

**CONTRACT FOR PROFESSIONAL SERVICES**

**between**

**GOVERNMENT OF THE VIRGIN ISLANDS  
DEPARTMENT OF PROPERTY AND PROCUREMENT  
on behalf of the**

**DEPARTMENT OF HUMAN SERVICES**

1303 Hospital Ground  
Knud Hansen Complex, Building A  
Charlotte Amalie, St. Thomas, VI 00802

**and**

**THE DEVEREUX FOUNDATION OF TEXAS**

120 David Wade Drive  
Victoria, Texas 77902-5000

**and**

1150 Devereux Drive  
League City, Texas 77573

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## CONTRACT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made this 10<sup>th</sup> day of May, 2017, in the Territory of the Virgin Islands, by and between the Government of the Virgin Islands, DEPARTMENT OF PROPERTY AND PROCUREMENT, on behalf of the DEPARTMENT OF HUMAN SERVICES, Knud Hansen Complex-Building A, 1303 Hospital Ground, St. Thomas, Virgin Islands 00802, (hereinafter referred to as "Government") and THE DEVEREUX FOUNDATION OF TEXAS, 120 David Wade Drive, Victoria, Texas 77902-5000 and 1150 Devereux Drive, League City, Texas 77573 (hereinafter referred to as "Contractor") and is executed pursuant to the terms and conditions set forth herein.

### WITNESSETH:

WHEREAS, the Government is in need of the services of a Contractor to provide residential treatment services for minor wards of and/or adults referred by the Government, which duties and responsibilities are more particularly described in Addendum I attached hereto; and

WHEREAS, the Contractor represents owns and operates a residential treatment facility for children and adults, licensed by the State of Texas as such, and is willing and capable of providing such services;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound by this written instrument, the parties hereto do covenant and agree as follows:

### 1. SERVICES

The Contractor will provide the services described in *Addendum I (Scope of Services)* attached hereto and made a part of this contract.

### 2. TERM

Upon the execution of this contract by the Governor of the U.S. Virgin Islands, this contract shall be effective from October 1, 2015, and shall terminate on September 30, 2018. The Government reserve's the right to renew this Contract for two (2) additional one (1) year periods.

### 3. COMPENSATION

The Government, in consideration of the satisfactory performance of the services described in *Addendum I (Scope of Services)*, agrees to pay a total amount not to exceed SEVEN MILLION SIX HUNDRED FIFTY THOUSAND EIGHT HUNDRED TWENTY FIVE and 00/100 (\$7,650,825.00) DOLLARS, in

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accordance with the provisions set forth in *Addendum II (Terms of Compensation)* attached hereto and made a part of this contract.

#### 4. TRAVEL EXPENSES

The cost of any travel and/or transportation costs of the Contractor and/or its agents, inside the Virgin Islands, and/or the shipping or transportation of any equipment, material, or supplies, required for preparing for and/or providing the services of the Contract, shall not be included within the compensation amount indicated in Paragraph 3 above.

#### 5. RECORDS

The Contractor, when applicable, will present documented, precise records of time and/or money expended under this Contract.

#### 6. PROFESSIONAL STANDARDS

The Contractor agrees to maintain the professional standards applicable to his profession and to consultants doing business in the United States Virgin Islands and in the state of Texas in which Contractor is duly licensed to provide the services described and agreed to herein.

#### 7. DOCUMENTS, PRINTOUTS, ETC.

All documents, books, records, instructional materials, programs, printouts and memoranda of every description derived from and pertaining to this Contract shall become the property of the Government and shall be turned over to it at the termination of this Contract. The above described materials shall not be used by Contractor or by any other person or entity except upon the written permission of the Government.

In performance of this Agreement, and any Addenda hereunder, the Contractor acknowledges that certain Government Data to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by territorial or federal law. In addition to the provisions of this Section, the Contractor shall execute the **HIPAA Business Associate Agreement** incorporated into this Agreement and attached as *Addendum III*.

#### 8. LIABILITY OF OTHERS

Nothing in this Contract shall be construed to impose any liability upon the Government to persons, firms, associations, or corporations engaged by Contractor as servants, agents, or independent contractors, or in any other capacity whatsoever, or make Government liable to any such persons, firms, associations, or corporations for

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the acts, omissions, liabilities, obligations and taxes of Contractor of whatsoever nature, including but not limited to gross receipts, unemployment insurance and social security taxes for Contractor, its servants, agents or independent contractors.

## 9. LIMITATION OF CONTRACTOR LIABILITY

- (a) Contractor's liability to the Government under or relating to this Contract shall be limited to actual damages and shall in no event exceed **SIX MILLION AND 00/100 DOLLARS (\$6,000,000.00)**, and in no event shall Contractor be liable to the Government for any indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits or good will) related to this Contract.
- (b) The limitation of liability provided for in this subsection (a) of this Section shall not apply in the event of gross negligence, reckless conduct, or willful misconduct on the part of Contractor, its employees, agents, or subcontractors, which event of gross negligence, reckless conduct, or willful misconduct shall include, but in no way be limited to, or by, the following:
- 1) Transmission of communicable diseases;
  - 2) Sexual misconduct;
  - 3) Acts performed while under the influence of alcohol, narcotics, Hallucinogenic agents, or which results from substance abuse; and
  - 4) Personal injury caused by or incurred at the direction of Contractor, its employees, agents, or independent contractors, where Contractor, its employees, agents, or independent contractors, knew or should have known that their action, or inaction, would result in such injury.

## 10. INDEMNIFICATION

Contractor agrees to investigate, defend and hold harmless Government from and against any and all loss, damage, liability, claims, demands, detriments, cost, charges and expenses (including attorney's fees) and causes of action of whatsoever character which Government may incur, sustain or be subjected to, arising out of or in any way connected to the services to be performed by Contractor under this Contract and arising from any cause, except the sole negligence of Government.

## 11. LICENSURE AND PERMITS

The Contractor covenants that it has familiarized itself with the applicable provisions of Title 27 of the Virgin Islands Code pertaining to professions and occupations, and has obtained all of the applicable licenses or permits, temporary or otherwise, as may be required by the state in which services are provided.

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## 12. INSURANCE

- (a) Contractor agrees to procure and provide evidence of the following insurance policies in the amount and with the type of coverage shown below:
  - (1) Compliance with 24 V.I.C. §273 requiring employer contributions to the Workers Compensation Insurance Fund.
  - (2) Commercial General Liability insurance on an "Occurrence Basis" with limits of liability not less than \$5,100,010.00 per occurrence with the Government as an additional named insured.
  - (3) Motor Vehicle Liability, including No-Fault coverage, with limits of liability not less than \$500,000 per occurrence with the Government as additional named insured. Coverage shall include all non-owned vehicles and, all hired vehicles.
  - (4) Professional Liability insurance in a form acceptable to the Government with a limit of not less than \$5,100,010.00 per occurrence.
- (b) Contractor warrants that during the term of the Contract it shall comply with the above-listed insurance requirements and maintain the above-listed insurance policies in the amount and type of coverage indicated. The Government acknowledges that any AAA rated insurance carrier shall be acceptable.
- (c) This Contract is subject to Contractor providing the Government with a Certificate of Insurance evidencing the Commercial General Liability, Motor Vehicle Liability, and Professional Liability Insurance coverage described above. Said Certificate of Insurance shall identify Contractor as the "Named Insured" and the Government as additional "Named Insured"
- (d) If the policy for any liability insurance described above is on a claims-made basis, the policy shall be acceptable provided that Contractor submit with the applicable Certificate of Insurance documentation evidencing an extended reporting endorsement (tail) for a period of not less than three (3) years after the end of the Contract term.
- (e) Evidence of insurance of documenting the required coverage under this Contract shall be provided to the Government prior to the commencement of services under this Contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, all payments under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Government.
- (f) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until



THIRTY (30) days after the insurer of Contractor gives written notice to the Government. If, during the performance period of this Contract, and the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to limits specified in paragraph (a) of this Section, for the entire period of the Contract, either under the new policy, or a combination of old and new policies.

- (g) Contractor shall insert the substances of this Section, including this paragraph (g) in all subsection under this Contract and shall require such subcontractors to provide evidence of and maintain adequate.

At least five (5) days before the commencement of work by any subcontractor, the Contractor shall furnish to the government evidence of such insurance.

### **13. INDEPENDENT CONTRACTOR**

The Contractor shall perform this Contract as an independent contractor and nothing herein contained shall be construed to be inconsistent with this relationship or status. The Contractor will act in an independent capacity and not as an officer or employee of the Government of the U. S. Virgin Islands.

### **14. GOVERNING LAW**

This Contract shall be governed by the laws of the United States Virgin Islands and jurisdiction shall remain in the United States Virgin Islands. Government does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Government does not waive any right to a jury trial.

### **15. ASSIGNMENT**

The Contractor shall not subcontract or assign any part of the services under this contract without the prior written consent of the Government.

### **16. WAIVERS AND AMENDMENTS**

No waiver, modification or amendment of any term, condition, or provision of this contract shall be valid or of any force or effect unless made in writing, signed by the parties hereto or their duly authorized representatives, and specifying with particularity the nature and extent of such waiver, modification, or amendment. Any such waiver, modification, or amendment in any instance or instances shall in no event be construed to be a general waiver, modification, or amendment of any of the terms, conditions, or provisions of this Contract, but the same shall be strictly limited and restricted to the extent and occasion specified in such signed writing or writings. In the event of that; the parties agree that changes must be made to ensure the performance

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of work under this Contract, said changes in the scope of work must be made in writing to the other for an equitable adjustment in compensation or schedule caused by such material change.

## **17. ENTIRE AGREEMENT**

This Agreement, including all Addenda, constitutes the entire agreement between the parties hereto. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

## **18. RIGHT TO WITHHOLD**

If work under this Contract is not performed in accordance with the terms hereof, Government will have the right to withhold out of any payment due to Contractor, such sums as Government may deem ample to protect it against loss or to assure payment of claims arising therefrom, and, at its option, Government may apply such sums in such manner as Government may deem proper to secure itself or to satisfy such claims. Government will immediately notify the Contractor in writing in the event that it elects to exercise its right to withhold.

No such withholding or application shall be made by Government if and while Contractor gives satisfactory assurance to Government that such claims will be paid by Contractor or its insurance carrier, if applicable, in the event that such contest is not successful.

## **19. CONDITION PRECEDENT**

This Contract shall be subject to the availability and appropriation of funds and to the approval of the Governor.

## **20. TERMINATION**

Either party will have the right to terminate this Contract with or without cause on **THIRTY (30)** days' written notice to the other party specifying the date of termination.

## **21. PARTIAL TERMINATION**

The performance of work under this Contract may be terminated by the Government, in part, whenever the Government shall deem such termination advisable. This partial termination shall be effected by delivering to the Contractor a Notice of Partial Termination specifying the extent to which the term and/or duties under this Contract are terminated and the date upon which such termination becomes

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effective. The Contractor shall be entitled to receive payment for services provided to the date of termination, including payment for the period of the **THIRTY (30)** day notice, provided that the Contractor has performed work specified under the Contract during that thirty-day period.

## 22. NON-DISCRIMINATION

No person shall be excluded from participating in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract on account of race, creed, color, sex, religion, disability or national origin.

## 23. CONFLICT OF INTEREST

- (a) Contractor covenants that it has no interest and will not acquire any interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract.
- (b) Contractor further covenants that it is:
  - (i) not a territorial officer or employee (i.e., the Governor, Lieutenant Governor, member of the Legislature, or any other elected territorial official; or an officer or employee of the legislative, executive or judicial branch of the Government or any agency, board, commission or independent instrumentality of the Government, whether compensated on a salary, fee or contractual basis); or
  - (ii) a territorial officer or employee and, as such, has:
    - a. familiarized itself with the provisions of Title 3, Chapter 37 of the Virgin Islands Code, pertaining to conflicts of interest, including the penalties provision set forth in section 1108 thereof;
    - b. not made, negotiated or influenced this Contract, in its official capacity;
    - c. no financial interest in the Contract as that term is defined in section 1101(1) of said Code chapter.

## 24. EFFECTIVE DATE

The effective date of this Contract is upon the signature of the Governor of the United States Virgin Islands. The Contractor acknowledges and understands that the Contract is not effective until all requisite Government approvals are received, and the Contractor shall not begin performing work under this Agreement until notified to do so by Government's Department of Human Services that this Contract has been fully executed. **The Contractor is entitled to no compensation for work performed prior to the effective date of this Agreement.**

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## 25. NOTICE

Any notice required to be given by the Terms of this Contract shall be deemed to have been given when the same is sent by certified mail, postage prepaid or personally delivered, addressed to the parties as follows:

### GOVERNMENT

Randolph N. Bennett  
Commissioner  
**Department of Property and Procurement**  
Sub Base, Building No. 1, Third Floor  
St. Thomas, VI 00802  
Telephone: (340) 774-0830  
Fax: (340) 777-9587

Dr. Anita Roberts  
Commissioner  
**Department of Human Services**  
**Golden Rock Office**  
3011 Estate Golden Rock  
Christiansted, St. Croix, Virgin Islands 00820  
Attention: Dr. Celia Victor  
Administrator Residential Services  
Telephone: (340) 774-0930, Ext. 4157  
Fax: (340) 777-1028

### CONTRACTOR

The Devereux Foundation, Texas  
1150 Devereux Drive  
League City, Texas 77573  
Attention: Pamela E. Reed, Executive Director  
Telephone: (281) 335-1000  
Fax: (281) 554-7447

## 26. PUBLICITY

No publicity, including press releases, interviews, bulletins, or articles in any public medium concerning this Contract, its terms, execution, implementation, or results, can be released without approval of the Government. Provided, however, upon the signing of this Contract by all parties hereto, the terms of the Contract become available to the public pursuant to Virgin Islands law. The parties hereto agree to allow public access to all documents, papers, letters, or other materials subject to the current Virgin Islands law on disclosure. It is expressly understood that substantial evidence of Contractor's refusal to comply with this provision shall constitute a material breach of this Contract.

All information received that is the subject of this Contract, including copyrighted material, is deemed public information and will be made available for public viewing and copying shortly after the signing of contracts. The sole exceptions to this are as follows: (1) trade secrets meeting the requirements of Federal Trade Secrets laws that have been properly marked, separated, and documented; and (2) any

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Contractor financial information requested by Government to determine Contractor's responsibility, unless prior written consent has been given by the Contractor.

## **27. WAIVER AGAINST LIENS**

The Contractor shall provide waivers from all Sub-Contractors certifying that the Sub-Contractors have been paid in full for all services rendered hereunder.

## **28. DEBARMENT CERTIFICATION**

By execution of this contract, the contractor certifies that it is eligible to receive contract awards using federally appropriated funds and that it has not been suspended or debarred from entering into contracts with any federal agency. The Contractor shall include this provision in each of its subcontracts hereunder and shall furnish its subcontractors with the current "LIST OF PARTIES EXCLUDED FROM FEDERAL PROCUREMENT OR NON PROCUREMENT". In the event the Contractor or any subcontractor misrepresents its eligibility to receive contract awards using federal funds, the Contractor or subcontractor agrees that it shall not be entitled to payment for any work performed under this contract or any subcontract and that the Contractor or subcontractor shall promptly reimburse the Government of the Virgin Islands for any progress payments heretofore made. If, during the term of this Contract, the contractor shall become ineligible to receive contract awards using federal funds, this contract shall be terminated forthwith for cause and the contractor shall not be entitled to payments for any work performed under this contract or subcontract after the effective date of such ineligibility.

## **29. FALSE CLAIMS**

Contractor warrants that it shall not, with respect to this Contract, make or present any claim upon or against the Government of the Virgin Islands, or any officer, department, board, commission, or other agency thereof, knowing such claims to be false, fictitious or fraudulent. Contractor acknowledges that making such a false, fictitious or fraudulent claim is an offence under Virgin Islands law.

## **30. NOTICE OF FEDERAL FUNDING**

Contractor acknowledges that this Contract is funded, in whole or in part, by federal funds. Contractor warrants that it shall not, with respect to this Contract, make or present any claim knowing such claim to be false, fictitious, or fraudulent. Contractor acknowledges that making such a false, fictitious, or fraudulent claim is a federal offence.

## **31. OTHER PROVISIONS**

Addendum I (Scope of Services), Addendum II (Terms of Compensation), and

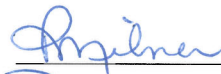
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Contractor's Initials: PKL


Addendum III (Business Associate Agreement) attached to this Contract are incorporated into and made part of this Contract. In the event of a conflict between terms and conditions of the general provisions of the Contract, as set out in Sections 1 through 29 of this Contract, and the terms of provisions of any Addendum or Attachment to this Contract, the terms and conditions of said general provisions of the Contract shall prevail.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

**WITNESSES:**


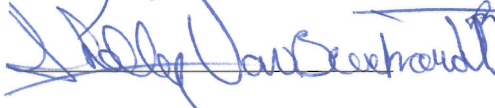
  
Betty Norwood

**CONTRACTOR**

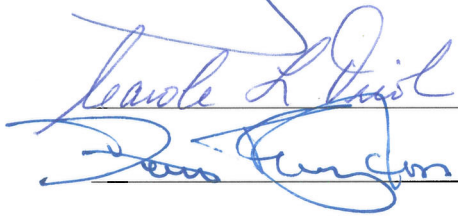

  
**Pamela E. Reed, Executive Director**  
The Devereux Foundation, Texas  
(Corporate seal, if Contractor is a corporation)

9-1-16  
Date

**GOVERNMENT OF THE VIRGIN ISLANDS**

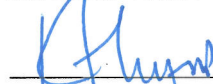
  
  
**Dr. Anita Roberts**  
Acting Commissioner  
Department of Human Services

12/1/16  
Date

  
  
**Timothy L. Lake**  
Acting Commissioner  
Department of Property and Procurement

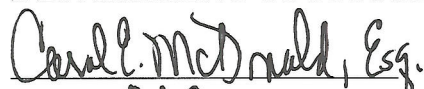
6 Feb 17  
Date

**APPROVED:**

  
**Kenneth E. Mapp**  
GOVERNOR OF THE VIRGIN ISLANDS

Date: 5-10-19

**APPROVED AS TO LEGAL SUFFICIENCY  
DEPARTMENT OF JUSTICE BY:**

  
**Carol L. McDonald, Esq.**  
AAG

Date: 3/28/17

**PURCHASE ORDER NO.**

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