ARMS WIDE
PRESERVING & FULFILLING FAMILIES

PURCHASE OF SERVICES CONTRACT

Spaulding for Children dba Arms Wide, hereinafter referred to as the Contract Provider, and hereinafter referred to as the Subcontract Provider, do hereby make and enter into this contract between the Subcontract Provider and the Contract Provider.

SECTION I
FUNDING AVAILABILITY AND FINANCIAL

A. This contract is subject to the availability of funds. If funds are unavailable or reduced, written notice will be given by the Contract Provider to the Subcontract Provider of termination, payment suspension, or funding reduction. Any amount due and accrued up to the date of notice will be paid to Subcontract Provider, if funds are available.

B. In the event that the Subcontract Provider fails to perform in accordance with the provisions of this contract, the Contract Provider may, upon written notice of default to the Subcontract Provider, immediately terminate the whole or any part of this contract, and such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided by law or under this contract.

C. The Subcontract Provider agrees to provide to the Contract Provider, in accordance with the procedures prescribed by the Department (DFPS), and agreed to in the Subcontract Agreement, a verified and proper monthly statement of charges for services which have been rendered under this contract.

D. The Subcontract Provider agrees to submit billings and statistical documentation as required by the Contract Provider by the fifth (5th) day following the last day of the month in which service is provided. If the required billing and statistical documentation have not been received by the tenth (10th) day following the last day of the month in which service is provided, this will be considered a failure to comply with the contract. Such failure to comply is valid justification for immediate termination of this contract and/or refusal to pay any portion of the billings not submitted within the above-stated time limits.

E. The Subcontract Provider agrees to use generally accepted accounting procedures as recognized by the American Institute of Certified Public Accountants and follow Contract Provider financial management policies and procedures in maintaining any fiscal records required to be kept under this contract.

F. The Subcontract Provider agrees that payments of $600 or more paid to the Subcontract Provider in a calendar year will be reported to the Internal Revenue Service on Form 1099. The Subcontract Provider is responsible for payment of all taxes incurred as a result of income from this contract.

G. INSURANCE
The Subcontract Provider agrees to provide the Contract Provider with documentation of Worker Compensation Insurance Coverage and/or Professional Liability Insurance if so required.

If coverage expires during the term of this Contract, Subcontract Provider must produce renewal certificates for each type of coverage.

PURCHASE OF SERVICES CONTRACT

SECTION II

RECORDS – ACCESS, AUDIT, AND RETENTION

The Subcontract Provider agrees to:

A. Provide services in compliance with this contract and with applicable Federal laws and regulations, state laws and regulations, and Contract Provider policies including service delivery standards.

B. Make available at reasonable times and for reasonable periods those client records, books and supporting documents pertaining to services provided for purposes of inspection, monitoring, auditing, or evaluating by Contract Provider personnel or their representatives.

C. Comply with appropriate State licensing or certification requirements and provide the Contract Provider with documentation of compliance upon request.

G. Refrain from entering into any subcontract(s) for services without prior written approval by DFPS through Contract Provider. All subcontracts entered into by the Subcontract Provider shall be written and shall be subject to the requirements of this contract. The Subcontract Provider agrees that it shall be responsible to the Contract Provider for the performance of any of its subcontractors and/or employees. Subcontract Provider must provide information and receive pre-approval from Contract Provider on any subcontractor and/or employees who will be providing services to clients.

H. Establish a method to secure the confidentiality of records and other information relating to clients in accordance with the applicable State law and regulations. The provision shall not be construed as limiting the Contract Provider's right to access to recipient case records or other information relating to clients served under this contract.

   Only use DFPS confidential information for the purpose of this Contract and to comply with all applicable state and federal laws when it receives and stores DFPS confidential information, including, but not limited to, the following enumerated. This includes any communication or record regardless of form or format provided or made available through any means and includes records or information that identifies DFPS children or clients:

   a. Section 106 of the Child Abuse Prevention and Treatment Act, codified at 42 U.S.C. §5106a;

   b. Section 471 of Title IV-E of the Social Security Act, codified at 42 U.S.C. §671(a)(8), and related federal rules at 45 CFR §1355.30 and 45 CFR §205.50;

   c. Social Security Administration data, including without limitation Medicaid information (Social Security Act, 42 U.S.C. Chapter 7);

   d. Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 CFR Part 99;

   e. Protected health information, including electronic protected health information or unsecured protected health information under the Health

Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. Chapter 7, Subchapter XI, Part C; 45 CFR Parts 160 and 164;

f. Confidentiality of Alcohol and Drug Abuse Patient Records, 42 U.S.C. §290dd-2, 42 CFR Part 2;

g. Federal Tax Information, Internal Revenue Code, Title 26 of the United States Code including IRS Publication 1075;

h. The Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. §552a;

i. Personal identifying information defined by Texas Business and Commerce Code Chapter 521, and OMB Memorandum 07-16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information;

j. Texas Family Code §261.201 and related provisions in Chapters 261 and 264;

k. Texas Health and Safety Code §81.046 and Chapters 181 and 611;

l. Texas Human Resources Code §12.003, §40.005, and Chapter 48;

m. Texas Public Information Act, Texas Government Code Chapter 552;

n. 19 Texas Administrative Code Chapter 702 Subchapter F (Child Protective Services) and Chapter 705 Subchapter M (Adult Protective Services); and

o. Criminal history record information guidelines in the FBI's Criminal Justice Information Services (CJIS) Security Policy.

I. Maintain financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report was submitted to the Contract Provider. The records and documents must be kept for a minimum of seven years after the termination of the contract period. If any litigation, claim, or audit involving these records begins before the seven-year period expires, the Subcontract Provider must keep the records and documents for not less than seven years until all litigation, claims, or audit findings are resolved. The case is considered resolved when there is a final order issued in litigation, or a written agreement is entered into between the Contract Provider and the Subcontract Provider.

J. Acceptance of funds under this contract as acceptance of the authority of the State Auditor's Office, HHSC Office of Inspector General, or any successor agency, to audit or investigate the expenditure of funds under this contract or any subcontract. Subcontract Provider further agrees to cooperate fully with the State Auditor's office or its successor, including providing all records requested. Subcontract Provider will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contract Provider and the requirement to cooperate is included in any subcontract it awards.

K. Be responsible for any audit exception or other payment deficiency in the program covered by this contract, and all subcontracts hereunder, which is found to exist after monitoring or auditing by the Contract Provider and be responsible for the collection and proper reimbursement of any amount paid in excess of the proper billing amount within 30 days.

SECTION III
NOTICE AND REPORTING

The Subcontract Provider agrees to:

A. Comply with applicable state and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under this Agreement. Subcontract Provider warrants that it has no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this Agreement.

B. Report employee conduct against a person receiving services from this contract that could constitute a criminal offense to a local law enforcement agency no later than 48 hours after becoming aware of such criminal conduct.

C. Report any suspected case of abuse, neglect, or exploitation to the appropriate authority as required by the Texas Family Code Chapter 261. All reports must be made within 24 hours of the discovery of the suspected abuse, neglect, or exploitation to DFPS Statewide Intake by either phone at 1-800-252-5400 or online at https://www.txabusehotline.org/Login/Default.aspx.

D. Notify the Contract Provider within five business days in the event of any significant change affecting the Subcontract Provider and Subcontract Provider's identity, such as ownership or control, and name change or any problem or potential problem associated with its performance or services.

SECTION IV
AMENDMENT

BILATERAL AMENDMENT

Except as provided for in the Unilateral Amendment section below, this Contract can only be changed by a Bilateral Amendment executed by both Parties.

UNILATERAL AMENDMENT

Unilateral Amendment will be effective on the date that is specified in it. Contract Provider has sole discretion to issue a Unilateral Amendment to modify the contract requirements, terms, or conditions as follows:

1. Correct an obvious clerical error;
2. Incorporate new or revised state or federal laws, regulations, rules, or policies;
3. Comply with a court order or judgment;
4. Update Contractor's name as recorded by the Secretary of State, as required by law, or as authorized by DFPS;
5. Change either party's contact information;

SECTION V
TERMINATION

A. TERMINATION FOR CAUSE

If Subcontract Provider fails to provide the services or goods required by this Contract or fails to comply with any terms or conditions of it, Contract Provider will terminate the Contract in whole or part.

The termination will be effective on the date specified in Contract Provider's notice of termination.

B. EQUITABLE SETTLEMENT

Any early termination under this Contract may be subject to the equitable settlement of outstanding payments, as determined by Contract Provider, up to the date of termination.

SECTION VI
GENERAL PROVISIONS

A. The scope and coverage of the services to be provided by the Subcontract Provider and/or subcontract agency(ies) under this contract, the program description and basis for payment for these services, as well as such other components as may be necessary, are described and limited in the attached Subcontract Agreement, which is (are) hereby incorporated into this contract. The contract will be maintained on file with the Contract Provider. Any change, modification or renewal thereof, must be made with the prior written approval of the Contract Provider except as otherwise provided in this contract and any such change, modification or amendment to, or renewal of, such contract is not effective until approved by the Contract Provider. Such original contract together with any approved amendment as maintained on file by the Contract Provider, will be considered to be the controlling instrument in case any dispute arises relative to the wording of any portion of such contract or amendments, thereto.

B. The Subcontract Agreement, including the basis for payment, will be periodically reviewed and reviewed in its entirety at least once annually. In no case will the Contract Provider be obligated to pay in excess of the Subcontract Provider's established fees as described in the Subcontract Agreement. Should it be determined by the Contract Provider as a result of periodic review(s) and/or audit(s) that an overpayment has occurred, such overpayment shall be refunded by the Subcontract Provider to the Contract Provider.

C. The Subcontract Provider agrees to accept and abide by all terms and conditions imposed on the Contract Provider under the prime contract. Refer to the applicable prime contract provided as an enclosure between the Texas Department of Family and Protective Services (DFPS) and Spaulding for Children dba Arms Wide. The Subcontract Provider will be provided a copy of the contract upon completion and will be notified in writing of any significant changes in terms or conditions.

D. The Subcontract Provider agrees not transfer or assign this contract without the prior written consent of the Contract Provider.

E. The Subcontract Provider agrees to utilize the U.S. Department of Homeland Security's E-Verify system during the term of the contract to determine the eligibility of:
   a. all persons employed by Subcontract Provider to perform duties within Texas; and
   b. all persons, including subcontractors, assigned by Subcontract provider to perform work pursuant to the contract within the United States of America.

F. Provide the Contract Provider a signed form granting permission to complete a routine background inquiry check and a disclaimer regarding criminal activities for staff who will be providing services under this contract. For entities, primarily General Residential Operations, that have active contracts with the Department of Family and Protective Services, documentation indicating that the required background checks have been completed and are on file with the Subcontract provider may be accepted in lieu of individual forms.

G. If while providing direct services or having direct client contact or access to client records, Subcontract Provider becomes aware of any new arrest or investigation of abuse or neglect conducted by any federal, state or local agency or board of an employee, subcontractor, or volunteer, then Subcontract Provider will notify Contract Provider within five business days of becoming aware of it. Contract provider will determine if and when the employee, subcontractor, or volunteer can have direct contact with clients.

H. The Subcontract Provider agrees to complete the following training either before contract execution or no later than 30 days after contract execution, unless a different timeframe is specified below:

(1) Cultural Diversity: A minimum of three (3) hours of training is required initially.
(2) DFPS Trauma Informed Care (Online): A minimum of two (2) hours of training is required initially, followed by an annual update.
(3) CAREGIVERS Preventing and Recognizing Sexual Abuse and Victimization of Youth in Foster Care (Online): An annual update is required.
(4) Mandatory Reporting Community Response for Youth and Families (Online): An annual update is required.
(5) TBRI Modules 1 and 2 (titled "TBRI Part 1"): Initial completion is required.
(6) The National Adoption Competency Mental Health Training Initiative (NTI), or an alternative adoption competency training related to the care of foster and adoptive children who have experienced abuse or neglect, must be completed before the Subcontract Provider completes a home assessment.

Training completed within the past 12 months will meet this requirement for the training, verified by training certificates provided to Contract Provider.

Any new employees hired by the subcontract provider will be expected to complete the training within three (3) months of the hire date and before being allowed to complete a home assessment.

The Subcontract Provider will be expected to maintain a record to document the training is completed.

I. Acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, HHSC Office of Inspector General, or any successor agency, to audit or investigate the expenditure of funds under this contract or any subcontract. Subcontract Provider further agrees to cooperate fully with the State Auditor's office or its successor, including providing all records requested. Subcontract Provider will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contract Provider and the requirement to cooperate is included in any subcontract it awards.

J. Subcontract Provider agrees to comply with applicable state and federal laws, rules, and regulations regarding conflicts of interest in the performance of its duties under this Agreement. Subcontract Provider warrants that it has no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with its performance under this Agreement.

K. INDEMNITY: Subcontract Provider agrees to

DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND ITS OFFICERS AND EMPLOYEES, AND DFPS AND ITS OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF OR RESULTING FROM:

a. PERFORMANCE UNDER THE CONTRACT, INCLUDING ANY NEGLIGENT ACTS OR OMISSIONS OF CONTRACTOR, OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT;
b. ANY BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE OF CONTRACT BY CONTRACTOR OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONTRACTOR, OR ANY THIRD PARTY UNDER THE CONTROL OR SUPERVISION OF CONTRACTOR, IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT;
c. EMPLOYMENT OR ALLEGED EMPLOYMENT DISCRIMINATION, INCLUDING CLAIMS OF DISCRIMINATION AGAINST CONTRACTOR, ITS OFFICERS, OR ITS AGENTS; OR
d. WORK UNDER THIS CONTRACT THAT INFRINGES OR ISAPPROPRIATES ANY RIGHT OF ANY THIRD PERSON OR ENTITY BASED ON COPYRIGHT, PATENT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS

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PURCHASE OF SERVICES CONTRACT

INCORPORATION BY REFERENCE

The following marked or listed certification(s) is/are on file with both the Contract Provider and the Subcontract Provider and are hereby incorporated into this contract by specific reference.

☐ Form 2971, CCR Request for Background Check

☐ Form 2970C

☐ Form 2971C, Request for Criminal History and Central Registry Check.

☐ Verification of the Subcontract Provider's cleared or otherwise acceptable background checks

☐ Documents to support that Subcontract Provider has met subcontract requirements, including insurance, licensure, certifications, or applicable credentials.

The following items (if any) are also incorporated into the contract by specific reference:

☒ Subcontract Agreement

☒ Form 5645V: Texas Department Of Family And Protective Services Vendor Uniform Terms And Conditions

☒ Prime Contract – HHS001428600135 – Residential Child Care CPA

☒ Prime Contract - HHS001601600059 – In-State Adoption Services

For the faithful performance of the terms of this contract, the parties hereto, in their capacities as stated, affix their signatures and bind themselves effective as of the date signed by Arms Wide and continuing through the termination date stated in the applicable Subcontract Agreement.

Arms Wide

_____

DeJuana S. Jernigan, MSW, LCPAA
Chief Executive Officer

Date

_____

Signatory Printed Name

Title

Date

Social Security/Taxpayer Identification Number