
House

Title: Deputy City  
Solicitor

**THE CITY OF  
PHILADELPHIA**

Through: **The Department of Human Services**

By: Cynthia Figueroa

Name: Cynthia Figueroa

Title: Commissioner

**CATHOLIC SOCIAL  
SERVICES**

By: James Amato

Name: James Amato

Title: Vice President

By: Franz Fruchwald

Name: Franz Fruchwald

Title: Assistant Treasurer

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CITY OF PHILADELPHIA

DEPARTMENT OF HUMAN SERVICES  
1515 Arch Street, Philadelphia, PA 19102  
215-683-4DHS (4347)

Commissioner  
KIMBERLY ALI

Deputy Commissioners

Policy Development and System Enhancement  
GARY D. WILLIAMS

Child Welfare Operations  
SAMUEL B. HARRISON, III

Juvenile Justice Services  
NELSON R. WALKER

Administration and Management  
VONGVILAY MOUNELASY

July 15, 2020

James Amato, Secretary, Human Services  
Catholic Social Services  
222 North 17th Street, Room 328  
Philadelphia, PA 19103

**Re: FY 2021 Award Letter (290) SAA  
Child Welfare Operations Division  
Foster Care Services, \$1,646,626.00**

Dear Secretary:

This letter is to provide you with information on the City of Philadelphia Department of Human Services' (hereinafter referred to as "DHS" or "Department") contract process for Fiscal Year 2021 beginning on July 1, 2020. The funding levels referenced above reflect the Department's budget constraints and priorities. **However, please be advised that the**

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**authorized levels of service and the continued funding of contracts is contingent upon the availability of proposed City, State and Federal funds and this award letter does not guarantee your agency a contract with DHS.**

Please be advised that DHS is not obligated to make any payment to your agency until after the execution and conformance of a formal written contract, containing such terms and conditions as are satisfactory to DHS; and provided that your agency has satisfied any conditions precedent to the start of work (e.g. insurance certificates or licenses) as required by the contract. Please review this letter and its attachments thoroughly as some of the information requested will be used to develop your agency's contract. If you have any questions about the content of this letter or its attachments, please contact your contract Conformance Manager. To obtain your Conformance Manager's contact information, you may call the Director of Contracts & Audit, Robert Hodge, at (215) 683-4200. Please email any questions to [dhscontracts@phila.gov](mailto:dhscontracts@phila.gov).

On behalf of the Department and the children and families we serve, I would like to express our thanks and appreciation for your commitment to provide high quality and effective services to Philadelphia's children and families. During this changing and challenging time the strength of the public/private partnership is critical as we work together toward the common goal of ensuring the overall safety and well-being of children and families in our City.

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Sincerely,

/s/ Kimberly Ali

Kimberly Ali

Commissioner

cc: Samuel B. Harrison III, Deputy Commissioner  
Child Welfare Operations

Robert Hodge, Director of Contracts and Audit

Rita Cairry, Contracts Administrator