

In the  
**Supreme Court of the United States**

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SHARONELL FULTON, CECELIA PAUL, TONI LYNN SIMMS-BUSCH, and  
CATHOLIC SOCIAL SERVICES

*Applicants,*

v.

CITY OF PHILADELPHIA, DEPARTMENT OF HUMAN SERVICES FOR THE CITY OF  
PHILADELPHIA, and PHILADELPHIA COMMISSION ON HUMAN RELATIONS,

*Respondents.*

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**City Appendix of Exhibits**

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**DIRECTED TO THE HONORABLE SAMUEL A. ALITO, JR.,  
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES  
AND CIRCUIT JUSTICE FOR THE THIRD CIRCUIT**

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# **EXHIBIT 1**

# Attachment W



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## News

# Two foster agencies in Philly won't place kids with LGBTQ people

Updated: MARCH 13, 2018 — 9:05 AM EDT



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A sign for Bethany Christian Services in Jenkintown. The organization is one of two foster care providers that don't work with LGBT people for religious reasons. JESSICA GRIFFIN / Staff Photographer.



by [Julia Terruso](#), Staff Writer [Twitter: @JuliaTerruso](#) | [Email: julia@phillynews.com](#)

Megan Paszko spent countless hours researching how to become a foster parent in Philadelphia. She compiled all the information organizations needed and mailed, emailed, faxed, and even hand-delivered applications.

Months passed before anyone responded, and then Bethany Christian Services got back to her and said there was an orientation for interested foster parents that week. Paszko and her wife drove to Elkins Park. They were the first people to arrive. They'd also be the first to leave.

"The trainer approached us, and she was really nice, but she told us, 'I just want to be upfront. This organization has

never placed a child with a same-sex couple,” Paszko said. “She told us she didn’t want to waste two hours of our time.”

In a follow-up call with administrators, the couple were told that Bethany does not work with LGBTQ people because of the church’s views on homosexuality. They were offered names of other agencies to try.

Article continues below advertisement

“I just couldn’t believe it,” said Paszko, who lives with her wife in Brewerytown. “There are so many kids out there who need homes, you’re really going to deny them a good one?”

At the same time that the city’s Department of Human Services [is urgently calling for more foster parents](#), two of its foster care agencies, Bethany and Catholic Social Services, operate under policies that turn away LGBTQ people who come knocking.

The organizations, which also offer adoption services, are likely violating city contract rules that forbid discrimination. Philadelphia’s fair practices ordinance, which prohibits discrimination based on sexual orientation, is included in all city contracts, said Rue Landau, executive director of the Human Relations Commission

“What a tragedy for the kids of Philadelphia,” said Mary Catherine Roper, deputy legal director for the ACLU of Pennsylvania. “This agency is putting its own view on religion above the needs of its kids.”

Roper said the position could also be unconstitutional: “A government doesn’t get to use a contractor to implement religious programs and when you start saying, ‘We’re running this as a religious program such that we won’t take you because you don’t fit our religious view,’ then the city is paying for a religious program, and that’s a problem under the First Amendment.”

DHS said it was unaware, until contacted by the Inquirer and Daily News, of the policies held by the two organizations. Bethany Christian Services has had a contract with the city since 1996 and Catholic Social Services since 1997.

DHS spokeswoman Heather Keafer called both groups' stances "deeply concerning," given an ongoing push to recruit more LGBTQ people to become foster parents. "We actively recruit individuals that represent the diversity of our city, including diversity of sexual orientation, genders, race, religions, and communities to provide quality foster care to Philadelphia's most vulnerable children and youth," Keafer said.

The city's Law Department is reviewing the issue while DHS works with the Human Relations Commission to investigate policies at both organizations, Keafer said. The department is also reviewing policies of all 26 foster care agencies it works with. The city will continue to recruit LGBTQ parents, [including at an event March 22 at the William Way LGBT Community Center](#) hosted by the Office of LGBT Affairs .

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Last year, Bethany Christian Services was reimbursed \$1.3 million for operating foster homes for 170 children, representing 1.5 percent of the department's payments to foster care providers. Catholic Social Services was reimbursed \$1.7 million in the same year for 266 children, representing 1.9 percent of the amount paid.

Joe DiBenedetto, a spokesman for Bethany, said the organization places children with married couples made up of two parents of the opposite sex, or in some cases individuals. He said the organization does not believe it is in violation of any city ordinances. "This has been our practice throughout our nearly 75 years of operation and is based on our adherence to what we believe to be foundational Biblical principles," he said.

Ken Gavin, a spokesman for the Archdiocese of Philadelphia, said Catholic Social Services wasn't aware of any

recent inquiries from same-sex couples but confirmed that the organization would not work with interested LGBTQ people if approached.

“Catholic Social Services is, at its core, an institution founded on faith-based principles,” Gavin said. “The Catholic Church does not endorse same-sex unions, based upon deeply held religious beliefs and principles. As such, CSS would not be able to consider foster care placement within the context of a same-sex union.” Gavin said that arrangement is a “well-established and long-known one in our relationship with DHS.”

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Both organizations work with LGBTQ youth. That can send a mixed message to children and teens in their care, said Currey Cook, an attorney who heads Lambda Legal’s Youth in Out-of-home Care Project.

“How do you pretend you can simultaneously say we serve all youth and do a good job serving all youth while at the same time you’re saying same-sex couples are not real parents, are not good parents?” Cook said. “LGBT youth who have faced so much isolation, stigma, prejudice in the system are left wondering, ‘What’s going to happen if I come out, and I’m being served by parents or an agency that basically says trans parents, LGBT people, aren’t good parents?’”

Cook said Pennsylvania could benefit from a more explicit nondiscrimination policy. Its [state code prohibits discrimination against children based on sexual orientation](#) but does not say anything specific about prospective foster or adoptive parents.

## A nationwide tension

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Similar conflicts have sprouted up across the country in recent years as states have legalized same-sex marriage. Before laws started changing, religious-conflicted organizations could avoid working with LGBTQ people by requiring foster parents to be legally married, Cook said.

His organization sued the [federal government and the Catholic Conference of Bishops](#) last month after married lesbian professors were told they could not foster a refugee child through Catholic Charities of Fort Worth, Texas. A woman at the organization told them foster parents must “mirror the Holy Family,” according to the suit.

[The ACLU sued the State of Michigan last year](#) after two same-sex couples were turned down by Bethany Christian Services and Catholic Social Services there. Michigan is one of a growing number of states to pass laws explicitly allowing religious-based discrimination. Similar bills are percolating in Georgia, Oklahoma, [and Kansas](#).

Pennsylvania has no such law but religious nonprofits often discriminate quietly, said Leslie Cooper, an attorney with the ACLU’s national office, who is handling [the Michigan case](#).

Lawyers for Bethany and Catholic Social Services have defended their clients’ stances in court documents by saying that requiring religious organizations to comply with nondiscrimination laws would force them to close, meaning fewer organizations to help kids in need.

Cooper said a religious organization could always change its affiliation, which occurred in Illinois after a foster care agency associated with the Catholic Church broke off and rehired the same staff to operate independently.

“The premise that there would be no one to do this work is just false,” she said.

Both the archdiocese and Bethany say they always direct interested LGBTQ parents to other agencies.

Paszko and her wife are now working with Jewish Family and Children’s Service of Greater Philadelphia to become

certified foster parents, but the journey has not been easy.

They started sending out requests for information to various agencies in July. Calls and emails went unanswered. An application Paszko hand-delivered was mailed back to her with no explanation. A home visit scheduled weeks ago was canceled unexpectedly. The couple took off from work to get background checks but upon arrival, learned the center no longer offered the screenings. They don't attribute all these roadblocks to discrimination but to a system ill-equipped to catch interested parents.

"If you work and you actually have the financial means to help a kid, I feel like the system is not set up to help you do that," Paszko said. "There have just been so many stops along the way where I've just said, 'Ugh, this is not meant to be.'"

*Interested in fostering? Call 215-683-5709 or email [fosteringphilly@phila.gov](mailto:fosteringphilly@phila.gov). Learn more at [beta.phila.gov/fosteringphilly](http://beta.phila.gov/fosteringphilly)*

*Anyone who believes they were discriminated against may contact the PCHR at 215-686-4670 or [pchr@phila.gov](mailto:pchr@phila.gov).*

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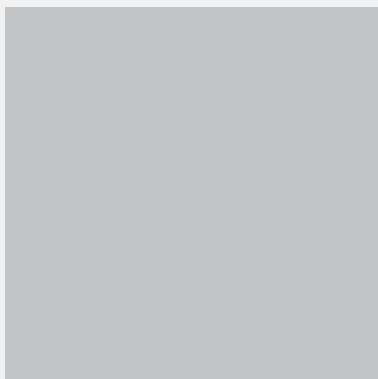


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# **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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**SHARONELL FULTON, CECELIA  
PAUL, TONI LYNN SIMMS-BUSCH,  
AND CATHOLIC SOCIAL SERVICES,**

Plaintiffs,

v.

**CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, AND  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,**

Defendants.

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Civil Action No. 18-CV-2075

**DECLARATION OF CYNTHIA F. FIGUEROA**

I, Cynthia F. Figueroa, declare as follows:

1. I am the Commissioner of the Department of Human Services (“DHS”) for the City of Philadelphia. I was appointed to this position in July 2016, effective September 2016.
2. Prior to being appointed Commissioner, I was the Chief Executive Officer of Congreso de Latinos Unidos, a nonprofit focused on strengthening Latino communities through social, economic, education and health services.
3. From 2008 to 2011, I served as Deputy Commissioner for DHS and was responsible for the oversight of what was then known as the Division of Community Based Prevention Services. In that role, I oversaw all child welfare prevention services delivered by community based providers including development of the Education Support Center.

4. Prior to that, I was the Executive Director of Women Against Abuse, a nonprofit organization in Philadelphia that advocates against domestic violence and provides services to victims.
5. As the Commissioner of DHS, I supervise one of the largest child welfare agencies in the country. In my role, I serve as the County Administrator to deliver our Federal and State mandated child welfare service for Philadelphia. I have direct oversight of 1500 employees, a budget of over \$600 million, and approximately 250 contractors. In this capacity, I am familiar with the Department's operations, policies, procedures, and contracts, including the practices that are the subject of this action.
6. The City of Philadelphia Department of Human Services is committed to providing and promoting safety, permanency, and well-being for children and youth at risk of abuse, neglect and delinquency.
7. DHS operates Philadelphia's child abuse hotline and investigates allegations of child abuse and neglect. To find placements for children who are not safe in their own homes, DHS contracts with state-licensed foster care agencies who recruit, certify, and service foster homes for these children. The goal of foster care is to reunite children with their families. DHS also manages Community Umbrella Agencies (CUAs), six private organizations that provide case management and other support services in 10 geographic regions throughout Philadelphia. CUAs serve children and families whose cases are accepted for service.
8. While agencies work with specific foster families to provide training and support, a CUA case manager coordinates the relationship between the foster family, the child, and the child's biological family with the goal of reunification.

9. The Archdiocese of Philadelphia operates a CUA and a foster care agency which is Catholic Social Services. Recently, the City began ranking CUAs. Catholic CUA was ranked second out of ten geographic regions. DHS does not currently rank foster care agencies and has not ranked Catholic Social Services in the last several years.
10. Currently, approximately 6,000 children in DHS's custody are in out-of-home placement. Approximately 86% of those are in family foster care and approximately 12% are in congregate care (i.e., group homes).
11. Approximately 54% of the children in family foster care are in kinship care, which is foster care with a relative or someone who has a significant relationship to the child. Approximately 45% are with families who have been certified as foster parents and who do not have a kinship relationship to the child.
12. In Fiscal Year '17, DHS reunified 1250 children with their families, finalized 636 adoptions and finalized 138 permanent legal custodianships.

#### DHS' Recruitment Drive

13. Recruitment and certification of new families are essential and integral parts of the work of the City's foster care agencies.
14. Each of the City's contracts includes these responsibilities.
15. Because it has the ultimate responsibility of children in its legal custody, DHS is always trying to identify new, qualified foster parents, including through its own recruitment efforts.
16. For example, this year DHS issued an "urgent call" to recruit new foster parents. DHS did this in order to build additional capacity into the system.



17. As part of this effort, DHS was trying to specifically recruit more families to serve children with special needs, older children, children with specialized behavioral health needs, and lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth, based in part on reports DHS received from LGBTQ youth who had negative experiences in homes that did not support them.
18. In addition, DHS' "urgent call" sought to recruit new foster parents to reduce the number of children in congregate care, and in particular, the number of older children in such care. DHS' experience is that there is a greater proportional number of LGBTQ youth in the population of older foster children. This also factored into DHS' recruitment efforts.
19. This "urgent call", however, does not indicate that there is a "crisis" in identifying new homes. Nor does the fact that City seeks to expand its foster care resources indicate that there are not enough foster homes available. At any given time, there are certified foster parents associated with one of the City's foster care agencies who are willing to care for a new child in their home. These households may be awaiting a placement or have exercised their discretion not to take a child due to their own preferences and willingness to accept certain children due to the child's age or the needs of the child.
20. As a result of this recruitment effort, since January 75 new families have been certified.
21. On occasion, and usually for a short period of time, there are children who the City is unable to immediately place with a foster family or in congregate care. There can be many reasons for this, including that on occasion a child comes into the City's custody in the middle of the night.

22. The City's data regarding the placement of foster children reflects that over the past year, the congregate care rate has remained the same.

Closure of CSS Intake

23. On March 9, 2018, DHS was asked by a reporter for the *Philadelphia Inquirer* whether DHS was aware of any organizations discriminating against same sex couples. At that time, DHS was not aware of any such discrimination, but the reporter disclosed that a same-sex couple said they had been turned away by another foster care agency, Bethany Christian Services. The reporter indicated they reached out to CSS and were awaiting a comment.
24. DHS First Deputy Commissioner Jessica Shapiro and I then contacted CSS to determine whether the statements in the article were accurate. Jim Amato of CSS confirmed the CSS would not certify same-sex couples as foster homes or for adoptions.
25. On March 13, 2018, the *Philadelphia Inquirer* published a story titled "Two foster agencies in Philly won't place kids with LGBTQ people." According to the article, neither Bethany nor CSS would place children with LGBTQ couples. A copy of the story is attached here as Exhibit 2-B.
26. In the past, as DHS Commissioner, I have had to suspend referrals and close intake at agencies for a variety of programmatic and administrative reasons.
27. On or about March 14, 2018, I determined that Bethany and CSS's public position raised a concern that it would discriminate against same-sex couples in violation of their contract with the City and the City's Fair Practices Ordinance.

28. I determined that DHS would suspend referrals and close intake at both agencies as long as they refused to certify qualified same-sex foster parents. I did this because CSS told us it could not comply with its contract.
29. In making this decision, I determined based on my professional experience that DHS would continue to be able place children in appropriate family foster homes. It is important to note that roughly half of family foster home placements are kinship care, which do not strain existing foster care capacity. I also knew that there were currently a number of foster families' homes with other agencies willing to accept new foster children and anticipated that our recruitment drive would bring additional families into the system. And since then we have been able to certify 75 new families.
30. In addition, as CSS had communicated that it could not comply with the contract with the City and the City's Fair Practices Ordinance, I had to also consider the best interest of any children who might be placed with CSS in the future.
31. I was concerned that because CSS was in breach of the contract, placing additional children with them—except on an individual, case by case basis—would not be in those children's best interest because of the risk of disruption related to CSS' no longer being a foster care agency for the City.
32. The following day, March 15, 2018, First Deputy Commissioner Shapiro, Kimberly Ali, and I met with representatives of Bethany and CSS. Following the meeting with CSS, Deputy Commissioner of Child Welfare Operations Kimberly Ali called CSS to inform them that DHS was suspending referrals and closing their foster home intake.
33. Following this call, Jim Amato of CSS contacted leadership at DHS to request waivers related to specific children.

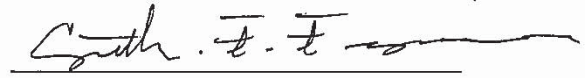
34. Since March 15, 2018, there have been at least two instances where CSS has requested waivers by contacting me to request those waivers. Kimberly Ali worked with CSS in both cases and the waivers were granted.
35. The closure of intake to CSS has had minimal impact on DHS operations. The percentage of children placed in congregate care (as opposed to family foster care) has remained consistent since the closure. Similarly, the number of childcare room overnight stays has actually decreased slightly from nine to eight per month since the closure.
36. I decided on this course of action with CSS with the consideration of arranging an interim contract that would permit CSS to continue to provide services to foster children and families it already had in its care. I continue to believe such an interim agreement is in the best interest of those foster children, however I also continue to believe that permitting CSS to continue to referrals and performing foster home intake services is not in the best interest of children.

Bethany

37. Since suspending referrals to Bethany, the City has been in discussions with Bethany to resolve the dispute.
38. While the City and Bethany are still negotiating a contract for the next fiscal year, the parties are close to a resolution and Bethany has agreed in principle to comply with the Fair Practices Ordinance and to institute a nondiscrimination policy.
39. I fully expect Bethany to enter into a full contract with the City for next fiscal year and that DHS will resume referrals and reopen intake at Bethany.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct, based upon my own knowledge and/or belief.

DATE: June 12, 2018

A handwritten signature in black ink, appearing to read "Cynthia F. Figueroa", written over a horizontal line.

Cynthia F. Figueroa

# **EXHIBIT 3**



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**SHARONELL FULTON, CECELIA  
PAUL, TONI LYNN SIMMS-BUSCH,  
AND CATHOLIC SOCIAL SERVICES,**

Plaintiffs,

V.

Civil Action No. 18-CV-2075

**CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, AND  
PHILADELPHIA COMMISSION ON  
HUMAN RELATIONS,**

Defendants.:

## DECLARATION OF KIMBERLY ALI

I, Kimberly Ali, declare the following:

1. I am employed by the City of Philadelphia, Department of Human Services (“DHS”) as the Deputy Commissioner of Child Welfare Operations. I was appointed to this position in October 2016. I report directly to DHS Commissioner Cynthia F. Figueroa.
2. I have worked for the City of Philadelphia since January 2000, when I joined the Department of Human Services as a Social Worker. I held that position until February 2002, when I became a Social Work Supervisor. I held that position until December 2006, when I was promoted to be a Human Services Program Administrator. In that role, among many other responsibilities, I provided oversight and monitored level of care

decisions for the identification and completion of referrals for in home and placement services.

3. I held that position until May 2009, when I was promoted to be a Human Services Staff Services Director of Provider Relations and Evaluation of Programs. In that role, among many other responsibilities, I managed 25 program analyst staff, responsible for monitoring and evaluating a total of 400 child welfare, delinquent, and prevention contracts to ensure quality services to children, youth, and families.
4. I held that position until October 2010, when I became DHS's Operations Director. In that role, I managed and coordinated the daily operations of DHS including its hotline, investigations, and ongoing provision of services to families.
5. I held that role until November 2014, when I was promoted to become the Chief Implementation Officer for Improving Outcomes to Children, a large-scale system transformation into a community based service delivery model, which involved the safe transfer of families from DHS to Community Umbrella Agencies (CUAs). I also created a structured Level Of Care Instrument that determines the least restrictive placement setting for children and youth. I held that role until October 2016 when I was promoted to be the Deputy Commissioner of Child Welfare Operations.
6. As the Deputy Commissioner of Child Welfare Operations, in addition to other duties, I supervise and support the Child Welfare Operations at DHS, one of the largest child welfare agencies in the country. In my role, I assist Commissioner Figueroa and the Department in achieving our goals, overseeing day-to-day operations, systemic issues, and future planning and initiatives. In this capacity, I am familiar with the Department's



operations, policies, and procedures, including the practices that are the subject of this action.

7. The City of Philadelphia Department of Human Services is committed to providing and promoting safety, permanency, and well-being for children and youth at risk of abuse, neglect and delinquency.

#### Foster Care in Pennsylvania

8. State law requires county children and youth agencies like DHS to develop a plan for the provision of protective services for children, and to provide or purchase those services, including the provision of foster care services for children placed in its care.
9. For at least 20 years, Philadelphia has used private agencies to provide services to children and families involved with DHS.
10. DHS values the expertise of private agencies that provide foster care services, and which are frequently located in communities close to homes of origin of children and families needing services.
11. There are 30 foster care agencies in Philadelphia.
12. 51% of children living in family foster care live within 5 miles of their home of origin, and 76% live within 10 miles.
13. The Pennsylvania Department of Human Services licenses foster care agencies. State law and regulations establish the criteria for the certification of prospective foster parents (“resource parents”). These criteria include a DHS history screening and criminal and child abuse history screenings, with limits of certification of individuals with a history of certain prohibited offenses and child abuse history in some circumstances.

14. Agencies are also required to evaluate a prospective resource parent's ability to provide care, nurturing, and supervision to children, their supportive community ties, the household composition, their ability to work with a child with special needs, and their financial stability.
15. Foster care agencies are required to register all resource parent applicants on a state "resource family registry."
16. If a resource parent meets the criteria, a foster care agency must certify the applicant.
17. Even once a foster care agency certifies a resource parent, pursuant to its contract with foster care agencies, DHS can determine that it does not want Philadelphia children placed in that home, such as when there are concerns about the resource parent's prior or current involvement with DHS.

#### DHS Custody and Placement Process

18. DHS runs a hotline for reports of alleged child abuse or neglect. DHS also receives reports from a state-run hotline and online portal. If the report contains factual allegations that would constitute child abuse or neglect, the report is accepted for investigation and DHS conducts a safety assessment of the situation/child's environment to determine if a safety threat to a child exists. If the safety threat rises to the level of present danger and the child is deemed unsafe, DHS obtains a court order to remove the child from their home and to place the child in foster care.
19. If a child is removed, there will be a hearing at Family Court within 72 hours, at which time the court will determine if the initial removal was appropriate, and if so, it may commit the child to the legal custody of DHS if circumstances have not changed.

20. Each child in the legal custody of DHS, as well as those who are receiving in home services, receives case management services. These services are provided by one of six private Community Umbrella Agencies (CUAs) with whom DHS contracts. Each CUA provides services in one of 10 geographic regions of Philadelphia.
21. Because DHS is committed to providing services to children and families in their communities, once it is determined that a family needs services, families are assigned to a CUA automatically via an electronic system based on the family's geographic region, with some rare exceptions.
22. Each child serviced by a CUA has a case manager at that CUA. The case manager's responsibilities include assessing the child's safety through visitation, completing a case plan for the child's needs, ensuring the child receives all behavioral health, medical, and educational services for the duration of the case and intervening when necessary.
23. Each CUA case manager has a supervisor, who is supervised by the CUA case management director. DHS provides a practice coach on site to provide technical assistance and learning support to the CUAs, and these staff are further supervised by other DHS staff. In addition, DHS has an Operations Director, Staci Boyd, who oversees all of the CUAs. Ms. Boyd reports directly to me.
24. With regard to identifying a placement, DHS will first ask the family to identify kin, i.e. family members or other people with close relationships with the family who can care for the child. If kin are identified, DHS performs preliminary child abuse and criminal clearances, DHS history clearance, home assessment, and if appropriate will place the child in the home of kin, and identify a foster care agency to certify the kinship home as a foster care home.

25. When kin cannot be identified, the worker submits the referral to the Central Referral Unit (CRU), which is managed by DHS. CRU consults with a nonprofit entity called Community Behavioral Health (CBH), and identifies the correct level of placement and seeks to identify an appropriate placement provider. There are different types of placements, depending on the needs of the child and the level of care needed. Placement providers include but are not limited to: family foster care homes, congregate care facilities (i.e. group homes and institutions), and residential treatment facilities.
26. Once DHS determines the level of care a child needs, it sends a referral to all agencies providing that level of care. Agencies with a potential foster home will relay this information to the CRU, who will provide the information to the CUA. The CUA and the agency then negotiate a placement date. If there are multiple potential foster homes, the CRU chooses which one meets the child's best interest.

#### Transferring Foster Care Agencies

27. While many resource parents stay with a single agency, some families change agencies either due to dissatisfaction with the agency or because their foster child has a need that is higher than the original agency can serve, such as a child with a behavioral issue that requires additional expertise better provided by another agency.
28. In these instances, the assigned worker at the CUA would make a referral to DHS's Central Referral Unit, stating that the entire foster home wants to transfer to another provider agency. Often times, the foster parent selects a new foster care provider agency from the list of Philadelphia foster care agencies. When a transfer occurs, DHS arranges for the previous agency to send over the foster care and child's files to the new agency.



29. The new agency begins to serve the family as soon as it receives the referral. The new agency needs to complete its own certification process of the foster home within 60 days of receiving the referral, but the child remains in the same foster home throughout the process so that the transfer is seamless.
30. As noted above, children are placed in different levels of foster care based on the child's needs: general, specialized behavioral health, or medical. The majority of placements are for permanent foster care placement because of need to stabilize the child.
31. However, a child can be placed in respite foster care, which is a short-term, temporary placement, when, for example, the foster parent is travelling and cannot bring the foster child or when there is a medical issue with the foster parent, they need a break, or if there is a report of child abuse or neglect in the foster home.
32. Foster care agencies and CUAs generally do not make referrals to other agencies; the referrals must be made through DHS's CRU. The only referrals that agencies may make are to another home within their agency, such as for respite care. Under their contract with DHS, they are required to identify respite homes. If they are unable to do so, the referral for another home goes back to CRU.
33. There have been numerous times when DHS' CRU, at the direction of the DHS Commissioner, has stopped referring children to a particular agency, either on a temporary basis due to concerns about a particular agency, or on a permanent basis when the agency stops providing services of its own volition or when DHS terminates the contract.

34. For instance, in March 2016 when Lutheran Children and Family Service of Eastern Pennsylvania decided to stop providing foster care services, there were over 100 children involved who were transitioned to other foster care agencies over a three month period.
35. In that instance, DHS and Lutheran leadership met with all of the foster parents to whom Lutheran provided services. DHS leadership made themselves available and explained to the families that the goal was to keep children in the same home and not disrupt the children in their care. Some families had a particular agency in mind that they were willing to transfer to. For those who didn't have an agency in mind, DHS provided a list of family foster care agencies and then followed up to ensure each family selected one. Lutheran, the sending agency, prepared a foster parent file as well as a child file, and then provided them to the receiving agency.
36. This whole process was managed through CRU along with the CUAs, who, at that time, made some direct referrals to other agencies. No significant issues arose during this process as families were allowed to select the agency that they wanted to transition to. In many instances, DHS was able to look to the date the child was scheduled to be reunified with their family or adopted (called the permanency date) and if possible, expedite that process so that the child would not need to be placed with a second agency at all.

#### Referral Suspension Waivers

37. When referrals to agencies have been temporarily suspended, CUAs and agencies, including the senior leadership of Catholic Social Services (CSS) and Catholic CUA, have reached out to senior DHS leadership to request waivers.
38. Since DHS suspended referrals to CSS, there have been four requests for waivers, including Doe Foster Child #1, discussed below. We have approved a waiver in each

instance based on communications from James Amato, the Secretary of CSS, and others at CSS. Except in these four instances, I have not been contacted by James Amato, James Black, or anyone else from CSS regarding waiver requests for children who have been referred to non-CSS placements when a CSS family was in the best interest of the child. However, even when DHS leadership grants a waiver, a family court order is necessary to effectuate the placement unless it is an emergency.

Foster Child #1 and His History with DHS

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63. Although referrals had been halted to CSS due to its stated refusal to certify prospective LGBTQ foster families, as noted by the above texts, its leadership was well aware that I could make exceptions to this, and they had contacted me on approximately three other occasions to do so. Each time, I granted the exception.

64. Where a court ordered the move, that was due to the fact that the case was already being heard on that date.

65. I have reviewed James Amato's statement that there are "multiple additional children who have been referred elsewhere when CSS families should have been the preferred placement for those children as a result of the City's freeze on referrals to CSS." Pltfs. Ex. 1 ¶16. I am not aware of any additional cases where placement with CSS would have been in the best interests of a child but where the child was not moved to one of their homes.
66. As DHS's Deputy Commissioner of Child Welfare Operations, I can unequivocally state that DHS is committed to finding the best placement for children that can meet all of their needs, even if that placement is with CSS.

I have read the foregoing and declare, under penalty of perjury, that the facts recited are true and corrected, based upon my own knowledge and/or belief.

DATE: June 12, 2018



Kimberly Ali

# **EXHIBIT 4**

Contract Number 16-20030-04  
Original Contract Number 16-20030  
290 – Placement Services

City of Philadelphia  
Department of Human Services

## **CONFORMED**

# **STANDARD AMENDMENT AGREEMENT**

THIS STANDARD AMENDMENT AGREEMENT (“Amendment Agreement”) is made as of September 20, 2017 and effective July 1, 2017 (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 **16-20030**, dated **November 30, 2015**, 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 agreed to render various Services to the City in accordance therewith; and

The City and Provider entered into an amendment to the Base Contract, Contract Number **16-20030-01**, for the period **July 1, 2015** to **June 30, 2016**; and

The City and Provider entered into an amendment to the Base Contract, Contract Number **16-20030-02**, for the period **July 1, 2015** to **June 30, 2016**; and

The City and Provider entered into an amendment to the Base Contract, Contract Number **16-20030-03**, for the period **July 1, 2016** to **June 30, 2017**; and



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 **Nineteen Million, Four Hundred Thirty Thousand, Nine Hundred Ninety-One Dollars and Twenty-Three Cents (\$19,430,991.23)**, 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

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, 2017** and expiring **JUNE 30, 2018**.

##### **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 **Nineteen Million, Four Hundred Thirty Thousand, Nine**

**Hundred Ninety-One Dollars and Twenty-Three Cents (\$19,430,991.23).** 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 **Forty-Three Million, One Hundred Seventy-Eight Thousand, Seven Dollars and Twenty-Three Cents (\$43,178,007.23).**

**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
- (b) S.A.A.-2: Scope of Services

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

- (c) S.A.A.- 3 :Community Umbrella Agency Practice Guidelines
- (d) S.A.A.- 4 :Day Treatment Standards
- (e) S.A.A.- 5 :Foster Family Care Standards
- (f) S.A.A.- 6 :Group Home Standards
- (g) S.A.A.- 7 :Institutional Care Standards
- (h) S.A.A.- 8 :Re-Integration Standards
- (i) S.A.A.- 9 :Specialized Behavioral Health Standards
- (j) S.A.A.- 10 :Maternity Mother/Baby Standards
- (k) S.A.A.- 11 :Medical Standards
- (l) S.A.A.- 12 :Supervised Independent Living Standards
- (m) S.A.A.- 13 :Streamlined Standards
- (n) S.A.A.- 14 :CARES Limited License Agreement
- (o) S.A.A.- 15 :Balanced and Restorative Justice Standards



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

**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. **The revised General Provisions are attached to this document and are explicitly accepted by the Provider.**

**1.8 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 ([http://dhs.phila.gov/extranet/extrahome\\_pub.nsf/Content/ServiceStandards](http://dhs.phila.gov/extranet/extrahome_pub.nsf/Content/ServiceStandards)) 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.

(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  
SOZI PEDRO TULANTE, CITY SOLICITOR Through: **THE CITY OF PHILADELPHIA**  
**The Department of Human Services**

Per: DocuSigned by:  
Crystal T. Espanol  
7777B8C1F7E44C9...

Name: Crystal T. Espanol

Title: Assistant City Solicitor

By: DocuSigned by:  
Cynthia Figueroa  
A9C82E46A19349B...

Name: Cynthia Figueroa

Title: Commissioner

**CATHOLIC SOCIAL SERVICES**

By: DocuSigned by:  
James Amato  
6C6D462686844FD...

Name: James Amato

Title: Vice President

By: DocuSigned by:  
Franz Fruehwald  
D426312A44334D4...

Name: Franz Fruehwald

Chief Financial Officer

Title: Assistant Treasurer



## City of Philadelphia Contract Routing Slip

### External Negotiation/Encumbrance & Budget Verification (Conformance Manager)

1. Review contract as signed by vendor and consult with supervisor.

☒ Click the check box to attach additional documentation, if required.

2. Confirm Encumbrance; supervisor routes in ACIS to Budget Verification.

3. Confirm Budget Verification completed in ACIS.

☒ Send to Law.



### Approve as to Form (Attorney)

☐ Click the check box to attach additional documentation, if required.

☒ Route in ACIS to Finance

### Finance Certification

☒ Attach the Endorsement Sheet then route in ACIS to Finance Review.



### Finance Review

☒ Review then route in ACIS to Department Signs Contract.

### Departmental Review (Conformance Manager)

☒ Route in ACIS to Conformance.

### Conformance Review (Conformance Clerk)

☒ Conform Contract.



**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

Services	Rate	Service Code	Contract Units	Total
<b><u>DEPENDENT SERVICES</u></b>				
<b><u>Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade - CUA/Placement</u></b>				
GH-Intensive (Non-RTF)	\$212.16	K1LG	AS NEEDED	\$0.00
GH-Intensive (Non-RTF) (Child Specific)	\$256.55	K1LG	AS NEEDED	\$0.00
GH-RTF (C/P)	\$3.00	K13M	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
<b>Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade - CUA/Placement TOTAL: \$0.00</b>				
<b><u>CUA - 1/1/18 to 6/30/18</u></b>				
FFC-College Rate	\$32.13	J1GW	AS NEEDED	\$0.00
FFC-Emergency Shelter	\$45.06	E1GG	AS NEEDED	\$0.00
FFC-Emergency Shelter 13+	\$55.06	E1GG	AS NEEDED	\$0.00
FFC-General	\$45.06	J1GG	AS NEEDED	\$0.00
FFC-General 13+	\$55.06	J1GG	AS NEEDED	\$0.00
FFC-M/B-Baby	\$0.00	J1WC	AS NEEDED	\$0.00
FFC-M/B-Mother	\$57.06	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (2B)	\$65.56	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (2B) 13+	\$75.56	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B)	\$74.06	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B) 13+	\$84.06	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother 13+	\$67.06	J1WP	AS NEEDED	\$0.00
FFC-Maternity	\$45.06	J1JG	AS NEEDED	\$0.00
FFC-Maternity 13+	\$55.06	J1JG	AS NEEDED	\$0.00
FFC-Medical	\$45.06	J1MR	AS NEEDED	\$0.00
FFC-Medical 13+	\$55.06	J1MR	AS NEEDED	\$0.00
FFC-Respite	\$0.00	J14G	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
KIN-College Rate	\$32.13	Z1GW	AS NEEDED	\$0.00
KIN-Emergency	\$45.06	Z1DG	AS NEEDED	\$0.00
KIN-Emergency 13+	\$55.06	Z1DG	AS NEEDED	\$0.00
KIN-Emergency-M/B-Baby	\$0.00	Z1DC	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother	\$57.06	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (2B)	\$65.56	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (2B) 13+	\$75.56	Z1DP	AS NEEDED	\$0.00

**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

<b>Services</b>	<b>Rate</b>	<b>Service Code</b>	<b>Contract Units</b>	<b>Total</b>
KIN-Emergency-M/B-Mother (3B)	\$74.06	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (3B) 13+	\$84.06	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother 13+	\$67.06	Z1DP	AS NEEDED	\$0.00
KIN-General	\$45.06	Z1GG	AS NEEDED	\$0.00
KIN-General 13+	\$55.06	Z1GG	AS NEEDED	\$0.00
KIN-M/B-Baby	\$0.00	Z1WC	AS NEEDED	\$0.00
KIN-M/B-Mother	\$57.06	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B)	\$65.56	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B) 13+	\$75.56	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B)	\$74.06	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B) 13+	\$84.06	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother 13+	\$67.06	Z1WP	AS NEEDED	\$0.00
KIN-Maternity	\$45.06	Z1JG	AS NEEDED	\$0.00
KIN-Maternity 13+	\$55.06	Z1JG	AS NEEDED	\$0.00
KIN-Medical	\$45.06	Z1MR	AS NEEDED	\$0.00
KIN-Medical 13+	\$55.06	Z1MR	AS NEEDED	\$0.00

CUA - 1/1/18 to 6/30/18 TOTAL: \$0.00

**CUA - 7/1/17 to 12/31/17**

FFC-College Rate	\$28.50	J1GW	AS NEEDED	\$0.00
FFC-Emergency Shelter	\$41.43	E1GG	AS NEEDED	\$0.00
FFC-Emergency Shelter 13+	\$51.43	E1GG	AS NEEDED	\$0.00
FFC-General	\$41.43	J1GG	AS NEEDED	\$0.00
FFC-General 13+	\$51.43	J1GG	AS NEEDED	\$0.00
FFC-M/B-Baby	\$0.00	J1WC	AS NEEDED	\$0.00
FFC-M/B-Mother	\$53.43	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (2B)	\$61.93	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (2B) 13+	\$71.93	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B)	\$70.43	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B) 13+	\$80.43	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother 13+	\$63.43	J1WP	AS NEEDED	\$0.00
FFC-Maternity	\$41.43	J1JG	AS NEEDED	\$0.00
FFC-Maternity 13+	\$51.43	J1JG	AS NEEDED	\$0.00
FFC-Medical	\$41.43	J1MR	AS NEEDED	\$0.00
FFC-Medical 13+	\$51.43	J1MR	AS NEEDED	\$0.00
FFC-Respite	\$0.00	J14G	AS NEEDED	\$0.00



**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

Services	Rate	Service Code	Contract Units	Total
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
KIN-College Rate	\$28.50	Z1GW	AS NEEDED	\$0.00
KIN-Emergency	\$41.43	Z1DG	AS NEEDED	\$0.00
KIN-Emergency 13+	\$51.43	Z1DG	AS NEEDED	\$0.00
KIN-Emergency-M/B-Baby	\$0.00	Z1DC	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother	\$53.43	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (2B)	\$61.93	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (2B) 13+	\$71.93	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (3B)	\$70.43	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother (3B) 13+	\$80.43	Z1DP	AS NEEDED	\$0.00
KIN-Emergency-M/B-Mother 13+	\$63.43	Z1DP	AS NEEDED	\$0.00
KIN-General	\$41.43	Z1GG	AS NEEDED	\$0.00
KIN-General 13+	\$51.43	Z1GG	AS NEEDED	\$0.00
KIN-M/B-Baby	\$0.00	Z1WC	AS NEEDED	\$0.00
KIN-M/B-Mother	\$53.43	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B)	\$61.93	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B) 13+	\$71.93	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B)	\$70.43	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B) 13+	\$80.43	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother 13+	\$63.43	Z1WP	AS NEEDED	\$0.00
KIN-Maternity	\$41.43	Z1JG	AS NEEDED	\$0.00
KIN-Maternity 13+	\$51.43	Z1JG	AS NEEDED	\$0.00
KIN-Medical	\$41.43	Z1MR	AS NEEDED	\$0.00
KIN-Medical 13+	\$51.43	Z1MR	AS NEEDED	\$0.00

CUA - 7/1/17 to 12/31/17 TOTAL: \$0.00

**Placement - 1/1/18 to 6/30/18**

FFC-College Rate	\$32.13	J1GW	AS NEEDED	\$0.00
FFC-Emergency Shelter	\$58.12	E11G	AS NEEDED	\$0.00
FFC-Emergency Shelter 13+	\$68.12	E11G	AS NEEDED	\$0.00
FFC-Level II	\$58.12	J12G	AS NEEDED	\$0.00
FFC-Level II 13+	\$68.12	J12G	AS NEEDED	\$0.00
FFC-M/B-Baby	\$0.00	J1WC	AS NEEDED	\$0.00
FFC-M/B-Mother	\$71.64	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (2B)	\$98.64	J1WP	AS NEEDED	\$0.00

**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

Services	Rate	Service Code	Contract Units	Total
FFC-M/B-Mother (2B) 13+	\$108.64	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B)	\$125.64	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B) 13+	\$135.64	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother 13+	\$81.64	J1WP	AS NEEDED	\$0.00
FFC-Maternity	\$46.12	J1JG	AS NEEDED	\$0.00
FFC-Maternity 13+	\$56.12	J1JG	AS NEEDED	\$0.00
FFC-Medical	\$46.12	J1MR	AS NEEDED	\$0.00
FFC-Medical 13+	\$56.12	J1MR	AS NEEDED	\$0.00
FFC-Respite	\$0.00	J14G	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
KIN-College Rate	\$32.13	Z1GW	AS NEEDED	\$0.00
KIN-Level II	\$58.12	Z12G	AS NEEDED	\$0.00
KIN-Level II 13+	\$68.12	Z12G	AS NEEDED	\$0.00
KIN-M/B-Baby	\$0.00	Z1WC	AS NEEDED	\$0.00
KIN-M/B-Mother	\$71.64	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B)	\$98.64	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B) 13+	\$108.64	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B)	\$125.64	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B) 13+	\$135.64	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother 13+	\$81.64	Z1WP	AS NEEDED	\$0.00
KIN-Maternity	\$46.12	Z1JG	AS NEEDED	\$0.00
KIN-Maternity 13+	\$56.12	Z1JG	AS NEEDED	\$0.00
KIN-Medical	\$46.12	Z1MR	AS NEEDED	\$0.00
KIN-Medical 13+	\$56.12	Z1MR	AS NEEDED	\$0.00
SBH-Transition FFC	Up to \$87.77	J1UG	AS NEEDED	\$0.00
SBH-Transition FFC 13+	Up to \$97.77	J1UG	AS NEEDED	\$0.00
SBH-Transition KIN	Up to \$87.77	Z1UG	AS NEEDED	\$0.00
SBH-Transition KIN 13+	Up to \$97.77	Z1UG	AS NEEDED	\$0.00
<b>Placement - 1/1/18 to 6/30/18 TOTAL:</b>				<b>\$0.00</b>

**Placement - 7/1/17 to 12/31/17**

FFC-College Rate	\$28.50	J1GW	AS NEEDED	\$0.00
FFC-Emergency Shelter	\$54.59	E11G	AS NEEDED	\$0.00
FFC-Emergency Shelter 13+	\$64.49	E11G	AS NEEDED	\$0.00
FFC-Level II	\$54.49	J12G	AS NEEDED	\$0.00
FFC-Level II 13+	\$64.49	J12G	AS NEEDED	\$0.00
FFC-M/B-Baby	\$0.00	J1WC	AS NEEDED	\$0.00
FFC-M/B-Mother	\$68.01	J1WP	AS NEEDED	\$0.00



**Exhibit SAA - 1**  
**Fiscal Year 2018**

**6606 - Catholic Social Services**

Services	Rate	Service Code	Contract Units	Total
FFC-M/B-Mother (2B)	\$95.01	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (2B) 13+	\$105.01	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B)	\$122.01	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother (3B) 13+	\$132.01	J1WP	AS NEEDED	\$0.00
FFC-M/B-Mother 13+	\$78.01	J1WP	AS NEEDED	\$0.00
FFC-Maternity	\$42.49	J1JG	AS NEEDED	\$0.00
FFC-Maternity 13+	\$52.49	J1JG	AS NEEDED	\$0.00
FFC-Medical	\$42.49	J1MR	AS NEEDED	\$0.00
FFC-Medical 13+	\$52.49	J1MR	AS NEEDED	\$0.00
FFC-Respite	\$0.00	J14G	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
KIN-College Rate	\$28.50	Z1GW	AS NEEDED	\$0.00
KIN-Level II	\$54.49	Z12G	AS NEEDED	\$0.00
KIN-Level II 13+	\$64.49	Z12G	AS NEEDED	\$0.00
KIN-M/B-Baby	\$0.00	Z1WC	AS NEEDED	\$0.00
KIN-M/B-Mother	\$68.01	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B)	\$95.01	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (2B) 13+	\$105.01	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B)	\$122.01	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother (3B) 13+	\$132.01	Z1WP	AS NEEDED	\$0.00
KIN-M/B-Mother 13+	\$78.01	Z1WP	AS NEEDED	\$0.00
KIN-Maternity	\$42.49	Z1JG	AS NEEDED	\$0.00
KIN-Maternity 13+	\$52.49	Z1JG	AS NEEDED	\$0.00
KIN-Medical	\$42.49	Z1MR	AS NEEDED	\$0.00
KIN-Medical 13+	\$52.49	Z1MR	AS NEEDED	\$0.00
SBH-Transition FFC	Up to \$84.14	J1UG	AS NEEDED	\$0.00
SBH-Transition FFC 13+	Up to \$94.14	J1UG	AS NEEDED	\$0.00
SBH-Transition KIN	Up to \$84.14	Z1UG	AS NEEDED	\$0.00
SBH-Transition KIN 13+	Up to \$94.14	Z1UG	AS NEEDED	\$0.00

**Placement - 7/1/17 to 12/31/17 TOTAL: \$0.00**

**St Francis/St Joseph for Boys – CUA/Placement**

GH-Intensive (Non-RTF)	\$212.16	K1LG	AS NEEDED	\$0.00
GH-Intensive (Non-RTF)	\$256.55	K1LG	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
SIL (Requires Authorization)	\$114.52	M1GG	AS NEEDED	\$0.00
SIL-College Rate	\$24.75	M1GW	AS NEEDED	\$0.00

**St Francis/St Joseph for Boys - CUA/Placement TOTAL: \$0.00**



**Exhibit SAA - 1  
Fiscal Year 2018**

**6606 - Catholic Social Services**

Services	Rate	Service Code	Contract Units	Total
<b><u>St Gabriel's (Requires Authorization) - CUA/Placement</u></b>				
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00
INST-Intensive (Non-RTF)	\$197.35	L1LG	AS NEEDED	\$0.00
INST-Intensive (Non-RTF)	\$239.94	L1LG	AS NEEDED	\$0.00
INST-RTF D&A (R/B,C/P)	\$84.61	L1AR	AS NEEDED	\$0.00
INST-RTF Mitchell (R/B,C/P)	\$84.61	L13R	AS NEEDED	\$0.00
INST-RTF Module I (R/B,C/P)	\$84.61	L13R	AS NEEDED	\$0.00

St Gabriel's (Requires Authorization) - CUA/Placement TOTAL: \$0.00

**St Vincent's: Guardian Angel/St.Vincent's Maternity Home - CUA/Placement**

GH-Intensive (Non-RTF)	\$212.16	K1LG	AS NEEDED	\$0.00
GH-M/B-Baby	\$0.00	K1WC	AS NEEDED	\$0.00
GH-M/B-Mother	\$229.16	K1WP	AS NEEDED	\$0.00
GH-M/B-Mother (2B)	\$246.16	K1WP	AS NEEDED	\$0.00
GH-M/B-Mother (3B)	\$263.16	K1WP	AS NEEDED	\$0.00
GH-Maternity	\$212.16	K1JG	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00

St Vincent's: Guardian Angel/St.Vincent's Maternity Home - CUA/Placement TOTAL: \$0.00

**St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol - CUA/Placement**

GH-Intensive (Non-RTF)	\$212.16	K1LG	AS NEEDED	\$0.00
GH-Shelter (Requires Authorization)	\$180.44	B12G	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X1XX	AS NEEDED	\$0.00

St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol - CUA/Placement TOTAL: \$0.00

**DEPENDENT TOTAL: \$9,021,176.23**

**DELINQUENT SERVICES**

**Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade**

GH-RTF (C/P)	\$3.00	K23M	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X2XX	AS NEEDED	\$0.00

Bouvier, McCarthy, Fairless, Morrell, Drexel and McGlade TOTAL: \$0.00

# **Exhibit SAA - 1**

## **Fiscal Year 2018**

### **6606 - Catholic Social Services**

<b>Services</b>	<b>Rate</b>	<b>Service Code</b>	<b>Contract Units</b>	<b>Total</b>
<b><u>Del Voc</u></b>				
Day Treatment (5 Day)	\$107.46	G2GF	AS NEEDED	\$0.00
				<b>Del Voc TOTAL: \$0.00</b>
<b><u>St Francis/St. Joseph for Boys</u></b>				
Initial Clothing Allowance	Up to \$250/child	X2XX	AS NEEDED	\$0.00
SIL	\$114.52	M2GG	AS NEEDED	\$0.00
				<b>St Francis/St. Joseph for Boys TOTAL: \$0.00</b>
<b><u>St Gabriel's</u></b>				
Counseling	\$25/.5 Hr	X2XX	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X2XX	AS NEEDED	\$0.00
INST-Intensive (Non-RTF)	\$197.35	L2LG	AS NEEDED	\$0.00
INST-Intensive (Non-RTF) Mitchell	\$239.94	L2LG	AS NEEDED	\$0.00
INST-RTF D&A (R/B,C/P)	\$84.61	L2AR	AS NEEDED	\$0.00
INST-RTF Mitchell (R/B,C/P)	\$84.61	L23R	AS NEEDED	\$0.00
INST-RTF Module I (R/B,C/P)	\$84.61	L23R	AS NEEDED	\$0.00
				<b>St Gabriel's TOTAL: \$0.00</b>
<b><u>St Gabriel's - Reintegration Services</u></b>				
Aftercare I	\$25.58	C2NG	AS NEEDED	\$0.00
				<b>St Gabriel's - Reintegration Services TOTAL: \$0.00</b>
<b><u>St Vincent's: Guardian Angel/St.Vincent's Maternity Home</u></b>				
GH-Intensive (Non-RTF)	\$212.16	K2LG	AS NEEDED	\$0.00
GH-M/B-Baby	\$0.00	K2WC	AS NEEDED	\$0.00
GH-M/B-Mother	\$229.16	K2WP	AS NEEDED	\$0.00
GH-M/B-Mother (2B)	\$246.16	K2WP	AS NEEDED	\$0.00
GH-M/B-Mother (3B)	\$263.16	K2WP	AS NEEDED	\$0.00
GH-Maternity	\$212.16	K2JG	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X2XX	AS NEEDED	\$0.00
				<b>St Vincent's: Guardian Angel/St.Vincent's Maternity Home TOTAL: \$0.00</b>
<b><u>St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol</u></b>				
GH-Intensive (Non-RTF)	\$212.16	K2LG	AS NEEDED	\$0.00
Initial Clothing Allowance	Up to \$250/child	X2XX	AS NEEDED	\$0.00
				<b>St. Vincent's Group Homes: Guardian Angel/St. Joachim/St. Joseph for Girls, M. Carol TOTAL: \$0.00</b>

**DELINQUENT TOTAL: \$10,409,815.00**

**CONTRACT MAXIMUM LIMIT: \$19,430,991.23**



## CITY OF PHILADELPHIA DEPARTMENT OF HUMAN SERVICES

"We believe that a community-neighborhood approach with clearly defined roles between county and provider staff will positively impact safety, permanency, and well-being."

What are we working together to achieve?

- o More children and youth maintained safely in their own homes and communities.
- o More children and youth achieving timely reunification or other permanence.
- o A reduction in the use of congregate care.
- o Improved child, youth, and family functioning.

# S.A.A.-2

## Scope of Service:

**For General, Kinship, and Teen Parent/Baby  
Resource Home Care Providers**

**July 2017**



**Statement of Purpose:**

This Scope of Service is made and entered into between Catholic Social Services (the Provider) and the Philadelphia Department of Human Services (DHS), and sets forth the services for general, kinship, and teen parent/baby resource home care.

Throughout this document, the term "Resource Parent" refers to both kinship parents and non-relative foster parents.

When a child or youth is placed through a Community Umbrella Agency, CUA, the Provider offers ongoing support and coaching to Resource Parents through Provider Staff<sup>1</sup>. The Provider is required to work collaboratively with the CUA. Contracts between DHS and all CUAs set forth services for resource home care with case management responsibilities remaining with the CUA. When the child or youth is receiving case management services directly from DHS, the Provider must also deliver case management services to the Resource Parent, parent or other reunification resource, and the child or youth and collaborate with the assigned DHS Social Worker (DHS cases).

**Department Overview:**

The mission of the Department of Human Services (DHS) is to provide and promote safety, permanency, and well being for children and youth at risk of abuse, neglect and delinquency. DHS is organized in the following Divisions: Administration and Management, Child Welfare Operations Division, Community Based Prevention Services, Finance, Juvenile Justice Services, and Performance Management and Technology. DHS continues to implement the Improving Outcomes for Children (IOC) model. The vision for IOC is to:

- o Maintain children and youth safely in their own homes and community.
- o Timely reunification or other permanency.
- o Reduce use of congregate care.
- o Improve children, youth, and family functioning.

As it relates to Resource Home care, the IOC framework provides a single Case Manager to work with assigned families. The case management service is provided by Community Umbrella Agencies who are embedded in the communities they serve.

For children and youth for whom the Provider continues to provide case management services, the case management staff interact on a regular basis with schools, medical, dental, and behavioral health providers; various community resources; and all service providers indicated on an Individual Service Plan (ISP) or Family Service Plan (FSP). For youth funded and placed by a CUA, the Provider interacts with external resources as needed, collaborates and communicates with the CUA, and continues to support the resource caregivers.

**Provider Organizational Overview:**

**Mission Statement:** Catholic Social Services of the Archdiocese of Philadelphia continues the work of Jesus by affirming, assisting and advocating for individuals, families, and communities.

**Vision and Values Statement:** Catholic Social Services Vision:

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<sup>1</sup> Provider Staff is responsible for recruiting and certifying foster and kinship homes.

Catholic Social Services exists to transform lives and bring about a just and compassionate society where every individual is valued, families are healthy and strong, and communities are united in their commitment to the good of all. We envision a world touched by God's mercy: where poverty and need are alleviated, and all people share justly in the blessings of creation.

#### Catholic Social Services Values:

Compassion: genuine care and heartfelt concern for those we serve  
 Dignity: respect for each person created in God's image, regardless of color, capacity, or age  
 Charity: generosity toward all people in response to God's goodness to us  
 Justice: defense of and advocacy for the rights of the poor, vulnerable, and disadvantaged  
 Excellence: professional competence and responsible stewardship of time and resources

#### Problems and Issues to be Addressed:

Ideally, children and youth should be with their own families. When this is not possible, resource homes ensure that children and youth can be maintained safely in their own community. All resource home procedures and resources must be directed to supporting reunification or other permanency options, and the overall positive functioning of children, youth, and their families. Resource Parents must function as mentors to legal families to support these goals. An increased focus on recruiting resource caregivers who can manage adolescents is required in order to reduce the use of congregate care. There must also be a continued focus on the need for resource homes for children who are 0-6 years of age. The specific issue to be addressed by the Provider is to recruit, screen, train, and provide certified resource care homes for dependent children or youth, some of whom will need support to address behavioral health, medical, and educational needs. Homes for teens including pregnant teens and teen parents (teen parent/baby placements) are a priority in order to reduce the use of congregate care.

#### Program Objectives:

The program objectives are to provide trauma informed and culturally competent placement resources via trained resource caregivers. Resource caregivers also serve as a mentor and support to the legal family. Anticipated outcomes for resource home care services are:

- o To provide children with protection, care, and a nurturing environment with certified Resource Parents which can include extended family members while a permanent plan can be established within a set time frame.
- o To focus on identifying strengths, developing protective capacities and building resiliency and adaptive coping skills.
- o To facilitate participation in service delivery and/or treatment provided by external resources so that healthy partnerships can be created and goals on the service plans can be archived.
- o To provide opportunities to strengthen and develop youth assets.
- o To promote social competency skills.
- o To ensure that youth is available for assigned court related appearances.
- o To collaborate with the CUA case manager, DHS and/or other team members in planning the transition into the next level of care which will ideally be family reunification.
- o To access medical, dental and behavioral health services as needed.
- o To provide support, including access to resources, to achieve academic and vocational goals.

#### Program Overview:

**Resource Home (Foster Care and Kinship Care):** The primary goal of Resource Home Care is to support the safety, stability, permanency, and well-being needs of the child or youth and legal family. Resource



Parents provide general care and supervision for children and youth placed in their home. For CUA cases, the Provider focus is on supporting the Resource Parent while case management is provided by the CUA. For cases in which DHS also provides case management, the Provider delivers case management services and ongoing support to the parents and reunification resource. Whether providing services for a DHS case or a CUA case, the safety, stability, permanency, and well-being needs of the child or youth and legal family support includes developing a mentoring relationship with the legal family specifically in ways that foster positive family relationships and reunification. Resource caregivers are screened, trained, and certified by the Provider. In kinship care, the caregiver may also be an extended family member, friend, previous Resource Parent, or other professional who in the past has established a relationship with the child.

**General level resource care, including kinship:** Children and youth identified for this service category mostly demonstrate a moderate degree of behavioral, social, emotional, intellectual, and educational needs or issues. Service needs are compounded by normal placement adjustment issues. Routine care and supervision of the children and youth is manageable with some ongoing training and support from the Provider. Siblings are placed together whenever possible.

In addition:

- Youth may require access to special education, or developmental or vocational services. This will be specified in either the FSP or the SCP depending on who is primarily responsible for case management functions (DHS or CUA).
- The child's or youth's biological family requires support and to maintain their emotional bond with their children and to address identified safety issues and permanency goals.
- Children and youth may require therapy or other therapeutic services provided by external resources as specified in either the FSP or the SCP, depending on who is primarily responsible for case management functions (either DHS or CUA).
- Children and youth require routine health care or may have minor health or medical needs for which follow up care is to be provided.
- The Provider agency staff or Resource Parents, or both participate in teaming meetings and development of SCP (CUA cases).

**Teen Parent/Baby Foster or Kinship Placement Services:** Teenage parents and their child who are identified for this service category demonstrate difficulty in behavioral, social, emotional, or intellectual development. The adolescent is not prepared to assume their current parental role. The child's legal family is typically not equipped to adequately address the adolescent needs.

This service includes:

- General care of healthy infants or toddlers requiring routine care. The adolescent is physically healthy and requires routine care.
- Neither the teen nor the child requires specially trained Resource Parents.
- Parents or reunification resource, if different, requires support and to maintain their emotional bond with the teen and the teen's child and to address identified safety issues and permanency goals.

## Services:

### Referrals:

The DHS Central Referral Unit and the DHS On-going Worker, the DHS Investigating Worker (if a newly accepted case), or CUA Case Manager (CUA CM) must share with the Provider pertinent information as required by the five county standards which include: medical consent form, Medical and Immunization Records, Universal referral, service plan, placement history, court disposition, Court Orders, educational records, birth certificate, and the name of the child's or youth's attorney.



**Case Management:**

Case management will be provided either by the Provider (for DHS placements) or one of the CUA's (for CUA placements). The CUA Case Manager will visit the resource home at least once per month. For DHS placements, the Provider Case Manager will visit the home as required pursuant to DHS performance standards.

For CUA placements, the Provider offers support to the resource caregivers via a Provider Staff as defined earlier in this document. They may visit the resource caregiver as often as needed but at a minimum, once per quarter. They provide other supportive services to resource caregivers and act as a possible liaison to CUAs as needed.

For DHS placements, there is a Provider Case Manager assigned to the case.

Examples of relevant topics to be discussed with the DHS Worker or CUA Case Manager include:

- o Child's or youth's adjustment to the home.
- o Behavior management strategies.
- o Child's or youth's educational, medical, and behavioral health progress.
- o Resource Parent's ability to meet needs and assistance needed.
- o Relationship with parents and reunification resource, and quality of visits (if applicable).

Examples of relevant topics to be discussed with Case Manager (CUA or DHS) include:

- o Placement stability.
- o Relationship issues with the other children in the resource home.
- o Child's educational, medical, and behavioral health needs and proposed interventions.
- o Behavior management strategies utilized by the Resource Parents.
- o Relationship between Resource Parent and parents and reunification resource, if different and issues related to the resource caregiver as a mentor.
- o Clarification of the role of the CUA Case Manager.
- o Youth's interaction in the community and use of community resources.
- o Progress or lack of progression toward attainment of service plan goals.
- o Permanency planning.
- o Results of Life Skills Assessment and related planning to help youth develop life skills.
- o Provision of routine medical and dental care.
- o Supplemental services or needs.

All resource caregivers and the Provider must ensure that:

- o Three nourishing meals and additional snacks daily are provided and any special dietary needs or religious food restrictions are accommodated. Food is never to be withheld as a means of discipline.
- o Provide children and youth with new, age appropriate, and seasonal clothing. All clothing should be purchased new with the child or youth, when appropriate, having choice in the selection. Consignment shops may be used as long as all household members utilize this option. Foster children and youth are to be treated no differently. All clothing purchased is the property of the child or youth. Purchase of necessary clothing is never to be withheld as a means of discipline by Resource Parents.

All resource homes must and the Provider must ensure that:

- o The home is free of infestation, structural damage that poses an immediate threat to safety, lead (unless being treated), non-functioning utilities, fire or other health or safety hazards.
- o There must be a working land line phone within the residence.
- o The home meets all of the requirements of an approved adoptive placement. At the same time, Resource Parents must be willing to work with and mentor the reunification resource to ensure



that children and youth can reunify in a timely way. If reunification is not feasible, Resource Parents must be willing to consider being a permanency resource for children and youth placed in their care.

More specifically resource homes must meet the following criteria:

- o All doors leading outside of the house are able to be locked or otherwise secured.
- o There are cribs for infants and beds for each child and youth.
- o There are working smoke detectors, fire extinguishers, and carbon monoxide detectors. Chemicals and drugs are stored properly away from children and youth.
- o Firearms are locked and ammunition is stored separately in a locked container.
- o Safe infant and toddler care, as applicable to the age of the children placed in the home including:
  - Safe bathing and the use of bath water thermometers.
  - Safe sleeping.
  - Car seats appropriate to the age and weight of the children if the resource family owns or will transport children in a vehicle.
  - Child proofing of the home and environment including stair gates, radiator covers, fireplace guards and other necessary safety devices including outlet covers.

The home must have and the Provider must ensure that there are the following resources:

- o Mobile Crisis number and contacting procedures.
- o Suicide Prevention Hotline number.
- o Poison Control number.
- o Smoke detectors and fire extinguishers.
- o Police Department number and contacting procedures.
- o Drug and Alcohol Intervention numbers and contacting procedures.
- o No smoking signs.

The Provider must complete an inspection of the above for all Resource Parents on a quarterly basis.

The Provider is responsible for offering training and related support to Resource Parents that includes the impact that trauma has on youth behaviors and functioning, ways to motivate positive behaviors of children and youth, and strategies on ways to manage child and youth behaviors and encourage positive behaviors in a manner that is not vindictive, abusive, or degrading. For children and youth placed by CUA's, this support is provided to resource caregivers by Provider Staff. The Provider recognizes that the interaction between a caring Resource Parent and the child or youth is an opportunity to help them recognize their inherent assets and strengths, and develop acceptable behaviors. Such support assists children and youth in developing skills that promote their successful integration into the community.

Provider and Resource Parents are prohibited by both PA Regulation and DHS policy from using corporal punishment, threats or derogatory remarks, the depriving of meals, and the depriving of visits with parents or others, verbal abuse or any punitive, unusual, or unnecessary consequences for behaviors.

In deciding on an effective means of intervening during conflict, Resource Parents assess and ensure the following:

- o The child's or youth's ability to problem solve and social or emotional maturity.
- o There is open communication with the child or youth to understand reactions and feelings.
- o Set clear limits and guidelines for positive behavior and ensure they have been communicated effectively.
- o That expectations for improved behaviors are defined or explained so that youth can develop new skills and receive incentives for pro social or positive behaviors.



If the Provider Staff (CUA cases) or Provider Case Manager (DHS cases) suspect that the disciplinary actions occurring in the foster home violate the Pennsylvania Child Protective Services Law, it is the mandated obligation of the Provider Staff to immediately report this incident to the Pennsylvania Child Abuse Hotline and to DHS. In some cases, the police and the District Attorney's Office may also be involved in investigating any alleged criminal actions. The State investigates these reports and determines if the incident is indicated or unfounded. State Foster Family Care Regulations mandate that the agency remove children and youth in situations where their safety is in question. Children and youth may require removal from the resource home while an investigation is taking place unless an acceptable plan of supervision can be put in place to ensure safety. This decision is made in conjunction with the Southeast Regional Office investigating the report, the CUA CM, if a CUA case and either the DHS Worker or the DHS Investigator assigned.

If the decision is made to allow the child or youth to remain in the home during or following an investigation, a written plan of supervision must be developed by the appropriate case management team. If the Resource Parent is placed on probation for this or any other reasons, no additional placements will be made in the Resource Parent's home during a probationary period or whenever the investigation is complete.

All placement moves must be legally approved by the Court or by agreement of all parties except in the case of emergencies. It is the case management's team responsibility to obtain Court authorization to move children or youth through the City of Philadelphia Law Department.

**Visitation:**

The frequency and duration of visits both with reunification resources, concurrent plan resources, and siblings must be as liberal as possible from the time of placement. Whenever possible, visitation should be weekly but parental and sibling visitation cannot be less than twice monthly unless otherwise prohibited or specified by Court. The visitation plan must be discussed and agreed upon. It must be accommodating to the schedules of the reunification resource, children, and youth and include weekends or evenings or both where needed.

For DHS placements, Provider Case Managers are responsible for visitation. For CUA placements, CUA's are responsible for visitation based on the SCP. Either Provider or CUA must ensure that children and youth have adequate resources and items provided by the Resource Parent to have successful visits. This may include a provision of transportation for the visitation, food, diapers, etc... to meet the child's needs.

Whenever children or youth are placed or re-placed, a visit must occur between the child or youth and the parent from whom they are removed as soon as possible and no later than two business days.

An introductory meeting between the Resource Parent or the Provider Staff and the parents must also occur within five business days of the placement or replacement. Resource Parents should communicate with the parents or other reunification resources regularly and at least monthly about the children or youth outside of regularly scheduled visits. Siblings are to be placed together whenever possible. When siblings are not able to be placed together, visits are to occur between the siblings bi-weekly, at a minimum, unless otherwise directed by Court Order.

Whenever possible visits must be:

- o In the home of the reunification resource unless there is a Court Order, clear documentation in the visitation plan, service plan or in a Structured Progress Note as to why this cannot occur. If other than the home of the reunification resource, visits must be in a family-like and family friendly visitation space that allows for normal parent-child interaction, ideally in the home of a relative or Resource Parent. If such home is not available, visits should occur at a community



location familiar to the child, youth, or parent (such as a recreation center, playground, or church). The option of last resort is a family-friendly area of the Provider's as the case manager or subcontractor for a CUA. In order to move from the best option in the hierarchy to a lower option, the higher option must be ruled out and the reasons for ruling it out must be clearly documented. When visits are not in the home, a progression plan for visits in the home must be considered at the service plan meetings and court hearings.

- Supervised only if necessary, based on clear threats to the safety of children and youth or Court Order. Persons supervising visits must ensure safety, remain in line of sight and earshot, and provide unobtrusive constructive feedback and coaching on parenting.
- Accommodating to the schedules of the reunification resource, children, and youth.

**Transportation:** Will be coordinated between all parties. Visits between parents and children and youth are critical to support and enhance the process of reaching the goals of reunification.

**Teaming:** For DHS cases, the Provider's Case Manager participates in DHS Family Service Plan (FSP) meetings and develops the Individual Service Plan (ISP). For CUA cases, Resource Parents or an agency representative, such as Provider Staff as defined earlier, or both will participate in teaming as needed. Information critical for decision making and planning will be shared with the CUA Case Manager prior to all teaming meetings.

**Court:**

For CUA, Provider Staff may be called upon to testify to safety or any other matters as providers currently are called upon. The Law Department will notify the CUA CM, and, if necessary, subpoena the provider. For DHS cases, the Provider Case Manager appears in court and provides safety testimony as well as family progress information to the Court.

**Placement Disruption:**

Providers and Resource Parents must give 30 days notice to DHS CRU regarding the need to remove a child or youth.

Whenever there appears or it is reported by either the child or youth or the Resource Parent that the placement is in danger of disruption or the Resource Parent gives 30 days notice, the Provider must notify CRU immediately. An email must be sent to DHS\_CRU@phila.gov with the subject line to read: "30 Day Notice."

If a CUA case, the CUA CM is to be notified and a Placement Stability Conference must be requested. The Provider and Resource Parent must be invited and must participate in this conference. The focus of the conference is to determine whether there are additional supports that could be put into place to avoid the disruption.

If it is a DHS case, the Provider and DHS Worker and Supervisors must conference the case together to determine whether there are additional supports that could be put into place to avoid the disruption.

**Reporting:**

**High Profile Cases:**

In an effort to keep abreast of high profile cases, Child Welfare Operations Leadership is requiring that all Directors of all agencies report to the appropriate Operations Director (DHS Front End, DHS Permanency and Well-being Services, or DHS CUA) via telephone and email any high profile case that come to their attention. These high profile cases must be conferenced with the assigned chain of command, including the CUA Director, and then the Director determines if a CWO Management team meeting is needed. This is a collaborative effort between CWO Management and Support Centers to extend support and guidance to DHS Social Work Services and CUA staff in their decision-making.



**Criteria:**

- o Death of a child or youth involved with DHS or in a DHS involved household.
- o Any missing child 12 years of age or under and active with DHS (committed to DHS or receiving in-home services).
- o Any child or youth sexually abused while in care.
- o Media report involving DHS cases or families.
- o Any child or youth committed to DHS and hospitalized subsequent to injury (whether accidentally or intentionally injured).
- o The arrest of a kin, Resource Parent, or any household member of a resource home, including any child or youth committed to the Department.
- o Notification from any placement agency that a child or youth has been moved due to a report of abuse or neglect and the kin, Resource Parent, or household member is the alleged perpetrator.
- o Any other type of incident as may be subsequently designated by the Department as High Profile.

**Notification Procedure:**

- o The Provider must immediately notify the CUA Chain of Command until an in-person contact is made or through the CUA after hours mechanism.
- o The CUA staff who is informed must notify the chain of command (up to Director level).
- o Directors must immediately notify via telephone the Operations Director who has responsibility for their service and subsequently send an email notification within 24 hours to
  - Operations Director for Front End Services;
  - Operations Director for Permanency and Well-being Services;
  - Operations Director for Improving Outcomes for Children; and
  - Chief of Staff for the Deputy Commissioner.
- o The CWO Deputy Commissioner will be contacted as needed. The CWO Deputy Commissioner notifies the Commissioner and other Executive Staff members as appropriate and always if the media is involved.
  - After hours notifications must be given to the Hotline Staff and Hotline Staff must immediately alert the Operations Director.

The above does not relieve any agency required to report incidents through HCSIS.

**Information Sharing:**

Routine information that emerges during or between visits such as a change in school functioning, relevant communication with a family member, emerging wellness concerns, or new legal family information that potentially changes goals or objectives identified in the FSP or SCP, whichever is applicable, must be reported to the DHS Worker or Supervisor (DHS case), or the CUA Case Manager or Supervisor (CUA case), during the same business week that the information becomes known.

**Media Inquiries:**

In the event that the Provider receives a media inquiry, the Provider must notify the CUA Director and DHS Communications Director. Staff are not permitted to comment or even acknowledge a case, but should direct such inquiries to the Department's Communications Director.

**Megan's Law Requirements:**

When a sexually violent predator from the National Megan's Law database lives or moves within 1000 feet of any of a Provider's resource home, the Provider receives an electronic notification from the Department. Upon receipt of this notification, the Provider must do the following:

- Make a telephone call (within 24 hours of the electronic notification) to the resource home notifying the Resource Parent that a sexually violent predator lives within 1000 feet of the home.
- Visit the resource home within 48 hours and:
  - Review the Megan's Law Safety Plan with the Resource Parent and any youth 14 and older.
  - Have all parties sign the Megan's Law Notification and Safety Plan.
  - Provide a picture of the predator.
- Mail a copy of the signed Megan's Law Notification/Safety Plan or Receipt of Megan's Law Notification and Safety Plan to the DHS Ombudsman in care of the DHS Commissioner's Office:  
1515 Arch Street, 8<sup>th</sup> Floor  
Philadelphia, PA 19102
- Email the signed Megan's Law Notification and Safety Plan to the CUA Director of Quality Assurance for any child or youth residing in the facility.

#### **Foster Parent Registry**

Providers promptly provide information to the PA Foster Parent Registry regarding Resource Parent Caregiver status and changes in status between annual certification and re-certification time frames.

Providers must ensure current and updated copies of each Resource Caregivers Certificate of Compliance are provided to the Department and the CUA. Providers must upload Resource Home certification information and documentation to the Provider Licensure module of DHSCConnect whenever Resource Caregivers are certified and whenever their certification status changes.

#### **Mentoring:**

The Resource Parent must play a role in facilitating reunification as described in the service plans. Primarily this will be based on the Resource Parents' capabilities to serve as a mentor to the legal family and assist legal family in strengthening parental capabilities, assisting with planned activities, modeling and fostering positive parent-child interaction.

*See also*, the DHS Performance Standards, DHS policy, and as appropriate, the IOC Practice and Fiscal Guidelines for relevant policy.

#### **Hours and location of work:**

The Provider must have 24 hours a day, 7 days a week accessibility. For CUA cases, resource homes are located ideally in the CUA region.

#### **Emergency contact procedures are as follows:**

Departmental supervisory staff will provide emergency coverage on a rotational basis to ensure access to agency assistance and services outside of regular business hours for referrals from the Philadelphia Department of Human Services and Community Umbrella Agencies for the placement of children in appropriate foster homes and to respond to emergencies involving the children and families served by the program. The on call supervisor can be reached at 215-808-8656.

#### **The administrative office for the Provider is located at:**

Catholic Human Services  
222 N. 17<sup>th</sup> Street  
3<sup>rd</sup> floor  
Philadelphia, PA 19103

Referrals are typically accepted during normal work hours although emergency placements are considered on a case by case basis.

**Staffing Structure:**

Attach Agency Organizational Chart and Program Organizational Chart.

**Technology requirements:**

Internet access to utilize DHSCconnect.

**Funding restrictions:**

(Insert N/A or describe restrictions)

**The program is overseen by:**

Robert Montoro, MSW, Administrator



Cover Page

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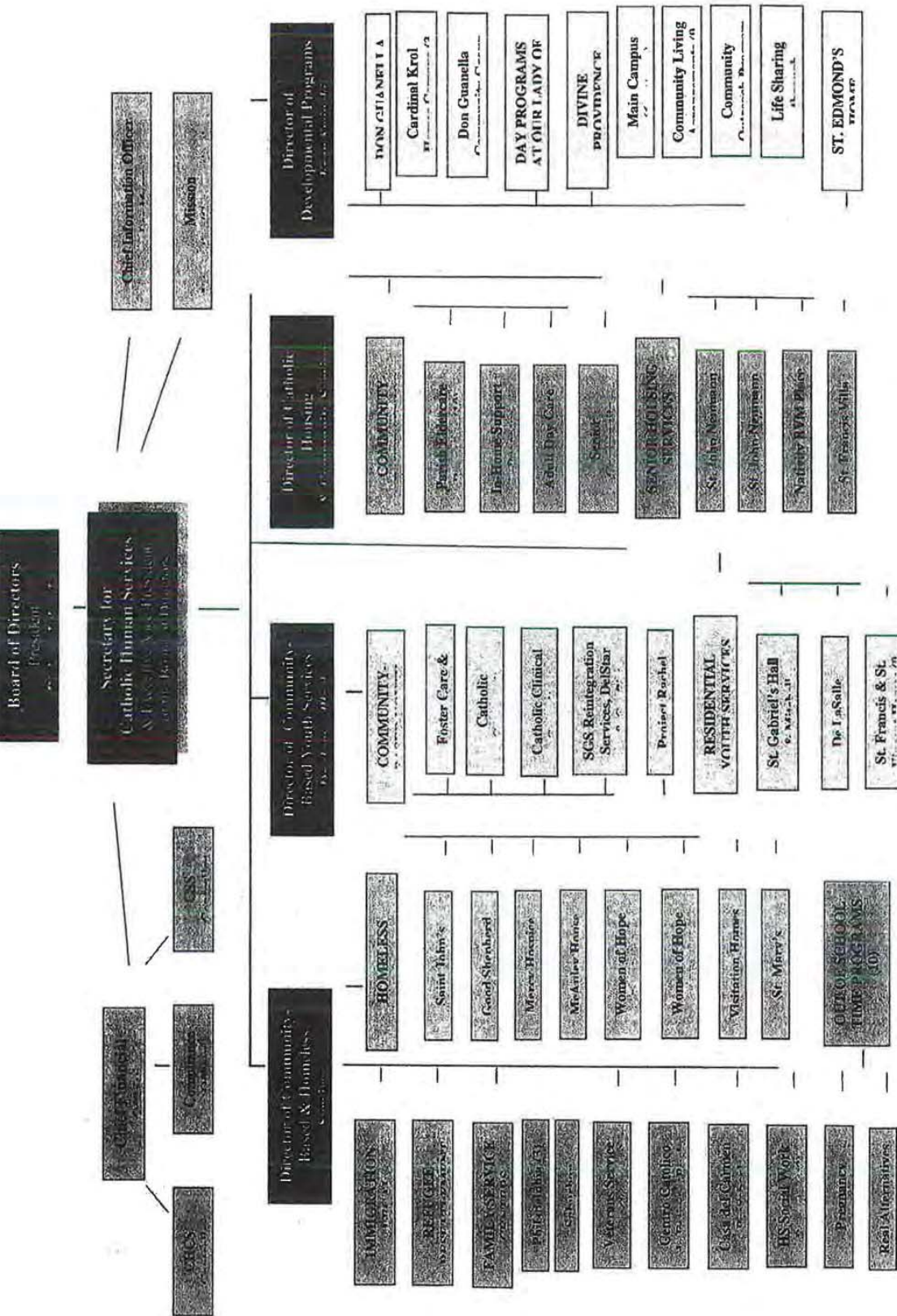
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Instructions:

# CATHOLIC SOCIAL SERVICES ARCHDIOCESE OF PHILADELPHIA Organizational Structure

July 2017







**THE CITY OF PHILADELPHIA**  
**PROFESSIONAL SERVICES CONTRACT**  
**GENERAL PROVISIONS**  
**FOR**  
**DEPARTMENT OF HUMAN SERVICES CONTRACTS**

Revision Date: June 2017

The City of Philadelphia  
Professional Services Contract  
Department of Human Services  
General Provisions

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The City of Philadelphia  
Professional Services Contract  
Department of Human Services  
General Provisions

## GENERAL PROVISIONS

### ARTICLE I: DEFINITIONS

- 1.1 **ADA.** “ADA” shall have the meaning set forth in Section 15.5 (Americans with Disabilities Act) below.
- 1.2 **Additional Services and Materials.** “Additional Services and Materials” shall have the meaning set forth in Section 3.3 (Additional Services and Materials; Change in Scope of Services) below.
- 1.3 **Additional Term, Additional Terms.** “Additional Term” and “Additional Terms” shall have the meanings set forth in Section 2.2 (Additional Terms) below.
- 1.4 **Agency.** “Agency” shall have the meaning set forth in Section 7.8 (Audits Pursuant to Section 6-400 of the Home Rule Charter) below.
- 1.5 **Aggregate Actual Cost.** “Aggregate Actual Cost” means the sum of all Total Actual Costs incurred by Provider in provision of the Services.
- 1.6 **Appropriated Fiscal Year.** “Appropriated Fiscal Year” shall have the meaning set forth in Section 6.4 (Crossing Fiscal Years) below.
- 1.7 **Amendment.** “Amendment” means (a) a written modification or change to any Contract Document signed by both Parties, and (b) a Modification Notice (see Section 6.9 Maximum Daily Rate, Days of Care or Units of Service (or combination thereof) below).
- 1.8 **Applicable Law.** “Applicable Law” means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, the Philadelphia Home Rule Charter, the Philadelphia Code, the Pennsylvania Code, and the specific laws set forth in Article XV (Additional Covenants of Provider Relating to Certain Applicable Laws) below, each as amended from time to time.
- 1.9 **Applicant.** “Applicant” has the meaning as set forth in Subsection 17-1401(1) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a] Person who has filed an application to be awarded a Non-Competitively Bid Contract.”
- 1.10 **CBES.** “CBES” means Community Based Emergency Shelter, an emergency placement facility for delinquent or alleged delinquent youth.



- 1.11 **Certification of Restrictions on Lobbying.** “Certification of Restrictions on Lobbying,” if required in the Provider Agreement, means a certificate in the form attached to the Provider Agreement.
- 1.12 **City.** The “City” means The City of Philadelphia, a corporation and body politic existing under the laws of the Commonwealth of Pennsylvania, and includes its various executive and administrative departments, agencies, boards and commissions, including the Department, and its legislature, City Council (defined below). The City is a City of the First Class under the laws of the Commonwealth of Pennsylvania.
- 1.13 **City Agency.** “City Agency” has the meaning as set forth in Subsection 17-1401(5) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ny office, department, board, commission or other agency of the City of Philadelphia.”
- 1.14 **City Council.** “City Council” means the Council of The City of Philadelphia, as described in Article II of the Philadelphia Home Rule Charter, as it may be amended from time to time. City Council is the legislature of the City.
- 1.15 **City-Related Agency.** “City-Related Agency” has the meaning set forth in Subsection 17-1401(9) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ll authorities and quasi-public corporations which either: receive appropriations from the City, have entered into continuing contractual or cooperative relationships with the City, or operate under legal authority granted to them by City ordinance.”
- 1.16 **Code.** The “Code” unless otherwise specified shall mean the Philadelphia Code, as it may be amended from time to time.
- 1.17 **Commissioner.** “Commissioner” means the Commissioner of the Department of Human Services of the City.
- 1.18 **Commonwealth.** “Commonwealth” means the Commonwealth of Pennsylvania.
- 1.19 **Community Behavioral Health.** “Community Behavioral Health” or “CBH” means Community Behavioral Health, a Pennsylvania nonprofit corporation incorporated for the purpose of helping to ensure that Philadelphians with mental health and substance abuse needs receive the most appropriate and effective treatment in the least restrictive and most cost effective setting.
- 1.20 **Consultant.** “Consultant” has the meaning as set forth in Subsection 17-1401(6) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ny Person used by Provider to assist in obtaining a Non-Competitively Bid Contract through direct or indirect communication by such Person with any City Agency or any City officer or employee, if the communication is undertaken by such Person in exchange for, or with the understanding of receiving, payment from Provider or any other Person; provided, however, that “Consultant” shall not include a full-time employee of Provider.”

- 1.21 **Contract.** The “Contract” means the agreement of the Parties evidenced by the Contract Documents. References to this “Contract” shall mean this Contract as the same may be in effect at the time such reference becomes operative.
- 1.22 **Contract Cost Principles.** The “Contract Cost Principles” means the “City of Philadelphia Contract Cost Principles and Guidelines,” as it may be amended from time to time, which specifies the Department’s guidelines for the qualitative and quantitative evaluation of contract services and materials, the determination of allowable costs, and the standards to determine the allowability of individual cost items. (Copies are available from the Department upon request.)
- 1.23 **Contract Documents.** The “Contract Documents” means these General Provisions, the Provider Agreement, the Limited License Agreement for the Cross Agency Response for Effective Services (CARES) (where applicable) and any and all other documents or exhibits incorporated by reference in either the General Provisions or the Provider Agreement, and any and all Amendments to any of these documents.
- 1.24 **Contributions.** “Contributions” shall have the meaning set forth in the Pennsylvania Election Code, 25 P.S. Section 3241.
- 1.25 **Community Umbrella Agency.** “Community Umbrella Agency” or “CUA” means an agency located in a defined geographic area that provides a continuum of services to children and youth at risk of abuse, neglect, or delinquency, as further described in the Scope of Services.
- 1.26 **CRU.** “CRU” means Central Referral Unit.
- 1.27 **CWO.** “CWO” means Child Welfare Operations of the Department. CWO was formerly known as the Children and Youth Division (“CYD”).
- 1.28 **CYD Policy Manual.** “CYD Policy Manual” (formerly the Operations Manual ) means the document and its revisions which contains all the policies of the Department’s Child Welfare Operations.
- 1.29 **Department.** The “Department” or “DHS” means the Department of Human Services of the City.
- 1.30 **Departmental and Administrative Policy Directives.** “Departmental and Administrative Policy Directives” means those policy or procedural directives regarding programs and operations of the various divisions of the Department that are issued to Providers by the Commissioner or the Commissioner’s designee which may include, but is not limited to, Deputy Commissioners, Policy and Planning, and Provider Relations and Evaluations of Programs (PREP). .
- 1.31 **Discharge Plan.** “Discharge Plan” means the document submitted by Provider to the Department upon discharge of a child from Provider’s agency. The Discharge Plan outlines the Services Provider has provided to the child and the child’s family, the effectiveness of those Services, and any additional services recommended by Provider.



- 1.32 **Discharge Summary.** “Discharge Summary” means a description of the Services provided to a child and the child’s family by Provider, and a statement of the reasons for the child’s discharge.
- 1.33 **EPSDT.** “EPSDT” means Early and Periodic Screening, Diagnosis and Treatment, a Pennsylvania Medical Assistance program initiative providing medical services to children aged 0-21 years.
- 1.34 **Event of Default.** “Event of Default” means those events defined and identified in Section 12.1 (Events of Default) of these General Provisions.
- 1.35 **Event of Insolvency.** “Event of Insolvency” means (a) the filing of a voluntary petition by Provider under the Federal Bankruptcy Code or any similar state or federal law; or (b) the filing of an involuntary petition against Provider under the Federal Bankruptcy Code or any similar state or federal law which remains undismissed for a period of forty-five (45) days; or (c) Provider’s making of an assignment for the benefit of creditors; or (d) the appointment of a receiver for Provider or for the property or assets of Provider, if such appointment is not vacated within forty-five (45) days thereafter; or (e) any other proceeding under any bankruptcy or insolvency law or liquidation law, voluntary or otherwise; or (f) Provider’s inability to pay its obligations as they mature; or (g) Provider’s insolvency as otherwise defined under any Applicable Law.
- 1.36 **Exhaustion of Capacity.** “Exhaustion of capacity” means the utilization of all of the Service capacity (whether beds in the case of out-of-home placement, or units or slots of Service in the case of non-placement), of Provider.
- 1.37 **Family Court.** “Family Court” means that judicial division of the Court of Common Pleas for Philadelphia County with original jurisdiction over all matters pertaining to dependent and delinquent children.
- 1.38 **Financial Assistance.** “Financial Assistance” has the meaning set forth in Section 17-1401(16) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a]ny grant, loan, tax incentive, bond financing subsidy for land purchase or otherwise, or other form of assistance that is realized by or provided to a Person in the amount of fifty thousand dollars (\$50,000) or more through the authority or approval of the City, including, but not limited to, Tax Increment Financing (TIF) aid, industrial development bonds, use of the power of eminent domain, Community Development Block Grant (CDBG) aid or loans, airport revenue bonds, and Enterprise Zone or similar economic development zone designations (such as Keystone Opportunity Zones, Keystone Opportunity Expansion Zones, Keystone Opportunity Improvement Zones, and Economic Development District Zones), but not including any assistance to which a Person is entitled under a law enacted before the Person applied for or requested such assistance.”
- 1.39 **Fiscal Year.** “Fiscal Year” means the fiscal year of the City, which commences on July 1 of each calendar year and expires on June 30 of the next succeeding calendar year.



- 1.40 **Form Authorizations.** “Form Authorizations” means the “CRU Fax Cover Transmittal Sheet for Referral and Service Authorization” and “DHS After-Hours Fax Cover Transmittal Sheet for Referral and Service Authorization.” The authorization forms will provide the Provider with the required documentation of proof or authorization to provide services to a child prior to accepting the child for service. Once the Fax Sheet has been received, Provider cannot make further requests for this form or for a Form 85-29 printout.
- 1.41 **FSP.** “FSP” means Family Service Plan, the document prepared by the Department which outlines those Services required for the family of the child or children committed to, or under the supervision of, the Department.
- 1.42 **Functional Expenditure Report.** “Functional Expenditure Report” means a report required by Subrecipient Audit Guide.
- 1.43 **General Provisions.** “General Provisions” means these “The City of Philadelphia Professional Services Contract General Provisions for Department of Human Service Contracts,” which contains the standard provisions required by the City in its professional services contracts for the Department of Human Services, and any exhibits identified in these General Provisions.
- 1.44 **HealthChoices.** “HealthChoices” means the program operating under a waiver from the Centers for Medicare and Medicaid Services (formerly Health Care Financing Administration) pursuant to Section 1915(b) of the Social Security Act, 42 U.S.C. 1396(n), to provide mandatory managed health care to Medical Assistance recipients in Bucks, Chester, Delaware, Montgomery and Philadelphia Counties.
- 1.45 **Improving Outcomes for Children.** “Improving Outcomes for Children” or “IOC” means the City’s multi-year reform plan to create a single case management system with distinct and well-defined roles for both DHS and Provider agencies.
- 1.46 **Independent Audit Report.** “Independent Audit Report” means a report prepared by a Certified Public Accountant who, pursuant to AICPA Professional Standards, is not (a) a member of the board of Provider, (b) an officer or employee of Provider, or (c) a partner, director, officer or employee of a partnership, corporation or association who is a member of the board of Provider, or a director, officer or employee of Provider.
- 1.47 **Initial Term.** “Initial Term” shall have the meaning set forth in Section 2.1 (Initial Term) below.
- 1.48 **Intent to Adopt.** “Intent to Adopt” means that report which is required by the Adoption Act (23 Pa. C.S. § 2531), to be filed with the Court of Common Pleas by the person or persons intending to adopt a child, confirming said person or persons’ intent to adopt.
- 1.49 **Interpretation; Number, Gender.** The words “herein” “hereof” and “hereunder” and other words of similar import refer to this Contract as a whole, including the all of the Contract Documents, and not to any particular article, section, subsection or clause contained in the Contract Documents. Whenever the



context requires, words used in the singular shall be construed to include the plural and vice versa, and pronouns of any gender shall be deemed to include the masculine, feminine and neutral genders.

- 1.50 **ISP.** “ISP” means the Individual Service Plan, that document prepared by Provider in accordance with the FSP, which identifies the specific Services Provider will render to the child and the child’s family.
- 1.51 **JPO.** “JPO” means the Juvenile Probation Officer.
- 1.52 **Materials.** “Materials” means any and all reports, records, documents, documentation, information, supplies, plans, original drawings, specifications, computations, sketches, renderings, arrangements, videos, pamphlets, advertisements, statistics, and other data, computer tapes, computer software, and other tangible work product or materials prepared or developed by Provider in connection with the Services, or for Provider by a Subcontractor in connection with the Services, and supplied to the City by Provider or its Subcontractor pursuant to this Contract.
- 1.53 **Medical Assistance.** “Medical Assistance” or “MA” means that program authorized under Article IV(f) of the Public Welfare Code, which is administered in accordance with Title XIX of the Social Security Act (42 U.S.C. §1396), and the regulations from time to time promulgated thereunder, to provide for specific medically necessary medical services and items furnished to eligible recipients by approved providers enrolled in the program.
- 1.54 **Mental Health Procedures Act.** “Mental Health Procedures Act” means the law, codified at 50 P.S. §§7101-7503, as it may be amended from time to time, which governs the procedures for voluntary and involuntary mental health treatment in the Commonwealth of Pennsylvania.
- 1.55 **Modification Notice.** “Modification Notice” means written notice from the City to Provider that informs Provider of the City’s intent to modify the maximum daily rate, number of days of care or units of Services under this Contract. The Modification Notice operates as an amendment to this Contract.
- 1.56 **Non-Competitively Bid Contract.** “Non-Competitively Bid Contract” has the meaning set forth in Section 17-1401(12) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a] contract for the purchase of goods or services to which the City or a City Agency is a party that is not subject to the lowest responsible bidder requirements of Section 8-200 of the Charter, including, but not limited to, a Professional Services Contract, and any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).”
- 1.57 **Out-of-Home Placement.** “Out-of-Home Placement” means those Services that involve placement of a child outside of the child’s home, including, without limitation, placement in a foster care home, a group home, a residential treatment facility, or any similar placement setting.
- 1.58 **PA DHS.** “PA DHS” means the Commonwealth Department of Human Services.

- 1.59 **Party; Parties.** A “Party” means either the City or Provider; the “Parties” means the City and Provider.
- 1.60 **PBC.** “PBC” or “Performance Based Contract” means a contract model that incentivizes performance and ties Provider’s payment and contract renewal to performance outcomes.
- 1.61 **Person.** “Person” means any individual, sole proprietorship, association, company, firm, partnership, limited partnership, joint venture, corporation, limited liability company or other form of entity or association recognized by law.
- 1.62 **Placement Amendment.** “Placement Amendment” means that document which is a part of the FSP, and which identifies those Services that are required for a child who is placed outside of his or her home.
- 1.63 **Policy Transmittals and Guides.** “Policy Transmittals and Guides” means those notifications to Providers of changes in Departmental policies or procedures in the of the Department that are issued on an interim or emergency basis.
- 1.64 **Professional Services Contract.** “Professional Services Contract” has the meaning set forth in Section 17-1401(15) of The Philadelphia Code, as it may be amended from time to time. As of June 2012, that definition was “[a] contract to which the City or a City Agency is a party that is not subject to the lowest competitive bidding requirements of Section 8-200 of the Charter because it involves the rendition of professional services, including any renewal of such a contract (other than a renewal term pursuant to an option to renew contained in an executed contract).”
- 1.65 **Provider.** “Provider” means the Person providing Services and Materials to the City as defined in the heading of the Provider Agreement.
- 1.66 **Provider Agreement.** The “Provider Agreement” means the instrument, part of the Contract Documents, which sets forth the terms, covenants and conditions specific to Provider’s engagement by the City to provide the Services and Materials under this Contract.
- 1.67 **Provisional.** “Provisional” means conditional, pending confirmation or validation.
- 1.68 **Referring Agency.** “Referring Agency” means the Department.
- 1.69 **Responsible Official.** The “Responsible Official” means the director, commissioner or other head of the Department.
- 1.70 **Santiago Consent Decree.** “Santiago Consent Decree” means the Third Amended Stipulation and Order, dated January 21, 1988, amending Santiago, et al. v. City of Philadelphia et al. (C.A. No. 74-2589, E.D. Pa.), a consent decree, and requiring the Department to maintain the population at the Philadelphia Juvenile Justice Services Center at a maximum of one hundred five (105) youth.
- 1.71 **Scope of Services.** “Scope of Services” means the document(s) incorporated by reference and/or the document(s) attached as an exhibit (or as exhibits) to the



Provider Agreement, which set(s) forth the Services to be rendered and Materials to be provided under this Contract, the time frames within which the Services are to be rendered and the Materials are to be provided, and other certain requirements Provider must satisfy in rendering the Services and providing the Materials.

- 1.72 **Services.** “Services” means the work to be performed under this Contract as specified in the Provider Agreement.
- 1.73 **Single Case Plan.** “Single Case Plan” means a coordinated plan developed as set forth in the Scope of Services, as it may be modified and revised from time to time.
- 1.74 **Subcontract.** “Subcontract” means a contract made between Provider and a Subcontractor providing for the completion of some part or parts of the Services or Materials by a Subcontractor.
- 1.75 **Subcontractor.** “Subcontractor” means a Person performing under a contract with Provider some part of the Services or Materials. It includes a Person performing some part of the Services or Materials under contract with another Subcontractor at any tier.
- 1.76 **Subrecipient Audit Guide.** “Subrecipient Audit Guide” means the document entitled City of Philadelphia Subrecipient Audit Guide, which specifies the City’s audit requirements, as amended from time to time. (Copies are available in the Office of the Director of Finance of the City.)
- 1.77 **Suspension Notice.** “Suspension Notice” means a written notice from the City to Provider pursuant to Section 14.2 (Termination or Suspension) below suspending Provider’s performance under this Contract.
- 1.78 **Suspension Period.** “Suspension Period” means the period designated by the City in a Suspension Notice during which the City has suspended Provider’s performance under this Contract.
- 1.79 **SWAN.** “SWAN” means the State Wide Adoption Network, a state wide adoption system which is administered by the Pennsylvania Council of Childrens’ Services under contract with PA DHS.
- 1.80 **Term.** “Term” has the meaning set forth in Section 2.1 (Initial Term) of the Provider Agreement.
- 1.81 **Termination Notice.** “Termination Notice” means a written notice from the City to Provider terminating this Contract.
- 1.82 **Transition.** “Transition” means the planned progression and transfer of Services and Materials from Provider’s Contract to either another provider or another contract with the same Provider.
- 1.83 **Transition Notice.** “Transition Notice” means means a written notice from the City to Provider evidencing the City’s intent to transition the Services and Materials to be provided under this Contract to another.

- 1.84 **Total Actual Cost.** "Total Actual Cost" means the sum of all allowable expenses incurred by Provider in the provision of a particular Service under the Contract.
- 1.85 **Vacancy.** "Vacancy" means the existence of an available bed in a placement program, or an available service unit or slot in a non-placement program.

## ARTICLE II: TERM

- 2.1 **Initial Term.** The initial term ("Initial Term") of this Contract is set forth in the Provider Agreement. In no event shall the Initial Term exceed one (1) year.
- 2.2 **Additional Terms.** The City may, at its sole option, amend this Contract to add on an annual basis up to three (3) successive one (1) year terms ("Additional Terms"), unless any shorter term (or terms) is specified in the Provider Agreement. Unless otherwise stated in the Provider Agreement, the same terms and conditions applicable in the Initial Term shall be applicable in the Additional Term(s). The City shall give Provider thirty (30) days written notice of its intent to amend this Contract to add an Additional Term prior to each annual Additional Term. Each Additional Term shall be subject to appropriation of funds by City Council for such Additional Term. There shall be no liability or penalty to the City for electing not to amend the term of this Contract to add Additional Terms. Each Additional Term of this Contract shall be deemed to constitute a separate contract, whose term shall not exceed one (1) year.

## ARTICLE III: PROVIDER'S DUTIES AND COVENANTS

- 3.1 **Performance Requirements.** Provider shall provide all Services and Materials in accordance with this Contract and applicable professional standards. All payments to Provider are contingent upon satisfactory performance of the terms and conditions set forth in this Contract, as determined by the Commissioner in his or her sole discretion.
- 3.2 **Compliance with Applicable Law.** Provider shall comply with the requirements of all Applicable Law with respect to Provider's activities, Services, Materials and facilities used in connection with any aspect of this Contract, whether or not such Applicable Law is specifically identified by name in this Contract. Provider shall inform the Commissioner, in writing, of any notices of violations of any Applicable Law within forty-eight (48) hours of Provider's receipt thereof, and shall correct any violations within the time prescribed by law, or immediately in the case of any emergency. In the case of out-of-state placements, the regulations of the licensing state and municipality, if any, shall apply except when such regulations are in conflict with PA DHS or City policies governing the



maintenance and care of children in its custody, in which case the more stringent standard shall apply.

(a) **Title IV(e) of the Social Security Act ("Title IV(e)") and Adoption and Safe Families Act ("ASFA") Compliance.** In compliance with the requirements of Title IV(e), ASFA, and corresponding Commonwealth of Pennsylvania law, Provider agrees to do the following:

- (1) Assure and document the safety of each child for every face to face contact.
- (2) If unsafe conditions exist, notify the Department of Human Services, immediately, and document the steps taken to remedy the unsafe conditions.
- (3) Provide timely outreach and services to families in accordance with the Family Service Plan.
- (4) Utilize a concurrent planning process while other possible permanent alternatives, including a primary goal of reunification, are being explored.
- (5) Document reasonable efforts exercised by Provider to accomplish the Family Service Plan goals and objectives.
- (6) Document and notify the Department when the parent(s) fail(s) to maintain substantial and continuing contact with their children.
- (7) Document and notify the Department, when there exists, or Provider believes there exists, compelling reasons not to file a petition to terminate parental rights of a child who has been in placement fifteen (15) of the previous twenty-two (22) months.
- (8) Document and notify the Department, when there exists, or Provider believes there exists, aggravated circumstances (as defined by the the Juvenile Act, 42 Pa.C.S.A. 6301 et seq.).

(b) **Compliance with Title VI of the Civil Rights Act of 1964.** The Department, as a recipient of federal funding from the federal Department of Health and Human Services, is bound by Title VI of the 1964 Civil Rights Act and its implementing regulations to take reasonable steps to provide meaningful access to its programs and activities by its language minority populations. In keeping with this mandate, the Mayor of Philadelphia has issued Executive Order "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001 requiring that reasonable steps be taken to ensure that all citizens of the City of Philadelphia have access to programs and activities without regard to English proficiency.



Provider agrees to cooperate fully with the Department in its efforts to achieve full compliance with this mandate. Provider will assess the level of services provided to clients with limited English proficiency, report those findings to the Department within the timeframe and in the format requested; and, to take any additional actions that may be requested by the Department from time to time to ensure compliance with Title VI.

- (c) **Compliance with the Prison Rape Elimination Act of 2003 (PREA) PL 108-79, 42 U.S.C. Chapter 147 §§15601--15609.** Provider agrees that if it is providing services to delinquent children, children held pursuant to a delinquent petition, or services relating to the confinement of children in any way then the Provider shall be obligated to comply with the Prison Rape Elimination Act of 2003 and all related standards as they may be amended from time to time.
- (d) **Fostering Connections To Success and Increasing Adoption Act of 2008.** Provider shall collect and provide appropriate documentation at a minimum of every six (6) months that all youth turning eighteen (18) years old are notified of the right to remain in care or re-enter care until twenty-one (21) years old if they continue to meet the definition of "child" under the Juvenile Act and the court grants their request.
- (e) **Activities and Experiences for Children in Out-of-Home Placements Act of 2015.** Provider shall comply will all requirements of the Activities and Experiences for Children in Out-of-Home Placements Act, including, without limitation, the reasonable and prudent parent standard established by the Act and all policies and regulations established by PA-DHS related to the Act.
  - (1) If Provider operates an Out-of-Home placement setting other than a resource family home, such as: a group home, shelter, RTF, institutional care facility, or other similar placement setting, then Provider shall designate an individual to provide decision-making authority under the reasonable and prudent parent standard for children residing in Provider's care in accordance with staffing and supervision requirements applicable to the placement setting. The individual designated shall consult with all appropriate DHS, CUA, and Provider caseworkers or staff members who are most familiar with the child in applying and using the standard.
  - (2) If Provider operates resource family homes, such as: foster homes, kinship homes, or other similar placement settings, then Provider shall provide training and monitoring of the resource families

regarding the application and use of the reasonable and prudent parent standard.

- (3) Consistent with Section 3.5 of this contract below, Provider shall require these same provisions in each of its Subcontracts for Out-of-Home placement services, with appropriate substitution of party identities.

3.3 **Additional Services and Materials; Change in Scope of Services.** Except as set forth in Section 6.8 (Monitoring of Fund Utilization) below, at any time during the Term of this Contract, the City may, by written change order or request delivered by notice to Provider, make changes to the Scope of Services under this Contract, and the Parties will, if appropriate, negotiate an adjustment in compensation if necessary, subject to appropriation of funds by City Council. Provider shall not commence to perform or provide, and the City shall not pay for, any services or materials not included in this Contract (the "Additional Services and Materials") unless and until Provider receives written pre-authorization (by change order or other request) from the Commissioner that specifies the Additional Services and Materials to be provided. In no event shall the rates charged by Provider for said Additional Services and Materials exceed the lowest of (a) Provider's then current standard rates for such Services or Materials, (b) such rates as the City and Provider may have negotiated for this Contract, as set forth in the Provider Agreement, or (c) the lowest rate or rates that Provider may then be charging to other purchasers of like Services and Materials. If Provider requests changes to the Scope of Services, Provider must demonstrate to the satisfaction of the City, in its sole discretion, that the changes are necessary and not due to the acts or omissions of Provider. The City shall pay Provider additional compensation above the limit set forth in the Provider Agreement only if and when an Amendment to this Contract is duly executed by the Parties. The City shall have no responsibility or liability whatsoever for any fee, or for costs incurred by Provider for any services, materials or other costs or expenses, other than the Services and Materials and any duly approved Additional Services and Materials.

3.4 **Responsibility.**

- (a) Notwithstanding the acceptance and approval by the City of any Services performed or Materials provided, Provider shall continue to be responsible for the professional quality, technical accuracy and the coordination of all Materials and Services provided by Provider under this Contract. Provider shall, without additional compensation, promptly and diligently correct any errors, defects, deficiencies or omissions in Provider's Materials and Services.



(1) Plan of Correction. This section applies to Providers who have been or who may be requested to submit a Plan of Correction (POC) to DHS regarding performance concerns. Provider acknowledges that DHS, by requesting a POC, does not resolve or waive the issues raised by DHS under any other notices and other communications and that under the Contract (and as it may be amended from time to time) Provider remains under the duty to explain and rectify any matters that have been or may be raised by DHS or its designee.

Provider agrees that the final accepted POC (and if applicable, any DHS addendum to POC) is incorporated by reference to the contract. By signing contract, Provider agrees to be bound by the additional terms and conditions of the POC submitted by Provider and any addendum submitted by DHS. Failure to submit or comply with the terms of the POC shall constitute an Event of Default as prescribed in Section 12.1(a) and (c), permitting DHS to exercise the remedies available in Section 13.1, including but not limited to, termination of the Contract.

By entering into a contract with Provider while requesting a POC, DHS reserves and does not waive its rights to enact Section 3.1 Performance Requirements, to rely on Section 3.4(b) Responsibility and/or or to invoke Article XIV: Transition, Termination and Suspension of the General Provisions for any of the reasons provided nor does it waive any remedies available under Article XIII: Remedies.

- (b) Furthermore, by entering into a contract with DHS and/or continued performance under this contract while submitting a POC, Provider maintains its obligation to comply with all of the provisions of Article III: Provider's Duties and Covenants of the General Provisions. The City's review, approval or acceptance of, or payment for, any of the Materials and Services required under this Contract shall not constitute any representation, warranty or guaranty by the City as to the substance or quality of the matter reviewed, approved or accepted and shall not be construed to operate as a waiver or estoppel of any of the City's rights or privileges under this Contract or of any cause of action arising out of the performance of this Contract. No Person shall have any right to rely in any way on the City's review, approval or acceptance of Provider's Services or Materials. Provider shall be and remain liable in accordance with this Contract and Applicable Law for all damages to the City caused by Provider or the Services or Materials provided by Provider. Review, approval or acceptance by the City or the Commissioner under this Contract shall not constitute or be construed to constitute approval otherwise required by any City department, board, commission, or other regulatory agency in the exercise of such department's, board's, commission's or agency's independent regulatory authority or police powers under Applicable Law.



- (c) Without limiting Provider's responsibility as set forth above, if any act or omission of Provider or error or deficiency or omission in the Services or Materials provided by Provider requires any change in the Scope of Services or any portion thereof, Provider shall promptly complete such change at no additional cost to the City.
- (d) **CUA Case Management.** For a Provider whose Services include Out-of-Home Placement of any child, insomuch as case management services are provided by a CUA under contract with DHS or according to Applicable Law, the Provider must abide by the respective CUA's policies and procedures, and cooperate with, assist, and take direction from the respective CUA in the performance of Provider's Services under this Contract.

3.5 **Subcontracts.**

- (a) Provider shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Contract, in whole or in part, without on each occasion first obtaining the written consent of the Commissioner or a designee.
- (b) Provider shall submit to the Commissioner or her designee copies of all proposed Subcontract(s) to be entered into by Provider, along with Provider's written request for the City's consent. All such Subcontracts must specify that:
  - (1) work performed by Subcontractor shall be in conformity with the terms of this Contract;
  - (2) nothing contained in such Subcontract shall be construed to impair the rights of the City under this Contract;
  - (3) the City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;
  - (4) nothing contained in such Subcontract, or under this Contract, shall create any obligation of the City to any Subcontractor;
  - (5) the City shall be expressly designated a third party beneficiary of the Subcontract;
  - (6) upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that this Contract between the City and Provider has been terminated, Subcontractor agrees that it will continue to perform its obligations under the Subcontract for the benefit of the City in conformity with the terms and conditions of this Contract, provided the City pays Subcontractor for the Services rendered and Materials provided by Subcontractor from and after the date of the termination of this Contract between the City and Provider at the same rate or in the same amount as set forth in the Subcontract for those Services and Materials provided by Subcontractor after such date of termination;

- (7) Under each Subcontract, the Subcontractor, at any tier, shall be bound by the same terms, covenants and conditions as Provider under this Contract, including without limitation: Confidentiality, Availability and Retention of Records, Inspection, all audit requirements, Independent Audits, Compliance Audit Reports, audits and inspection by government representatives, Placement and Referral Process requirements, Insurance, Indemnification, and Litigation Cooperation requirements. Any item required to be submitted to the City under this section shall be submitted to the City directly, with a copy to the Provider, unless otherwise directed by the Commissioner or their designee in writing;
- (8) Under each Subcontract, the Subcontractor shall be subject to quality assurance, fiscal and performance reviews which include site evaluations and inspection of records, that will be directed at compliance of state and federal law and regulations, including but not limited to Title IV-E of the Social Security Act, Temporary Assistance for Needy Families (TANF), the Public Welfare Code (including Act 148), the Child Protective Services Law, and compliance of the requirements under this Contract;
- (9) Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and/or use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Contract, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment;
- (10) Subcontractor shall not be indebted to the City. To satisfy this requirement, Provider shall include the requirement of subsection 4.1(f) (No Indebtedness to the City) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract;
- (11) Subcontractor shall comply with Chapter 17-400 of The Philadelphia Code. To satisfy this requirement, Provider shall include the requirements of Subsection 15.2(a) (The Philadelphia Code, Chapter 17-400) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract);
- (12) Subcontractor shall comply with Section 17-104 of The Philadelphia Code. To satisfy this requirement, Provider shall include the requirements of Subsection 15.2(b) (The Philadelphia



Code, Section 17-104) below, with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Contract; and

- (13) Subcontractor is not and shall not become suspended or debarred by the Commonwealth, any other state or the federal government throughout the term of the Subcontract.
- (14) Subcontractor shall comply with Chapter 17-1300 of the Code to the extent it is applicable to a Subcontractor that is also a Service Contractor (as defined in Chapter 17-1300) providing Services under the Subcontract, and to Subcontractors at any tier that are also Service Contractors providing Services under this Contract. To satisfy these requirements, Provider shall notify its Subcontractors of these provisions; shall incorporate this paragraph and Section 15.10 below, with appropriate adjustments for the identity of the parties, in each Subcontract; and shall require its Subcontractors to include such terms in any lower-tier Subcontract that is, or may become, covered by Chapter 17-1300.
- (c) No permitted Subcontract shall relieve Provider of any obligation under this Contract. Provider shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Provider and Persons directly or indirectly employed or retained by Provider.
- (d) Any purported Subcontract made in violation of this Section or of any other Section in this Contract shall be null and voidable.
- (e) City-Related Agencies.
  - (1) If Provider is a City-Related Agency, Provider shall abide by the provisions of Chapter 17-1400 of The Philadelphia Code in awarding any contract(s) pursuant to this Contract as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Section 17-1406(8) of The Philadelphia Code shall apply to Provider as if Provider were listed in that subsection.
  - (2) Unless approved by the City to the contrary, any approvals required by Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed on behalf of a City-Related Agency by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed on behalf of a City-Related Agency by its Chief Financial Officer; and any approvals required to be performed by the Mayor shall be performed on behalf of a City-Related Agency by its Executive Director. Any notices required to be sent under Chapter 17-1400 to designated City officials, shall be sent in electronic form to



those designated City officials.

- (f) Provider shall submit to the Commissioner or her designee final copies of all executed Subcontracts entered into by Provider.

**3.6 Conflict of Interest; Related Party Transactions.**

- (a) Provider shall adhere to Department policy and to 55 Pa. Code §3680.63, as it may be amended from time to time, regarding conflicts of interest and related party transactions. Without limitation of the foregoing, related party transactions shall also include any transactions involving any direct or indirect financial interest of Provider's board members, executive personnel, or their immediate families.
- (b) Provider shall furnish the Department with copies of all documents submitted to PA DHS for the purpose of securing a prior written determination pursuant to §3680.63, including a copy of the written determination.
- (c) Provider shall disclose all related party transactions in its annual fiscal report to the City.

**3.7 Relationship with the City or Family Court.**

- (a) Neither Provider's personnel nor any Subcontractor personnel shall be employees of the City, employees of the Family Court, or any other governmental officer or employee whose salary is paid out of the City Treasury. Provider shall notify the City of any Provider personnel or any Subcontractor personnel who have any employment or other contractual relationship or agency relationship with the City or with the Family Court.
- (b) Pursuant to Section 20-607(c) of The Philadelphia Code, as it may be amended from time to time, neither Provider's personnel nor any Subcontractor personnel, nor any parent, spouse, child, brother, sister or like relative-in-law, nor any person, firm, partnership, corporation, business association, trustee or straw party owned or operated by any of them, shall be financially interested in any award, contract, lease, case, claim, decision, decree or judgment made by any such personnel while in the service of the City until at least two (2) years after the expiration of such person's service or employment with the City.
- (c) Provider must maintain documentation in its personnel files that provides verification that it has informed all of its personnel and Subcontractors of their obligation to report to Provider whether they are currently or subsequently become employed by DHS.

**3.8 Time Frame for Submissions.** Provider shall perform any and all Services and shall submit any and all Materials required by this Contract within the time frames set forth in the Scope of Services attached as an exhibit to the Provider Agreement or as mutually agreed upon in writing by the City and Provider. Absent any such written time frames, Provider shall perform its obligations under

this Contract diligently and promptly and in any and all events before the scheduled expiration of the Term.

- 3.9 **Prompt Payment by Provider.** Provider agrees to promptly pay all Persons which have furnished labor or supplies in connection with the Services, the Materials or this Contract, including, without limitation, Subcontractors and suppliers. Provider shall provide, upon request of the City, reasonable evidence that these Persons have been fully and timely paid.
- 3.10 **Sales and Use Tax.** The City is not subject to federal, state or local sales or use taxes or federal excise tax. Provider hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials, including any Materials, purchased or any services, including any Services, rendered in connection with this Contract and unless directed otherwise by the City, Provider shall not file a claim for any sales or use tax refund subject to this assignment. Provider authorizes the City, in its own name or the name of Provider, to file a claim for a refund of any sales or use tax subject to this assignment.
- 3.11 **Adherence to Departmental Policy.** Provider shall be bound by all current Departmental and Administrative Policy Directives, Policy Transmittals and Guides, the CYD Policy Manual, applicable Performance and Service Standards, applicable Practice Guidelines, and any applicable PA DHS and/or Office of Children, Youth, and Families transmittals and bulletins as these documents may be amended from time to time. The Department may provide access to these documents on the Provider Extranet website or by making copies of these documents available to the Provider upon request.
- 3.12 **Adoption License.**
- (a) If Provider's Services include foster family care, Provider agrees as follows:
- (1) Provider shall, at Provider's option, (a) apply for and obtain, within sixty (60) days from the effective date of this Contract, a valid, current adoption license from the PA DHS; or, (b) immediately upon the effective date of this Contract, become affiliated with a child welfare agency that possesses a valid, current adoption license.
- (2) Provider shall become affiliated with SWAN immediately upon the effective date of the Contract.
- (b) Provider shall cooperate with the City in the City's efforts to facilitate the adoption of children in foster care, and Provider shall refer all children in its custody to SWAN when the child has a court sanctioned goal of adoption. If there is no known adoption resource, SWAN shall register such children with the appropriate adoption exchanges.



- 3.13 **Routine Transportation Costs.** With the exception of those costs associated with a runaway, the specific provisions for which are set forth at Section 3.29 (Absence of a Child), Provider shall be responsible for all routine transportation costs incurred by Provider in fulfilling the terms of this Contract.
- 3.14 **Family Visit Food Costs.** Provider shall be responsible for the costs of food for the child while the child is visiting his or her family.
- 3.15 **Payments for Placement Services.** Provider shall use payments under this Contract to purchase only those Services that are reimbursable under Applicable Law and the Contract Cost Principles, unless Provider has received prior written approval from the Commissioner or the Commissioner's designee to purchase non-reimbursable Services. This requirement applies equally whether the Services are purchased directly by Provider or indirectly through Provider's Subcontractor, or Provider's referral to another agency.
- 3.16 **EPSDT; Managed Care.** Provider shall comply with the City's EPSDT initiative. Compliance shall include, without limitation, Provider's securing of all licenses and permits necessary for Provider to participate in the Medical Assistance program, HealthChoices or managed care organizations (where appropriate); Provider's timely submission of all forms and reports required by the Commonwealth Office of Medical Assistance, HealthChoices or managed care organizations; and Provider's timely pursuit of any and all appeals of the Commonwealth's denial or discontinuance of EPSDT funding to Provider, or denial, discontinuance or reduction of medical services by HealthChoices or managed care organizations.

Provider shall comply with the City's initiative to integrate behavioral health services with other health and social services provided to children and families. Compliance shall include, without limitation, the following:

- (a) Provider shall use **1-888-545-2600**, the central contact number of Community Behavioral Health (CBH), for the purpose of securing mental health and substance abuse services for children and their caregivers;
- (b) Provider shall document fully in the case file the results of each referral to CBH; and
- (c) Upon request by DHS and/or CBH and with proper authorization, Provider shall release to CBH any documents and/or reports regarding behavioral health services provided to children and families.  
Provider must maintain centrally located documentation regarding whether a child/youth has received a full EPDST screening within sixty (60) days of entering placement, unless the child has had a screening and the results are available, and whether the subsequent treatment indicated has been initiated/scheduled within ninety (90) days upon entering placement. Youth transferring from one foster care agency to another and youth transferring from a facility licensed under Chapter 3800 regulations to a foster care agency may be exceptions.



3.17 **Service Requirements.**

- (a) Provider shall provide Services to the children and youth and their families in accordance with the FSP, any Placement Amendments, and Form Authorizations.
- (b) Provider shall submit a Scope of Services which shall be consistent with Department's Program Standards and Applicable Law.
- (c) Provider's Scope of Services shall be current, shall satisfy the City's requirements as to form and content, and shall be attached as an exhibit to the Provider Agreement.

3.18 **Web-Based Central Referral Unit (CRU) System Participation.**

- (a) The Department utilizes a Web-Based CRU System for all its non-PBC providers. Upon its implementation, Provider shall report all its vacancies, by age and gender, by participating in the Department's Web-Based CRU System, and in any additional tracking system the Department may identify, and Provider shall update the system on a weekly basis, and/or more frequently for emergency shelter programs. Failure to comply with this provision may result in the Provider not receiving referrals from the Department's CRU. Provider has twenty-four (24) hours to accept or reject a referral.
- (b) The Department shall monitor Provider's compliance with this provision and shall only make referrals based upon vacancies reported through this system. The Department, in its sole discretion, may periodically utilize additional resource tracking systems.

3.19 **Dependent Placement Referrals.** Provider shall accept youth with deferred or dual adjudications in its dependent facility. To the extent permitted by law, including applicable state regulations, Provider shall accept dependent youth in its delinquent facilities if such youth are otherwise eligible for admission into Provider's facility. Delinquent Providers agree that their Scope of Services shall not exclude dependent children from their program unless they are required by law to do so.

3.20 **Referral Disputes.** Provider shall submit a written quarterly report to the Commissioner's designee detailing the number and circumstances of each referral dispute registered in accordance with Section 5.2(b)(3) of these General Provisions. Excessive referral disputes, as determined by the Commissioner in his/her sole discretion, may cause the City to terminate this Contract.

3.21 **Rejection of Referral.** Provider shall not reject a child or family for Services based upon the location or condition of the family's residence, their environmental or social condition, or for any other reason if the profiles of such child or family are consistent with Provider's Scope of Services or DHS's applicable standards as listed in the Provider Agreement, unless an exception is

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

3.22 **Notice of Referral Acceptance or Rejection.**

- (a) Except for Performance Based Contract Providers, Provider shall notify the Commissioner within twenty-four (24) hours of its decision to accept or reject placement referrals; provided, however, Provider's rejection of a placement referral must be in accordance with the process set forth in Section 5.2(b)(3) of the General Provisions. Provider shall provide the Commissioner with a written statement of the basis for each rejected referral within twenty-four (24) hours of the rejection unless an exception is granted by Commissioner or Commissioner's designee.
- (b) Within seventy-two (72) hours of accepting a case that has been designated as a Kinship Care placement, Provider must visit the placement and complete an assessment of the kinship caregiver's home to ensure that it is in compliance with State regulations regarding foster homes

3.23 **Documentation of Referrals.** Providers must maintain centrally located documentation regarding each referral that the Provider receives from DHS. Provider must maintain the following information: the date of receipt of referral; the requesting DHS division (CWO or JJS); the name, age and race of the child; presenting primary problem; and whether the child was accepted or rejected for admission to the program and if applicable, the reason for rejection.

3.24 **Vacation, Holiday Placement.** Provider shall ensure that each child in an Out-of-Home Placement has uninterrupted Services and placement in the event Provider's office closes for vacation or holidays.

3.25 **Adequate Clothing.** It shall be Provider's responsibility to purchase a seasonally adequate and complete wardrobe for each child in placement in its program and for any child who is being discharged from its program.

3.26 **Return of Medical Assistance Card.** At the time of discharge or within seventy-two (72) hours of an unplanned discharge, Provider shall return the Medical Assistance card of any child who has been removed or discharged from Provider's placement to the City; otherwise, Provider shall be liable for any charges incurred after discharge. Provider agrees that, upon its return of the child's Medical Assistance card to the City, Provider will cooperate fully with the Department for the purpose of re-enrolling the child with a primary care physician.

3.27 **Service Reports.**

- (a) **Progress Reports.** Provider shall submit to the City, on a quarterly basis, a written progress report for each child for whom Services are provided. The report shall be consistent with the ISP, shall present an evaluation of



the child's current status, and shall include a statement of Provider's treatment goals. If the City purchases residential treatment Services under the Contract, Provider shall submit a diagnostic study and treatment plan to the City within thirty (30) days after the child's initial placement.

- (b) **Placement Objectives; Adjustment Reports.** When the Services purchased under the Contract include residential Services, Provider shall, within ninety (90) days after the child's initial placement, submit a report to the City which evaluates the child's adjustment to placement and the child's prognosis. Within one hundred eighty (180) days after the initial placement, Provider shall submit a report to the City which examines whether a less restrictive placement is appropriate for the child. The City generally expects that Provider will move children to a less restrictive placement, and that children have the capacity to make use of a less intensive Service within one hundred eighty (180) days after their initial placement in a residential facility. With the exception of those children committed to the Juvenile Justice System as the result of the commission of delinquent acts, when Provider recommends that a child receive more than one hundred eighty (180) days of residential services, Provider shall present written justification for the recommendation to the Department, and shall participate in a case review within one hundred eighty (180) days after the child's placement. Provider shall allow visits by authorized City employees, upon oral or written request, for discussion or review of information pertinent to the child, or for interviews with the child and the child's natural family. If the child is placed in foster family residential treatment, and is supervised by Provider, Provider shall arrange for all contacts by the City with the child and foster family through the staff of Provider. The use of conference calls between the City, the natural family, and the residential treatment facility or the foster family will be regularly scheduled by Provider when distance prevents regular contact.

With regard to children with special medical needs, Provider shall provide all training necessary to the individual(s) with whom the child will reside in order to accommodate those needs. Individuals to be trained may include, without limitation, the child's legal guardian(s) or the child's biological, kinship, foster or adoptive parent(s).

- (c) **Notice of Child's Location.** Providers shall promptly notify the City of the exact placement location and address of each child placed in accordance with the terms of the Contract. A child shall not be moved from one location to another even within a Provider's own system without PRIOR written notice to the Department and applicable approval of court, except in emergency situations that place the child in imminent risk of harm. In non-emergency situations, Provider must furnish the City, in writing, with information regarding any proposed move of a child including, but not limited to, the exact new address of the child as soon as that address is known, plans for education, and plans for transfer of



applicable medical and therapeutic services but in no event less than seventy-two (72) hours prior to the move. In emergency situations, Provider shall notify the City of the new address orally and in writing with information regarding any proposed move of a child including, but not limited to, the exact new address of the child as soon as that address is known, plans for education, and plans for transfer of applicable medical and therapeutic services immediately after ensuring the safety of the child or children involved.

**A failure to comply with this provision constitutes an Event of Default pursuant to Section 12.1(a). If Provider fails to comply with this provision, the City may exercise any of the Remedies available to it pursuant to Section 13.1.**

- (d) **Copies of ISPs, Other Reports.** Provider shall promptly provide the City with copies of each ISP, periodic reviews of ISPs, and in-home and day care services reports. Provider's ISP form for children and youth, as well as quarterly reports on each child and family shall be consistent with the FSP and Applicable Law. In addition, Provider shall promptly submit all requisite reports to Family Court and to Community Behavioral Health or its successor or assigns.
- (e) **In Home Services and Foster Care Outcomes Requirements.** All providers are required to implement and utilize all forms and procedures in home services and Foster Care Services. Provider shall comply with all current, newly enacted and subsequent outcome requirements enacted during the term of the Contract, including any and all amendments thereto.
- (f) **Compliance with Temporary Assistance for Needy Families ("TANF") Reporting Requirements.** Provider shall comply with all requirements needed to document and claim under TANF the eligible services delivered by the Provider. Compliance shall include, without limitation, submitting the following:
  - (1) Once a month, the list of clients receiving services that month on the form prescribed by the City;
  - (2) Once a month, the standard summary invoice on the form prescribed by the City;
  - (3) Once a year, a properly completed Means Test Worksheet (MTW) for each child receiving services. A MTW must be completed when a child first comes into service, so each month the Provider must provide a properly completed MTW for every child who came into care that month. That MTW is valid for twelve (12) months from the date the MTW was completed. If the client continues to receive services beyond twelve (12) months, a new MTW must be completed.

- (g) **Unusual Incident, Safety Alert and HCSIS Reports.** Provider shall notify DHS, orally and in writing of any fatality or incident, as required by state regulations, including but not limited to 55 Pa. Code 3680.21, and state and DHS directives, including but not limited to, the Policy and Procedure Guide dated February 23, 2010, "Using and Responding to the Safety Alert Tool for Families Receiving In Home Services and the Home and Community Services Information System (HCSIS) Reports for Children in PA Placements."
- (h) **Documentation of arrests of children/youth.** Providers must maintain centrally located documentation regarding all arrests by law enforcement of children and youth being served by the Provider. The Provider must maintain the following information: the date of the report, the DHS division (CWO or JJS) that placed the child with the Provider agency or program; the name, age and race of the child; the date and time the arrest occurred; and reason for the arrest by the law enforcement agency.
- (i) **Documentation of restraints of children/youth.** Providers must maintain centrally located documentation regarding all restraints of children/youth served. Provider must maintain the following information: the date of the report; the DHS division (CWO or JJS) that placed the child with the Provider agency or program; the name, age and race of the child; reason for restraint; date and time the restraint occurred; type of restraint used; name of employee(s) who performed the restraint; duration of the restraint; name of employee(s) who observed the child; and the result of restraint (i.e., injuries incurred, hospitalization, etc.). Provider shall abide by all applicable law and directives in regards to restraints of pregnant females.
- (j) **Documentation of Truancy.** Provider must maintain centrally located documentation regarding whether a child/youth has been truant (three (3) unexcused absences within the school year) during the time the child/youth was placed with Provider.

**If the Provider fails to comply with these requirements, the City may withhold payments to the Provider until such time that the Provider complies with these requirements.**

- 3.28 **Transitional and Discharge Planning.** Provider shall comply with any Departmental and Administrative Policy Directives, and all applicable laws, regulations, and directives regarding transition and discharge planning and development.



(a) **Upon Agreement of the Parties.**

- (1) Provider shall submit to the City a Case Closing Summary and close the case pursuant to Departmental Policy following child's discharge from Provider's care, along with important documents including, without limitation, birth certificate, Social Security card, court order, and copies of any other documents requested by the City that relate to the child.
- (2) Provider shall administer and distribute money acquired or received by the child in accordance with Applicable Law and any applicable Discharge Plan. Provider acknowledges that such funds are the property of the child.

(b) **Upon Request of Provider.** In cases where the child's discharge from Provider's care is requested by Provider, and is not made pursuant to a mutually agreed upon service plan or court-ordered removal, Provider shall submit to Commissioner a written explanation detailing the basis for the requested discharge. If the request is approved by the Commissioner or Commissioner's designee, Provider shall give the City thirty (30) days formal written notice of its intent to discharge; if the child is a special needs child (as that term is defined by the Department and Applicable Law), Provider shall give the City ninety (90) days formal written notice. If a discharge on an emergency basis proves necessary, the City may, in its sole discretion, permit a shorter notice period. Provider may not unilaterally discharge a child or case.

- (1) **Unplanned discharges.** In accordance with the requirements of Section 3.28(b) and subject to Provider's full compliance therewith, Provider is authorized to discharge a child from its care and custody **only after** Provider has confirmed with the Department's Central Referral Unit that an alternative placement has been identified and Provider has contacted the Department's Social Worker regarding the date, time and place of discharge. The discharge documents must include a statement of the reason for the discharge. Provided further, that in compliance with the thirty (30) or ninety (90) day notice requirement set forth in Section 3.28(b), Provider will forward such notice both to the Department Social Worker and to the Central Referral Unit. Provider further agrees to include with the notice a current evaluation addressing the child's treatment needs.

(c) **Delinquent Children.**

- (1) When a delinquent child is recommended for discharge, Provider shall submit to the Probation Department of the Court of Common Pleas, the Juvenile Justice Services Administrator of the



Department, and the District Attorney, a complete summary of all information pertaining to the child's adjustment and progress, and any recommendations of Provider, one (1) month prior to the anticipated discharge date.

- (2) If a delinquent youth or an alleged delinquent youth is placed in a CBES or, in the case of a delinquent youth, in a delinquent facility, and while residing at such facility is arrested on new charges; and if at the time of the arrest the youth was not a runaway youth; then Provider shall accept and transport the youth back to the facility pending court disposition of the new charges. Provider may obtain an exception to this provision if Provider's facility has exhausted its capacity, or if the youth is committable pursuant to the Mental Health Procedures Act, is eligible for detention at the Philadelphia Juvenile Justice Services Center pursuant to the Santiago Consent Decree, or is eligible for admission to an acute care facility for medical purposes. If Provider determines that the youth, because of the new charges, is not suitable for its program, Provider may, after accepting the youth back to its facility, request that the referring agency of the City grant an exception to this provision by following the procedures outlined in Section 5.2(b)(3).

- (d) **Documentation of discharges of children/youth.** Providers must maintain centrally located documentation regarding each child that is discharged from Provider's agency. Provider must maintain the following information: the date of the discharge from the Provider's agency or program; the DHS division (CWO or JJS) that placed the child; the name, age and race of the child; and the reason that the child was discharged (including successful progress of original presenting problem; AWOL; negative discharge; etc.).

### 3.29 **Absence of Child.**

- (a) When a child voluntarily absents himself or herself from the supervision of Provider or Provider's designee for a period of twenty-four (24) hours, the child is to be considered a runaway and Provider shall:
- (1) Notify all appropriate parties, including the Department, police, the National Center for Missing and Exploited Children, and, if appropriate, the Philadelphia Juvenile Probation Department of the Court of Common Pleas. Immediate oral notice shall be given to the Department and the Philadelphia Juvenile Probation Department (if appropriate), as soon as Provider determines that the child is determined to be a runaway, but in no event later than

twenty-four (24) hours after departure. Provider shall give written notice not later than the next working day. Provider shall also give oral and written notice, in the manner set forth above, as soon as the child is found or returned to Provider's physical custody. Provider shall notify the Philadelphia Juvenile Probation Department of any runaway at the following numbers:

Weekends, Evenings and Holidays  
686-4818 or 4999 Intake Unit

When the child is alleged or adjudicated delinquent, Provider shall notify the District Attorney at 686-4000.

- (2) Reserve the child's placement for seven (7) days from the time of knowledge of the child's departure, unless the City notifies Provider to the contrary. Upon such notice, the City or CUA shall be obligated to compensate Provider for maintaining availability of the placement. If the child is located within the seven (7) day period, Provider shall accept the child back into placement in accordance with the exception and appeal procedure described at Section 5.2(b)(3)
  - (b) Upon mutual agreement of Provider and the Commissioner's designee, the seven (7) day period may be extended.
  - (c) When a child who is still in the care of Provider is found within the county of placement or a contiguous county, Provider shall be responsible for transportation costs for returning the child. In all other situations, the City shall be responsible for the cost of transportation. If Provider makes arrangements for the use of public transportation in returning a child who has run away, the City shall be responsible for transportation costs only when it has given prior approval. With the exception of delinquent children, this subsection (c) shall apply only to children placed in the legal custody of the Department.
- 3.30 **Provider's Publications.** Provider shall identify the Department as a funding source in all literature, documents reports or pamphlets which Provider publishes, develops or produces in connection with this Contract.
- 3.31 **Certifications.** Provider shall obtain Certifications as required by law and by DHS policy. Herein, "Certifications" shall be understood to mean: (i.) a report of Federal criminal history record information dated no more than one (1) year-to-the-day prior to the individual's start date and obtained by submitting a full set of fingerprints in a manner described by PA DHS to the Federal Bureau of Investigation (FBI), (ii.) a Pennsylvania Criminal History Record Report dated no more than one (1) year-to-the-day prior to the individual's start date, (iii.) a certification from PA DHS dated no more than one (1) year-to-the-day prior to the



individual's start date certifying whether the applicant is named in the PA DHS maintained central register as an alleged perpetrator in a pending child abuse investigation, the perpetrator in a founded report of child abuse, the perpetrator in an indicated report of child abuse, the perpetrator in a founded report for a school employee or the perpetrator in an indicated report for a school employee, (iv.) criminal history and child abuse record certifications from any other current or previous state of residence within the past five (5) year period and dated no more than one (1) year-to-the-day prior to the individual's start date, and (v.) any other record or certification requested by the Department.

- (a) Prior to commencing employment or service with the Provider or Subcontractor, any individual for whom Certifications are required must swear or affirm in writing that the individual has not been disqualified from employment or service under the Child Protective Services Law, 23 Pa.C.S. § 6344(c), and has not been convicted of an offense similar in nature to a crime listed in 23 Pa.C.S. § 6344(c) under the laws or former laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation, or under a former law of the Commonwealth of Pennsylvania.
- (b) Certifications shall be obtained prior to the approval and/or hiring of any applicant. Provider shall obtain Certifications for all applicants for employment including without limitation: employees, agents, independent contractors, volunteers having contact with children, all prospective foster parent applicants, all prospective adoptive parent applicants, all prospective PLC custodians, all prospective foster home Household Members, all prospective adoptive parent Household Members, and all prospective PLC custodian Household Members. A "Household Member" shall herein be defined as: any individual 18 years of age or older spending thirty (30) days or more in a home during a calendar year.
- (c) This section shall be applicable to all staff including without limitation executive, administrative, and operational staff.
- (d) Provider shall obtain the required Certifications for all current employees, agents, independent contractors, volunteers having contact with children, foster parents, adoptive and prospective adoptive parents, PLC custodians and prospective PLC custodians, and all of their respective Household members for whom this information has not already been obtained.
- (e) Providers have a continuing obligation to obtain updated Certifications every sixty (60) months.



- (f) The PA DHS is utilizing Cogent Systems to process FBI record checks. Provider shall be responsible for entering into an agency agreement with Cogent Systems so that Provider may pay for the fees for all prospective foster and adoptive parent applicants and their respective Household Members applying through the Provider or establish an agency policy to require that applicants pay the fees themselves. These records must be included, when applicable, in the documentation forwarded to the DHS Licensure Unit when foster homes are certified or recertified.
- (g) According to the Child Protective Services Law ("CPSL"), 23 Pa. C.S. § 6301 et seq.), an individual may not be hired or approved for employment or participation in a program, activity, or service, including but not limited to employment as either a foster parent or an adoptive parent, if that individual has been convicted of any of the following offenses or if the individual has been convicted of the attempt, solicitation, or conspiracy to commit any of the following offenses:
- Criminal Homicide
  - Aggravated Assault
  - Stalking
  - Kidnapping
  - Unlawful Restraint
  - Rape
  - Statutory Sexual Assault
  - Involuntary Deviate Sexual Intercourse
  - Sexual Assault
  - Aggravated Indecent Assault
  - Indecent Assault
  - Indecent Exposure
  - Incest
  - Concealing Death of a Child
  - Endangering the Welfare of Children
  - Dealing in Infant Children
  - Felony Prostitution and Related Offenses
  - Obscene and Other Sexual Materials and Performances
  - Corruption of Minors
  - Sexual Abuse of Children
  - Felony Offense Under the Controlled Drug, Device and Cosmetic Act, committed within the five (5) year period immediately preceding individual's application
- (h) Other than the last criminal offense listed – Felony Drug Offense – there is no time limitation on the enumerated criminal convictions. For example, an aggravated assault from thirty-five (35) years ago shall have the same effect as an aggravated assault conviction this year: namely,

the individual shall be precluded from employment or participation in a program, activity, or service.

- (i) Provider shall not approve an applicant as a foster parent, prospective adoptive parent, or PLC custodian if they or any Household Member are named as the perpetrator in a founded report of Child Abuse or a report equivalent to a founded report of Child Abuse in another state.
- (j) Provider shall not approve an applicant as a foster parent, prospective adoptive parent, or PLC custodian if they or any Household Member are named as the perpetrator in an indicated report, or a report equivalent to an indicated report in another state, within the previous 5 years. A perpetrator and those with a Household Member named as a perpetrator in an indicated report or the equivalent of an indicated report from another state more than five years ago may be approved as a foster parent, prospective adoptive parent, or PLC custodian, but only with the written approval of the Commissioner or his/her designee at the director level or higher.
- (k) Provider shall not approve an employee, agent, independent contractor, or volunteer having contact with children for service if they are named as the perpetrator in a founded report of Child Abuse or a report equivalent to a founded report of Child Abuse in another state, within the previous 5 years. A perpetrator named in a founded report, or the equivalent of a founded report from another state, more than 5 years ago may only be approved as an employee, agent, independent contractor, or volunteer having contact with children for service upon the written approval of the Provider's Executive Director, President, or similar Chief Executive Officer. Such written approval shall be determined on a case by case basis and record of such written approval shall be maintained in accordance with section 7.4 of these General Provisions.
- (l) Provider shall not approve an employee, agent, independent contractor, or volunteer having contact with children for service if they are named as the perpetrator in an indicated report, or a report equivalent to an indicated report in another state, within the previous 5 years. A perpetrator named in an indicated report, or the equivalent of an indicated report from another state, more than 5 years ago may only be approved as an employee, agent, independent contractor, or volunteer having contact with children for service upon the written approval of the Provider's Executive Director, President, or similar Chief Executive Officer. Such written approval shall be determined on a case by case basis and record of such written approval shall be maintained in accordance with section 7.4 of these General Provisions.



- (m) Provider shall immediately require any of its employees, agents, independent contractors, volunteers having contact with children, foster parents, prospective adoptive parents, or Household members of either a foster home or prospective adoptive home to submit new Certifications to Provider in the manner required in this section for a new applicant should Provider have or ever develop a reasonable belief that such Certifications would disqualify the individual or home they reside in from approval under this section or Applicable Law. Costs for these certifications shall be borne by the Provider.
- (n) Provider shall require all employees, agents, independent contractors, all adoptive, foster and kinship parents, and all of Provider's volunteers having contact with children to notify Provider in writing if they are arrested for or convicted of an offense that would constitute grounds for denying employment or participation in a program, activity or service, or if they are named as a perpetrator in a founded or indicated report. Such written notice shall be provided not later than 72 hours after the arrest, conviction or notification that the person has been listed as a perpetrator.
- (o) Provider shall immediately notify the Department of any disqualifying Certification.
- (p) Waiver: Waiver of any of the provisions of this section may be requested only for those provisions not required by Applicable Law. Such waivers shall only be valid with the express written approval of the Commissioner or his/her designee at the director level or higher and only to the extent permitted by Applicable Law.

3.32 **Child Death Review.** Provider shall conduct an internal review when a child placed with Provider, whether or not placed by the City, dies as the result of suspected child abuse or neglect. The review shall include cases that are currently active and also those that were known to Provider within the past sixteen (16) months. Provider shall conduct said review simultaneously with the Child Protective Service (CPS) investigation. Provider's review shall assess compliance with statutory, regulatory, and county requirements; and compliance with Provider's policies and procedures, including examination of supervisory and training requirements, for the purpose of determining whether the appropriate level of service was provided to the child, the child's family and/or foster family. A written report detailing the findings and conclusions of the death review shall be submitted to DHS within thirty (30) days following receipt of the report of suspected abuse if applicable. In addition, Provider shall participate in Act 33 meetings.

3.33 **Foster Parent Agreements.** Provider shall include in its agreements with foster parents the requirement that foster parents shall not maintain in their households,



at the same time, other children committed to the Department of Human Services who are placed with other Philadelphia County foster family care agencies.

- 3.34 **Group Home Provision.** Provider must obtain the prior written approval of the City of Philadelphia, through the Commissioner or the Commissioner's designee, prior to acquiring, whether through purchase or lease, a group home or institution situated in the City of Philadelphia for the purpose of providing services to Philadelphia County dependent or delinquent youth. Provider further agrees that it must obtain written approval of the Commissioner or the Commissioner's designee before making any change in the type of dependent or delinquent youth for whom services will be provided on these properties.
- 3.35 **Adoption and Permanent Legal Custodianship.** Provider shall complete and/or ensure the completion of a family profile according to the Department, City and State specifications for caretakers the City identifies as appropriate for adoption and permanent legal custodianship. The fee payable for the work to complete the family profile will be determined by the revised Statewide Adoption Network ("SWAN") state bulletin by reference.

#### ARTICLE IV: PROVIDER'S REPRESENTATIONS AND COVENANTS

- 4.1 **Provider's Representations and Covenants.** Provider makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Contract. The representations, warranties, and covenants stated below shall continue throughout the Term of this Contract. 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.
- (a) **Good Standing.** If Provider is not an individual, Provider is a business corporation, limited liability company, partnership, limited partnership or other business entity duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization. Provider is duly licensed, qualified and in good standing in the Commonwealth of Pennsylvania and in all jurisdictions in which it conducts business activities relating in any way to the performance of the Services and delivery of the Materials under this Contract, including, but not limited to, the jurisdiction in which Provider is organized. If Provider is a not-for-profit corporation or otherwise an entity determined to be tax exempt pursuant to Section 501(c) of the Internal Revenue Code by the Internal Revenue Service, then Provider has procured, and shall maintain in full force and effect, all consents and approvals necessary in connection with such tax-exempt and non-profit status.
- (b) **Authority to Act.** Provider has full legal power and authority to execute and deliver this Contract, and provide the Services and Materials as set

forth herein. Provider has duly authorized by all necessary actions the execution and delivery of this Contract on behalf of Provider by the individual or individuals signing the Provider Agreement. This Contract is the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with the terms set forth herein. The execution and delivery of this Contract by Provider will not result in a default under or a breach or violation of (1) Provider's certificate or articles of incorporation or bylaws, partnership agreement, limited liability company operating agreement or other pertinent organizational documents, as applicable; (2) any Applicable Law or any judgment, decree order, license, permit or other instrument or obligation to which Provider is now a party or by which Provider may be bound or affected; and (3) Provider's tax exempt status, if applicable. No consent, approval or authorization is required of any regulatory authority or governmental agency, or of any shareholder, partner, member, manager or other party related to Provider.

- (c) **Legal Obligation.** This Contract has been duly authorized, executed and delivered by Provider, by and through individuals duly authorized to execute this Contract on behalf of Provider, and constitutes the legal, valid and binding obligation of Provider, enforceable against Provider in accordance with its terms.
- (d) **No Litigation Preventing Performance.** There is no litigation, claim, consent order, settlement agreement, arbitration, agency proceeding, investigation, challenge or other proceeding pending or threatened against Provider, its properties or business or any individuals acting on Provider's behalf, including, without limitation, Subcontractors, in which any Person seeks to enjoin or prohibit Provider from entering into or performing its obligations under this Contract.
- (e) **Requisite Licensure and Qualifications.** Provider and all of the Persons acting on Provider's behalf, including, without limitation, Subcontractors and their Subcontractors at any tier, in connection with the Services and Materials provided under this Contract, possess and, at all times during the Term of this Contract, shall possess all approvals, licenses, board certifications or eligibilities, training, certifications, qualifications and other credentials, including, without limitation, all licenses required for eligibility to receive Medical Assistance or other third party reimbursements, required in accordance with Applicable Law and the terms of this Contract, to perform the Services and provide the Materials. Provider shall provide the City with copies of all approvals, licenses, credentials and certifications required under this Section upon request by the City.

Provider and all foster family homes, whether relative or non-relative, shall have current, full Certificates of Approval and/or licensure



throughout the Term of this Contract. Temporary or provisional approval and/or licenses do not satisfy this requirement.

Provider shall notify the Commissioner or Commissioner's designee, orally, electronically, and in writing, of any violations of the requirements of this section within twenty-four (24) hours of Provider's receipt of notice or other knowledge thereof, including changes which place Provider, Subcontractors, or a foster home in a provisional license status, or any other approval and/or license violation. Electronic notices of violation of this section shall be sent via email to [DHSLicensure@phila.gov](mailto:DHSLicensure@phila.gov). **DHS will not reimburse foster care agencies for services provided to homes without documentation of full licenses.**

- (f) **No Adverse Interests.** Except as disclosed in writing and approved in advance by the Responsible Official, neither Provider nor any of its directors, officers, members, partners or employees, has any interest, or will acquire any interest, directly or indirectly, that would or may conflict in any manner or degree with the performance or rendering of the Services and Materials.
- (g) **No Indebtedness to the City.** Provider and any and all entities controlling Provider, under common control with Provider or controlled by Provider are not currently indebted to the City, and will not at any time during the Term of this Contract (including any Additional Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Provider shall remain current during the Term of this Contract under all such agreements and payment plans, and shall inform the Responsible Official in writing of Provider's receipt of any notices of delinquent payments under any such agreement or payment plan within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Provider acknowledges that any breach or failure to conform to this representation, warranty and covenant may, at the option of the City, result in the withholding of payments otherwise due to Provider under this Contract or any other agreement with the City under which the City may then owe payment of any kind, and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments or the termination of this Contract for default (in which case Provider shall be liable for all excess costs and other damages resulting from the termination), or both. In addition, Provider understands that false certification, representation or warranty by it is subject to prosecution under Title 18 Pa.C.S.A. § 4904.



- (h) **Commercial Activity License.** If Provider is a "business" as defined in Section 19-2601 of the Code, Provider has and shall maintain during the Term of this Contract, a valid, current Commercial Activity License, issued by the City's Department of Licenses and Inspections, to do business in the City.
- (i) **Subcontractor Licensure; No Indebtedness to the City.** Each Subcontractor, if any, holds and shall maintain during the term of the Subcontract, a valid, current Commercial Activity License to do business in the City, if required by Applicable Law. To the best of Provider's knowledge, information and belief, the representations made in any Subcontract that Subcontractor is not indebted to the City are true and correct.
- (j) **Non-Suspension; Debarment.** Provider and all of the individuals acting on Provider's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Provider cannot so warrant, then Provider shall submit to the Responsible Official a full, complete written explanation as to why Provider cannot so warrant. Provider shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Provider's compliance with the terms of this or any other contract between Provider and the City which results in the suspension or debarment of Provider. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Provider shall not be responsible for costs of investigations which do not result in Provider's suspension or debarment.
- (k) **Prohibiting Religious Activities.** Provider shall not provide religious instruction, conduct religious worship or services, or in any way proselytize any individual in connection with the Services provided, either directly or indirectly, under this Contract.

Provider shall inform all individuals to whom Services are provided, whether directly or indirectly, of the following: "The Philadelphia Department of Human Services' selection of a faith-based provider of social services is not an endorsement of the Provider's religious character, practices or beliefs. No Provider of social services may discriminate against you on the basis of religion, a religious belief or your refusal to actively participate in a religious practice."

The above representations, warranties and covenants shall continue throughout the Term of this Contract. 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.

- (l) **Non-Lobbying Certification.** No federally appropriated funds have been paid, by or on behalf of Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, Provider shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

If this Contract or any Subcontract is funded with federal funds, Provider shall require that this language be included in the award documents for all subawards at all tiers (including Subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and Subcontractors shall certify and disclose accordingly.

Provider understands that this is a material representation of fact upon which reliance was placed when this Contract was entered into. Submission of this certification is a prerequisite for making or entering into this Contract imposed under Section 1352, Title 31, U.S. Code, and Provider agrees that the execution of this Contract shall constitute the requisite submission.

The above representations, warranties and covenants shall continue throughout the Term of this Contract. 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.

- 4.2 **Notice of Change.** If there is a material change in the foregoing representations made by Provider for itself or on behalf of any of its Subcontractors, or a



circumstance occurs adversely affecting Provider's business integrity, Provider shall promptly notify Responsible Official of such changed circumstances.

#### **ARTICLE V: SERVICE REQUIREMENTS**

5.1 **Scope of Services.** Services provided include the Services described in the Provider Agreement and all the obligations under this Contract. The Services encompass the following general categories:

- (a) Services to dependent, delinquent, and non-adjudicated children and their families; and
- (b) Other professional services, including consulting and training services.

5.2 **Placement and Referral Process.**

(a) **Eligibility for Services.** With the exception of children adjudicated delinquent, the City will be responsible for the determination of eligibility for public care and Services, and for the assumption of legal custody, if required, for all children provided Services under the Contract.

(b) **Referral Process.**

- (1) With the exception of children adjudicated delinquent, the City shall, prior to Provider's acceptance of a child, furnish Provider with a social summary, including a family summary and a medical history. To the extent such information is available to the City, the City shall also provide related school information, a signed psychological evaluation, and a signed psychiatric evaluation.
- (2) When Provider receives a referral from the City for placement, with the exception of state approved residential treatment facility placements, the City will cooperate with Provider in arranging a pre-placement visit or conference. The participants may include, but are not limited to, the child, parent or guardian, and County caseworker or probation officer. Provider will not be obligated to pay transportation costs for participants who attend the visit or conference.
- (3) Provider may reject a child and family only if it has exhausted its capacity under this Contract. If Provider determines that a child or family is not acceptable for reasons other than exhaustion of capacity, it must notify the Commissioner in writing within twenty-four (24) hours of the rejection detailing the basis of the intended rejection and request an exception to this provision. The Commissioner or Commissioner's designee's decision to grant or reject the request shall be final.



- (c) **Residential Treatment Facility Placement.** In the event that a child requires services that can only be provided in a residential treatment facility (RTF), Providers are to obtain approval from Community Behavioral Health (CBH) PRIOR to the RTF placement.
- (d) **Emergency Shelter Placement.** In the case of Out-of-Home Placement in an emergency shelter, Provider will accept all referrals as stated in the Performance Standards. Provider may only reject a referral if:
- Provider has exhausted its capacity under the Contract;
  - the youth is committable pursuant to the Mental Health Procedures Act 50 P.S. § 7101 et seq.;
  - the youth is eligible for detention at the Philadelphia Juvenile Justice Services Center pursuant to the Santiago Consent Decree; or
  - the youth is eligible for admission to an acute care facility for medical purposes.

If Provider determines that a child placed in an emergency shelter is not suitable for its program for reasons other than those identified in this Section 5.2, Provider may, after accepting the child into emergency shelter, request an exception to this provision by following the procedures outlined in Section 5.2(b)(3). Emergency shelter services must be accessible to the City for the placement of children twenty-four (24) hours per day, seven (7) days per week.

- (e) **Availability of Placement Providers.** All Providers of Out-of-Home Placement services to children shall be prepared to receive referrals and to accept children into placement at all times, twenty-four (24) hours per day, seven (7) days per week. Out-of-Home Placement Providers shall respond to placement referrals within one hour of their being contacted and will work immediately to secure placement for each child referred.
- (f) **Information Sharing Following Acceptance for Placement.** Except in emergency situations, when the City receives official notice of acceptance by Provider for Out-of-Home Placement of a referred child, the City shall send to Provider available and pertinent information and documentation within five (5) business days after receipt of notice, or as soon as possible thereafter.
- (g) **Information Sharing in Emergency Out-of-Home Placement Cases.** In the event of an emergency Out-of-Home Placement, the City shall make every effort to supply Provider with all available records, reports,

summaries, and any other pertinent information as soon as possible after the date of acceptance.

- (h) **Collaborative Planning.** Provider, with the participation of all other necessary participants, shall develop an ISP, which shall be consistent with the FSP and Applicable Law. If DHS is responsible for case management, then DHS, with the participation of the Provider and all other necessary participants, shall develop an FSP, including a Placement Amendment. If a CUA is responsible for case management, then CUA, with the participation of the Provider and all other necessary participants, shall develop a Single Case Plan, which incorporates the ISP and shall be consistent with Applicable Law.
- (i) **Clothing.** The City shall ensure that each child entering Out-of-Home Placement with Provider shall have at least minimally adequate clothing. If the City determines that the child's clothing is inadequate, it may authorize Provider to purchase the necessary clothing as outlined in the Departmental and Administrative Policy Directives.
- (j) **Life skills training for children in placement.** Provider shall comply with Departmental and Administrative Policy Directives regarding the provision of life skill services for all youth in placement who have attained the age of twelve (12) years or above, regardless of their permanency goals. Concurrent with the ongoing reasonable efforts toward permanency, Provider will address the child's need to acquire the life skills needed for adult self-sufficiency. The Individual Service Plan will identify self-sufficiency goals and specific courses of action that the child will take to prepare for the pursuit of these goals. Provider's agency case worker will provide direct social work and other services to help the child prepare for self-sufficiency as an adult, including:
  - Provision of life skills training
  - High school retention and support
  - Career clarification and decision-making
  - Preparation for post-secondary education or vocational training
  - Planning for acquisition of permanent housing upon discharge
  - Support in identifying and coping with feelings of separation and loss that will be encountered upon emancipation

Provider shall identify and facilitate access to the resources needed for youth to acquire the skills necessary for self-sufficiency, including resources to support educational and employment goals and the acquisition of housing upon discharge.



**Failure to comply with these requirements constitutes an Event of Default pursuant to Section 12.1(a). If Provider fails to comply with the requirements under Section 5.2, the City may exercise any of the remedies available pursuant to Section 13.1 including withholding of payment.**

**5.3 Medical and Dental Costs.**

- (a) **Responsibility for Payment.** The maximum fee(s) set forth in the Provider Agreement and Article VI of these General Provisions do not include payment of medical expenses. The City shall provide the necessary means of payment for medical expenses for the child only in the absence of a third party payor. The City shall apply for public benefits on behalf of the children and youth, including Public Assistance, Medical Assistance, Social Security or SSI, and the City shall furnish Provider with Medical Assistance card(s) or such information as is necessary to secure third party payments.
- (b) **Medical Assistance.** For delinquent children and children placed in the legal custody of the City, the City shall provide financial coverage for medical expenses through the MA program. The City shall not provide financial reimbursement for medical expenses which are not covered by the MA eligibility guidelines, or for services provided by vendors who are not MA-approved. Reimbursement shall be paid directly to the MA-approved vendor, not to Provider.
- (c) **Limits of the City's Responsibility.**

The City shall not be responsible for the following medical expenses:

- (1) those expenses incurred prior to the effective date of this Contract;
- (2) those expenses that are in excess of the applicable MA rate, unless Provider obtained prior written approval from the City;
- (3) those expenses for services not covered by the applicable MA category for which the child or youth is eligible, unless Provider has obtained prior written approval from the City;
- (4) those expenses for which the vendor refuses to bill MA; and
- (5) those expenses for services for which prior authorization from a managed care organization, including CBH, is required and has not been obtained, and for which Provider is seeking payment from the City. Provider shall be responsible for obtaining treatment authorization prior to securing the services; failure to do so shall result in Provider bearing sole liability for payment for such services.



(d) **Elective Services.** The City shall not assume responsibility for elective services (including medical or dental) unless Provider obtains prior written approval from the City.

5.4 **Change in Laws.** If, during the Contract Term, there are changes in PA DHS regulations regarding MA reimbursement, the City and Provider agree to negotiate an Amendment, to set forth revisions to Section 0 (Medical and Dental Costs) hereof, to conform to such changes. The City and Provider further agree that the remaining provisions of this Contract shall remain in full force and effect and binding on the Parties.

5.5 **Right of Review and Rejection.** The City reserves the right to inquire into the background and qualifications of Persons retained by Provider to provide Services, and to reject the use of any persons, families, or households which, in the City's sole judgment, are determined not to be in the best interests of the child or families for whom the Services are required.

#### ARTICLE VI: COMPENSATION

6.1 **Requisite Documents.** Prior to the City's payment for placement Services furnished by Provider to delinquent or alleged delinquent youth, Provider must possess the following completed and current documents:

- (1) Form Authorizations;
- (2) FSP;
- (3) Placement Amendment, if any;
- (4) CY-61 (Application for Initial Determination for Title IV-E Placement Maintenance and Medicaid); and
- (5) Court Order

6.2 **Certification of Available Funds.** Provider acknowledges that payments under this Contract shall not exceed the amount certified by or on behalf of the City's Director of Finance as available for this Contract. A copy of the form signed by the Office of the Director of Finance showing the amount of currently available funds will be attached to the fully executed Contract returned to Provider. During the Initial Term and any Additional Term(s) of this Contract, the City reserves the right to fund any remaining balance of this Contract amount in varying amounts from time to time as funds become available, not to exceed in total the maximum amount stated in this Contract. Provider agrees that the City shall not be obligated to fund this Contract except out of funds certified by or on behalf of the City's Director of Finance as currently available, even if those funds are less than the maximum amount stated in this Contract. If sufficient funds are not certified as available at any time, the City may exercise its options described in Section 6.3 (Unavailability of Funds) below.

6.3 **Unavailability of Funds.** If funding for this Contract from any source is not obtained and continued at an aggregate level sufficient to allow for payment for

the Services performed and Materials delivered under this Contract, the City may exercise one of the following options without liability or penalty to the City:

- (a) Terminate this Contract effective upon a date specified in a Termination Notice; or
- (b) Continue this Contract by reducing, through written notice to Provider, the amount of this Contract and Services and Materials, consistent with the nature, amount and circumstances of available funding.

The City's exercise of either option under this Section shall not affect any obligations or liabilities of either Party accruing prior to such termination or reduction of Services or Materials. Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to such termination or modification of this Contract under this Section.

6.4 **Crossing Fiscal Years.** If any portion of the compensation set forth in this Contract is to be paid in any City fiscal year following the fiscal year in which the Initial Term or any Additional Term of this Contract commences (in either case, "Appropriated Fiscal Year"), Provider understands and agrees that the portion of the compensation under this Contract payable with City funds for any period following the Appropriated Fiscal Year is subject to the discretion of City Council as to future appropriations. If, for any reason, funds for any such portion of the compensation are not appropriated by City Council in any Fiscal Year following the Appropriated Fiscal Year, this Contract and the City's liability under this Contract shall automatically terminate at the end of the then current Appropriated Fiscal Year; provided, however, that Provider shall be compensated in accordance with the terms of this Contract for Services and Materials satisfactorily performed and delivered prior to the end of the then current Appropriated Fiscal Year.

6.5 **Allowability of Cost Items.** All payments by the City to Provider under this Contract shall be subject to the limitations on the allowability of cost items imposed by the City of Philadelphia Contract Cost Principles and Guidelines.

6.6 **Advances.** The City may, in the City's sole discretion, offer providers of per diem placement services (including Provider, if applicable) a one twelfth (1/12) advance payment, based on the maximum amount of this Contract, if Provider meets the following criteria:

- (1) Contract and/or encumbrance is \$50,000.00 or over;
- (2) Agency is not-for-profit;
- (3) Service is to be provided for at least 5 DHS placement clients;
- (4) Agency has submitted audited financial statements by required date;
- (5) Audit review does not indicate possible financial difficulties;
- (6) Provider performance reviews have been satisfactory;
- (7) Provider has been contracting with DHS for at least 3 years; and



- (8) A decrease in payments and/or placements, as determined by DHS, is not expected.

The advance to Provider shall be repaid by Provider to the City by reducing a proportionate amount of the advance from subsequent monthly payments by the City to Provider. The entire advance amount must be repaid no later than the April 30<sup>th</sup> invoice unless otherwise approved by the DHS Commissioner, not to exceed the end of the fiscal year for which the advance is provided. The City, in its sole discretion, may waive any or all of the criteria enumerated in (1)-(8) above.

- 6.7 **Income From Contract Funds.** Provider shall provide a written report to the City accounting for all income derived either directly or indirectly by Provider from the use of funds paid to Provider under this Contract or with respect to any activities of Provider in connection with this Contract, including, but not limited to, sale, publication, registration fees, interest, program service fees, and service charges on fees. If required by the City, at the City's sole discretion, Provider shall use all such income to set off against and reduce payments to Provider otherwise due under this Contract.
- 6.8 **Monitoring of Fund Utilization.** Provider and the City shall monitor utilization of funds encumbered under this Contract. Provider shall furnish the City with current utilization reports on a monthly basis. In the event of mutually agreed upon overutilization, the City will, proceeding under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above, authorize an Amendment to this Contract to compensate Provider for such overutilization.
- 6.9 **Maximum Daily Rate, Days of Care or Units of Service (or combination thereof).** The City shall not compensate Provider for any increases in the maximum daily rate, number of days of care or units of service set forth in the Provider Agreement without the prior written approval of the Commissioner. By execution of this Contract, Provider agrees that the City may modify, upon issuance of a Modification Notice to Provider, the maximum daily rate, number of days of care or units of service that the City agrees to purchase under this Contract. In the event the maximum daily rate, number of days of care or units of service are increased, the date of such increase shall be the date stated in the Modification Notice. Any decrease in the maximum daily rate, number of days of care or units of services shall be made upon issuance of a Modification Notice not less than thirty (30) days prior to the effective date of such decrease.
- 6.10 **Total Actual Cost.** The maximum fee(s) set forth Section 4.1 in the Provider Agreement represents the maximum daily rate multiplied by the anticipated units of Services. The City shall pay Provider only for Provider's Total Actual Cost for Services set forth in the Provider Agreement, not to exceed the maximum amount set forth in Section 4.1 of the Provider Agreement. Total Actual Cost shall be limited to those expenditures permitted by Applicable Law, the City's Functional Expenditure Report, and the City of Philadelphia Contract Cost Principles and



Guidelines, as each may be amended from time to time. Actual cost shall be measured as of the end of the current fiscal year (unless a different date is approved in writing by the Commissioner or Commissioner's designee), and shall be documented on the Independent Functional Expenditure Report prepared and certified by a Certified Public Accountant. The Functional Expenditure Report shall be submitted to the City not more than one hundred twenty (120) days after the expiration or earlier termination date of this Contract.

- 6.11 **Excess Compensation.** If, as documented on the Independent Functional Expenditure Report prepared and certified by a Certified Public Accountant, compensation exceeds Provider's Total Actual Cost for Services, the City shall recover such excess compensation over Total Actual Cost by deduction from subsequent Provider billings to the Department or by accepting a refund from the Provider. The City may recover excess compensation at any time after it is documented. Total recovery of excess compensation by deductions from subsequent Provider billings shall be accomplished over a nine (9) month maximum duration, unless a longer period is authorized in writing by the Commissioner or Commissioner's designee. Any extension of the recovery period, requested by the Provider or otherwise, beyond nine (9) months shall not create a bar to recovery by the City. If Provider ceases to contract with the City before the City has recovered all or any portion of the excess compensation, Provider shall promptly pay such excess amount to the City. The amounts of any deductions from Provider billings to the City in recovery of prior excess compensation over Total Actual Cost shall not be a part of actual costs for Department funded programs for the fiscal period during which it was deducted.
- 6.12 **Unpaid Amounts.** Provider must notify Department in writing at the address set forth in the Provider Agreement of any payments it claims are due to it under this Contract and which remain unpaid by the City, not more than sixty (60) days after the expiration of the then current Term of this Contract. Failure to adhere to the time limitation set forth in this Section may result in Provider's forfeiture of any unpaid balances or, in the sole discretion of the City, the requirement that Provider pay any and all additional administrative costs incurred by the City to process the invoices.
- 6.13 **Invoices.** To meet the City's requirements of a complete and accurate invoice a Provider must have a validly conformed contract with the City for the time period in which the Provider's duties were performed and a Provider must be in compliance with all of the terms of that contract, including, but not limited to, the Scope of Services, DHS Provider Standards, and all applicable Article VII audit requirements. A Provider shall submit their invoices to the City on a monthly basis. The City must receive invoices not more than ten (10) business days following expiration of the month for which the invoice is submitted.

- 6.14 **Golden Parachute Agreements.** Provider shall not utilize funds under this Contract to fund in whole or in part the payment of Golden Parachute agreements or any similar agreements negotiated with its employees or agents.
- 6.15 **Indirect Rate Requests.** The budget-based, cost reimbursement contract Provider may request an indirect rate for indirect expenses. In order to be eligible for indirect rate approval, Provider must ensure that the request conforms to the requirements outlined in the Contract Cost Principles.
- (a) For cost reimbursement contracts over \$500,000.00, Provider must submit a detailed justification including line item indirect expense cost calculations, regardless of the percentage of the indirect rate that is being requested.
  - (b) For cost reimbursement contracts under \$500,000.00 with a request of an indirect rate of greater than 10% of the total budget, Provider must submit a detailed justification including line item indirect expense cost calculations.
  - (c) For cost reimbursement contracts under \$500,000.00 with a request of an indirect rate of equal to or less than 10% of the total budget, Provider is not required to submit a detailed justification including line item indirect expense cost calculations, unless specifically requested by DHS.
  - (d) The value of any applicable Subcontracts shall not be part of Provider's indirect percentage calculations.
  - (e) All indirect rate approvals are at the sole discretion of DHS.
  - (f) DHS may require a detailed justification including line item indirect expense cost calculations for all indirect rate requests at any time; all provisions to the contrary notwithstanding.
- 6.16 **Timely Payment From Pennsylvania State Funds.** Complete and accurate invoices submitted to the City, for which the City receives State reimbursement and for which the State funds have already been appropriated by the State for reimbursement to the City, shall be paid within thirty (30) days of receipt of the invoice.

## **ARTICLE VII: AUDITS; INSPECTION RIGHTS; RECORDS**

- 7.1 **City Audit.** From time to time during the Initial Term and any Additional Term(s) of this Contract, and for a period of five (5) years after the expiration or termination of this Contract, the City may audit any and all aspects of Provider's performance under this Contract, including but not limited to its billings and invoices. Audits may be conducted by representatives, agents or contractors of the City, including the Department, or other authorized City representatives including, without limitation, the City Controller. If requested by the City, Provider shall submit to the City all vouchers or invoices presented for payment



pursuant to this Contract, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this Contract. All books, invoices, vouchers, records, reports, cancelled checks and other materials shall be subject to periodic review or audit by the City.

- 7.2 **Inspection.** All Services and Materials shall be subject to inspection and review by City, federal and state representatives, as may be applicable, or their designees, at the offices of Provider in the City, or in another location with the City's consent. Provider shall cooperate with all City, state and federal inspections and reviews conducted in accordance with the provisions of this Contract. Such inspection and review of Provider's Services and Materials, including, without limitation, programs and facilities, shall be in the sole discretion of the inspecting or reviewing entity. Such inspection or review may include, without limitation, meetings with consumers, review of staffing ratios and job descriptions, and meetings with any of Provider's staff members who are either directly or indirectly involved in providing Services or Materials.
- 7.3 **Availability of Records.** Provider shall make available to the City at reasonable times during the Term of this Contract and for the period set forth in Section 7.4 (Retention of Records) below, all records pertaining to this Contract for the purpose of inspection, audit or reproduction by any authorized representative (including any agent or contractor and the City Controller) of the City, the Commonwealth Secretary of PA DHS or Auditor General, and any other federal and/or state auditors, as may be applicable.
- 7.4 **Retention of Records.** Provider shall retain all records, books of account and documentation pertaining to this Contract for a period of five (5) years following expiration or termination of this Contract; if, however, any litigation, claim or audit is commenced prior to expiration of said five (5) year period, then the records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the records shall be retained for such longer period.
- 7.5 **Independent Audit.**
- (a) *Combined City contracts that total less than \$300,000 in a fiscal year.* If requested by the City, Provider shall submit to the City an Independent Audit Report that is acceptable to the City and prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:
    - (1) Provider shall submit a separate audit for each individual entity that contracts with the City. An individual entity includes each



entity with a distinct taxpayer identification number or social security number, or employer identification number. It is intended that this requirement be followed in addition to any other requirements of: the law, other regulatory bodies, or other financial statement presentations.

- (2) The basic financial statements to be filed will include: the Statement of Financial Position, the Statement of Activities, the Statement of Cash Flows and the Statement of Functional Revenue and Expenses by Contract number and Program name.
  - (3) Provider shall ensure that a final audit of the financial transactions relating to each City contract shall be performed in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this Contract by reference. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with each City contract's requirements.
  - (4) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this contract, including, without limitation, the Contract Cost Principles.
  - (5) The City reserves the right to disallow fees paid by Provider for audit services under this contract if the final audit report is not submitted in the manner and within the time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.
  - (6) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City's audit policies, which are incorporated in this contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this contract and the City's audit policies.
- (b) *Combined City contracts that total \$300,000 or more in a fiscal year.* Provider shall submit to the City an Independent Audit Report that is acceptable to the City and prepared and certified by a Certified Public Accountant (CPA) acceptable to the City. The Independent Audit Report shall be prepared in accordance with the following audit requirements:

- (1) Provider shall submit a separate audit for each individual entity that contracts with the City. An individual entity includes each entity with a distinct taxpayer identification number or social security number, or employer identification number. It is intended that this requirement be followed in addition to any other requirements of: the law, other regulatory bodies, or other financial statement presentations.
- (2) The basic financial statements to be filed will include: the Statement of Financial Position, the Statement of Activities, the Statement of Cash Flows and the Statement of Functional Revenue and Expenses by Contract number and Program name.
- (3) Provider shall ensure that an audit of the financial transactions relating to each City contract shall be performed.
  - a) As applicable, the audit shall be in compliance with all requirements of the Subrecipient Audit Guide, which is incorporated in this contract by reference. This includes Department specific required disclosures and schedules. This audit shall verify that all invoiced costs are actual, authorized and eligible for reimbursement in accordance with this contract's requirements.
    - 1) When the combined total of all City contracts with the Provider is greater than \$300,000 but the combination of all federal and state funds received by the Provider, from all sources, is less than \$500,000, the Provider must provide a financial audit in accordance with generally accepted auditing standards. Specifically, the report shall contain a Balance Sheet, Statement Of Activities And Changes In Net Assets, and A Statement Of Cash Flows.
    - 2) When the combined total of all funds received by the Provider from the federal and state governments, from all sources, are equal to or greater than \$500,000, the Provider must provide a financial audit in accordance with generally accepted government auditing standards (Yellow Book Audit), regardless of the combined total of all City contracts. Specifically, the report shall contain a Balance Sheet, Statement Of Activities And Changes In Net Assets, and A Statement Of Cash Flows. In addition, there must be an opinion given on Internal Control Over Financial Reporting.



- 3) When the combined total of all funds received by the Provider from the federal government, from all sources, is equal to or greater than \$750,000, the Provider must provide a Single Audit in accordance with the United States Code of Federal Regulations Title 2 (2 CFR).
    - b) Providers shall adhere to all other auditing requirements imposed by state and/or federal legislation and regulation, including but not limited to audit submission timelines, on funding source(s) that provider receives through this contract, if the funding source(s) are comprised of state and/or federal funds.
  - (4) Provider agrees to make full and prompt refund to the City of amounts of money which result from audit exceptions due to Provider's performance hereunder, or result from non-compliance with Applicable Law and this contract, including, without limitation, the Contract Cost Principles.
  - (5) The City reserves the right to disallow fees paid by Provider for audit services under this contract if the final audit report is not submitted in the manner and time frame prescribed in this Section or if subsequent review of audit work papers discloses deficiencies in required performance.
  - (6) Provider shall submit all audit documentation, as described above, pertaining to this Contract no later than one hundred twenty (120) days after the end of the Term of this Contract, unless a different time is approved, in writing, in accordance with City audit policies, which are incorporated in this contract by reference. Provider's failure to submit the audit documentation in the time required shall be a basis for withholding processing of invoices for payment, and other remedies the City has at its discretion in accordance with this contract and the City's audit policies.
- 7.6 **Compliance Audit Reports.** If this Contract is funded in whole or in part with Commonwealth or federal funds, Provider must prepare and submit compliance audit reports to the Department as required under Applicable Law and any contracts pertinent to the Department's receipt of such funds.
- 7.7 **Program Records; Reporting Costs.**
- (a) **Reports Concerning Provider's Costs.** In addition to the financial and compliance audits, Provider shall (1) identify that part of its per diem rate or unit cost that is attributable to Services rendered; and (2) identify any



unallowable costs, as defined by Applicable Law, this Contract, and the Contract Cost Principles.

- (1) Providers of Title IV-E eligible services, regardless of their physical location, are required to provide complete, timely and accurate Title IV-E submissions.
  - a) Providers must secure approved Title IV-E rates for all eligible services as a condition of receiving full funding for Title IV-E services from DHS. If, after a reasonable timeframe (as determined by DHS), Provider has failed to secure approved Title IV-E rates, DHS may retroactively decrease payable per diems to the prior year's city portion of such per diems. If no prior year Title IV-E per diem rate was established, DHS reserves the right to establish a temporary city share rate until the Provider's Title IV-E package has been approved.
  - b) Title IV-E rate packages must include rates for all Out-of-Home Placement services provided to DHS. If DHS's contracted rates are greater than the projected per diem included in the Title IV-E rate packages, DHS's contracted rates shall be reduced to the Title IV-E rates.
- (b) **Purchase Category.** In reporting financial, program or Service information, Provider shall reflect costs by purchase category for each Service rendered under this Contract.
- (c) **Unallowable Costs; Third Party Funds.**
  - (1) In the calculation of unallowable costs under Title IV-E, this Contract, or the City of Philadelphia Contract Cost Principles and Guidelines, contributed Services are to be used to offset unallowable costs before computing the unreimbursed amount which Provider will report to the City.
  - (2) Unless otherwise required by the Department to obtain maximum reimbursement from any third party source, Provider agrees that third party funds received from a government funding source (which may be used to pay for costs incurred in providing a child welfare Service provided under this Contract) or third party donor restricted funds (which may be held for a specific child welfare Service provided under this Contract), shall be credited in the following manner:
    - a) first against unallowable costs; then,

- b) against the difference between the Actual Allowable Costs incurred by Provider and the per diem cost paid by the City for the Service; then,
- c) to reduce the payments otherwise required to be made by the City under this Contract, by applying the remaining funds to such costs on a percentage basis, calculated by dividing the cost for each Service under this Contract by the total cost of all Services provided under this Contract.

- 7.8 **Audits Pursuant to Section 6-400 of the Home Rule Charter.** Any Provider that is an Agency, as defined in Section 6-400 of the Philadelphia Home Rule Charter, shall permit the City Controller to audit its affairs as authorized in Section 6-400 during the Initial Term or any Additional Term. Under Section 6-400, an Agency is any entity that receives funds from the City, and either a) is created by, or whose board of directors is in whole or part appointed by, one or more City officials or bodies; or b) is organized pursuant to legal authority granted to it by City ordinance.

#### ARTICLE VIII: ASSIGNMENT

- 8.1 **Assignment By Provider.** Provider shall not assign this Contract, or any part of this Contract, or delegate performance of this Contract (other than to its own work forces), without obtaining the prior written consent of the Commissioner or designee. The decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Contract shall not relieve Provider from the faithful performance of any of its obligations under this Contract or change any of the Terms and Conditions of this Contract. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Contract. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Contract. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section 8.1 (Assignment by Provider), an assignment includes the acquisition of the Provider, or a controlling interest therein, through a sale of stock, assets, or otherwise; a corporate or other merger; and the appointment of a receiver or bankruptcy trustee; and the transfer of this Contract or of control of Provider in any bankruptcy or other insolvency proceeding.
- 8.2 **Applicability in Case of Bankruptcy or Insolvency.** A receiver or trustee of or for Provider in any federal or state bankruptcy, insolvency or other proceeding concerning Provider shall comply with the requirements set forth in Section 8.1 (Assignment by Provider) above.



- 8.3 **Personal Services.** Provider acknowledges that the Services and Materials are the personal services of Provider and the City shall have no obligation to accept performance by a third party without the Commissioner's or designee's prior and express written consent.

**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.
- 9.2 **Indemnification.** Provider shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees and expenses), claims, suits, actions, damages, liability and expenses, occasioned wholly or in part by Provider's act or omission or negligence or fault or the act or omission or negligence or fault of Provider's agents, Subcontractors, independent contractors, suppliers, employees or servants in connection with this Contract, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to pay any Subcontractors and suppliers, any breach of this Contract, loss of data, data security breach, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret).
- 9.3 **Litigation Cooperation.** If, at any time, the City becomes involved in a dispute or receives notice of a claim or is involved in litigation concerning the Services and Materials provided under this Contract, the resolution of which requires the Services or cooperation of Provider, and Provider is not otherwise obligated to indemnify and defend the City pursuant to the provisions of Section 9.2 (Indemnification) above, Provider agrees to provide such Services and to cooperate with the City in resolving such claim or litigation as Additional Services and Materials under Section 3.3 (Additional Services and Materials; Change in Scope of Services) above and require any Subcontractors to abide to this Section 9.3.
- 9.4 **Notice of Claims.** If Provider receives notice of a legal claim against it in connection with this Contract, Provider shall submit appropriate written notice of such claim to its insurance carrier within the time frame required for submission of claims by the applicable insurance policy and, within ten (10) business days of receipt of notice of the claim, to the Commissioner.



## ARTICLE X: INSURANCE

10.1 **Insurance.** Unless otherwise approved by the City's Risk Manager in writing, Provider shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Provider's performance of the Services and the delivery of the Materials. Provider shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Provider perform any Services or other work until Provider has delivered or caused to be delivered to the Responsible Official and the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability Insurance policy. Coverage shall also include sexual abuse/molestation coverage. As outlined in Section 10.3, Provider shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

(a) **Workers' Compensation and Employers' Liability.**

- (1) Workers' Compensation: Statutory Limits
- (2) Employers' Liability: \$100,000 Each Accident - Bodily Injury by Accident; \$100,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.
- (3) Other states insurance including Pennsylvania.

(b) **General Liability Insurance.**

Limits of Liability:

- (1) For all Out-of-Home service categories, including, but not limited to, day treatment and day care centers: Two million dollars (\$2,000,000.00) per occurrence;
- (2) For all in-home service categories: One million dollars (\$1,000,000.00) per occurrence;

Coverage:

- (1) Premises operations;
- (2) Blanket contractual liability;
- (3) Personal injury liability;
- (4) Products and completed operations;
- (5) Independent contractors;
- (6) Employees and volunteers as additional insureds;
- (7) Cross liability;
- (8) Broad form property damage (including completed operations); and
- (9) Sexual abuse/molestation.

(c) **Automobile Liability Insurance.**

- (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
- (2) Coverage: Owned, non-owned, and hired vehicles.

(d) **Professional Liability Insurance.**

- (1) Health Care Providers subject to the Medical Care Availability and Reduction of Error (MCARE) Act, as amended:
  - a) Hospital and Nursing Homes including officers and employees: \$1,000,000 each occurrence, \$4,000,000 annual aggregate.
  - b) Individuals and Professional Corporations: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
- (2) All Health Care and Human Services Providers not subject to the MCARE Act, as amended: \$1,000,000 each occurrence; \$3,000,000 annual aggregate.
- (3) Professional Liability Insurance may be written on a claims-made basis provided that coverage for occurrences happening during the performance of the Services required under this Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after completion of the Services.

- 10.2 **Self-Insurance.** Provider may not self-insure any of the coverages required under this Contract without the prior written approval of the Commissioner and the City's Risk Manager. In the event that Provider wants to self-insure any of the coverages listed above, it shall submit to the Commissioner and the City's Risk



Manager, prior to Provider's commencement of Services or delivery of any Materials hereunder, a certified copy of Provider's most recent audited financial statement, and such other evidence of its qualifications to act as self-insurer (e.g. state approval) as may be requested by the Commissioner or the City's Risk Manager. In the event the City grants such approval, Provider understands and agrees that the City, its officers, employees and agents shall be entitled to receive the same coverages and benefits under Provider's self-insurance program that they would have received had the insurance requirements set forth above been satisfied by a reputable insurer admitted and duly authorized to do business in the Commonwealth of Pennsylvania or otherwise acceptable to the City. If at the time of commencement of the Term of this Contract, Provider self-insures its professional liability or workers' compensation and employers' liability coverage, Provider may, in lieu of the foregoing, furnish to the City a current copy of the state certification form for self-insurance or a current copy of the State Insurance Commissioner's letter of approval, whichever is appropriate. The insurance (including self-insurance) requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Contract by Provider to the City, or to limit Provider's liability under this Contract to the limits of the policies of insurance (or self-insurance) required to be maintained by Provider hereunder.

- 10.3 **Evidence of Insurance Coverage.** Certificates of insurance evidencing the required coverages must specifically reference the City contract number for which they are being submitted, indicate that the City of Philadelphia, its officers, employees and agents are named as additional insureds and that coverage is included for sexual abuse/molestation. The original certificates of insurance and a copy of Provider's current sexual abuse/molestation endorsement must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia  
Office of the Director of Finance  
Division of Risk Management  
1515 Arch Street, 14th Floor  
Philadelphia, PA 19102-1579  
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Commissioner at the address of the Department set forth in the Notice Section of the Provider Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Provider actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City contract number and be submitted to the City's



Risk Manager at the above address. The City reserves the right to require Provider to furnish certified copies of the original policies of all insurance required under this Contract at any time upon ten (10) days written notice to Provider.

- 10.4 **Fidelity Bond.** When required by the City, Provider shall, at its sole cost and expense, obtain and maintain during the Initial Term and any Additional Term(s) of this Contract, a fidelity bond in an amount equal to the greater of (a) Ten Thousand Dollars (\$10,000) or (b) the amount specified in the Provider Agreement, covering Provider's employees who have financial responsibilities related to the receipt and disbursement of funds under this Contract. In lieu of a fidelity bond, Provider may obtain coverage for crime insurance with limits that are the greater of (a) ten thousand dollars (\$10,000) or (b) the amount specified in the Provider Agreement. The fidelity bond or crime insurance, whichever is obtained by Provider, shall name the City as a beneficiary. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services in conformity with the requirements of Section 10.3 (Evidence of Insurance Coverage) above.

#### **ARTICLE XI: OWNERSHIP OF MATERIALS; PROPRIETARY INFORMATION; CONFIDENTIALITY**

- 11.1 **City Data.** Except as may be provided otherwise in the section of the Provider Agreement dealing with exceptions to these General Provisions, "City Data" shall include: any and all records, documents, and data furnished by the City to Provider in relation to the work required under the Contract; and all Deliverables, Materials, other work product(s), and items of work created by Provider as part of, or to perform work required under, the Contract. "City Data" shall not, however, include any information which: was known to Provider, prior to the commencement of its performance of the Contract, free of any obligation to keep it confidential; is proprietary to Provider; was generally known to the public at the time of receipt by Provider, or becomes generally known to the public through no act or omission of Provider; or was independently developed by Provider, unrelated to work performed for the City, and without knowledge or use of any information obtained from the City.

#### **11.2 Ownership of Materials.**

- (a) Subject to Applicable Law, all Materials shall be the sole and absolute property of the City and the City shall have title thereto and unrestricted use thereof. To the extent that any Materials relating to this Contract developed by or for Provider embody a copyrightable work, including, but not limited to, a "compilation" as that term is used in 17 U.S.C. §101, as amended from time to time, the City and Provider agree that such copyrightable work(s) shall be considered as one or more "works made for hire" by Provider for the City, as that term is used in 17 U.S.C. §§101 and 201(b), as amended from time to time. To the extent that any Materials



relating to this Contract developed by or for Provider embody one or more copyrightable works but are neither a "compilation" nor any other form of "work made for hire," Provider hereby assigns, and agrees to execute instruments evidencing such assignment, all copyrights in all of such works to the City. Provider shall cause all Materials developed or produced by Provider and any Subcontractor in connection with this Contract which embody a copyrightable work to bear the following designation: "©\_\_\_\_The City of Philadelphia" [complete then current year in blank line].

- (b) Without limitation of the foregoing, and in order to ensure continuity of care, medical records may be retained in the custody and control of Provider. The City shall be allowed unlimited access to all medical records, and if copies are required they shall be made at Provider's expense.
- (c) Provider shall make available to the City, upon the City's request, a copy of any Materials prepared by or for Provider in performance of this Contract, at no cost to the City.
- (d) All computer programs, tapes and software developed under this Contract shall be compatible with specifications set by the Department.
- (e) Provider hereby grants, and shall require its Subcontractors to grant, to the City a royalty-free, nonexclusive and irrevocable right to publish, translate, reproduce, deliver, perform and authorize others to do so, all studies, media, curricula, reports and other Materials not owned by the City under this Contract but which relate to the performance of the Services, Materials or this Contract; provided, however, that Provider shall not be required to grant such right to the City with respect to any Materials for which Provider would be liable to pay compensation to third parties because of such grant.
- (f) If federal or Commonwealth funds are used for the development of new software or for modifications of software, the Provider hereby grants to the Commonwealth of Pennsylvania and the federal government a royalty-free, nonexclusive and irrevocable license. Said license shall include the rights to reproduce, publish, or otherwise use, and to authorize others to use for State and Federal Government purposes, including software or modifications thereof and associated documentation designed, developed or installed with federal financial participation. Said license shall apply except when in the case that the software purchase is of proprietary operating/vendor software packages (e.g., ADABAS or TOTAL) which are provided at established catalog or market prices and sold or leased to the general public.

- 11.3 **Non-Disclosure and Destruction of Data.** Provider and its employees, agents, Subcontractors, suppliers, and any person or entity acting on its behalf (i) will maintain in strict confidence all City Data; (ii) will not, without the City's written permission, issue, divulge, disclose, publish, communicate, or distribute any City Data to any person or entity except as may be strictly necessary to perform under the Contract; (iii) will not, without the City's written permission, in any way use any City Data for their businesses, research, or other advantage or gain (except as may be strictly necessary to perform under the Contract), including, without limitation, any use of City Data in any presentation, demonstration, or proposal to perform work, to the City or to others, that may be conducted or created as part of their business activities or otherwise; and (iv) except as required by Applicable Law, will immediately upon termination of the Contract return all City Data to the City, destroy any and all copies of any City Data that are in their possession, whether on paper or in electronic or other form and, if requested by the City in writing, will certify in writing that there has been full compliance with this section.

#### ARTICLE XII: EVENTS OF DEFAULT

- 12.1 **Events of Default.** Each of the following shall be an Event of Default by Provider under this Contract:
- (a) Failure by Provider to comply with any provision of this Contract;
  - (b) Occurrence of an Event of Insolvency with respect to Provider;
  - (c) Falseness or inaccuracy of any warranty or representation of Provider contained in this Contract or in any other document submitted to the City by Provider;
  - (d) Misappropriation by Provider of any funds provided under this Contract or failure by Provider to notify the City upon discovery of any misappropriation;
  - (e) A violation of law which results in a guilty plea, a plea of nolo contendere, or conviction of a criminal offense by Provider, or any of its directors, employees, or agents (1) directly or indirectly relating to this Contract or the Services or Materials provided under this Contract, whether or not such offense is ultimately adjudged to have occurred; or (2) which adversely affects the performance of this Contract; or (3) in any factual circumstances bearing any substantial similarity to any of the Services under this Contract;
  - (f) Indictment or other issuance of formal criminal charges against Provider, its directors, employees or agents for any criminal offense or any other violation of Applicable Law directly relating to this Contract or Services or Materials, in any factual circumstances bearing any substantial



similarity to any of the Services under this Contract or which otherwise adversely affects Provider's performance of this Contract in accordance with its terms, whether or not such offense or violation is ultimately adjudged to have occurred;

- (g) Debarment or suspension of Provider or any agent, employee or Subcontractor of Provider under federal, state or local law, rule or regulation; and/or
- (h) Any act, omission, or misrepresentation which renders Provider ineligible for a City contract or renders the contract voidable under Philadelphia Code Chapter §17-1400.

12.2 **Notice and Cure.** The City agrees that the City will not exercise any right or remedy provided for in Section 13.1 (The City's Remedies) below because of any Event of Default unless the City has first given written notice of the Event of Default to Provider, and Provider, within a period of ten (10) days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Event of Default; provided, however, that no such notice from the City shall be required nor shall the City permit any period for cure if:

- (a) Provider has temporarily or permanently ceased providing Services and/or Materials;
- (b) The Event of Default creates an emergency which requires, as determined by the City in the City's sole discretion, immediate exercise of the City's rights or remedies;
- (c) The City has previously notified Provider in the preceding twelve (12) month period of any Event of Default under this Contract;
- (d) An Event of Default occurs as described in 12.1(b), (c), (d), or (f) above; or
- (e) Provider has failed to obtain or maintain the insurance or any bond required under this Contract.

Nothing contained in this Section shall limit the City's rights under Article XIII (Remedies) below.

### **ARTICLE XIII: REMEDIES**

#### **13.1 The City's Remedies.**

- (a) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without

further notice to or demand on Provider and without waiving or releasing Provider from any of its obligations under this Contract:

- (1) perform (or cause a third party to perform) this Contract, in whole or in part, including, without limitation, obtaining or paying for any required insurance or performing other acts capable of performance by the City. Provider shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or a third party) pursuant to this Section 13.1, together with interest at a rate equal to the Prime Rate as set by First Union National Bank or its successors, plus five (5) percent, provided, however, such interest rate and expense shall not exceed the highest legal rate permitted in the Commonwealth of Pennsylvania thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or any other damage (including, but not limited to, consequential damages or lost profits) incurred by Provider by reason of the City's performance or paying such costs or expenses, and the obligations of Provider under this Contract shall not be altered or affected in any manner by the City's exercise of its rights under this Section 13.1 (The City's Remedies);
  - (2) withhold payment of, or offset against, any funds payable to or for the benefit of Provider;
  - (3) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Provider;
  - (4) exercise any other right the City has or may have at law, in equity, or under this Contract.
- (b) In the event Provider has committed or permitted an Event of Default and has been notified thereof in accordance with Section 12.2 (Notice and Cure) above, then the City may, but shall not be obligated to, without waiving or releasing Provider from any of its obligations under this Contract, terminate or suspend this Contract in whole or in part, as set forth more fully in Article XIV (Transition, Termination, and Suspension) below. In the event of partial termination or suspension, Provider shall continue the performance of this Contract to the extent not terminated or suspended.
- (c) The Services and Materials purchased from Provider are unique, personal in nature and not otherwise readily available. Accordingly, Provider acknowledges that, in addition to all other remedies to which the City is entitled, the City shall have the right, to the fullest extent permitted under Applicable Law, to enforce the terms of this Contract without limitation, by a decree of specific performance or by injunction restraining a



violation, or attempted or threatened violation, of any provision of this Contract.

- 13.2 **Concurrent Pursuit of Remedies; No Waiver.** The City may exercise any or all of the remedies set forth in this Article XIII (Remedies), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Article XIII (Remedies) and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.

#### **ARTICLE XIV: TRANSITION, TERMINATION AND SUSPENSION**

- 14.1 **Transition.** As provided for in Section 2.1, this Contract shall not exceed the term period of one (1) year. However, the City shall have the right at any point, in either whole or in part, to transition the Services and Materials covered under this Contract to another contract. At least sixty (60) days notice of the need to transition the Services and Materials covered under this Contract will be provided with a transition start date and transition end date.
- 14.2 **Termination or Suspension.** In addition to its rights under Articles VI (Compensation) and XIII (Remedies) above, the City shall have the right, in either whole or in part, to terminate this Contract or suspend Provider's performance under this Contract at any time during the Initial Term or any Additional Term(s) of this Contract, for any reason, including, without limitation, the convenience of the City. If this Contract is terminated, the City shall issue a written Termination Notice, which shall set forth the effective date of the termination. If this Contract is suspended, the City shall issue a written Suspension Notice, which shall set forth the effective date of the suspension.
- 14.3 **Provider Responsibilities Upon Transition, Termination or Suspension.**
- (a) Upon the City's transmission of a Transition Notice, Termination Notice or a Suspension Notice under any provision of this Contract, Provider and its agents, employees and Subcontractors, shall
    - (1) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and
    - (2) upon request by the City by notice to Provider, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the transition, termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Commissioner and delivered to

the Commissioner by Provider on or before the date for delivery of the Materials set forth in the Transition Notice, Termination Notice or Suspension Notice or, if no such date is set forth in the Termination Notice or Suspension Notice, then before the effective date of termination set forth in the Transition Notice, Termination Notice or Suspension Notice. Provider waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Provider.

- (b) The City's transition, termination or suspension of this Contract shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.
- (c) There shall be no liability, cost or penalty to the City (including, but not limited to, consequential damages or lost profits) for transition, termination or suspension of this Contract.

**14.4 Payment of Provider upon Transition, Termination or Suspension.**

- (a) Upon termination or suspension of this Contract by the City for an Event of Default, Provider shall be entitled to payment of such an amount, to be determined by the City and subject to audit, as shall compensate it for the work satisfactorily performed prior to the termination date; provided, however, that:
  - (1) no allowance shall be included for termination expenses or for anticipated profits, unabsorbed or under absorbed overhead, or unperformed Services and Materials not satisfactorily delivered; and
  - (2) the City shall deduct from any amount due and payable to Provider prior to the termination date, but withheld or not paid, the total amount of fees, costs or additional expenses incurred by the City in order to satisfactorily complete the Services and Materials required to be performed by Provider under this Contract, including the expense of engaging another provider for this purpose, and such other damages, costs, losses and expenses of the City as may be incurred or result from such termination for an Event of Default.
- (b) In the event of transition, termination or suspension of this Contract by the City for the City's convenience, Provider shall be paid such an amount as shall compensate Provider for the portion of the Services satisfactorily performed and Materials satisfactorily delivered prior to the date of transition, termination or suspension. The City shall not pay Provider any amount for Provider's transition, termination or suspension expenses or anticipated profits, unabsorbed or underabsorbed overhead, or unperformed Services and Materials not satisfactorily delivered.



- 14.5 **Special Suspension Rules.** Suspension of Provider's performance under this Contract after an Event of Default shall not constitute a waiver or release of any liability of Provider for such Event of Default or any of the City's damages or other remedies arising out of such Event of Default; nor shall such suspension be deemed an election of remedies in derogation of any other remedy. Provider acknowledges that the City shall have the right, at its sole discretion, to suspend Provider's performance in the event City Council or the Commonwealth of Pennsylvania does not appropriate funds for the performance of this Contract. In the event that the City issues a Suspension Notice to Provider, such suspension shall continue from the effective date specified in the Suspension Notice until a date specified in the Suspension Notice which shall be not more than one hundred eighty (180) days after the effective date or the date of judgment in any pending trial, whichever is later (such period, the "Suspension Period"). On or prior to the expiration of the Suspension Period, the City shall either terminate this Contract by giving a Termination Notice pursuant to Section 14.2 (Termination or Suspension) above, or by notice to Provider, instruct Provider to resume the delivery of Services and Materials pursuant to this Contract upon the expiration of the Suspension Period. After issuing a Suspension Notice, the City shall pay any invoices submitted by Provider for Services rendered prior to the commencement of the Suspension Period or otherwise payable by the City to Provider under this Contract, subject to all of the City's rights and remedies against Provider, including but not limited to, its rights of set off and its right to review and accept Services and Materials prior to payment therefor.

#### **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. 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 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 (Non-Discrimination; Fair Practices), 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.

15.2 **Chapter 17-400 of the Philadelphia Code: Exclusionary Private Organizations.**

- (a) In accordance with Chapter 17-400 of the Code, Provider agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes, without limiting the applicability of Articles XII (Events of Default) and XII (Remedies) above, 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.
- (b) Provider agrees to cooperate with the Commission on Human Relations of the City in any manner which the Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of the Code. Provider's failure to so cooperate shall constitute, without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, 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.

15.3 **Executive Order 03-12: Minority, Woman and Disabled Business Enterprise Participation.** In accordance with Executive Order 03-12 (the "Antidiscrimination Policy"), the City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and inclusion of Minority Business Enterprises ("MBE"), Woman Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE")



(collectively, "M/W/DSBE") in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all businesses desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, Subcontractors and joint venture partners. In furtherance of this policy, the City will, from time to time, establish participation ranges for City Contracts and City Related Special Projects. Provider agrees to comply with the requirements of the Antidiscrimination Policy, and where participation ranges are established by OEO, Provider agrees, without limitation, to submit documentation responsive to each of the participation ranges established for the Contract.

(a) **General Requirements.** In furtherance of the purposes of the Antidiscrimination Policy, Provider agrees to the following:

- (1) Provider, if it has achieved participation commitments with M/W/DSBEs, represents that it has entered into legally binding agreement(s) with M/W/DSBEs as participants under this Contract ("Participant Agreement(s)") for the services and in the dollar amount(s) and percentage(s) as specified in the M/W/DSBE Participation Exhibit to this Contract (the "Contract Commitment(s)").
- (2) Provider shall secure the prior written approval of the Office of Economic Opportunity ("OEO"), before making any changes or modifications to any Contract Commitments made by Provider herein, including, without limitation, substitutions for its MBEs, WBEs and/or DSBEs, changes or reductions in the services provided by its M/W/DSBE Subcontractors, or changes or reductions in the dollar and/or percentage amounts paid to its M/W/DSBE Subcontractors.
- (3) Unless otherwise specified in a Participant Agreement as described in (a) (1) above, Provider shall, within five (5) business days after receipt of a payment from the City for work performed under the Contract, deliver to its M/W/DSBE Subcontractors the proportionate share of such payment for services performed by its M/W/DSBE Subcontractors. In connection with payment of its M/W/DSBE Subcontractors, Provider agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.
- (4) Provider shall, in the event of an increase in units of work and/or compensation under the Contract, increase its Contract Commitment(s) with its M/W/DSBE Subcontractors proportionately, which increase shall be reflected in the Participant

Agreement(s). OEO may from time to time request documentation from Provider evidencing compliance with this provision.

- (5) Provider shall submit, within the time frames prescribed by the City, any and all documentation the City may request, including, but not limited to, copies of Participant Agreements, participation summary reports, M/W/DSBE Subcontractor invoices, telephone logs and correspondence with M/W/DSBE Subcontractors, cancelled checks and certification of payments. Provider shall maintain all documentation related to this Section for a period of five (5) years from the date of Provider's receipt of final payment under the Contract.
- (6) Provider agrees that the City may, in its sole discretion, conduct periodic reviews to monitor Provider's compliance with the terms of this Antidiscrimination Policy.
- (7) Provider agrees that in the event the City determines that Provider has failed to comply with any of the requirements of this Antidiscrimination Policy, including substantial compliance with any Contract Commitment, the City may, in addition to any other rights and remedies it may have under the Contract which includes termination of the Contract, exercise one or more of the following remedies which shall be deemed cumulative and concurrent:
  - a) Debar Provider from proposing on and/or participating in any future contracts for a maximum period of three (3) years.
  - b) Recover as liquidated damages, i.e., without institution of a civil lawsuit, one percent (1%) of the total dollar amount of the Contract, which amount shall include any increase by way of amendments to the Contract, for each one percent (1%) (or fraction thereof) of the shortfall in Contract Commitment(s) to Provider's M/W/DSBE Subcontractors.
- (8) No privity of contract exists between the City and any M/W/DSBE Subcontractor identified herein and the City does not intend to give or confer upon any such M/W/DSBE Subcontractor(s) any legal rights or remedies in connection with the Subcontracted services pursuant to the Antidiscrimination Policy or by reason of this Contract except such rights or remedies that the M/W/DSBE Subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party. The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as



a waiver of any of the City's rights in connection with this Contract nor shall it give rise to actions by any third parties including identified M/W/DSBE Subcontractors.

- (b) **Special Requirements Applicable to Non-Profit Providers.** In the event the Provider is a non-profit, the Contract may not be subject to M/W/DSBE participation ranges, but Provider shall demonstrate its compliance with the Antidiscrimination Policy in the following manner:

- (1) Provide to the OEO annually, a written diversity program identifying the race, gender and ethnic composition of its board of directors, its employment profile, a list of all vendors that the non-profit does business with in its M/W/DSBE procurement program (e.g., "M/W/DSBE Supplier Diversity Program") and a statement of the geographic area(s) where its services are most concentrated; and
- (2) Demonstrate, to the OEO's satisfaction, that the non-profit's organization makes appropriate efforts to maintain a diverse workforce and board of directors and operates a fair and effective M/W/DSBE procurement program.

- (c) **Criminal Liability for Fraudulent or False Statements.** It is understood that false certification or representation made in connection with this Antidiscrimination Policy may be subject to prosecution under Title 18 Pa.C.S. Sections 4107.2 and 4904.

- 15.4 **Federal Laws.** Provider shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. Sections 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. Section 794), the Age Discrimination Act of 1975, (42 U.S.C. Sections 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.

- 15.5 **Americans With Disabilities Act.** Provider understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this Contract or from providing Services or Materials under this Contract. By executing and delivering this Contract, Provider covenants to comply with all provisions of the Americans With Disabilities Act (the "ADA"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable (a) to Provider; (b) to the benefits, Services, Materials, activities, facilities and programs provided in connection with this Contract; (c) to the City, or the Commonwealth of Pennsylvania; (d) to the benefits, services, activities, facilities

and programs of the City or of the Commonwealth; and (e) if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its funds, benefits, services, activities, facilities and programs applicable to this Contract. Without limiting the applicability of the preceding sentence, Provider shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, facilities, programs and activities provided by the City through contracts with outside contractors.

**15.6 Northern Ireland.**

- (a) In accordance with Section 17-104 of the Code, Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) (1) confirms that it does not have, and agrees that it will not have at any time during the Term of this Contract (including any extensions of the Term), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) agrees that no product to be provided to the City under this Contract will originate in Northern Ireland, unless Provider has implemented the fair employment principles embodied in the MacBride Principles.
- (b) In the performance of this Contract, Provider agrees that it will not use any suppliers, Subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles.
- (c) Provider agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Code. Provider expressly understands and agrees that any false certification or representation in connection with this Section 15.6 (Section 17-104 of the Code) and any failure to comply with the provisions of this Section 15.6 (the Section 17-104 of the Code) 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 (including, but not limited to, Section 17-104 of the Code) or in equity. In addition, Provider understands that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

- 15.7 Limited English Proficiency.** Provider understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to



Services provided under this Contract on the basis of that limitation. As a condition of accepting and executing this Contract, Provider shall comply with all provisions of Title VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia's Executive Order entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Provider, (b) to the benefits, services, activities and programs provided in connection with this Contract, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Contract are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Provider shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

- 15.8 **Business, Corporate and Slavery Era Insurance Disclosure.** In accordance with Section 17-104 of the Code, the Provider, after execution of this Contract, will complete an affidavit certifying and representing that the Provider (including any parent company, subsidiary, exclusive distributor or company affiliated with Provider) has searched any and all records of the Provider or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

The Provider expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law (including, but not limited to, Section 17-104 of the Code) or equity and the Contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S. Section 4904.

15.9 **Protected Health Information**

- (a) The City of Philadelphia is a "Covered Entity" as defined in the regulations issued pursuant to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The City's business activities include both (1) functions which make the City a Covered Entity, and, therefore, subject to HIPAA, and (2) functions that are not subject to HIPAA. In accordance with 45 CFR §164.105(a)(2)(iii)(D), the City has

designated certain departments and units of the City as health care components that must comply with HIPAA ("Covered Components"). The Covered Components of the City as of April 1, 2017 include: Ambulatory Health Services (a unit of the Philadelphia Department of Public Health ("PDPH")); the Philadelphia Nursing Home (a unit of PDPH); the Sexually Transmitted Disease Control Program (a unit of PDPH); the Philadelphia Public Health Laboratory (a unit of PDPH); the Benefits Administration Unit of the Office of Human Resources; Emergency Medical Services (a unit of the Philadelphia Fire Department); and the Office of Behavioral Health and Intellectual disAbility Services. This list is subject to change, and any department or unit of the City that the City in the future determines to be a Covered Component under HIPAA shall be deemed to be a Covered Component for purposes of this Section 15.9.

- (b) To the extent (1) this Contract is entered into by the City for or on behalf of a Covered Component and/or requires the performance of services that will be delivered to or used by a Covered Component (whether or not the City department or unit through which the City entered the Contract is a Covered Component), and (2) Provider is a "Business Associate" of the City, as defined in 45 CFR §160.103, Provider shall comply with the City's Terms and Conditions Relating to Protected Health Information ("City PHI Terms") posted on the City's website (at <https://secure.phila.gov/eContract/> under the "About" link). The City PHI Terms are hereby incorporated in this Section 15.9 as if fully set forth herein. (A printed version of the City PHI Terms, in the City's sole discretion, also may be attached to this Contract.)

#### 15.10 **Chapter 17-1300 of The Philadelphia Code: Philadelphia 21st Century**

##### **Minimum Wage and Benefits Standard**

- (a) Provider is a "Service Contractor" in that by virtue of entering into this Contract, Provider has entered into a "Service Contract," as those terms are defined in Section 17-1300 of the Code. Any Subcontract between Provider and a Subcontractor to perform work related to this Contract is a "Service Contract" and such Subcontractors are also "Service Contractors" for purposes of Chapter 17-1300 as are any Subcontract and Subcontractor at any tier providing Services under this Contract. (Chapter 17-1300 is accessible at <http://www.amlegal.com/library/pa/philadelphia.shtml>.) If such Service Contractor (Provider or any Subcontractor at any tier) is also an "Employer," as that term is defined in § 17-1302 of the Code (more than 5 employees), and further described in § 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, Provider shall



provide, and shall enter into Subcontracts and otherwise cause any Subcontractors at any tier that are also Service Contractors to provide their respective covered Employees (persons who perform work for a covered Employer that arises directly out of a Service Contract), with at least the minimum wage standard and minimum benefits standard, and required notice thereof, stated in Applicable Law and in Chapter 17-1300 of the Code. A summary of the current requirements is as follows:

(1) **Minimum Wage**

Commencing as of January 1, 2016, for wages to be provided on and after January 1 of each year during which the Initial Term and any Additional Term is in effect, Provider, and any Subcontractor at any tier, shall provide their covered Employees with an hourly wage, excluding benefits, that is no less than the result of multiplying \$12 by the then current Consumer Price Index Multiplier (CPI Multiplier) as annually adjusted. For purposes of determining the minimum hourly wage required, 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). The then current minimum hourly wage applicable to City contractors and subcontractors will be posted on the City's website. As of January 1, 2017 that wage is \$12.10 per hour.

(2) **Minimum Benefits**

- (a) To the extent an Employer provides health benefits to any of its employees, then absent a waiver, during the Initial Term and any Additional Term, in addition to any applicable state and federal requirements, such 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; and
- (b) provide to each full-time, non-temporary, non-seasonal covered Employee at least the minimum number of earned sick leave days required by Code Section 17-1305(2).

(3) **Change in Law**

- (c) Generally. Chapter 17-1300 of the Philadelphia Code requires that employers pay the higher of either: 150% of the federal minimum wage, or \$12 multiplied by the CPI Multiplier. To the extent a

change in law would require an increase in wages or benefits under Chapter 17-1300 (for example, an increase in the federal minimum wage to \$9.00/hour, which would increase the required City minimum wage to \$13.50 due to the Chapter's requirement of 150% of the federal minimum wage), such new requirement will take effect only at the start of an Additional Term, if any, commencing on or after the date of the new legal requirement.

- (b) If covered, absent a waiver, Provider shall promptly provide to the City all documents and information as the City may require verifying its compliance, and that of all Service Contractors providing Services under the Contract, with the requirements of Chapter 17-1300. Each covered Service Contractor shall notify each affected Employee what wages and benefits are required to be paid pursuant to Chapter 17-1300.
- (c) Absent a waiver, a Provider subject to Chapter 17-1300 shall comply with all of its requirements as they exist on the date when the Provider entered into this Contract with the City or into an amendment thereto. Provider shall take such steps as are necessary to notify its Subcontractors of these requirements, and to cause such Subcontractors to notify lower-tier Subcontractors that are Service Contractors of these requirements, including, without limitation, by incorporating this Section 15.10, with appropriate adjustments for the identity of the parties, in its Subcontracts with such Subcontractors. A Provider or Subcontractor at any tier subject to Chapter 17-1300 that fails to comply with these provisions may, after notice and hearing before the Director of Finance or such other officer or agency designated by the Mayor, 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.
- (d) Without limiting the applicability of Articles XI (Events of Default) and XII (Remedies) above, Provider's failure to comply, or the failure of Subcontractors at any tier to comply, with the requirements of Chapter 17-1300 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.
- (e) Provider's covered Employees shall be deemed third-party beneficiaries of Provider's representation, warranty, and covenant to the City under this Section 15.10 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.

- (f) 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. An overview offering guidance on the applicability of, and requirements placed on City contractors and Subcontractors by Chapter 17-1300 of the Code is available on the City's website at <https://secure.phila.gov/eContract/> under the "About" link; see "Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors."

#### 15.11 **Chapter 17-1400 of the Philadelphia Code: Contributions and Other**

##### **Mandatory Disclosures.**

- (a) Provider confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Contract, and any Additional Term, by Provider, any Subcontractor, or any party from which a contribution can be attributed to the Provider or Subcontractor, that would render the Provider or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Contract under the provisions of Code Sections 17-1404(1) and 17-1405; and that disclosures made as part of its application to receive a Non-Competitively Bid Contract contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Contract voidable at the City's option, and, as to contributions attributable to Provider, shall make the Provider liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Provider allowed under the Contract, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this Section 15.11 (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Provider shall operate as a waiver of any of the City's rights in connection with this Contract. The rights and remedies of the City as described in this Section 15.11 and as described elsewhere in this Contract shall not be exclusive and are in addition to any other rights or remedies available to the City under this Contract at law or in equity.
- (b) Provider shall, during the term of the Contract, and any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Provider, or any Subcontractor or Consultant utilized by

Provider in connection with this Contract, has made, or any individual or entity has made if such contributions can be attributed to Provider, or such Subcontractor or Consultant pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

- (1) It shall not be a violation of Section 15.11(b) if Provider fails to disclose a contribution made by a Consultant because the Provider was unable to obtain such information from the Consultant, provided the Provider demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:
  - (a) Entering into a written agreement with the Consultant for such Consultant's services, before the filing of the application for the Contract, and before the Consultant communicated with a City department or office, official or employee on behalf of the Provider;
  - (b) Including in such agreement a provision requiring the Consultant to provide the Provider in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Provider if the Consultant fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Consultant by or on behalf of the Provider as of the date of such termination;
  - (c) Communicating regularly with the Consultant concerning the Consultant's obligations to provide timely information to permit the Provider to comply with the provisions of Chapter 17-1400; and
  - (d) Invoking the termination provisions of the written agreement in a full and timely manner.
- (c) The Provider shall, during the Term of the Contract, an any Additional Term, and for one year thereafter, disclose the name and title of each City



officer or employee who, during such time period, asked the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider, to give money, services, or any other thing of value (other than a Contribution as defined in Section 17-1401) to any Person, and any payment of money, provision of services, or any other thing of value (other than a Contribution as defined in Section 17-1401) given to any Person in response to any such request. The Provider shall also disclose the date of any such request, the amount requested, and the date and amount of any payment made in response to such request.

- (d) The Provider shall, during the Term, and any Additional Term, of the Contract, disclose the name and title of each City officer or employee who directly or indirectly advised the Provider, any officer, director or management employee of the Provider, or any Person representing the Provider that a particular Person could be used by the Provider to satisfy any goals established in the Contract for the participation of minority, women, disabled or disadvantaged business enterprises. The Provider shall also disclose the date the advice was provided, and the name of such particular Person.
- (e) The disclosures required by Sections 15.11(b), (c) and (d) shall be made utilizing the online disclosure update process through Provider's eContract Philly account which can be accessed on the City's website at [www.phila.gov/contracts](http://www.phila.gov/contracts) by clicking on eContract Philly. Such disclosures shall be made within five (5) business days of the action or event requiring Provider to update its disclosures. In the case of updates to political contributions made by Provider required by Section 15.11(b), the attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Provider or of a Consultant. Provider is advised that any individual who submits an update on eContract Philly must be an authorized signatory of the Provider, authorized to make the required updated disclosures.
- (f) Reports generated automatically by the online process for the updated disclosures required by Sections 15.11(b), (c) and (d) will be automatically forwarded to the President and Chief Clerk of Council, and to the Mayor, Director of Finance, Procurement Department, and the Department of Records.

15.12 **Executive Order 10-16: Gifts.**

- (a) Pursuant to Executive Order 10-16, no City officer or employee may accept or receive a payment, subscription, advance, forbearance, rendering or deposit of money, services, entertainment, invitation, food, drink, travel, lodging or anything of value, unless consideration of equal or greater value is conveyed in return, from any person who, at time or within 12 months preceding the time a gift is received:
  - 1) Is seeking, or has sought, official action from the officer or employee;
  - 2) has operations or activities regulated by the officer's or employee's agency, department, office, board or commission, or, in the case of gifts to members of the Mayor's Cabinet, has operations or activities that are regulated by any agency, department, office, board or commission within the Executive and Administrative branch; or
  - 3) has a a financial or other substantial interest in acts or omissions taken by the officer or employee, which the officer or employee is able to substantially affect by his or her official action.
- (b) Additionally, no City officer or employee shall accept or receive a gift of any value from any person that engages in lobbying on behalf of a principal for economic consideration, and is registered as such, pursuant to the requirements of Section 20-1202 of The Philadelphia Code, including any attorney at law while engaged in lobbying.
- (c) Provider understands and agrees that if it offers anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order, Provider shall be subject to sanctions with respect to future City contracts. Such sanctions may range from disqualification from participation in a particular contract to debarment, depending on the nature of the violation.
- (d) All City employees presented with gifts or gratuities as indicated in Executive Order 10-16 have been instructed to report these actions to the appropriate authorities. All Providers, who are solicited for gifts or gratuities by City employees are urged to report these incidents to the appropriate authorities, including but not limited to, the Office of the Inspector General.



15.13 **Chapter 17-1900 of the Philadelphia Code: Equal Benefits Ordinance.**

- (a) Unless Provider is a government agency, this is a “Service Contract” as that term is defined in Section 17-1901(4) of the Code. If the Service Contract is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Provider shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Provider extends to spouses of its employees to life partners of such employees. Provider certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Provider does not provide employment benefits to the spouses of married employees.
- (b) Provider acknowledges and agrees that the following terms are included in this Contract:
  - (1) Provider shall notify its employees of the employment benefits available to life partners pursuant to Chapter 17-1900 of the Code.
  - (2) Noncompliance by the Provider with the requirements of Chapter 17-1900 of the Code shall be a material breach of this Contract.
  - (3) Discrimination or retaliation by the Provider against any employee on account of having claimed a violation of Chapter 17-1900 shall be a material breach of this Contract.
  - (4) In addition to any other rights and remedies available to the City pursuant to this Contract at law or in equity, a material breach of this Contract related to Chapter 17-1900 may result in the suspension or debarment of Provider from participating in City contracts for up to three (3) years.
- (c) An overview offering guidance on the applicability of, and requirements placed on City contractors by Chapter 17-1900 of the Code is available on the City’s website (at <https://secure.phila.gov/eContract/> under the “About” link) (see “Minimum Wage and Equal Benefits Ordinances Impacting Some City Contractors”).

## ARTICLE XVI: MISCELLANEOUS

- 16.1 **Governing Law.** This Contract shall be deemed to have been made in Philadelphia, Pennsylvania. This Contract and all disputes arising under this Contract shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to principles of Pennsylvania law concerning conflicts of laws.
- 16.2 **Amendments; Waiver.** Except as provided in Section 6.9 (Maximum Daily Rate, Days of Care or Units of Service) above, this Contract may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written Amendment signed by the Parties. Except to the extent that the Parties may have otherwise agreed in writing in an Amendment, no waiver, whether express or implied, by either Party of any provision of this Contract shall be deemed: (a) to be a waiver by that Party of any other provision in this Contract; (b) to be a waiver by that Party of any breach by the other Party of its obligations under this Contract; or (c) a course of conduct, dealing or performance with respect to any other matter arising hereunder. Any forbearance by a Party in seeking a remedy for any noncompliance or breach by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.
- 16.3 **Integration.** The Contract Documents forming this Contract, including the Provider Agreement and the General Provisions and the exhibits incorporated by reference therein, contain all the terms and conditions agreed upon by the Parties, constitute the entire agreement among the Parties pertaining to the subject matter hereof, and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties (except to the extent specifically set forth herein). No other prior or contemporaneous agreements, covenants, representations or warranties, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any Party or to vary any of the terms contained in this Contract.
- 16.4 **No Joint Venture.** The Parties do not intend to create, and nothing contained in this Contract shall be construed as creating, a joint venture arrangement or partnership between the City and Provider with respect to the Services or the Materials.
- 16.5 **No Third Party Beneficiaries.** Nothing in this Contract, express or implied, is intended or shall be construed to confer upon or give to any Person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of this Contract. This Contract shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of this Contract.



- 16.6 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.
- 16.7 **Severability and Partial Invalidity.** The provisions of this Contract shall be severable. If any provision of this Contract or the application thereof for any reason or in any circumstance shall to any extent be held to be invalid or unenforceable, the remaining provisions of this Contract and the application of such provision to Persons, or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Contract shall be valid and enforceable to the fullest extent permitted by law.
- 16.8 **Survival.** Any and all provisions set forth in this Contract which, by its or their nature, would reasonably be expected to be performed after the termination of this Contract or are expressly stated as surviving or intended to survive, shall survive and be enforceable after such termination. Any and all liabilities, actual or contingent, which have arisen in connection with this Contract shall survive the expiration or earlier termination of this Contract, including without limitation: Provider's representations, warranties and covenants set forth in Article IV (Provider's Representations and Covenants) above; Provider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents as set forth in Section 9.2 (Indemnification) above; and the Parties' rights and obligations set forth in Article XI (Ownership of Materials; Proprietary Information; Confidentiality) above.
- 16.9 **Determination of Disputes.** Any dispute arising between the City and Provider under or with respect to either Party's covenants, obligations, powers, rights or duties under this Contract shall be submitted to and decided by the Commissioner or his or her designee. The Commissioner or his or her designee shall render and reduce to writing his or her decision, and furnish a copy to Provider by notice under this Contract. In connection with any dispute under this Contract, the Commissioner shall offer Provider an opportunity to offer evidence in support of its position concerning the subject matter of the dispute. This Section shall not be construed to limit the benefit to the City of Articles XII (Events of Default) or XIII (Remedies) above.
- 16.10 **Interpretation; Order of Precedence.** In the event of a conflict or inconsistency between the terms of the Contract Documents, the terms of the General Provisions shall govern, followed by the terms of the Provider Agreement, and lastly by any exhibit, attachment, or other document incorporated by reference into the Contract. The foregoing notwithstanding, the Provider Agreement may expressly supersede, create exception to, or otherwise modify the General Provisions by specific reference thereto in a section of the Provider Agreement created and labeled for such purpose.
- 16.11 **Headings.** The titles, captions or headings of Articles, Sections and Exhibits or schedules in this Contract are inserted for convenience of reference only; do not



in any way define, limit, describe or amplify the provisions of this Contract or the scope or intent of the provisions, and are not a part of this Contract.

- 16.12 **Statutory and other Citations.** All statutory or other citations of law referenced in the Contract shall refer to the statute referenced, as it may be amended or superseded from time to time.
- 16.13 **Days.** Any references to a number of days in this Contract shall mean calendar days unless this Contract specifies business days.
- 16.14 **Forum Selection Clause; Consent to Jurisdiction.** The Parties irrevocably consent and agree that any lawsuit, action, claim, or legal proceeding involving, directly or indirectly, any matter arising out of or related to this Contract, or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the Parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two (2) forums. The Parties further irrevocably consent and agree not to raise any objection to any lawsuit, action, claim, or legal proceeding which is brought in either of these two (2) forums on grounds of venue or *forum non conveniens*, and the Parties expressly consent to the jurisdiction and venue of these two (2) forums. The Parties further agree that service of original process in any such lawsuit, action, claim, or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in Section 5.1 Notice of the Provider Agreement.
- 16.15 **Waiver of Jury Trial.** Provider hereby waives trial by jury in any legal proceeding in which the City is a party and which involves, directly or indirectly, any matter (whether sounding in tort, contract or otherwise) in any way arising out of or related to this Contract or the relationship created or evidenced hereby. This provision is a material consideration upon which the City relied in entering into this Contract.
- 16.16 **Notices.** All notices, demands, requests, waivers, consents, approvals or other communications which are required or may be given under this Contract shall be in writing and shall be deemed to have been duly made (a) on the date received or refused if delivered by hand with receipt given or refused; (b) on the next business day if delivered by a nationally recognized overnight courier service (e.g., Federal Express or United Parcel Service); (c) on the date confirmed for receipt by facsimile if delivered by facsimile; (d) on the date of receipt or refusal of delivery if sent by certified or registered United States mail, return receipt requested; or (e) on the date confirmed for receipt by electronic mail if delivered by electronic mail. In each case notices shall be sent to the addresses set forth in Section 5.1 of the Provider Agreement, or to such other address as either Party may specify to the other by a notice complying with the terms of this Section 16.16.



16.17 **E-signatures.** DHS is increasing its administrative efficiency through the use of electronic signature technology.

- (a) **Technology Changes.** As updates become necessary, the Department will continue to notify providers of technology requirement changes through the use of the Department Extranet and/or any other established means of communication identified by the Department.
- (b) **Electronic Submissions.** Submission of electronic invoices and documents shall be considered binding and have the full and same effect as a signed paper submission. By submitting an invoice or document electronically Provider certifies that the information in that invoice or document is true and correct to the best of Provider's knowledge, information, and belief, and that the submission constitutes Provider's signature and certification as if it were physically written.
- (c) **Breach.** Failure to comply with any DHS e-signature technology requirements (including, but not limited to the use of [www.phila.gov/contracts](http://www.phila.gov/contracts) and eContract Philly) may result in a financial penalty and/or a finding that an Event of Default has occurred.



June 27, 2017

The Board of Catholic Social Services has granted approval for the following individuals to sign contracts.

James Amato	Secretary for Catholic Human Services	<a href="mailto:jamato@chs-adphila.org">jamato@chs-adphila.org</a>
Franz Fruehwald	Chief Financial Officer	<a href="mailto:ffruehwald@chs-adphila.org">ffruehwald@chs-adphila.org</a>

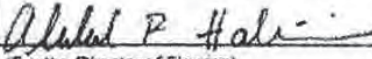
Sincerely,

Gary Miller  
Controller

Compassion • Charity • Dignity • Justice • Excellence

Financial Affairs • 222 N. 17<sup>th</sup> Street • Philadelphia, PA 19103 • 215-587-3900 • 215-587-3867 (fax)



CONTRACT SUMMARY AND ENDORSEMENT						DATE	9/18/2017
TO THE LAW DEPARTMENT: The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.							
CONTRACTOR Catholic Social Services				FINANCE CONTR. NO.		LAW DEPT. NO.	
				16 20030		16 20030 04	
				AMT. OF CONTRACT		ANN. SURETY BOND	
				\$43,178,007.23			
DESCRIPTION Placement Services				PERIOD COVERED		7/1/2015 - 6/30/2018	
<b>ENDORSEMENT</b>							
OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION				OFFICE OF THE CITY CONTROLLER			
Examined: Pat Preston				Examined:			
(For the Director of Finance)				(For the City Controller)			
(Date) 9-1-17				(Date)			
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter:							
 (For the Director of Finance)				09-19-17 (Date)			
				(For the City Controller)			
				(Date)			
DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS		
						Previously Encumbered	\$23,022,293.80 ✓
MDXX18000210 01	080	22	49	01	0290	HUMAN SERVICES	\$4,534,945.29
MDXX18000210 02	080	22	49	01	0290	HUMAN SERVICES	\$133,513.41
MDXX18000210 03	080	22	49	01	0290	HUMAN SERVICES	\$3,300,925.80
MDXX18000210 04	010	22	49	01	0290	HUMAN SERVICES	\$1,051,791.92
MDXX18000298 01	080	22	47	01	0290	HUMAN SERVICES	\$2,120,584.00
MDXX18000298 02	080	22	47	01	0290	HUMAN SERVICES	\$105,936.00
MDXX18000298 03	080	22	47	01	0290	HUMAN SERVICES	\$5,243,578.00
MDXX18000298 04	010	22	47	01	0290	HUMAN SERVICES	\$2,939,717.00
						TOTAL	\$42,453,285.02
Partial Certification: Contract increased to \$43,178,007.23. Contract extended to 6/30/2018.							
Amendment							



CONTRACT SUMMARY AND ENDORSEMENT						DATE 9/15/2017	
TO THE LAW DEPARTMENT. The attached bid and award described below is referred to you for certification as to form, and where annual surety bond is on file, to have Contractor post satisfactory bond.							
CONTRACTOR Catholic Social Services				FINANCE CONTR. NO. 16 20030		LAW DEPT. NO. 16 20030 04	
				AML OF CONTRACT \$43,178,007.23		ANN. SURETY BOND	
DESCRIPTION Placement Services				PERIOD COVERED		7/1/2015 - 6/30/2018	
<b>ENDORSEMENT</b>							
OFFICE OF THE DIRECTOR OF FINANCE-ACCOUNTING DIVISION Examined: Pat Preston (For the Director of Finance)				OFFICE OF THE CITY CONTROLLER Examined:  (For the City Controller)			
PP 09/15/17 (Date)				(Date)			
This contract approved as to availability of funds under the budget and appropriations pursuant to section 8-200 (2) (d) of the Home Rule Charter:							
09-19-17 (For the Director of Finance)				(Date)			
(Date)				(Date)			
DOCUMENT NO.	ACCOUNT CODE					DEPARTMENT OR AGENCY	AMOUNT CHARGEABLE TO ACCOUNT
	FUND	DEPT	ELEMENT	SUB ELEMENT	CLASS		
						Previously Encumbered	\$23,365,446.24 ✓
MDXX16000054 01	080	22	47	01	0290	HUMAN SERVICES	(\$83,716.94) JE
MDXX16000054 02	080	22	47	01	0290	HUMAN SERVICES	(\$26,672.20) JE
MDXX16000054 03	080	22	47	01	0290	HUMAN SERVICES	(\$208,735.91) JE
MDXX16000054 04	010	22	47	01	0290	HUMAN SERVICES	\$10,633.65 JE
MDXX16000143 01	080	22	49	01	0290	HUMAN SERVICES	(\$36,811.93) JE
MDXX16000143 02	080	22	49	01	0290	HUMAN SERVICES	(\$1,083.75) JE
MDXX16000143 03	080	22	49	01	0290	HUMAN SERVICES	(\$36,739.31) JE
MDXX16000143 04	010	22	49	01	0290	HUMAN SERVICES	\$39,973.95 JE
						<b>TOTAL</b>	<b>\$23,022,293.80</b>
Partial Certification. Contract increased to \$43,178,007.23. Contract extended to 6/30/2018.							



**Certificate Of Completion**

Envelope Id: 421E34E1110943FD947827B82F8F845C

Status: Completed

Subject: Contract #16-20030-04 Catholic Social Services 290 SAA (Corp)

Source Envelope:

Document Pages: 118

Signatures: 4

Envelope Originator:

Supplemental Document Pages: 0

Initials: 0

City of Philadelphia - Department of Human Services

Certificate Pages: 4

AutoNav: Enabled

Payments: 0

City Hall, Room 215

Enveloped Stamping: Enabled

Philadelphia, PA 19107

Time Zone: (UTC-05:00) Eastern Time (US &amp; Canada)

dhs.contractinitiation@phila.gov

IP Address: 170.115.248.25

**Record Tracking**

Status: Original

8/15/2017 12:03:55 PM

Holder: City of Philadelphia - Department of Human Service

Location: DocuSign

dhs.contractinitiation@phila.gov

**Signer Events**

James Amato

Jamato@chs-adphila.org

Security Level: Email, Account Authentication (None), Access Code

**Signature**

DocuSigned by:  
  
 0C8D462686844FD...

Using IP Address: 72.237.20.231

**Timestamp**

Sent: 8/15/2017 12:06:38 PM

Viewed: 8/15/2017 1:02:04 PM

Signed: 8/16/2017 12:41:46 PM

**Electronic Record and Signature Disclosure:**

Accepted: 8/2/2017 1:08:41 PM

ID: 5b7f6f70-14ba-4dd4-8743-90cc1f43b2ca

Franz Fruehwald

ffruehwald@chs-adphila.org

Security Level: Email, Account Authentication (None), Access Code

DocuSigned by:  
  
 D426312AM334D4...

Using IP Address: 72.237.20.231

Sent: 8/16/2017 12:41:49 PM

Viewed: 8/16/2017 1:48:28 PM

Signed: 8/16/2017 1:47:38 PM

**Electronic Record and Signature Disclosure:**

Accepted: 8/10/2017 4:43:08 PM

ID: 1af965ac-0460-43dc-8d54-7d8ebc90dd1b

Terri Scarbo

Terri.Scarbo@phila.gov

Security Level: Email, Account Authentication (None)

**Completed**

Using IP Address: 170.115.248.24

Sent: 8/16/2017 1:47:42 PM

Viewed: 8/16/2017 2:00:24 PM

Signed: 8/16/2017 2:01:13 PM

**Electronic Record and Signature Disclosure:**

Accepted: 8/16/2017 2:00:24 PM

ID: a75eb74a-1ee3-468e-9d9a-e3bce956262b

Crystal T. Espanol

Crystal.Espanol@phila.gov

Security Level: Email, Account Authentication (None)

DocuSigned by:  
  
 7777B8C1F7E44C9...

Using IP Address: 170.115.248.25

Sent: 8/16/2017 2:01:16 PM


Viewed: 8/18/2017 9:54:00 AM

Signed: 8/18/2017 10:04:54 AM

**Electronic Record and Signature Disclosure:**

Accepted: 12/1/2016 6:25:47 PM

ID: d0cdd1ca-dfd6-4d41-ab14-e1ecc0ad6da9

Signer Events	Signature	Timestamp
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<b>Electronic Record and Signature Disclosure:</b> Accepted: 9/19/2017 1:51:12 PM ID: 78d572d1-9af6-4f15-9404-e43b371a878f		
Jacqueline Dunn Jacqueline.Dunn@phila.gov City of Philadelphia Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 170.115.248.25	Sent: 9/19/2017 1:57:08 PM Viewed: 9/19/2017 6:18:26 PM Signed: 9/19/2017 6:18:32 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Cynthia Figueroa cynthia.figueroa@phila.gov Security Level: Email, Account Authentication (None)	 Using IP Address: 170.115.248.24	Sent: 9/19/2017 6:18:35 PM Viewed: 9/20/2017 2:08:49 PM Signed: 9/20/2017 2:09:25 PM
<b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign		
Terri Scarbo Terri.Scarbo@phila.gov Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 170.115.248.24	Sent: 9/20/2017 2:09:29 PM Viewed: 9/20/2017 2:26:05 PM Signed: 9/20/2017 2:26:06 PM
<b>Electronic Record and Signature Disclosure:</b> Accepted: 9/20/2017 2:26:05 PM ID: 6d0bb28e-44c6-47ea-a692-fe4d7b5c47b1		
Kathleen Rush Kathleen.Rush@phila.gov Security Level: Email, Account Authentication (None)	<b>Completed</b>  Using IP Address: 170.115.248.24	Sent: 9/20/2017 2:26:11 PM Viewed: 9/20/2017 2:44:44 PM Signed: 9/20/2017 2:47:08 PM
<b>Electronic Record and Signature Disclosure:</b> Accepted: 2/16/2017 8:26:55 AM ID: 0dce6c59-8808-429a-a117-b2f1e6a3bb27		

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Terri Scarbo Terri.Scarbo@phila.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b>	<b>COPIED</b>	Sent: 8/15/2017 12:06:37 PM



**Carbon Copy Events****Status****Timestamp**

Accepted: 8/16/2017 2:00:24 PM  
ID: a75eb74a-1ee3-468e-9d9a-e3bce956262b

Kumar Roy  
kumar.roy@phila.gov  
Security Level: Email, Account Authentication  
(None)

**COPIED**

Sent: 8/16/2017 1:47:41 PM  
Viewed: 8/16/2017 1:54:17 PM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Rita Cairry  
rita.cairry@phila.gov

**COPIED**

Sent: 8/16/2017 1:47:41 PM

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Carolyn Pownall  
Carolyn.Pownall@phila.gov

**COPIED**

Sent: 9/20/2017 2:47:11 PM  
Viewed: 9/20/2017 3:45:58 PM

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Controller Contracts  
Controller.Contracts@phila.gov

**COPIED**

Sent: 9/20/2017 2:47:11 PM

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

Linda Chaney  
linda.chaney@phila.gov

**COPIED**

Sent: 9/20/2017 2:47:11 PM

Security Level: Email, Account Authentication  
(None)

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

**Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent	Hashed/Encrypted	9/20/2017 2:47:12 PM
Certified Delivered	Security Checked	9/20/2017 2:47:12 PM
Signing Complete	Security Checked	9/20/2017 2:47:12 PM
Completed	Security Checked	9/20/2017 2:47:12 PM

**Payment Events****Status****Timestamps****Electronic Record and Signature Disclosure**

This Electronic Records and Signature Disclosure is provided by the City of Philadelphia in connection with a pending electronic transaction. Any party proceeding with such electronic transaction is deemed to have consented i) to conduct the transaction by electronic means; and ii) where execution of an agreement is required, to the use of electronic signatures using the method provided in the agreement. Questions regarding this Electronic Records and Signature Disclosure should be addressed to [econtractphilly@phila.gov](mailto:econtractphilly@phila.gov).



# **EXHIBIT 5**

**From:** Jonathan Janiszewski [<mailto:Jonathan.Janiszewski@Phila.gov>]  
**Sent:** Tuesday, June 5, 2018 12:13 PM  
**To:** Lori Windham <[lwindham@becketlaw.org](mailto:lwindham@becketlaw.org)>  
**Subject:** Catholic Social Services - DHS Continuing Contract Relations

Dear Ms. Windham:

I am the attorney currently serving as head of the City of Philadelphia Law Department's Finance and Contracts Division. I represent the City of Philadelphia and, in this instance, its Department of Human Services ("DHS"), in business dealings. I understand from my colleague, Benjamin Field, that you have requested any communications from DHS and related to Catholic Social Services ("CSS") flow through you. Consequently, I have copied a message for your client, Mr. Amato, below. Please forward it to him for his urgent review. The message pertains to the maintenance of on-going services for children in the custody of DHS and in the care of CSS.

I look forward to working with you and appreciate your assistance.

-----Begin Forwarded Message-----

Dear Mr. Amato:

Throughout our respective histories, Catholic Social Services ("CSS") and the City of Philadelphia Department of Human Services ("DHS") have always agreed on one thing: we are here to nurture, guide, and protect the children and families we serve. Although recent circumstances have highlighted differences in our respective philosophies regarding certification of same-sex foster and adoptive parents, and while DHS makes no concession regarding its position in that matter, I write to you in our mutual spirit of service to propose interim measures that will enable CSS and DHS to ensure that no child or family suffers while we resolve our differences.

The City's fiscal year 2018 closes on June 30, 2018 and the current contract between CSS and DHS then comes to its natural end. However, when the current contract ends, CSS will still have in its care children placed in the custody of DHS. In order to minimize disruption for those children and families, DHS is prepared to offer CSS a new one-year contract to continue its work on behalf of these children and families. The new contract would: 1) acknowledge our current dispute; 2) enable DHS to continue payment of CSS for the administration and maintenance of existing foster homes where children in DHS's care reside; 3) allow for referrals of new child foster care placements in limited 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; and 4) provide time for the orderly transition of services, should that become necessary.

Please know that DHS values its historic relationship with CSS, and if CSS is able to find a way to approve same-sex foster and adoptive parents, consistent with current law and city policy, DHS would offer CSS a new contract that allows CSS to continue to select and recruit new foster parents, and to continue to receive new referrals. However, if CSS is unable to do so, DHS still intends to send you an official award letter to prepare for a new contract under the terms described above. You should anticipate receiving DHS's official award letter later this week. Please contact me if you wish to discuss the matter.

Thank you for your commitment to service, and your understanding.

Sincerely,

*Jon*



Jonathan R. Janiszewski, Esq.  
Divisional Deputy City Solicitor  
Finance & Contracts Division  
Commercial Law Unit  
City of Philadelphia Law Department  
One Parkway Building  
1515 Arch Street, 17th Floor  
Philadelphia, PA 19102

Phone: (215) 683-5035

Fax: (215) 683-5069

# **EXHIBIT 6**





## CITY OF PHILADELPHIA

June 11, 2018

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

**Re: FY 2019 Award Letter (290) PA  
Child Welfare Operations  
Placement Services (Foster/Kinship Care), \$2,400,000.00**

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

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 2019 beginning on July 1, 2018. 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, the scope of the FY 19 contract will change. DHS will continue to make payment to CSS for the administration and maintenance of existing foster homes where children in DHS's care reside.

Additionally, the FY 19 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.

The new contract will also provide time for the orderly transition of services, should that become necessary. The contract amount has been adjusted to reflect the volume of services projected under the new scope of the contract.

However, please be advised that the 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.**

Starting in FY2019, all Foster Care/Kinship Care services rate sheets will have a different look. The new rate sheet will separate all Foster Care/Kinship Care service rates into maintenance and administrative costs for your reference. Please note that these rates are subject to change.

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).

If you have a question, complaint, concern, or suggestion about DHS and its operations  
call the Commissioner's Action Response Office (CARO) at 215-683-6000  
or visit our website: [dhs.phila.gov](http://dhs.phila.gov) and click on the "suggestions" link.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cynthia F. Figueroa', with a long horizontal flourish extending to the right.

Cynthia F. Figueroa  
Commissioner

cc: Lori Windham, Esquire  
Jonathan Janiszewski, Esquire  
Kimberly Ali, Deputy Commissioner  
Robert Hodge, Director of Contracts and Audit  
Rita Cairry, Contracts Administrator

---

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EXHIBIT A-1  
FISCAL YEAR 2019  
Catholic Social Services  
6606

Rate Type	Service Code	Service Description (Rates Paid on a Per Diem Basis Unless Otherwise Noted)	FY19 Maximum Rate (Q1-Q2)	FY19 Maximum Rate (Q3-Q4)	FY19 Administrative Portion (All Quarters)	FY19 Maintenance Portion (Q1-Q2)	FY19 Maintenance Portion (Q3-Q4)
CUA	E1GG	FFC-Emergency Shelter	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		FFC-Emergency Shelter 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	J14G	FFC-Respite	\$ -	\$ -	Immediately preceding placement rate	Immediately preceding placement rate	Immediately preceding placement rate
	J1GG	FFC-General	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		FFC-General 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	J1GW	FFC-College Rate	\$ 33.13	\$ 34.13	\$ -	\$ 33.13	\$ 34.13
	J1JG	FFC-Maternity	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		FFC-Maternity 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	J1MR	FFC-Medical	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		FFC-Medical 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	J1WC	FFC-M/B-Baby	\$ -	\$ -	\$ -	\$ -	\$ -
	J1WP	FFC-M/B-Mother	\$ 64.63	\$ 65.63	\$ 23.00	\$ 41.63	\$ 42.63
		FFC-M/B-Mother (2B)	\$ 73.13	\$ 74.13	\$ 23.00	\$ 50.13	\$ 51.13
		FFC-M/B-Mother (2B) 13+	\$ 83.13	\$ 84.13	\$ 23.00	\$ 60.13	\$ 61.13
		FFC-M/B-Mother (3B)	\$ 81.63	\$ 82.63	\$ 23.00	\$ 58.63	\$ 59.63
		FFC-M/B-Mother (3B) 13+	\$ 91.63	\$ 92.63	\$ 23.00	\$ 68.63	\$ 69.63
		FFC-M/B-Mother 13+	\$ 74.63	\$ 75.63	\$ 23.00	\$ 51.63	\$ 52.63
	Z1DC	KIN-Emergency-M/B-Baby	\$ -	\$ -	\$ -	\$ -	\$ -
	Z1DG	KIN-Emergency	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		KIN-Emergency 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	Z1DP	KIN-Emergency-M/B-Mother	\$ 64.63	\$ 65.63	\$ 23.00	\$ 41.63	\$ 42.63
		KIN-Emergency-M/B-Mother (2B)	\$ 73.13	\$ 74.13	\$ 23.00	\$ 50.13	\$ 51.13
		KIN-Emergency-M/B-Mother (2B) 13+	\$ 83.13	\$ 84.13	\$ 23.00	\$ 60.13	\$ 61.13
		KIN-Emergency-M/B-Mother (3B)	\$ 81.63	\$ 82.63	\$ 23.00	\$ 58.63	\$ 59.63
		KIN-Emergency-M/B-Mother (3B) 13+	\$ 91.63	\$ 92.63	\$ 23.00	\$ 68.63	\$ 69.63
		KIN-Emergency-M/B-Mother 13+	\$ 74.63	\$ 75.63	\$ 23.00	\$ 51.63	\$ 52.63
	Z1GG	KIN-General	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		KIN-General 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	Z1GW	KIN-College Rate	\$ 33.13	\$ 34.13	\$ -	\$ 33.13	\$ 34.13
	Z1JG	KIN-Maternity	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		KIN-Maternity 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	Z1MR	KIN-Medical	\$ 52.63	\$ 53.63	\$ 23.00	\$ 29.63	\$ 30.63
		KIN-Medical 13+	\$ 62.63	\$ 63.63	\$ 23.00	\$ 39.63	\$ 40.63
	Z1WC	KIN-M/B-Baby	\$ -	\$ -	\$ -	\$ -	\$ -
	Z1WP	KIN-M/B-Mother	\$ 64.63	\$ 65.63	\$ 23.00	\$ 41.63	\$ 42.63
		KIN-M/B-Mother (2B)	\$ 73.13	\$ 74.13	\$ 23.00	\$ 50.13	\$ 51.13
		KIN-M/B-Mother (2B) 13+	\$ 83.13	\$ 84.13	\$ 23.00	\$ 60.13	\$ 61.13
		KIN-M/B-Mother (3B)	\$ 81.63	\$ 82.63	\$ 23.00	\$ 58.63	\$ 59.63
		KIN-M/B-Mother (3B) 13+	\$ 91.63	\$ 92.63	\$ 23.00	\$ 68.63	\$ 69.63
		KIN-M/B-Mother 13+	\$ 74.63	\$ 75.63	\$ 23.00	\$ 51.63	\$ 52.63
DHS	E11G	FFC-Emergency Shelter	\$ 59.12	\$ 60.12	\$ 29.49	\$ 29.63	\$ 30.63
		FFC-Emergency Shelter 13+	\$ 69.12	\$ 70.12	\$ 29.49	\$ 39.63	\$ 40.63
	J12G	FFC-Level II	\$ 59.12	\$ 60.12	\$ 29.49	\$ 29.63	\$ 30.63
		FFC-Level II 13+	\$ 69.12	\$ 70.12	\$ 29.49	\$ 39.63	\$ 40.63
	J14G	FFC-Respite	\$ -	\$ -	Immediately preceding placement rate	Immediately preceding placement rate	Immediately preceding placement rate
	J1GW	FFC-College Rate	\$ 33.13	\$ 34.13	\$ -	\$ 33.13	\$ 34.13
	J1JG	FFC-Maternity	\$ 47.12	\$ 48.12	\$ 17.49	\$ 29.63	\$ 30.63
		FFC-Maternity 13+	\$ 57.12	\$ 58.12	\$ 17.49	\$ 39.63	\$ 40.63
	J1MR	FFC-Medical	\$ 47.12	\$ 48.12	\$ 17.49	\$ 29.63	\$ 30.63
		FFC-Medical 13+	\$ 57.12	\$ 58.12	\$ 17.49	\$ 39.63	\$ 40.63
	J1UG	SBH-Transition FFC	\$ 88.77	\$ 89.77	No standard breakdown	No standard breakdown	No standard breakdown
		SBH-Transition FFC 13+	\$ 98.77	\$ 99.77	No standard breakdown	No standard breakdown	No standard breakdown
	J1WC	FFC-M/B-Baby	\$ -	\$ -	\$ -	\$ -	\$ -
	J1WP	FFC-M/B-Mother	\$ 72.64	\$ 73.64	\$ 31.01	\$ 41.63	\$ 42.63
		FFC-M/B-Mother (2B)	\$ 99.64	\$ 100.64	\$ 49.51	\$ 50.13	\$ 51.13
		FFC-M/B-Mother (2B) 13+	\$ 109.64	\$ 110.64	\$ 49.51	\$ 60.13	\$ 61.13
		FFC-M/B-Mother (3B)	\$ 126.64	\$ 127.64	\$ 68.01	\$ 58.63	\$ 59.63
		FFC-M/B-Mother (3B) 13+	\$ 136.64	\$ 137.64	\$ 68.01	\$ 68.63	\$ 69.63
		FFC-M/B-Mother 13+	\$ 82.64	\$ 83.64	\$ 31.01	\$ 51.63	\$ 52.63
	Z12G	KIN-Level II	\$ 59.12	\$ 60.12	\$ 29.49	\$ 29.63	\$ 30.63
		KIN-Level II 13+	\$ 69.12	\$ 70.12	\$ 29.49	\$ 39.63	\$ 40.63
	Z1GW	KIN-College Rate	\$ 33.13	\$ 34.13	\$ -	\$ 33.13	\$ 34.13
	Z1JG	KIN-Maternity	\$ 47.12	\$ 48.12	\$ 17.49	\$ 29.63	\$ 30.63
		KIN-Maternity 13+	\$ 57.12	\$ 58.12	\$ 17.49	\$ 39.63	\$ 40.63
	Z1MR	KIN-Medical	\$ 47.12	\$ 48.12	\$ 17.49	\$ 29.63	\$ 30.63
		KIN-Medical 13+	\$ 57.12	\$ 58.12	\$ 17.49	\$ 39.63	\$ 40.63

EXHIBIT PA-1  
FISCAL YEAR 2019  
Catholic Social Services  
6606

Rate Type	Service Code	Service Description (Rates Paid on a Per Diem Basis Unless Otherwise Noted)	FY19 Maximum Rate (Q1-Q2)	FY19 Maximum Rate (Q3-Q4)	FY19 Administrative Portion (All Quarters)	FY19 Maintenance Portion (Q1-Q2)	FY19 Maintenance Portion (Q3-Q4)
DHS	Z1UG	SBH-Transition KIN	\$ 88.77	\$ 89.77	No standard breakdown	No standard breakdown	No standard breakdown
		SBH-Transition KIN 13+	\$ 98.77	\$ 99.77	No standard breakdown	No standard breakdown	No standard breakdown
	Z1WC	KIN-M/B-Baby	\$ -	\$ -	-	-	-
	Z1WP	KIN-M/B-Mother	\$ 72.64	\$ 73.64	\$ 31.01	\$ 41.63	\$ 42.63
		KIN-M/B-Mother (2B)	\$ 99.64	\$ 100.64	\$ 49.51	\$ 50.13	\$ 51.13
		KIN-M/B-Mother (2B) 13+	\$ 109.64	\$ 110.64	\$ 49.51	\$ 60.13	\$ 61.13
		KIN-M/B-Mother (3B)	\$ 126.64	\$ 127.64	\$ 68.01	\$ 58.63	\$ 59.63
		KIN-M/B-Mother (3B) 13+	\$ 136.64	\$ 137.64	\$ 68.01	\$ 68.63	\$ 69.63
		KIN-M/B-Mother 13+	\$ 82.64	\$ 83.64	\$ 31.01	\$ 51.63	\$ 52.63

X1XX	Initial Clothing Allowance	\$ 300.00	Upon approval by DHS, only allowed one time, at initial DHS commit
	Dependent Total	\$ 2,400,000.00	
	Contract Total	\$ 2,400,000.00	



# **EXHIBIT 7**



CITY OF PHILADELPHIA

LAW DEPARTMENT  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

Marcel S. Pratt  
City Solicitor

Eleanor N. Ewing  
Chief Deputy City Solicitor  
Affirmative & General  
Litigation Unit  
215-683-5012  
215-683-5069 (fax)  
eleanor.ewing@phila.gov

June 29, 2018

**VIA ECF**

The Honorable Petrese B. Tucker  
United States District Court for the  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 10106

**RE: *Fulton et al. v. City of Philadelphia et al., 18-CV-2075***

Dear Judge Tucker:

We write in reply to Plaintiffs' continued, unauthorized submissions following the three-day hearing on Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction.

The City objects to the submission of the Supplemental Declaration of James Amato. The parties had ample opportunity to present their cases during the hearing, and after the record was closed, the Court asked the parties to provide proposed Findings of Fact and Conclusions of Law. Instead, Plaintiffs now seek to offer new evidence in the form of an declaration of a witness who cannot be cross-examined. Essentially, this is no different from Plaintiffs' unsuccessful attempts at the hearing to submit declarations in lieu of live testimony.

The unfairness of this is highlighted by the inaccuracy of the declaration's contents, which concern a meeting between the City and CSS yesterday at which the City attempted to negotiate a limited contract for existing CSS placements. Mr. Amato's supplemental declaration is not an accurate account of that meeting.<sup>1</sup> The City therefore respectfully requests that the

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<sup>1</sup> For example, Mr. Amato asserts that the City is requiring CSS to agree "that the outcome of a home study would be an endorsement and certification of the relationship of a same-sex couple." Amato Suppl. Decl. (ECF 46-1 ¶ 5). As the hearing record makes clear, the City's position is only that CSS must conduct its home studies using the criteria set forth in state law, and is free to find any applicant unqualified so long as the reason for that finding is not an illegal or impermissibly discriminatory one.





## CITY OF PHILADELPHIA

LAW DEPARTMENT  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

Court reject any attempts to reopen the record through supplemental declarations. Should the Court accept Plaintiffs' declaration, however, the City must seek leave to submit its own declaration regarding this June 28 meeting.<sup>2</sup>

Over the past week, Plaintiffs also have sent several letters to the Court regarding cases newly decided by the Supreme Court. None are on point. Neither *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31*, No. 16-1466, 2018 WL 3129785 (U.S. June 27, 2018), nor *Nat'l Inst. of Family & Life Advocates v. Becerra*, No. 16-1140, 2018 WL 3116336 (U.S. June 26, 2018), concerned speech made pursuant to a contract. Indeed, the statute under review in *Becerra*, which concerned a notice crisis pregnancy centers were to provide, specifically exempted any entity that had a contractual or programmatic relationship with the government. *See id.* at \*10.

As we explained in both our opening Brief and Conclusions of law, where speech is made pursuant to a contract, it is not compelled because an individual can choose not to participate in the contract. *See Agency for Int'l Dev. v. Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) ("As a general matter, if a party objects to a condition on the receipt of [government] funding, its recourse is to decline the funds."). As we also explained, an exception has arisen in government contracting cases when the speech the government seeks to regulate is not related to the obligor's contractual duties. *See id.* That exception does not apply here because speech related to selecting and certifying foster parents is integral to the contract.

Neither of these new cases concern that exception because they were not government contracting cases. Therefore, they are not informative on this matter.

Respectfully,

A handwritten signature in blue ink that reads 'Eleanor N. Ewing'.

Eleanor N. Ewing  
Chief Deputy City Solicitor

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<sup>2</sup> These declarations would also inform the Court of the fact that DHS has reopened intake with Bethany Christian Services following Bethany's agreement to comply with the City's antidiscrimination laws. *See* Julia Terruso, *City resumes foster-care work with Bethany Christian Services after it agrees to work with same-sex couples*, Philly.com (June 28, 2018 12:46 PM), <http://www.philly.com/philly/news/foster-care-lgbt-bethany-christian-services-same-sex-philly-lawsuit-catholic-social-services-20180628.html>.

# **EXHIBIT 8**





## CITY OF PHILADELPHIA

LAW DEPARTMENT  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

Marcel S. Pratt  
City Solicitor

Eleanor N. Ewing  
Chief Deputy City Solicitor  
Affirmative & General  
Litigation Unit  
215-683-5012  
215-683-5069 (fax)  
eleanor.ewing@phila.gov

June 21, 2018

**BY HAND DELIVERY AND ECF**

The Honorable Petrese B. Tucker  
United States District Court for the  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 10106

**RE: *Fulton et al. v. City of Philadelphia et al., 18-CV-2075***

Dear Judge Tucker:

The City submits this letter as supplemental briefing based on new evidence adduced at the evidentiary hearing on Plaintiffs' Motion for a Temporary Restraining Order or Preliminary Injunction. This new evidence, adduced from CSS itself, indicates that CSS is engaging in additional conduct that violates the Establishment Clause, as well as violating contractual and legal guarantees that CSS will not discriminate on the basis of religion. As noted in our summation, this new evidence indicates that if the Court orders relief compelling the City to enter into a full contract with CSS, such relief would be problematic.

James Amato testified that CSS requires a "pastoral reference" from all prospective foster parents, and that CSS will not certify a prospective foster parent (or parents) without that pastoral reference. Mr. Amato testified that the pastoral reference letter does not have to be a letter from the Catholic priest or parish, but that the pastoral reference must show that the prospective foster parent engages in "active participation" in any faith.

A requirement that a prospective foster parent be an active participant in a faith community violates both the Establishment Clause as well as CSS' contractual and legal guarantees that it will not discriminate on the basis of religion. The Supreme Court has "repeatedly reaffirmed that neither a State nor the Federal Government "can constitutionally pass laws or impose requirements which aid all religions as against non-believers, and neither can aid those religions based on a belief in the existence of God as against those religions founded on different beliefs." *Torcaso v. Watkins*, 367 U.S. 488, 495 (1961) (footnote omitted); *see also*



## CITY OF PHILADELPHIA

LAW DEPARTMENT  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

*McCreary County v. ACLU*, 545 U.S. 844, 860 (2005) (holding that Establishment Clause's prohibition upon governmental endorsement of religion requires that government maintain its neutrality both "between religion and religion, and between religion and nonreligion" such that Ten Commandments display on government property violated Establishment Clause because its purpose was to advance religion).

In *Torcaso*, the Supreme Court invalidated Maryland's requirement that individuals who seek to become notaries public must affirm they believe in God. The Court held that religious tests or requirements violate the Establishment Clause. *Id.* CSS' requirement of a pastoral reference letter here is no different. If prospective foster parents cannot provide evidence that they are members in good standing of a faith community, CSS refuses to certify them as a foster parents. Therefore, the pastoral reference requirement amounts to a religious test for prospective foster parents.

Even assuming CSS is a private actor, CSS cannot use its taxpayer-funded contract to provide City social services to run a program that expresses a clear preference for religion in this manner. *See Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 126 (1982) (invalidating municipal ordinance that delegated veto power to churches regarding liquor license applications).

Further, in requiring that individuals be active participants in a faith community, CSS is discriminating against nonbelievers on the basis of religion. Pursuant to its contract with the City, CSS agreed not to discriminate in its provision of foster care services based on its religious beliefs. *See* Pltfs. Ex. 1-A (Dkt. 13-4) at 29-30 (§ 4.1(k)). In addition, anti-discrimination guarantees set forth in the contract, and in the City's Fair Practice Ordinance, state law, and federal law as incorporated into the contract, require CSS not to discriminate in the provision of services on the basis of religion. *Id.* at 18-29 (§ 15.1). By requiring that individuals be members of a faith community, CSS is discriminating against individuals who are non-believers. *See Mathis v. Christian Heating & Air Conditioning, Inc.*, 158 F. Supp. 3d 317, 329 (E.D. Pa. 2016) (find that because, "[u]nder Title VII, atheists are entitled to the exact same protection as members of other religions," employer that required employees to wear ID badge containing religious mission statement violated Title VII when it terminated atheist employee who taped over mission statement).

Respectfully,

  
Eleanor N. Ewing  
Chief Deputy City Solicitor



# **EXHIBIT 9**



1200 New Hampshire Ave. NW, Suite 700  
Washington, DC 20036  
202-955-0095 / [@BecketLaw](#)  
[www.becketlaw.org](http://www.becketlaw.org)

June 25, 2018

Page 1 of 4

The Honorable Petrese B. Tucker  
United States District Court for the Eastern District of Pennsylvania  
U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106-1790

VIA ECF

***Re: Fulton v. City of Philadelphia, No. 18-2075***

Dear Judge Tucker:

The City contends that Catholic’s use of pastoral reference letters as a means of evaluating prospective foster families is unconstitutional and in breach of contract. The City does not claim that the reference letters had anything to do with the intake closure at issue in this case. Letter at 1 (citing “new evidence”). But it argues that granting Catholic relief “would be problematic” now because of the pastoral letters.

The City’s concern about relief is misplaced. However, in order to eliminate any potential issue regarding how the parties would operate under a preliminary injunction, Catholic will agree not to require pastoral letters. While such letters have been helpful in the past, the letters are not necessary for Catholic to provide foster care services consistent with its religious mission.

The City’s legal arguments are incorrect. As Commissioner Figueroa testified at the hearing last week, the City has “nothing to do” with the process and policies private agencies use to perform home studies and certify prospective foster families. Preliminary Injunction Hearing Transcript (“Tr.”), Day 3, Figueroa, pp. 53-54. Certification of foster families occurs under standards provided by the State, not the City. If anything, the City’s apparent ignorance of how Catholic performs home studies just confirms that the City has never scrutinized the ways in which private agencies perform this work. Surely the City cannot have a





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June 25, 2018

Page 2 of 4

compelling interest now in a process it has utterly ignored, apparently for decades.

Second, Catholic is a religious non-profit; it is not the government. Indeed, the City's contract emphasizes in no uncertain terms that Catholic shall not "in any way or for any purpose be deemed or intended to be an employee or agent of the City." Pl. Ex. 15 at 86 (paragraph 9.1). Neither the Establishment Clause nor federal law forbids Catholic from having a religious nature. *See, e.g., Corp. of Presiding Bishop v. Amos*, 483 U.S. 327, 337 (1987) (upholding Title VII's exemption for religious organizations against an Establishment Clause challenge); 42 U.S.C. § 604a(c) ("[N]either the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor . . . on the basis that the organization has a religious character.").

Third, the City's witnesses testified that they were unaware of a single person who had ever raised a concern or been unable to foster because of Catholic's use of religious criteria. Tr., Day 1, Ali, pg. 114; Tr., Day 3, Figueroa, pg. 18-19, 145.

As with the rest of its case, the City's concerns are entirely speculative, and ignore the fact that people will readily "recognize and accept" that, even when churches are engaged in activities which have both religious and civil effects, churches do not surrender their religious nature. *Cf. Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, No. 16-111, 2018 WL 2465172, at \*7 (U.S. June 4, 2018) (noting that a church's decision not to perform a same-sex wedding ceremony "would be well understood in our constitutional order as an exercise of religion, an exercise that gay persons could recognize and accept without serious diminishment of their own dignity and worth.").

Nevertheless, since Catholic will agree to cease requiring pastoral letters going forward, these issues should not impact the ability of this Court to issue a preliminary injunction.



June 25, 2018  
Page 3 of 4

1200 New Hampshire Ave. NW, Suite 700  
Washington, DC 20036  
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Respectfully submitted,

/s/ Mark Rienzi

Mark Rienzi

*Counsel for Plaintiffs*





1200 New Hampshire Ave. NW, Suite 700  
Washington, DC 20036  
202-955-0095 / [@BecketLaw](#)  
[www.becketlaw.org](http://www.becketlaw.org)

June 25, 2018  
Page 4 of 4

**Certificate of Service**

I hereby certify that this letter has been served electronically via ECF and is available for viewing and downloading from the ECF system.

/s/ Mark Rienzi  
Mark Rienzi

# **EXHIBIT 10**





CITY OF PHILADELPHIA

LAW DEPARTMENT  
One Parkway  
1515 Arch Street  
Philadelphia, PA 19102-1595

Marcel S. Pratt  
City Solicitor

Diana Cortes  
Chair, Litigation Group  
215-683-5038  
215-683-5069 (fax)  
Diana.Cortes@Phila.gov

July 11, 2018

**VIA ECF**

The Honorable Petrese B. Tucker  
United States District Court for the  
Eastern District of Pennsylvania  
James A. Byrne U.S. Courthouse  
601 Market Street  
Philadelphia, PA 10106

**RE: *Fulton et al. v. City of Philadelphia et al., 18-CV-2075***

Dear Judge Tucker:

Defendants write in response to Plaintiffs' second post-hearing fact submission regarding the above-captioned litigation. Plaintiffs' new submission is unnecessary and inaccurate, and Defendants provide the following information to respond to the letter submitted by Plaintiffs' counsel and to correct and clarify the public record. We also respectfully request that the Court neither consider Plaintiffs' submission nor give any weight to the assertions it contains. Should the Court determine that additional information would assist it in its decision, Defendants continue to stand ready to provide documentary evidence and supplemental declarations. *See* Dkt. 47.

Contrary to Plaintiffs' representation, the kinship care matter they reference was not urgent, and Plaintiffs have not accurately represented the underlying facts regarding the children's placement.<sup>1</sup> For the past year, the kinship foster parent has been caring for five children – the two elementary-school-aged siblings (her niece and nephew) as well as two other foster children and her own biological child. The siblings' placement is through a different foster care agency than CSS and Catholic is not the CUA. A few months ago, the kinship foster parent indicated that she was unable to care for five foster children on a permanent, long term basis. Because of this, the Dependency Court's Order noted that a 30-day notice would be

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<sup>1</sup> Defendants only address CSS' representations regarding specific foster children herein to correct the record. CSS' representations regarding two of its employees adds nothing to CSS' testimony during this Court's hearing and needs no response.

provided after the end of the school year and a follow-up hearing was scheduled for mid-July.<sup>2</sup> Less than a month after the June 12 end of the school year, DHS learned that an appropriate family foster care placement with a resource parent working with one of the City's 29 other foster care agencies would be available on July 13.

DHS was in the process of finalizing that placement when James Amato of CSS wrote to DHS Deputy Commissioner Kimberly Ali on July 9, 2018. Mr. Amato informed Deputy Commissioner Ali that a foster parent CSS works with— who is currently caring for at least one foster child — had a relationship with the siblings' current kinship parent, was prepared to foster both siblings, and requested an exception. Deputy Commissioner Ali promptly reviewed this and approved the exception for placement with the CSS foster parent within twenty minutes. Contrary to CSS' representation, this was the first time that anyone had suggested to DHS that an exception to intake closure should apply. On July 5, the CUA responsible for the siblings contacted DHS' Central Referral Unit (CRU) and informed the CRU that a CSS foster family was available, but there was no suggestion that the family should be subject to an exception because of any prior relationship with the siblings. Further email correspondence reflects that CSS leadership and its counsel with Becket discussed the CSS foster parent, including CSS' belief that the parent should satisfy DHS' kinship exception requirements, on July 5 as well. However, neither CSS nor its counsel reached out to DHS leadership or the City's counsel prior to Mr. Amato's July 9 email to Deputy Commissioner Ali to suggest or request that an exception to the intake closure would apply. Had they done so on July 5 with information supporting an exception, Deputy Commissioner Ali likely could have approved the placement even sooner.

The fact that the transition to a new placement has extended shortly beyond the beginning of July does not mean that DHS, the CUA, and applicable foster agencies are not acting in the best interest of the siblings, or that there is any urgent need for an immediate transfer. Indeed, it reflects the fact that this situation was not an emergency. As we explained, the siblings' aunt, their current kinship parent, has only become an unavailable placement because she has expressed that she is unable to care for all of her foster children on a long term basis. According to the CUA, the siblings are actually currently on vacation with her, and therefore, they are not available to transition to their new placement until July 13 anyway. Further, she is willing to serve as a respite resource for the children when necessary.

In sum, we are at a loss to explain why CSS has deduced that there is urgent need to remove the children from her care immediately, described her care as "sub-optimal," and

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<sup>2</sup> A 30-day notice is a written statement from a foster parent indicating that a child in their care needs to be moved to a new placement. The notice is provided for in DHS' contracts with family foster care agencies as a step in the process of discharging or removing a child that falls within that agency's care. The contract requires that DHS be given a minimum of 30 days' notice to effect a new placement. However, when the situation is not urgent — like in the case here — the notice will often provide for a longer period. And neither state law nor the contract impose any penalties on DHS for extending the 30-day period.

In this instance, the kinship foster parent sent the notice on May 22, 2018 and in the notice requests that the children be relocated by July 1, 2018. She also requests in the notice that the children be with her for a June 30, 2018 graduation party and indicates she is open to hosting them on weekends and serving as respite care for them.

suggested DHS is not acting in the best interest of the children. There is simply no indication that the children have been in a “sub-optimal placement.” Indeed, if CSS believed this situation to be urgent, then Mr. Amato or CSS’ counsel with the Becket Fund should have contacted DHS leadership on July 5 to request an immediate exception and inform DHS about its concerns rather than conferring with counsel first, reaching out to DHS four days later, and then filing a notice with the Court five days after CSS learned of the issue.

This Court should disregard CSS’ submission and permit DHS to handle case-specific determinations in the best interest of the 6,000 children in foster care outside of this litigation and in conjunction with the oversight of Dependency Court.

Respectfully,



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Diana Cortes  
Chair, Litigation Group



**CERTIFICATE OF SERVICE**

I hereby certify that this letter has been served electronically via ECF and is available for viewing and downloading from the ECF system.

/s/ Benjamin H. Field

Benjamin H. Field

Deputy City Solicitor

Affirmative and General Litigation

# **EXHIBIT 11**

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SHARONELL FULTON, CECELIA  
PAUL, TONI LYNN SIMMS-BUSCH,  
and CATHOLIC SOCIAL SERVICES,

*Plaintiffs,*

v.

CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN  
SERVICES FOR THE CITY OF  
PHILADELPHIA, and PHILADELPHIA  
COMMISSION ON HUMAN  
RELATIONS,

*Defendants.*

Civil No. \_\_\_\_\_

**COMPLAINT**

**INTRODUCTION**

1. Catholic Social Services exists to serve those in need, and it wants to continue serving foster children in Philadelphia. Despite a foster care crisis and a need for more foster homes, the City of Philadelphia has decided to cut off foster placements for Catholic Social Services and prioritize political grandstanding over the needs of children.

2. Unsurprisingly, the City's actions are creating a severe human cost. Available foster homes are sitting empty. Numerous foster parents like Cecelia Paul have homes that are now vacant because the City will no longer allow Catholic Social Services to place children with these loving families. Other foster parents, such as Sharonell Fulton, may soon lose their placements, meaning that they will



no longer be able to care for children who rely on their foster families to help with extensive medical care for their special needs. Other foster parents, such as Toni Simms-Busch, risk losing the opportunity to foster additional children, including biological siblings of her current foster children, in the future. And many foster children will face even greater obstacles to finding a safe home. These consequences are severe, unnecessary, and illegal under state and federal law. And they are the direct consequences of the City's actions.

3. On an average day, Catholic Social Services serves more than 120 children in foster care, and it supervises around 100 different foster homes. Through its combined programs, Catholic Social Services served more than 2,200 different at-risk children in Philadelphia last year. For decades, Catholic Social Services has partnered with the City to place foster children in stable, loving homes. It has a proven track record of compassion, quality, and success.

4. Catholic Social Services works with foster parents like Ms. Fulton, who has cared for children with severe medical problems and trauma from past abuse. Catholic Social Services works with parents like Ms. Simms-Busch, who is fostering two biological siblings and is very open to fostering again in the future, including if additional biological siblings of her children went into foster care. Catholic Social Services works with parents like Ms. Paul, who, in her 40-plus years of foster work, has fostered more than 130 children, adopted six children, and received a Foster Parent of the Year award from the City.

5. The City is penalizing Catholic Social Services, in violation of its contract and state and federal law, because the agency has Catholic beliefs about same-sex marriage. Catholic Social Services serves and places children regardless of their race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, source of income, familial status, genetic information, or sexual violence victim status. Even though no LGBT couple has filed a complaint against Catholic Social Services, and the agency would not stand in the way of any couple who wished to foster a child in need, the City has decided to penalize the agency because the City disagrees with its religious beliefs. But even more importantly, the City is penalizing both the foster parents who wish to continue working with Catholic Social Services and the children they would serve.

6. Philadelphia's actions discriminate against Plaintiffs for their religious beliefs and practices, constitute a breach of contract, unlawfully try to coerce them to speak contrary to their religious beliefs, and restrict Plaintiffs' religious exercise in violation of state law and the Pennsylvania and U.S. Constitutions.

#### **IDENTIFICATION OF PARTIES**

7. Plaintiff Sharonell Fulton is a foster parent who works with Catholic Social Services. She has fostered more than 40 children over 25-plus years as a foster parent. She has cared for children with significant medical needs and is currently caring for two special needs foster children.

8. Ms. Fulton could not provide the extensive care that these special needs children require without the support she receives from Catholic Social Services.

Catholic Social Services has provided Ms. Fulton with training, resources, support, and professional guidance as to how to best care for special needs children. She has been able to call social workers at any hour and receive an answer from someone she knew and trusted. These social workers have become like family and have shown great love and care to her foster children. By contrast, Ms. Fulton previously received training from a government agency, and has noted the stark difference between that agency's treatment of her and Catholic Social Services' care and compassion. She is aware that other foster parents have been unsatisfied with the support they receive from other foster agencies. Ms. Fulton believes that she would not receive the kind of support she needs to serve children with serious medical problems if she were with another agency. If the City terminates its contract with Catholic Social Services, or refuses to renew the contract in June, Ms. Fulton's two current foster children will be immediately transferred away. Because of their extensive medical needs, she anticipates these children will have a very difficult time being placed, and it is very unlikely they will be placed with a foster parent that has the same capacity and training as Ms. Fulton to address these special needs.

9. Ms. Fulton shares the religious beliefs of Catholic Social Services. As an African American woman, Ms. Fulton has experienced discrimination in her life. It is insulting and hurtful for her to observe the government of the city in which she lives needlessly denigrate and publicly condemn her own religious beliefs in such a discriminatory fashion.



10. Plaintiff Cecelia Paul is a foster parent who has worked with Catholic Social Services for 46 years and who has fostered 133 children. Mrs. Paul was honored by the City as one of its Foster Parents of the Year for her excellent care. Caring for children in need is what gives life meaning for Mrs. Paul. She first began caring for children when she worked as a nurse. Her religious beliefs inspired her to make serving children her life's work. These religious beliefs also inspired Mrs. Paul to work with Catholic Social Services, and the social workers at this agency have become like family to Mrs. Paul. Mrs. Paul trusts them, relies on them, and she cannot imagine starting from scratch and fostering children without them. But because the City is no longer referring children to families who work with Catholic Social Services, as of April Mrs. Paul is no longer caring for children in need. This has left a void in Mrs. Paul's life and has left her unable to fulfill her religious commitment to give of herself and show love to those most in need. Mrs. Paul's home will remain empty of children as long as the City continues refusing to refer foster children to Catholic Social Services.

11. Plaintiff Toni Lynn Simms-Busch previously worked as a foster care social worker with a private agency, and then later as a child advocate social worker who spent four years working at the Defender Association of Philadelphia. Ms. Simms-Busch obtained her bachelor's degree in forensic psychology from Chatham University in Pittsburgh. In her prior role as a child advocate social worker with the City of Philadelphia, Ms. Simms-Busch interacted with all the foster agencies in the City. She observed some to offer high-quality services, and others at the other end of

the spectrum. She observed that Catholic Social Services consistently was among the best of any foster agency in terms of quality of services the provided, and they operated with the highest level of integrity, professionalism, responsiveness, and care.

12. Ms. Simms-Busch is now a foster parent herself, caring for two very young foster children who are biological siblings. Ms. Simms-Busch chose to work with Catholic Social Services because she observed their high-level care in the past, as well as because of her desire to raise her family with an organization that shared her religious beliefs. Ms. Simms-Busch is inspired by her religious beliefs to serve children, which is why she found work as a child advocate so rewarding. She is continuing that religiously-motivated practice of serving vulnerable children now as a foster mother. Ms. Simms-Busch relies heavily on the trusted social workers she interacts with at Catholic Social Services. Fostering is often a very emotionally exhausting process, and she could not imagine continuing on this journey without the support she receives from Catholic Social Services. In her interactions with other agencies, Ms. Simms-Busch has not received this same level of personal care and loving encouragement. It is possible that in the future, a biological sibling of her foster children would need foster care, and Ms. Simms-Busch would be very open to fostering this child if she could work with Catholic Social Services. Ms. Simms-Busch is very open to fostering other children in need in the future as well. But if Catholic Social Services were forced to close its program, Ms. Simms-Busch thinks it is highly unlikely that she would be able to continue fostering.

13. Plaintiff Catholic Social Services is a non-profit religious corporation under the auspices of the Archdiocese of Philadelphia and party to a foster services contract with Defendant Department of Human Services. Catholic Social Services' foster care program currently cares for 127 children daily whom it has placed in foster arrangements through referrals from the City. Thanks to its work, last year 132 of its graduates went on to receive high school diplomas. Catholic Social Services prioritizes permanency, and the statistics demonstrate its success. Across its programs, about 50 children per year achieve permanency either by returning to their families or moving to adoption with their foster families.

14. Catholic Social Services and the Archdiocese of Philadelphia have provided care for needy children in Pennsylvania for over a century. In 1916, the Catholic Children's Bureau was established and staffed by Missionary Sisters of the Blessed Trinity, early Catholic pioneers in social work. Their work continues today through the dedicated efforts of Catholic Social Services' foster care program. This ongoing religious mission motivates Catholic Social Services and its staff to provide exemplary services to children and families in Philadelphia.

15. Catholic Social Services exists to transform lives and bring about a just and compassionate society where every individual is valued, families are healthy and strong, and communities are united in their commitment to the good of all. Catholic Social Services works towards a world touched by God's mercy: where poverty and need are alleviated and all people share justly in the blessings of creation. Catholic Social Services is dedicated to serving others in a spirit of humility and genuine



concern for the well-being of its neighbors and affirms the God-given dignity and worth of every person.

16. Catholic Social Services exercises its faith and carries out this religious mission through its foster work. Care for needy children and the provision of foster care services is an integral, fundamental, and central part of Plaintiffs' religious exercise. Providing these services in a manner consistent with Catholic teaching is part of its religious character and affiliation.

17. Catholic Social Services also provides important ancillary services to children and families. For example, Catholic Social Services, St. Gabriel's Hall, is certified as a Sanctuary Model of Trauma-Informed Care provider—a best practice standard now hailed nationwide. Catholic Social Services also provides educational programming via state-licensed schools at St. Gabriel's Hall, DeLaSalle Vocational School and St. Francis Homes. Last year, through Catholic Social Services programs, 132 graduates received high school diplomas. Catholic Social Services' Youth Division, including St. Gabriel's System and St. Francis & St. Vincent Homes, served 1,544 youth in placement, and approximately 1,400 families per year across all its child welfare and juvenile justice programs last year. That number includes over 120 children whom Catholic Social Services has, on an average day, placed in foster arrangements through referrals from the City.

18. Defendant City of Philadelphia is a municipality organized pursuant to Section 1 of Article XV of the Constitution and the Act of the General Assembly, approved April 21, 1949, P.L. 665, of the Commonwealth of Pennsylvania.

19. Defendant Department of Human Services is an agency of the City of Philadelphia and party to a foster services contract (“the Contract”) with Plaintiff Catholic Social Services. The Contract is attached as Exhibit A.

20. Defendant Philadelphia Commission on Human Relations is an agency of the City of Philadelphia.

## **JURISDICTION AND VENUE**

21. This action arises under the Constitution and laws of the United States. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

22. The Court has authority to issue the declaratory and injunctive relief sought under 28 U.S.C. §§ 2201 and 2202.

23. Venue lies in this district under 28 U.S.C. § 1391(b)(1) and (2).

## **FACTUAL ALLEGATIONS**

### **Foster Care Under Pennsylvania and Federal Law**

24. More than 5,000 children are in Philadelphia’s foster care system, and experts have recognized that the City faces a “crisis” because of “the lack of qualified foster parents and other placement options for the increasing number of children in care.”<sup>1</sup> Philadelphia relies upon state-licensed foster care agencies to help make up the shortfall.

25. In Pennsylvania, standards for foster care providers are set out by state law. 55 Pa. Code § 3700. The Commonwealth provides funding to municipalities for

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<sup>1</sup> David R. Fair, Partners for Philadelphia Families Testimony to Philadelphia City Council, Turning Points for Children (June 14, 2016), [www.turningpointsforchildren.org/news/228-partners-for-philadelphia-families-testimony](http://www.turningpointsforchildren.org/news/228-partners-for-philadelphia-families-testimony)

foster care, and runs the Statewide Adoption Network (SWAN), under which foster care agencies may be licensed to provide adoption services to foster children.

26. Pennsylvania sets the standards which foster agencies use to determine whether a particular foster family should be certified. Those standards include consideration of “existing family relationships” and the “[a]bility of the applicant to work in partnership with” the foster care agency. 55 Pa. Code § 3700.64.

27. Pennsylvania laws permit religious foster care agencies to operate in a manner consistent with their faith.

28. The City relies upon state and federal funds, including Temporary Assistance to Needy Families (TANF) block grants, to administer its foster care program. This federal funding includes requirements that states and local government bodies not discriminate against religious foster care agencies based upon their religious beliefs. *See, e.g.*, 42 U.S.C. § 604a(c) (“neither the Federal Government nor a State receiving funds under such programs shall discriminate against an organization which is or applies to be a contractor to provide assistance, or which accepts certificates, vouchers, or other forms of disbursement, on the basis that the organization has a religious character.”) 45 C.F.R. § 87.3(a) (“Neither the HHS awarding agency, nor any State or local government and other pass-through entity receiving funds under any HHS awarding agency program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization’s religious character or affiliation.”).

### **Philadelphia’s Foster Care Program**



29. In Philadelphia, there are 28 state-licensed agencies who partner with the city to provide foster services. Of those agencies, eight obtained additional competitive contracts with the City to also serve as a Community Umbrella Agency (CUA), an entity that works to try to help at-risk children stay in their homes where such an option would be possible and safe for the child. Of these select agencies, the City ranked Catholic Social Services as the second highest of all agencies. This demonstrates Catholic Social Services' track record of providing both quality and value to the City's residents.

30. When at-risk children are not able to remain in their family homes, the City refers the child to be placed in foster care. The City is the only source of foster care referrals, so any Philadelphia-area foster agency who does not receive referrals from this source cannot place new foster children with families and will quickly lose the ability to serve any foster children at all.

31. The City has provided referrals to Catholic Social Services on a regular basis for many years and requires Catholic Social Services to report open spaces weekly so that any openings in foster homes may be filled promptly. This has been the City's consistent practice. The City has never before suspended referrals to Catholic Social Services when homes were available, and, upon information and belief, the City's longstanding practice is to provide referrals to all approved foster care agencies in the City with capacity to place children on a consistent and continuing basis.

32. State-licensed agencies in Philadelphia place children with foster families who have already undergone extensive interviews and home studies by social workers at the agency. The agency makes a determination that a particular foster family would be an appropriate family to care for foster children. After these interviews, home studies, and recommendations, an agency may certify that a foster family is approved to care for foster children.

33. State law does not prohibit foster agencies from declining to perform a home study, nor from referring families to another licensed agency to perform a home study. State law also permits waivers of provisions of the laws governing foster care agencies, so long as the waiver “[d]oes not jeopardize receipt of Federal monies.” 55 Pa. Code § 3700.5.

34. After an agency licensed by the Commonwealth has taken the steps prescribed by state law, it may place a foster child referred to it with a certified foster family. The City provides per diem payments from a combination of federal, state, and city funds. That funding is provided to foster care agencies only after an agency has accepted the referral of a child and is supervising that placement with a certified foster family.

35. A foster agency provides ongoing training and support and works with the assigned CUA case manager to coordinate services to the foster family, birth family and child in order to achieve a positive outcome. Foster parents are needed not only to care for children, but to provide mentoring to the birth family and support the relationship between the child and the birth family. This collaborative approach

assesses the continued appropriateness of temporary placement and explores options for permanency through return to the birth family, placement with kin, or adoption.

### **Catholic Social Services' Foster Care Program**

36. Catholic Social Services shares the City's goal of working to fill the shortage of safe foster homes for these vulnerable kids. On an average day, Catholic Social Services' foster care program cares for over 120 children who are placed with about 100 different foster families that Catholic Social Services supervises. Catholic Social Services is able to recruit many foster families, such as Ms. Simms-Busch, Ms. Fulton, and Mrs. Paul, who would not otherwise feel able to foster or adopt children. Of the select agencies who obtained additional CUA contracts, the City ranked Catholic Social Services as the second highest of all these agencies.

37. Catholic Social Services serves and places children regardless of their race, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, source of income, familial status, genetic information, or sexual violence victim status.

38. Catholic Social Services shares the religious beliefs and teachings of the Catholic Church regarding same-sex marriage. But Catholic Social Services would never stop a family who wants to foster from having the opportunity to complete the application and home study process, either through Catholic Social Services or another agency. If Catholic Social Services were ever unable to perform in-depth home assessments and make reports and written certifications to the State for any



reason, including consistency with religious beliefs and mission of Catholic Social Services, then it would refer the potential foster parent to one of 26 nearby agencies who can better serve their needs. Four agencies are located within just two miles of Catholic Social Services' downtown office.

39. On information and belief, Catholic Social Services has never had a same-sex couple request that the agency perform a home study. No same-sex couples have been denied the ability to become foster parents because of Catholic Social Services, and no same-sex couples have filed complaints against Catholic Social Services regarding its foster care operations.

40. As long as staff at Catholic Social Services can remember, and for at least 50 years, the agency has provided foster care services to the City pursuant to a contract, which is renewed annually. In reliance upon that contract, Catholic Social Services has hired 15 staff members who work exclusively on that contract, has budgeted and raised funds designed to supplement City funding on that contract, and has taken other concrete steps in expectation that it will continue to receive referrals and be able to perform its duties under the Contract. Catholic Social Services offers a significant subsidy to the City by supplementing City foster funds with private donations and volunteer hours to cover costs that City funding cannot.

41. Although Catholic Social Services provides home studies and hopes to continue doing so, there is no contractual or other requirement of a free-standing duty to offer certification services to prospective foster families. Catholic Social

Services is not obligated to provide home studies to the general public under the Contract.

42. The City has been aware of Catholic Social Services' religious beliefs for years. For example, the City has repeatedly accepted waiver requests from Catholic Social Services pursuant to Phila. Code § 17-1904. That provision permits the City to waive the obligation for contractors to provide benefits to same-sex spouses of employees where "the contractor certifies, and the City finds, that (a) the contractor is operated, supervised, or controlled by a bona fide religious institution or organization for charitable purposes, and (b) compliance with the provisions of this Chapter would conflict with the beliefs of the religion with which the contracting organization is identified." The City's acceptance of that certification demonstrates its knowledge of Catholic Social Services' position regarding same-sex marriage. The Contract has a non-discrimination provision that has been in place for many years without material alteration, and during that time, the City has never investigated Catholic Social Services, penalized Catholic Social Services, nor otherwise indicated in any way that Catholic Social Services would be in breach of that contract if it did not perform home studies, nor if it referred a couple to another agency for home studies due to consistency with its religious mission.

### **The City Targets Catholic Social Services and Breaches Its Contract**

46. Despite this long history of serving the City and its residents, on March 15, 2018, Catholic Social Services was informed via a news article that the City was suspending foster care referrals to the agency. That same day, the Philadelphia City

Council passed a resolution alleging that some foster services providers “have policies that prohibit the placement of children with LGBTQ people based on religious principles” and calling for an investigation.<sup>2</sup> A local news agency quoted the Mayor saying, “we cannot use taxpayer dollars to fund organizations that discriminate against people because of their sexual orientation or because of their same-sex marriage status. . . . It’s just not right.”<sup>3</sup>

47. The apparent impetus for the City’s actions was a newspaper article published two days earlier. The article discussed the case of a different foster care provider which was facing a complaint from a same-sex couple. No such complaint has been made against Catholic Social Services. The article also discussed Catholic Social Services’ religious beliefs.

48. After the City passed its resolution, Catholic Social Services received a letter from the Philadelphia Human Relations Commission demanding information about the policies and practices of Catholic Social Services. A true and correct copy of the letter is attached as Exhibit C.

49. At no time has the Human Relations Commission received a formal complaint against Catholic Social Services, notified Catholic Social Services of such a complaint as required by law, or otherwise taken the steps required by law to open a formal proceeding against Catholic Social Services.

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<sup>2</sup> Exhibit B, Resolution No. 180252, <http://philly.councilmatic.org/legislation/3378655>.

<sup>3</sup> Tom MacDonald, *Philly halts foster placements with 2 faith-based agencies shutting out LGBT couples*, WHYY, Mar. 16, 2018, <https://whyy.org/articles/philly-halts-foster-placements-2-faith-based-agencies-shutting-lgbt-couples/>.



50. Upon information and belief, other religious groups who contract with the City and who have different religious beliefs and practices regarding same-sex marriage have not received such letters and the City continues performance of those contracts.

51. In its letter, the City also indicated it suspected that Catholic Social Services was in breach of its contract. But Catholic Social Services did not receive a suspension notice and was not given an opportunity to cure. The City's contract with Catholic Social Services states under the relevant nondiscrimination Paragraph 15.1 that the City may "suspend or terminate" its contract with Catholic Social Services only "[i]n the event of any breach of this Section 15.1." But the City has never set forth any clear basis for breach of contract prior to engaging in suspending additional referrals.

52. Nor has the City provided the notice required under the contract prior to exercising its remedies. *See* Section 12.2.

53. As such, the City is in breach of its contract with Catholic Social Services by failing to perform and for preventing Catholic Social Services from continuing to perform without any justification.

54. On March 27, 2018, Staci Boyd, the Operations Director at the Department of Human Services, sent an email to other foster agencies in Philadelphia forbidding them from referring any additional foster intakes to Catholic Social Services. A copy of that email is attached as Exhibit D.

55. Provision of referrals is necessary for performance and the receipt of any payment under the Contract. Because the City is the sole source of foster care referrals, without such referrals, Catholic Social Services is unable to fully perform its duties under the Contract and, as foster children return to their birth families or other placements, will eventually be unable to perform *any* duties under the contract.

56. Catholic Social Services has not breached its contract or otherwise acted unlawfully.

57. Catholic Social Services informed the City it was in breach, but the City has continued to suspend referrals and impede Catholic Social Services' ability to perform under its contract without clear justification.

58. Catholic Social Services' foster services do not constitute a "public accommodation" under the City's Fair Practices Ordinance, and therefore it cannot have violated the contract provision relating to that ordinance.

59. Catholic Social Services is a private, religious charity. It does not offer, sell, or make available its services to the public that entail supervision of a child placed with a certified foster family. Phila., Pa., Admin. Code § 9-1102(1)(w). These services are only available to at-risk children who have been removed by the state and are in need of a loving home, and Catholic Social Services serves any child who is referred to them. The City only pays Catholic Social Services a per diem for these supervisory services, and the City is not contracted to compensate Catholic Social

Services for anything else related to the provision of foster care, including home studies and assessments of potential foster families.

60. No individual or couple has alleged that Catholic Social Services has denied or interfered with the public accommodations opportunities of an individual. Nor could they, because Catholic Social Services is not a place of public accommodation, no allegation has been made that Catholic Social Services prevented anyone from receiving relevant city services, and Catholic Social Services has not prevented any child from being placed in a family.

61. Upon information and belief, the City has never before interpreted and applied its contracts or non-discrimination ordinances in this manner. The novel and inconsistent application demonstrates an attempt to target and penalize a particular set of religious beliefs and practices.

62. The City has targeted Catholic Social Services because of its religious beliefs. City officials have been open about their disagreement with Catholic teaching on marriage and their personal animosity toward the Archdiocese. Local media has chronicled Mayor Kenney's public statements criticizing the Archdiocese and Archbishop. *See, e.g.,* Patrick Kerkstra, *Jim Kenney's Long War with the Archdiocese*, Philadelphia, July 9, 2015, (compiling tweets);<sup>4</sup> David O'Reilly, *Chaput edict draws mixed reviews; Kenney calls it "not Christian"*, Philadelphia Inquirer,

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<sup>4</sup> <https://www.phillymag.com/citifed/2015/07/09/jim-kenney-catholic-archdiocese-charles-chaput/>.



July 6, 2016 (Mayor Kenney, “who was raised Catholic, has often been sharply critical of [Archbishop] Chaput’s conservative stances on matters of faith.”).<sup>5</sup>

63. Plaintiffs informed the Commission on April 18, 2018, that Plaintiffs’ actions were lawful, the Defendants’ actions were unlawful, and requested that Defendants cease their unlawful behavior and resume normal operations under the Contract. A true and correct copy of that letter is attached as Exhibit E.

64. On May 9, Plaintiffs’ counsel received a response from the Commission, dated May 7, defending Defendants’ actions and stating that Plaintiffs would face subpoenas and further adverse actions under the Contract 10 days after the date of the letter, which Plaintiffs calculate to be May 17. A true and correct copy of that letter is attached as Exhibit F.

65. On May 10, Plaintiffs requested a meeting with the Commission to attempt to resolve the issues prior to May 17, or in the alternative, a delay of that timeframe to allow for further discussion. The Commission has yet to respond to that request.

66. Plaintiffs’ counsel received a second letter dated May 7, this one from the City’s law department. A true and correct copy of that letter is attached as Exhibit G.

67. In that letter, the City confirmed that its purpose is to ensure that Catholic Social Services cannot “inform a qualified family” that they are unable to complete a home study and refer that family elsewhere. The City made it clear that same-sex marriage is a “value that must be embodied in our contractual relationships.”

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<sup>5</sup> [http://www.philly.com/philly/news/20160707\\_Chaput\\_edict\\_draws\\_mixed\\_reviews\\_Kenney\\_calls\\_it\\_not\\_Christian\\_.html](http://www.philly.com/philly/news/20160707_Chaput_edict_draws_mixed_reviews_Kenney_calls_it_not_Christian_.html).

68. The City also indicated that it has the power to grant exemptions from certain requirements. It highlighted contract language that states that in some circumstances, “an exception is granted by the Commissioner . . . in his/her sole discretion.” It also stated that it had recently granted an “exception” from the cessation of referrals “in that instance” in order to allow siblings to be placed together. However, as to the provision of home studies and other support for same-sex couples, the City stated: “the Commissioner has no intention of granting an exception.”

69. The City also stated that it believes Catholic Social Services is obligated to provide home studies to same-sex couples, and it said that “any further contracts with CSS will be explicit in that regard.” This acknowledges that the City’s current contract with Catholic Social Services is not currently explicit in this regard.

70. The City indicated it would not renew the Contract after its expiration on June 30th, and would begin a transition plan, unless Catholic Social Services agreed to engage in the City’s preferred form of speech and provide home studies and support services to same-sex couples.

71. In that letter, the City also threatened to terminate the Contract for convenience.

### **The City’s Unlawful Actions Harm Catholic Social Services and the Children of Philadelphia**

72. The City’s unlawful actions have real-world consequences. After the City informed Catholic Social Services that it would not receive any new referrals, Catholic Social Services received a request from another agency regarding a child

who had just been taken into foster care. Despite the City's announced ban, the agency wished to place that child with his siblings, who had been placed with a family through Catholic Social Services. Responding to an urgent need, Catholic Social Services immediately agreed to exercise its role as a state-licensed foster care agency to place the child with his siblings. Catholic Social Services informed DHS of the placement that same day. That placement was made in accordance with best practices and law, which favor family placement of siblings wherever possible.

73. Had DHS successfully implemented its prohibition on referrals to Catholic Social Services, this child could not have been placed with his siblings. Immediately after this successful placement of the child, however, DHS instead doubled down on its prohibition, sending a message to its referral partners regarding Catholic Social Services and Bethany Christian Services, stating that "NO referrals are sent to these two providers effective immediately," and demanding that all its partners affirm this directive in writing. Weeks later, after Catholic Social Services pointed out to the City that its actions suggested it was not acting in the best interests of the child, the City claimed that it granted an exception "in that instance."

74. If a similar situation happens in the future, the City's current policy means that the child would not be automatically referred to Catholic Social Services for placement in a home with his or her siblings. Catholic Social Services, and the children it hopes to serve, are at the mercy of the City.

75. Also after the City's unlawful suspension, a court order was necessary to ensure that a child could be reunited with her former foster mother, who is a



certified foster parent working with Catholic Social Services. A foster family with Catholic Social Services had formerly cared for the girl, and the foster mother came to court to state her willingness to foster the girl once again. The court determined that it was in the child's best interests to be placed with this family, but it was only after a direct court order and a personal appeal from Catholic Social Services that the City took the obvious—and right—step of placing the child with her former foster mother.

76. The City has threatened to terminate the Contract “for convenience.” If such a termination happened abruptly, then the City would be forced to remove foster children from their current placements, disrupting their lives at a sensitive and difficult time, and to find new homes for those children on short notice and during a time when the City is in a crisis because of the lack of available foster parents. The results would be devastating.

77. Catholic Social Services continues to work with the families it has certified and to serve the children in their care. It is aware of at least eleven vacancies with foster families who are willing and able to take in additional children. However, due to the City's unlawful suspension, Catholic Social Services is unable to place children with those families. Mrs. Paul is one of these parents who stands ready and willing to care for more children, and she is unable to do so because of the City's current policy. Her home is currently empty. And other foster parents, like Ms. Fulton and Ms. Simms-Busch, fear they will be deprived of the ability to continue fostering children in the future. If the contract is terminated or not renewed on

June 30, then the children currently in placement may be removed from their homes.

78. Catholic Social Services remains willing and able to continue its ministry serving children in Philadelphia. It wants to help alleviate the foster care crisis in Philadelphia, and it has not and will not prevent any qualified family from becoming a foster parent, be it through Catholic Social Services or a referral to another agency. But because of the City's actions, Catholic Social Services is unable to place foster children with families. Its 100-year-old ministry to at-risk children is in jeopardy.

## **CLAIMS**

### **Count I**

#### **Violation of Religious Freedom Protection Act 71 Pa. Stat. Ann. § 2404**

79. Plaintiffs incorporate by reference all preceding paragraphs.

80. Defendants are an "agency" within the meaning of 71 Pa. Stat. Ann. §§ 2403-04.

81. Defendants' actions have substantially burdened Plaintiffs' religious exercise.

82. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

83. Plaintiffs will provide Defendants with notice of the substantial burden forthwith. A full 30-day delay is not feasible because the exercise of government

authority in the form of further adverse action in its contract with the City, as well as the unlawful use of subpoena power against the Plaintiffs, is imminent. On May 7, in letters which were mailed and thus were not received by Plaintiffs until later that week, Defendants threatened adverse contract actions against Plaintiffs, including immediate termination for convenience, and threatened Plaintiffs with unlawful and unjustified subpoenas in 10 days. Defendants' threats of imminent unlawful action make formal notice 30 days in advance impracticable.

84. The City has constructive notice of this action due to the Plaintiffs' public statements and the religious freedom arguments asserted in their letter to the Commission on April 18, 2018.

85. Absent injunctive and declaratory relief against defendants, Plaintiffs are and will continue to be irreparably harmed.

## **Count II**

### **42 U.S.C. § 1983**

#### **Violation of the First Amendment to the U.S. Constitution Free Exercise Clause Not Neutral**

86. Plaintiffs incorporate by reference all preceding paragraphs.

87. "[A] law targeting religious beliefs as such is never permissible." *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 n.4 (2017) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533 (1993)).

88. By suspending their contract with Plaintiffs, Defendants have targeted their religious beliefs and practices.



89. The public statements of Defendants' and their officials demonstrate that hostility toward Plaintiffs and their religious beliefs was a motivation for Defendants' actions.

90. Defendants' laws and policies have not been evenly enforced, demonstrating that the current attempt at enforcement is designed to target particular religious beliefs and practices.

91. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

92. Absent injunctive and declaratory relief against Defendants, Plaintiffs are and will continue to be irreparably harmed.

**Count III**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment to the U.S. Constitution**  
**Free Exercise Clause**  
**Not Generally Applicable**

93. Plaintiffs incorporate by reference all preceding paragraphs.

94. "[L]aws burdening religious practice must be of general applicability." *Lukumi*, 508 U.S. at 542.

95. Defendants' laws and policies have not been evenly enforced, demonstrating that the current attempt at enforcement is designed to target particular religious beliefs and practices.

96. Defendants have never enforced their laws, policies, and contract provisions in the manner they are currently being enforced against Plaintiffs.

97. The public statements of Defendants and their officials demonstrate that hostility toward Plaintiffs and their religious beliefs was a motivation for Defendants' actions.

98. Defendants concede that they can and have made exceptions to their policies in some instances.

99. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

100. Absent injunctive and declaratory relief against Defendants, Plaintiffs are and will continue to be irreparably harmed.

**Count IV**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment to the U.S. Constitution**  
**Free Exercise Clause**  
**System of Individualized Assessments**

101. Plaintiffs incorporate by reference all preceding paragraphs.

102. A law that burdens religious exercise “must satisfy strict scrutiny if it permits individualized, discretionary exemptions because such a regime creates the opportunity for a facially neutral and generally applicable standard to be applied in practice in a way that discriminates against religiously motivated conduct.” *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004).

103. Defendants' Resolution, calling for an investigation, demonstrates that the City is engaging in an individualized assessment of Plaintiffs' actions and the applicability of the law and of any exceptions.

104. The Human Relation Commission's specific inquiry into Plaintiffs' practices constitutes an individualized assessment of their practices and the application of the law.

105. The City admits that it can make exceptions to its policies in some circumstances, but it is unwilling to extend an exception to allow Catholic Social Services "freedom to express" its religious beliefs in this circumstance.

106. State law permits individualized exemptions from foster care agency requirements.

107. The contract suspension and subsequent refusal to lift that suspension are the product of a system of individualized exemptions and burden Plaintiffs' religious exercise.

108. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

109. Absent injunctive and declaratory relief against Defendants, Plaintiffs are and will continue to be irreparably harmed.

**Count V**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment to the U.S. Constitution**  
**Free Speech Clause**  
**Compelled Speech**

110. Plaintiffs incorporate by reference all preceding paragraphs.

111. Defendants are seeking to compel Plaintiffs to make affirmative statements that contradict Plaintiffs' religious beliefs.



112. The City is conditioning contracts with the City, and the ongoing ability to engage in the religious exercise of helping children in need, on Plaintiffs' willingness to make such statements.

113. Such compulsion amounts to compelled speech in violation of the Free Speech Clause of the First Amendment to the United States Constitution.

114. Absent injunctive and declaratory relief against Defendants, Plaintiffs are and will continue to be irreparably harmed.

**Count VI**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment to the U.S. Constitution**  
**Free Speech Clause**  
**Retaliation for Protected Speech**

115. Plaintiffs incorporate by reference all preceding paragraphs.

116. Statements made by and on behalf of Plaintiffs about their religious beliefs and practices are protected speech.

117. Defendants' contract suspension and inquiry, and their threats of contract termination and subpoena power, would be sufficient to deter a person of ordinary firmness from exercising his or her constitutional rights.

118. A causal link exists between Plaintiffs' protected speech and Defendants' adverse actions against Plaintiffs.

119. Such actions are retaliation for protected speech in violation of the First Amendment to the United States Constitution.

120. Absent injunctive and declaratory relief against defendants, Plaintiffs are and will continue to be irreparably harmed.

**Count VII**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment to the U.S. Constitution**  
**Free Exercise and Establishment Clauses**  
**Denominational Preference and Discrimination**

121. Plaintiffs incorporate by reference all preceding paragraphs.

122. The Free Exercise and Establishment Clauses prohibit government from officially preferring one denomination over another or discriminating against a religious group for its religious beliefs and practices.

123. Defendants are applying their laws in a manner which penalizes Catholic Social Services for its religious beliefs. Defendants' actions also alienate, communicate disapproval to, and impose concrete harms on foster families such as Ms. Fulton, Mrs. Paul, and Ms. Simms-Busch, who share the Catholic religious beliefs of Catholic Social Services.

124. Defendants have not penalized other religious groups for their religious beliefs.

125. Defendants' preference for some religious beliefs and practices and discrimination against Plaintiffs' beliefs and practices violates the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution.

126. Defendants do not have a compelling reason for their actions, and Defendants have not selected the means least restrictive of religious exercise in order to further their interests.

127. Absent injunctive and declaratory relief against Defendants, Plaintiffs have been and will continue to be irreparably harmed.

**Count VIII**  
**42 U.S.C. § 1983**  
**Violation of the Fourteenth Amendment to the U.S. Constitution**  
**Equal Protection**

128. Plaintiffs incorporate by reference all preceding paragraphs.

129. The Equal Protection Clause prohibits discrimination on the basis of religion.

130. Defendants' unlawful contract suspension and investigation penalizes Plaintiffs because of their religious beliefs.

131. Contractors that espouse religious beliefs contrary to those espoused by Plaintiffs are allowed to maintain recognized status.

21. Defendants' preference for one set of religious beliefs and against Plaintiffs' religious beliefs violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

132. Absent injunctive and declaratory relief, Plaintiffs have been and will continue to be irreparably harmed.

**Count IX**  
**Violation of the Pennsylvania Constitution Article I, § 3**  
**Religious Freedom**

133. Plaintiffs incorporate by reference all preceding paragraphs.

134. Pennsylvania's Constitution states that Defendants may not, "in any case whatever, control or interfere with the rights of conscience," and that "no preference



shall ever be given by law to any religious establishments or modes of worship.” Pa. Const. art. I, § 3.

135. Defendants’ attempt to compel Plaintiffs to act contrary to their religious beliefs and teachings, and to prevent them from acting consistently with their religious beliefs, is an unlawful attempt to control or interfere with their right of conscience.

136. Defendants’ decision to penalize Plaintiffs for their religious beliefs and practices constitutes a substantial burden on Plaintiffs’ religious exercise; it places substantial pressure on Plaintiffs to modify their behavior and violate their religious beliefs.

137. Defendants’ decision to penalize Plaintiffs, but not other religious groups which contract with the City, constitutes a preference given by law to a mode of worship.

138. Absent injunctive and declaratory relief against Defendants, Plaintiffs have been and will continue to be irreparably harmed.

**Count X**  
**Violation of the Pennsylvania Constitution Article I, § 7**  
**Freedom of Press and Speech**

139. Plaintiffs incorporate by reference all preceding paragraphs.

140. The Pennsylvania Constitution guarantees that “every citizen may freely speak, write and print on any subject.” Pa. Const. art. I, § 7.

141. Defendants have penalized Plaintiffs for speaking, writing, and printing their beliefs regarding marriage.

142. Defendants are conditioning contracts with the City on whether Plaintiffs make statements acceptable to the City.

143. Defendants' actions constitute retaliation against Plaintiffs for their protected speech.

144. Such penalties and compulsion violate Article I, Section 7 of the Pennsylvania Constitution.

145. Defendants have no compelling interest in penalizing Plaintiffs' speech, and their actions are not narrowly tailored to achieve their goals.

146. Absent injunctive and declaratory relief against Defendants, Plaintiffs are and will continue to be irreparably harmed.

#### **Count XI**

#### **Violation of the Pennsylvania Constitution Article I, § 26 Discrimination by the Commonwealth and its political subdivisions**

147. Plaintiffs incorporate by reference all preceding paragraphs.

148. Pennsylvania's Constitution states: "Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right." Pa. Const. art. I, § 26.

149. This provision is intended to protect Pennsylvania citizens from being harassed or punished for the exercise of their constitutional rights.

150. Defendants are a political subdivision of the Commonwealth for purposes of this section.

151. Defendants' unlawful actions have denied to Plaintiffs the enjoyment of their civil right to religious freedom, and punished and discriminated against them in the exercise of their civil right of religious freedom.

152. Section 26 prohibits discrimination on the basis of religion.

153. Defendants' unlawful contract suspension and investigation penalizes Plaintiffs because of their religious beliefs.

154. Contractors that espouse religious beliefs contrary to those espoused by Plaintiffs are allowed to maintain recognized status.

155. Defendants' preference for one set of religious beliefs and against Plaintiffs' religious beliefs violates Article I, Section 26 of the Pennsylvania Constitution.

156. Absent injunctive and declaratory relief, Plaintiffs have been and will continue to be irreparably harmed.

**Count XII**  
**Violation of the Philadelphia Charter Article X, § 10-111**  
**Discrimination by the City**

157. Plaintiffs incorporate by reference all preceding paragraphs.

158. The Philadelphia Charter states that "no department, board or commission of the City shall in the exercise of his or its powers and the performance of his or its duties or in the granting of the use of City property discriminate against any person because of race, color, religion or national origin...."

159. Defendants are departments, boards, or commissions of the City.

160. Defendants have discriminated against Plaintiffs in the performance of Defendants' duties due to Plaintiffs' religion.



161. Absent injunctive and declaratory relief against Defendants, Plaintiffs have been and will continue to be irreparably harmed.

**Count XIII**  
**Breach of Contract**

162. Plaintiffs incorporate by reference all preceding paragraphs.

163. Effective June 27, 2017, Plaintiffs entered into a renewed contract with the City to provide foster care services.

164. Under the contract, Defendants were obligated to, among other things, fill openings in existing foster homes, place children in foster homes with their siblings where possible, refer children seeking foster homes to Plaintiffs, and compensate Plaintiffs on a per diem basis for the foster placements they oversee.

165. Defendants breached this contract in at least the following ways: (1) Defendants refused to place new referrals with Plaintiffs in violation of the contract; (2) Defendants suspended performance of the contract without following the appropriate termination process outlined in Article 14.1 of the contract; (3) Defendants prevented full performance of the Contract by ordering third parties not to provide referrals to Plaintiffs; (4) Defendants prevented full performance of the Contract by refusing to make referrals to Catholic Social Services; (5) Defendants failed to fill existing vacancies in the homes of foster families working with Catholic Social Services.

166. Plaintiffs have suffered, and will continue to suffer, damages as a direct result of Defendants' breach.

167. Plaintiffs are entitled to an injunction and declaratory relief, as well as damages due to Defendants' breach.

**Count XIV**  
**Equitable Estoppel**

168. Plaintiffs incorporate by reference all preceding paragraphs.

169. Defendants have long been aware of Catholic Social Services' religious beliefs concerning marriage.

170. Defendants, through their actions, representations, and silence, induced Plaintiffs to believe that Defendants would continue to (1) respect Plaintiffs' sincere religious beliefs, (2) provide an appropriate accommodation to Plaintiffs pursuant to Phila. Code § 17-1904 to continue their vital work, (3) continue to refer children to Catholic Social Services for foster placement on a regular basis, as Defendants have done for many years, and (4) continue to partner with Plaintiffs to provide foster care services.

171. Plaintiffs justifiably relied on Defendants' long-time practices of making referrals to Catholic Social Services and of providing an accommodation that would allow Plaintiffs to continue partnering with the City. That reliance is demonstrated by Catholic Social Services' actions in hiring staff to work on the services provided under the Contract; budgeting based upon projections and historical actions by the City under the Contract; and taking other actions showing detrimental reliance by Plaintiffs. It is also demonstrated by Mrs. Paul, Ms. Fulton, and Ms. Simms-Busch making important life decisions about their family with the expectation that they would be able to continue relying on Catholic Social Services.

172. Defendants are equitably estopped from taking a position contrary to their prior representations on which Plaintiffs relied. Accordingly, Plaintiffs are entitled to injunctive and declaratory relief to that effect.

**Count XV**  
**42 U.S.C. § 1983**  
**Violation of the First and Fourteenth Amendments of the U.S. Constitution**  
**Free Exercise and Due Process Clauses: Parental Association**

173. Plaintiffs incorporate by reference all preceding paragraphs.

176. The liberty protected by the Due Process Clause includes the right of parents to establish a home and bring up children. This liberty interest extends to foster parents. The Supreme Court has recognized both a parental and free exercise interest in being able to raise children consistent with religious beliefs. *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972) (“[T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.”).

177. Ms. Simms-Busch specifically chose to work with Catholic Social Services because this foster agency shares her religious beliefs and would make it possible for her to raise foster children consistent with her own religious values. By preventing Ms. Simms-Busch from working with Catholic Social Services, Defendants are infringing on her liberty interests to have a family consistent with her religious beliefs.

178. Mrs. Paul wants to foster more children, and she has worked with CSS for the past 46 years. Mrs. Paul also chose to work with Catholic Social Services so that she could raise her foster children consistent with her own religious values. By



preventing Mrs. Paul from working with Catholic Social Services for her next foster child, Defendants are preventing Mrs. Paul from fostering children at all, infringing her liberty interests to have a family relationship protected by the Constitution.

179. Similarly, Ms. Fulton is currently caring for two foster children. If the City terminates its contract with Catholic Social Services, or refuses to renew the contract in June, the two foster children Ms. Fulton is caring for will be immediately transferred away from Ms. Fulton. By preventing Ms. Fulton from working with Catholic Social Services to continue caring for her current foster children, Defendants are infringing on her liberty interests to have a family relationship protected by the Constitution.

180. Plaintiffs wish to associate with their chosen religious foster agency, Catholic Social Services, in order to pursue foster parenthood as protected by the Constitution.

181. Absent injunctive and declaratory relief, Plaintiffs have been and will continue to be irreparably harmed.

**Count XVI**  
**42 U.S.C. § 1983**  
**Violation of the Fourteenth Amendment of the U.S. Constitution**  
**Due Process Clause: Sibling Association**

182. Plaintiffs incorporate by reference all preceding paragraphs.

183. The Fourteenth Amendment recognized the liberty interest siblings have in protecting their relationships with each other. That liberty interests extends to the foster and adoption context.

184. Ms. Simms-Busch is fostering two young children who are biological siblings. Ms. Simms-Busch would be very open to fostering and adopting a biological sibling of her children if that child needs to enter the foster care system.

185. Defendants' actions impede and may entirely prevent Ms. Simms-Busch from fostering and adopting a child and uniting biological siblings in her home, violating those siblings and Ms. Simms-Busch's constitutional rights under the 14th Amendment.

186. Absent injunctive and declaratory relief, Ms. Simms-Busch, and her children, have been and will continue to be irreparably harmed.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs request that the Court:

- a. Declare that the Religious Freedom Protection Act; First and Fourteenth Amendments to the United States Constitution; Article I, Sections 3, 7, and 26 of the Pennsylvania Constitution; and Article 10, Section 10-111 of the Philadelphia Charter, require Defendants to cease discriminating against Plaintiffs and to cease their ongoing investigation and unlawful contract suspension on the basis of Plaintiffs' religious beliefs, speech, and practices;
- b. Declare that Defendants have breached their contract with Plaintiffs and should be equitably estopped from applying their contract terms in a manner that would penalize Plaintiffs for their religious belief, speech, and practices regarding marriage;
- c. Order Defendants to resume and continue performance of the Contract;
- d. Issue preliminary and permanent injunctions prohibiting Defendants from taking retaliatory action against Plaintiffs, including cancellation or non-renewal of the foster services contract, or from otherwise penalizing Plaintiffs for their religious belief, speech, and practices regarding marriage;
- e. Award Plaintiffs nominal damages for the loss of their rights as protected by law;

- f. Award Plaintiffs actual damages for the costs they have incurred and the contract revenues they have lost as a result of Defendants' unlawful actions;
- g. Award Plaintiffs the costs of this action and reasonable attorney's fees; and
- h. Award such other and further relief as the Court deems equitable and just.

Dated: May 16, 2018

Respectfully submitted,

/s/ Nicholas M. Centrella

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*\*Admission pro hac vice pending*



# **EXHIBIT 12**

No. 18-2574

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**United States Court of Appeals  
for the Third Circuit**

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SHARONELL FULTON, ET AL.,  
*Plaintiffs-Appellants,*

V.

CITY OF PHILADELPHIA, ET AL.,  
*Defendants-Appellees.*

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On Appeal from the U.S District Court for the  
Eastern District of Pennsylvania,  
No. 2:18-cv-02075-PBT (Hon. Petrese B. Tucker, U.S.D.J.)

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**Emergency Motion of Sharonell Fulton, Cecilia Paul,  
Toni-Lynn Simms-Busch, and Catholic Social Services for  
Fed. R. App. P. 8 Injunction Pending Appeal**

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**United States Court of Appeals for the Third Circuit**

**Corporate Disclosure Statement and  
Statement of Financial Interest**

No. \_\_\_\_\_

v.

Instructions

Pursuant to Rule 26.1, Federal Rules of Appellate Procedure any nongovernmental corporate party to a proceeding before this Court must file a statement identifying all of its parent corporations and listing any publicly held company that owns 10% or more of the party's stock.

Third Circuit LAR 26.1(b) requires that every party to an appeal must identify on the Corporate Disclosure Statement required by Rule 26.1, Federal Rules of Appellate Procedure, every publicly owned corporation not a party to the appeal, if any, that has a financial interest in the outcome of the litigation and the nature of that interest. This information need be provided only if a party has something to report under that section of the LAR.

In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate shall provide a list identifying: 1) the debtor if not named in the caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is an active participant in the bankruptcy proceedings. If the debtor or the bankruptcy estate is not a party to the proceedings before this Court, the appellant must file this list. LAR 26.1(c).

The purpose of collecting the information in the Corporate Disclosure and Financial Interest Statements is to provide the judges with information about any conflicts of interest which would prevent them from hearing the case.

The completed Corporate Disclosure Statement and Statement of Financial Interest Form must, if required, must be filed upon the filing of a motion, response, petition or answer in this Court, or upon the filing of the party's principal brief, whichever occurs first. A copy of the statement must also be included in the party's principal brief before the table of contents regardless of whether the statement has previously been filed. Rule 26.1(b) and (c), Federal Rules of Appellate Procedure.

If additional space is needed, please attach a new page.

(Page 1 of 2)



Pursuant to Rule 26.1 and Third Circuit LAR 26.1, \_\_\_\_\_  
makes the following disclosure: (Name of Party)

1) For non-governmental corporate parties please list all parent corporations:

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock:

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has as a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests:

4) In all bankruptcy appeals counsel for the debtor or trustee of the bankruptcy estate must list: 1) the debtor, if not identified in the case caption; 2) the members of the creditors' committee or the top 20 unsecured creditors; and, 3) any entity not named in the caption which is active participant in the bankruptcy proceeding. If the debtor or trustee is not participating in the appeal, this information must be provided by appellant.

\_\_\_\_\_  
(Signature of Counsel or Party)

Dated: \_\_\_\_\_

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**EMERGENCY MOTION FOR ENTRY OF AN INJUNCTION  
PENDING APPEAL UNDER FED. R. APP. P. 8**

Appellants Sharonell Fulton, Toni Simms-Busch, Cecelia Paul, and Catholic Social Services (“Catholic”) (collectively, “Appellants”) respectfully move for an emergency injunction pending appeal pursuant to Federal Rule of Appellate Procedure 8. On July 13, 2018, the District Court denied Appellant’s motion for a temporary restraining order and preliminary injunction.

Appellants immediately moved for an injunction pending appeal before the District Court, which has not yet ruled. Given the immediacy of the harm and the ongoing violation of the First Amendment, Appellants believe that awaiting a ruling on that motion would be “impracticable.” *See* Fed. R. App. P. 8(a); *see also Homans v. City of Albuquerque*, 264 F.3d 1240, 1243 (10th Cir. 2001) (not requiring the filing of a motion for injunction in the district court due to the “immediacy of the problem and the district court’s legal error concerning the First Amendment”).

Absent an injunction ordering Appellees (together, “the City”) to maintain the status quo that has prevailed for 50 years, Catholic’s



foster care program will close within months, harming foster children and families.

Accordingly, Appellants request an order by August 2, enjoining the City to:

- Continue operating and resume normal operations under Catholic's July 1, 2017 Contract, including making foster care referrals to families certified by Catholic; and
- refrain from conditioning foster care referrals or future contracts on Catholic providing written certifications in home studies that violate Catholic's religious beliefs, or from otherwise penalizing Appellants during this appeal.

Appellants have also notified the City of this motion.

## **INTRODUCTION**

Philadelphia is shutting down Catholic's foster care program, which the District Court found "has benefitted Philadelphia's children in immeasurable ways." Appx.1. Without an injunction from this Court, Catholic's program will be forced to close, award-winning foster families like Appellant Mrs. Paul's will have their homes sit empty, and children

will be kept from loving homes or removed from current homes, all before Appellants can litigate their case.

The City has excluded Catholic and its families from foster care because the City disagrees with the Catholic Church's views about same-sex marriage. Same-sex unions have been recognized in Philadelphia for two decades, and the City is unaware of a single person who has been hurt by Catholic's views. But the City is closing Catholic's program over a hypothetical question: whether the Catholic Church *could* endorse same-sex unions in writing, *if* a same-sex couple approached a Catholic agency seeking its written opinion on their family relationships.

Philadelphia cannot demand that religious groups parrot the City's views as a pre-condition to serving foster children. And it cannot retaliate against Catholic's views by shutting Catholic down. On these grounds alone, the City's inquisition is impermissible under the Free Exercise and Speech clauses of the First Amendment.

Worse yet, the City engaged in unabashed religious targeting. The City admittedly investigated only *religious* foster agencies. Then it punished Catholic for violating supposed policies it has never

announced, much less applied, to secular agencies. The Mayor, City Council, Human Relations Commission, and Department of Human Services (DHS) all targeted Catholic. The City told Catholic to change its religious practices because it is “not 100 years ago” and “times have changed.”

All this would be flagrantly unconstitutional *even if* the City could point to someone who had been harmed by Catholic. But it cannot. The prior “live-and-let-live” status quo—in which same-sex couples are free to become foster parents with dozens of willing agencies and Catholic is free to provide foster services without violating its faith—is not acceptable to the City. Rather than permit respectful disagreement on deeply important issues, the City moved to eliminate Catholic’s foster program unless Catholic embraced the City’s views on same-sex marriage. That is anathema to our pluralistic democracy and forbidden by the First Amendment.

This Court’s intervention is necessary to ensure that Catholic’s foster program lasts long enough to litigate this case and continue serving children in need.



## FACTUAL BACKGROUND

***Catholic's foster program.*** For over a century, the Catholic Church has been caring for foster children in Philadelphia, long before the City's involvement in foster care.<sup>1</sup> Beginning in the mid-twentieth-century, however, the City began requiring foster agencies to contract with the City.<sup>2</sup> Today, "you would be breaking the law if you tried to provide foster-care services without a contract."<sup>3</sup> Catholic has always provided foster care services as a "religious ministry"<sup>4</sup> consistent with its religious beliefs, and its contract makes clear that it operates according to its religious mission.<sup>5</sup>

***Home studies and certifications.*** Foster agencies work with foster families approved by that agency after a home study and written certification. "[T]he home study is a written evaluation" of the

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<sup>1</sup> Appx.222-225, 227. All documents cited in the Appendix were either attached to declarations submitted to the District Court or were admitted as evidence during the preliminary injunction hearing.

<sup>2</sup> Appx.226-27.

<sup>3</sup> Appx.227.

<sup>4</sup> Appx.222-24, Appx.228-29; Appx.66.

<sup>5</sup> Appx.197-98; Appx.111; Appx.113.

“relationships” in the potential foster home.<sup>6</sup> State law mandates that the foster agency “shall consider” and evaluate “existing family relationships” and the “[a]bility of the applicant to work in partnership” with an agency, which results in a “decision to approve, disapprove or provisionally approve the foster family.” 55 Pa. Code §§ 3700.64, 3700.69. Catholic has certified and supported many foster parents, including the individual Appellants—each of whom serves because of their religious beliefs.<sup>7</sup>

***The City has “nothing to do” with home studies and certifications.*** Until March 2018, the City’s contract requirements did not interfere with Catholic’s religious exercise of providing “foster care services consistent with [its] religious beliefs.”<sup>8</sup> The City has renewed Catholic’s contract annually for decades, and frequently operates under the prior year’s contract for several months post-expiration.<sup>9</sup> The contract emphasizes Catholic’s independence: Catholic “shall not in any

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<sup>6</sup> Appx.229-30.

<sup>7</sup> Appx.189, Appx.192; Appx.183-85; Appx.176-77; Appx.182.

<sup>8</sup> Appx.257.

<sup>9</sup> Appx.246-47; Appx.309; Appx.145-49.

way or for any purpose be deemed or intended to be an employee or agent of the City.”<sup>10</sup>

In particular, the City admits it has “nothing to do”<sup>11</sup> with home studies—a process that occurs under State law and for which the contract provides no payment.<sup>12</sup> The City instead tells prospective foster parents that agencies can have “different requirements” and that they should seek out the agency that is “the best fit” for them.<sup>13</sup>

***Referrals.*** Foster agencies routinely refer potential applicants to other agencies for a variety of reasons. “[R]eferrals were done all the time,”<sup>14</sup> and are permitted for geographic proximity, medical expertise, behavioral expertise,<sup>15</sup> specialization in pregnant youth,<sup>16</sup> and language needs.<sup>17</sup> Some agencies “specialize in servicing kin care” (foster placements with extended family or friends) and advertise that they

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<sup>10</sup> Appx.118.

<sup>11</sup> Appx.285-86.

<sup>12</sup> Appx.257; Appx.285-86.

<sup>13</sup> Appx.109

<sup>14</sup> Appx.221; Appx.235; Appx.169-71; Appx.172-173.

<sup>15</sup> Appx.233; Appx.172-74; Appx.195-96; Appx.201-02.

<sup>16</sup> Appx.165-66.

<sup>17</sup> Appx.200; *see also* Appx.202-05.



exclusively serve that population.<sup>18</sup> The City acknowledged that agencies sometimes refer rather than perform a home study.<sup>19</sup>

***The hypothetical religious dispute.*** No same-sex couple has ever approached Catholic seeking its written endorsement to become foster parents.<sup>20</sup> Nor is there any evidence that Catholic's religious beliefs stopped, or even discouraged, *anyone* from becoming a foster parent.<sup>21</sup> But in March, DHS Commissioner Figueroa called "faith-based institutions . . . to ask them their position regarding serving same-sex couples."<sup>22</sup> Figueroa contacted only one non-religious organization, since she was friends with its CEO.<sup>23</sup> She still has not called any other non-religious agencies to inquire about their practices or tell them to conform to the policies being applied to Catholic.<sup>24</sup>

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<sup>18</sup> Appx.234-35; Appx.127.

<sup>19</sup> Appx.200-02.

<sup>20</sup> Appx.231.

<sup>21</sup> Appx.268.

<sup>22</sup> Appx.258-59; *see also* Appx.236.

<sup>23</sup> Appx.297-98.

<sup>24</sup> Appx.297-98.

Catholic's religious beliefs include the belief "that a marriage is a sacred bond between a man and a woman."<sup>25</sup> "[T]o provide a written certification endorsing a same-sex marriage" would "violate the religious exercise of Catholic Social Services."<sup>26</sup> Catholic believes that the written certification pursuant to a home study is an "endorsement."<sup>27</sup> Were a same-sex couple to approach Catholic seeking foster parent certification, Catholic would refer the couple to one of 29 nearby agencies, just as agencies refer couples elsewhere for myriad secular reasons.

***The DHS headquarters meeting and adverse actions.*** Figueroa summoned Catholic's senior management to DHS headquarters.<sup>28</sup> The issue had the attention of the Mayor,<sup>29</sup> who has previously said he "could care less about the people at the Archdiocese," called Archbishop

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<sup>25</sup> App. 222-24; Appx.229-31; Appx.236; Appx.262.

<sup>26</sup> Appx.231.

<sup>27</sup> Appx.257.

<sup>28</sup> Appx.237; Appx.298.

<sup>29</sup> Appx.300-01.

Chaput's actions "not Christian," and exhorted Pope Francis "to kick some ass here!"<sup>30</sup>

At DHS headquarters, Figueroa told Catholic it should follow the City's understanding of "the teachings of Pope Francis," *not* Archbishop Chaput.<sup>31</sup> When Amato noted that Catholic had been serving foster children for over 100 years, Figueroa told him "times have changed," "attitudes have changed," and it is "not 100 years ago."<sup>32</sup>

Minutes after the meeting, the City called to say that it was shutting down foster care intake for Catholic because of its "religious decision."<sup>33</sup> The City also closed Bethany Christian's intake for the same reason.<sup>34</sup> Under an intake shutdown, no children can be placed in the homes of families certified and supported by that foster agency.<sup>35</sup>

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<sup>30</sup> Appx.157-64 (available at <https://www.phillymag.com/citifed/2015/07/09/jim-kenney-catholic-archdiocese-charles-chaput/>); Appx.150-56.

<sup>31</sup> Appx.237; Appx.298-99.

<sup>32</sup> Appx.238; Appx.298-99.

<sup>33</sup> Appx.288-89.

<sup>34</sup> Appx.266.

<sup>35</sup> Appx.263-64; Appx.69 (¶13).



DHS was not alone: HRC opened an inquiry into Catholic's practices, and City Council passed a resolution concerning "discrimination that occurs under the guise of religious freedom."<sup>36</sup>

***The claimed violations.*** The City claimed Catholic violated two policies: (1) an unwritten policy that agencies must provide home studies to every applicant and (2) the public accommodations portion of the City's Fair Practices Ordinance ("FPO").

But witnesses had never heard of a policy requiring foster care agencies to perform every home study, or that referrals were inappropriate. No DHS official could identify any written version of this policy.<sup>37</sup> The City claimed this was in the contract, but later admitted that the identified provision (3.21) does not apply to situations where a prospective foster parent approaches Catholic independently.<sup>38</sup> Even the City's website states that foster agencies *can* have "different requirements."<sup>39</sup>

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<sup>36</sup> Appx.136-140; Appx.101.

<sup>37</sup> Appx.214-15; Appx.283-84, 288.

<sup>38</sup> Appx.199.

<sup>39</sup> Appx.109; Appx.116-17.

Nor could any witness provide any example of a situation in which—prior to this litigation—foster care was considered a public accommodation.<sup>40</sup> Figueroa could not recall training staff or even discussing public accommodation laws in the foster care context, nor could she recall doing “anything [as Commissioner] to make sure that people at DHS follow the Fair Practices Ordinance when doing foster care work.”<sup>41</sup> The City acknowledged that it sometimes considers race and disability when making foster care placement decisions.<sup>42</sup>

***Consequences of intake freeze.*** The City’s actions have consequences for both the individual Appellants and Catholic.

First, Philadelphia has a shortage of foster homes and admits it needs to get 250 children out of group homes<sup>43</sup> and into the most “most family-like setting” possible, as required by state law.<sup>44</sup> But under the referral freeze, those children cannot be placed with Catholic’s

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<sup>40</sup> Appx.216-17; Tr., Appx.240-41; Appx.273-74, 277, 282.

<sup>41</sup> Appx.273-74.

<sup>42</sup> Appx.274-79.

<sup>43</sup> Appx.232; Appx.293-95.

<sup>44</sup> 11 Pa. Stat. Ann. § 2633(4).

families.<sup>45</sup> Catholic has over two dozen empty homes ready for children, including that of Mrs. Paul, a former pediatric nurse who has fostered 133 children and whom the City named a foster parent of the year.<sup>46</sup>

Second, due to the intake freeze, reuniting children with siblings or prior foster parents is no longer easy.<sup>47</sup> The City now says it will perform “individualized assessments” and grant case-by-case exceptions to its freeze, but this has not been communicated to lower-level DHS staff, requires intervention by DHS leadership, and permits children to fall through the cracks.<sup>48</sup> Only after Catholic sought a TRO did the City allow an autistic child to be placed with his former foster mother; similar situations continue to occur.<sup>49</sup>

Third, absent relief, Catholic will be forced to lay off staff within weeks and close its foster program within months.<sup>50</sup> Catholic has

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<sup>45</sup> Appx.69.

<sup>46</sup> Appx.245; Appx.183-85.

<sup>47</sup> Appx.243-44.

<sup>48</sup> Appx.305-08.

<sup>49</sup> Appx.79-82; Appx.94-100.

<sup>50</sup> Appx.247-248. While the City has ostensibly offered to allow Catholic to continue, that offer requires Catholic to either violate its religious beliefs or wind down. Appx.76-77; Appx.265-66.



already begun the termination process.<sup>51</sup> Losing experienced staff “would take years” to recover from, if at all.<sup>52</sup>

If Catholic closes, its foster parents must transfer or lose their current foster children, which the City admits can harm children.<sup>53</sup> And the individual Appellants and their children will lose support.

## **ARGUMENT**

### **I. An injunction pending appeal is necessary.**

Injunctions pending appeal turn on (1) likelihood of success; (2) irreparable harm; (3) balance of harms; and (4) public interest. *In re Revel AC, Inc.*, 802 F.3d 558, 565 (3d Cir. 2015). Appellants need “a reasonable chance, or probability, of winning” but the likelihood “need not be ‘more likely than not.’” *Id.* at 568-69 (citation omitted). This Court also recognizes “a constitutional duty to conduct an independent examination of the record as a whole when a case presents a First Amendment claim.” *Brown v. City of Pittsburgh*, 586 F.3d 263, 269 (3d Cir. 2009). Injunctions are designed to “maintain the status quo,

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<sup>51</sup> Appx.245; Appx.79-82.

<sup>52</sup> Appx.248.

<sup>53</sup> Appx.290.

defined as the last peaceable, noncontested status of the parties.” *Kos Pharm., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004).<sup>54</sup>

**II. Appellants have a reasonable probability of success on the merits.**

**A. Appellants are likely to succeed on their claims under the Free Exercise Clause.**

The City’s attempt to force Catholic to provide written endorsements imposes an obvious burden on Catholic’s religious exercise: if it wants to provide foster care, Catholic must violate its faith.<sup>55</sup> The City has violated the Free Exercise Clause in four different ways. First, through outright discrimination, which is unconstitutional *even without* resorting to strict scrutiny. *See Masterpiece Cakeshop Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1729 (2018); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2022 (2017). *Cf. Whole*

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<sup>54</sup> Appellants raised, and the District Court decided, additional claims not discussed in this motion. Appellants plan to brief those claims on appeal.

<sup>55</sup> “[P]ut[ting] [Appellants] to this choice” between religious exercise and penalties “easily satisfie[s]” the substantial burden test. *Holt v. Hobbs*, 135 S. Ct. 853, 862-63 (2015). The same is true of the burdens on foster parents, which the District Court agreed would be “difficult, uncertain, and emotionally challenging.” Appx.60. Mrs. Paul’s religious exercise of providing foster care is currently prevented altogether. Appx.185-86.

*Woman's Health v. Smith*, No. 18-50484, 2018 WL 3421096, at \*11 (5th Cir. July 15, 2018) (“This looks like an act of intimidation.”).

Further, the City’s actions are subject to strict scrutiny for three independent reasons: they (1) are “not neutral,” (2) “not of general application,” and (3) involve “individualized, discretionary exemptions.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993); *Blackhawk v. Pennsylvania* 381 F.3d 202, 209-10 (3d Cir. 2004) (Alito, J.). Any one would necessitate strict scrutiny; here, all three are present.

***1. The City’s actions target Catholic in violation of the Free Exercise Clause.***

Government actions based on “impermissible hostility toward . . . sincere religious beliefs” are *per se* unconstitutional. *Masterpiece*, 138 S. Ct. at 1729. Catholic has been the target of coordinated actions by every branch of City government: City Council passed a resolution targeting “discrimination that occurs under the guise of religious freedom”<sup>56</sup>; the

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<sup>56</sup> Appx.136-140. The Council’s reference to the “guise” of religious freedom is evidence of targeting. *See Masterpiece*, 138 S. Ct at 1729 (“clear and impermissible hostility” where government dismissed religious freedom as “rhetoric”).



Human Relations Commission opened an extra-jurisdictional inquiry and threatened subpoenas;<sup>57</sup> the Mayor prompted inquiries by the Commission and DHS<sup>58</sup>; DHS's commissioner summoned Catholic's leadership to headquarters, accused them of not following "the teachings of Pope Francis," and told them it was "not 100 years ago."<sup>59</sup>

The City then told Catholic that future contracts would "explicit[ly]" require written certifications for same-sex couples, and that the City "has no intention of granting an exception" to Catholic.<sup>60</sup> Furthermore, the City targeted its investigation to religious entities, has never enforced the alleged policies against secular agencies, informed secular agencies of the policies, or even inquired as to whether secular agencies obey them.<sup>61</sup> These targeted and disparaging actions "pass[] judgment upon or presuppose[] the illegitimacy of religious beliefs and practices" in violation of the First Amendment. *Masterpiece*, 138 S. Ct. at 1731; *Trinity Lutheran*, 137 S. Ct at 2019. The Court need go no further.

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<sup>57</sup> Appx.101. The Commission only has power to investigate complaints, see Phila. Code § 9-1112; but no one has complained. Appx.268-69.

<sup>58</sup> Appx.101; Appx.300-01.

<sup>59</sup> Appx.237-38; Appx.298-99.

<sup>60</sup> Appx.104.

<sup>61</sup> Appx.297-98

The District Court found no targeting because Bethany was also penalized.<sup>62</sup> But discriminating against *two* religious agencies rather than one hardly cures a Free Exercise violation. *See, e.g., Colorado Christian Univ. v. Weaver*, 534 F.3d 1245, 1260 (10th Cir. 2008) (state program violated Free Exercise Clause by singling out two universities, one Christian and one Buddhist).

The District Court did not apply *Masterpiece* or *Trinity Lutheran*, instead citing an “absence of caselaw,”<sup>63</sup> and looking to *CLS v. Martinez*, and *Teen Ranch v. Udow*. But *Martinez* is a free speech case about the government’s ability to regulate a “limited public forum” with an “all comers” policy, 561 U.S. 661, 683 (2010); *Teen Ranch* is largely an Establishment case that “boil[s] down to the single issue” of whether teens sent to the ranch had “true private choice,” 389 F. Supp. 2d 827, 834-35 (W.D. Mich. 2005), *aff’d as supplemented*, 479 F.3d 403 (6th Cir. 2007). Neither case controls here, where the government targeted religious groups, seeks to foreclose religious conduct that it does not pay for, lacks any actual “all comers” policy, and prospective parents have a

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<sup>62</sup> Appx.29, 34.

<sup>63</sup> Appx.23.

true private choice among 30 providers. Neither case controls over the Supreme Court’s much more recent religious targeting precedents.

The Court’s reliance on *Martinez* is also incompatible with *Masterpiece*’s observation that the Constitution would protect a religious decision not to perform same-sex weddings. Even though marriage is both a civil and religious act and requires a government license and government-sanctioned officiant, a decision to only perform some marriages “would be well understood in our constitutional order as an exercise of religion, an exercise that gay persons could recognize and accept without serious diminishment to their own dignity and worth.” *Masterpiece*, 138 S. Ct. at 1727. The same is true of the Catholic Church’s religious decisions regarding marriage and parenting, particularly where there is no danger of a “long list” of refusers creating “community-wide stigma,” *id.*, because literally every other agency in the City provides the service.

***2. The City’s actions must face strict scrutiny under the Free Exercise Clause.***

The City’s actions are subject to strict scrutiny for three reasons.

***Not neutral.*** The City targeted only religious agencies for investigation, applying standards that have never been applied to



secular agencies. In *Tenaflly Eruv Association, Inc. v. Borough of Tenaflly*, this Court invalidated a city’s “invocation of [an] often-dormant Ordinance” to prohibit conduct undertaken for religious reasons, even though it had permitted widespread violations of the ordinance. 309 F.3d 144, 153, 168 (3d Cir. 2002). Here, the City selectively enforced its “must certify” policy and the FPO against Catholic, while never applying those principles to the City’s or non-religious agencies’ foster work.<sup>64</sup>

The City admitted that it investigated only *religious* foster agencies, with a single exception: Figueroa phoned a friend.<sup>65</sup> The City still has not bothered to *ask* whether other secular agencies accept all applicants.<sup>66</sup> To compound this problem, the City is selectively enforcing its newly minted “must certify” policy, continuing to allow other agencies to decline to perform home studies for a range of secular reasons. *See supra* p. 7-8. The City’s decision to shut down Catholic—

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<sup>64</sup> Appx.215-17; Appx.240-41; Appx.273-74, 277, 282, 297-98.

<sup>65</sup> Appx.297 (“Q. When you did that investigation, you only contacted faith-based agencies, correct? A. That’s correct.”)

<sup>66</sup> Appx.297-98.

while not even investigating secular agencies—is textbook selective enforcement.

Worse, the City is penalizing foster parents like Mrs. Paul merely for their religious affiliation with Catholic.<sup>67</sup> Placements with *existing* foster parents are not implicated by the City’s interests in *future* home studies. This punitive action unlawfully “proscribe[s] more religious conduct than is necessary to achieve the[] stated ends.” *Lukumi*, 508 U.S. at 538.

The District Court found the City’s actions neutral because the policies were not “drafted or enacted” to target religion.<sup>68</sup> But the “problem is not the adoption of an anti-discrimination policy; it is the implementation of the policy permitting secular exemptions but not religious ones and failing to apply the policy in an even-handed” manner. *Ward v. Polite*, 667 F.3d 727, 739 (6th Cir. 2012). Both the “must certify” policy and the FPO’s application to foster care were invented post hoc for religious agencies and have not been applied to

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<sup>67</sup> Appx.185.

<sup>68</sup> Appx.27.

anyone else, ever.<sup>69</sup> And the City plans to condition future contracts on a requirement that agencies certify same-sex couples—a requirement admittedly added to prevent a particular religious practice.<sup>70</sup>

***Not generally applicable.*** The City’s actions also trigger strict scrutiny because they are not generally applicable. *Fraternal Order of Police v. City of Newark*, 170 F.3d 359, 365 (3d Cir. 1999); *Blackhawk*, 381 F.3d at 209-10. The City permits agencies to make referrals for a host of secular reasons, but not for religious reasons. *Supra* at 7-8. This undermines any claimed interest the City has. Such actions “trigger strict scrutiny because at least some of the [secular] exemptions available . . . undermine the interests” the City claims to be pursuing. *Id.* at 211. Indeed, the exceptions here are so sweeping that they prove the City’s interests are illusory.

The District Court held the FPO generally applicable because it applies regardless of religious motivation, and that the exemptions did not undermine the FPO. Appx.28-29, 39. First, *any* exemption undermines the purpose of the “must certify” policy, since its purpose is

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<sup>69</sup> Appx.272-74, 297-98; Appx.215-17; Appx.240–41; Appx.172-73.

<sup>70</sup> Appx.105.



uniformity. Second, evidence showed that agencies refer prospective foster parents elsewhere for many reasons. Third, state law requires agencies to decline to certify couples for reasons that conflict with the FPO.

The FPO prohibits discrimination on the basis of “race”; “marital status”; “familial status”; or “disability,” which includes “mental impairment.”<sup>71</sup> But state law governing home studies *requires* subjective consideration of factors including “stable mental and emotional adjustment,” possibly including a “psychological evaluation”; a family’s “[s]upportive community ties”; certifications approving “[e]xisting family relationships, attitudes and expectations”; and the “[a]bility of the applicant to work in partnership with” the foster care agency.<sup>72</sup> Foster care home studies and certifications are not a “service . . . extended, offered [] or otherwise made available to the public,”<sup>73</sup>—their purpose is to be selective. None of these assessments would be remotely permissible reasons for denying someone a train ticket, a cup

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<sup>71</sup> Phila. Code §§ 9-1102(d), 9-1106.

<sup>72</sup> 55 Pa. Code § 3700.64.

<sup>73</sup> Phila. Code § 9-1102(w).

of coffee, or any other actual public accommodation. Indeed, the City admitted to considering *race* and *disability* when making foster care placements.<sup>74</sup>

Thus the FPO is not even applicable—much less “*generally* applicable”—to foster care.

***Discretionary exemptions.*** When a law gives the government discretion to grant case-by-case exemptions based on “the reasons for the relevant conduct,” such a “waiver mechanism . . . create[s] a regime of individualized, discretionary exemptions that triggers strict scrutiny.” *Blackhawk*, 381 F.3d at 207, 209-10. Here, the contract provision on which the City relies allows exceptions in the Commissioner’s “sole discretion.”<sup>75</sup> City officials also grant case-by-case exemptions to its intake freeze—based on “individualized assessments”—but not for Catholic’s religious exercise.<sup>76</sup> These discretionary exemptions trigger strict scrutiny.

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<sup>74</sup> Appx.274-79.

<sup>75</sup> Appx.104; Appx.116-117.

<sup>76</sup> Appx.305; Appx.104

Finally, the City cannot rely upon its contract to escape the First Amendment; courts frequently apply the First Amendment to contractors, grantees, and even employees. *See, e.g., Trinity Lutheran*, 137 S. Ct. at 2018 (grantee); *Fraternal Order*, 170 F.3d at 365 (employee); *Bd. of Cty. Comm’rs v. Umbehr*, 518 U.S. 668, 684 (1996) (independent contractor whose annually renewed contract was terminated); *Springer v. Henry*, 435 F.3d 268, 275 (3d Cir. 2006) (same).

***3. The City’s actions cannot pass strict scrutiny.***

***No compelling interest.*** A compelling interest is an interest “of the highest order.” *Lukumi*, 508 U.S. at 546. The District Court never held that the City has a compelling interest, finding instead that the interests were only “legitimate.”<sup>77</sup> Finding a compelling interest would be impossible, given Deputy Commissioner Ali’s concession that the City’s interest in requiring home studies is “no stronger or no weaker than enforcing any other policy,”<sup>78</sup> the City’s failure to notify agencies about (much less enforce) the policy,<sup>79</sup> its failure to apply FPO

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<sup>77</sup> Appx.29.

<sup>78</sup> Appx.213.

<sup>79</sup> Appx.280-81, Appx.297-98.



standards to its own or anyone else's foster care practices,<sup>80</sup> the City's own suggestion that agencies can have "different requirements," and controlling state law.<sup>81</sup> The City's actions contravene its interest in caring for children: Mrs. Paul's home and dozens of others remain empty despite the fact that 250 children currently in congregate care could move into family homes.<sup>82</sup> The City can have no compelling interest in contravening state law and keeping children from loving homes.

***Failure to use least restrictive means.*** The City's chosen means—stopping placements with even existing foster families—does not further its alleged interests. The City is punishing current foster families over a dispute about hypothetical future home studies.

Further, the longstanding status quo was a tested, workable, less restrictive alternative. Allowing religious referrals the way the City allows secular referrals maximizes the number of (1) foster parents, (2) foster agencies, and (3) foster children placed in loving homes.

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<sup>80</sup> Appx.272-77.

<sup>81</sup> Appx.270, 287.

<sup>82</sup> Appx.128.

The absence of even a single complaint against Catholic shows that the diverse group of 30 foster agencies is meeting the needs of prospective foster parents. And the City has identified, and is pursuing, another less restrictive alternative through its ongoing direct recruitment of LGBTQ foster families.

**B. Appellants are likely to prevail on their Free Speech claims.**

The City seeks to impose an unconstitutional condition—forced speech—on Catholic’s ability to provide foster care services. The City’s restriction is not limited to funding, as Catholic cannot provide foster care services to Philadelphia children *at all* without a City contract.<sup>83</sup> Catholic is thus unlike the libraries in *United States v. American Library Ass’n, Inc.*, 539 U.S. 194, 212, (2003) (plurality opinion) who were “free to [offer unfiltered access] without federal assistance.”

Even in the funding context, however, the First Amendment circumscribes the government’s ability to leverage funding to control speech. *See AOSI v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214-5 (2013) (government cannot “leverage funding to regulate speech”

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<sup>83</sup> Appx.227.

outside of the funded program).

Here, despite admitting that it has “nothing to do” with home studies (which are governed by State law and not paid for by the City), the City insists on controlling Catholic’s speech. In particular, Catholic must “certify” or “approve” same-sex couples, providing “written endorsements” of such couples, regardless of Catholic’s actual views.<sup>84</sup> Catholic is not free to disagree with the City’s views on same-sex marriage and parenting: it *must* adopt the City’s preferred view, in writing, or it will lose its foster program.

But the First Amendment protects speakers when governments seek to “compel[] them to voice ideas with which they disagree.” *Janus v. AFSCME*, 138 S. Ct. 2448, 2464 (2018). It is “always demeaning” when speakers are “coerced into betraying their convictions,” and forced “to endorse ideas they find objectionable.” *Id.* Such laws are treated as “content-based” because they necessarily “alter[] the content” of the speaker’s message. *NIFLA v. Becerra*, 138 S. Ct. 2361, 2371 (2018) (citation omitted).

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<sup>84</sup> Appx.211, Appx.250-51, Appx.271, Appx.291-92, Appx.229-30, Appx.242, Appx.76.



The District Court believed Catholic’s speech to be the City’s “governmental speech.” But the City has “nothing to do” with home studies, which are not designed to “promote a governmental message.” *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541-43 (2001). Catholic does not speak for the City when it considers the factors for certification, and is not “in any way or for any purpose” acting as the City’s agent,<sup>85</sup> particularly for an uncompensated activity.

The City therefore cannot force Catholic to embrace the City’s views. *Id.* *AOSI* is instructive. There, “[b]y demanding that funding recipients adopt—as their own—the Government’s view on an issue of public concern” and forcing recipients “to pledge allegiance to the Government’s policy,” the government violated the First Amendment. *AOSI*, 570 U.S. at 218, 220. And even if the City imposed a licensing requirement for foster care, the Court has been clear that even in licensed activities governments cannot engage in “invidious discrimination of disfavored subjects.” *NIFLA*, 138 S. Ct. at 2375.

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<sup>85</sup> Appx.118.

Of course, the City remains free to speak its own message, and to place children with same-sex foster parents. Catholic has never interfered with either endeavor. But the City cannot coerce Catholic to publicly promote the City's views.

**III. Appellants will be irreparably harmed absent an injunction.**

“[L]oss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Furthermore, without an injunction, Catholic will likely close before litigation is complete.<sup>86</sup> This loss is more than monetary; it would be extremely difficult, if not impossible, for Catholic to rebuild after the loss of employees, connections to foster families, and its institutional knowledge and experience built over decades of service.<sup>87</sup> And the immeasurable benefits of Catholic's work would be lost to the individual plaintiffs and to unnamed and unknown foster children who could be living with Catholic's foster families today.

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<sup>86</sup> Appx.249, 252-55, 256.

<sup>87</sup> Appx.248.

#### **IV. An injunction is in the public interest.**

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012). Here, the public interest is best served by ensuring that empty foster homes are filled and at-risk children are placed with loving foster parents in accordance with state law. *See* 11 Pa. Stat. Ann. § 2633(4).

#### **V. The balance of the equities favors Appellants.**

In balancing the equities, this Court looks to “the potential injury to the plaintiffs without this injunction versus the potential injury to the defendant with it in place.” *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 143 (3d Cir. 2017). Here, Appellants—along with dozens of foster parents and an untold number of children—will be harmed if this Court does not act to restore normal foster care operations.

The City’s alleged harms are hypothetical. No same-sex couple has ever even asked Catholic to assess their home life for foster care purposes. If the situation ever arises, the couple would simply be referred to one of 29 different agencies nearby, and that couple—just



like any other family referred for secular reasons—would not be blocked from fostering children. As Figueroa admitted, regardless of the outcome of this litigation, the same number of foster care agencies will be available to serve same-sex couples in Philadelphia.<sup>88</sup> The City’s failure to adduce a scintilla of evidence of harm confirms that the balance tips in favor of preliminary relief to allow Catholic to continue serving foster children while the appeal proceeds.

### **CONCLUSION**

The Appellants respectfully request that this Court grant their motion for an injunction pending appeal.

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<sup>88</sup> Appx.267-68.

Date: July 16, 2018

Respectfully submitted,

/s/ Mark L. Rienzi

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### **CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will automatically send notification and a copy of this motion to the counsel of record for the parties.

Executed this 16th day of July, 2018.

/s/ Mark L. Rienzi

Mark L. Rienzi



**CERTIFICATE OF COMPLIANCE WITH FEDERAL RULE OF  
APPELLATE PROCEDURE 32(A) AND  
LOCAL RULES 25 AND 32**

I hereby certify that the following statements are true:

1. This brief complies with the type-volume limitations imposed by Federal Rules of Appellate procedure 29(d) and 32(a)(7)(B). It contains 5,184 words, excluding the parts of the brief exempted by Federal Rule 32(a)(7)(B)(iii) and by Local Rule 32.
2. This brief complies with the typeface and typestyle requirements of Federal Rule 32(a)(5) and 32(a)(6). It has been prepared in a proportionally-spaced typeface using Microsoft Office Word 2016 in 14-point Century Schoolbook font.
3. This brief complies with the electronic filing requirements of Local Rule 25. The text of this electronic brief is identical to the text of the paper copies, and Windows Defender Antivirus Version 1.271.1085.0 has been run on the file containing the electronic version of this brief and no virus has been detected.

Executed this 16 day of July, 2018.

/s/ Mark L. Rienzi

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