

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**AGREEMENT FOR ADULT BASIC EDUCATION SERVICES BETWEEN
WHARTON COUNTY JUNIOR COLLEGE AND FORT BEND COUNTY**

THIS AGREEMENT is made and entered into by and between Fort Bend County Sheriff's Office acting as a body of Fort Bend County, (hereinafter "County" or "Sheriff"), a body corporate and politic under the laws of the State of Texas, and Wharton County Junior College (hereinafter "School") an institution of higher education.

WITNESSETH

WHEREAS, the U.S. Department of Education provides grants to states to fund local programs of adult basic education services which enable adults to become employable, productive, and responsible citizens, workers, and family members; and

WHEREAS, School intends to apply for a U.S. Department of Education grant; and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, County desires that School provide adult basic education services at the Fort Bend County Jail; and

WHEREAS, School represents that it is qualified and desires to perform such services; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth below, the parties agree as follows:

AGREEMENT

I. Scope of Services

- A. The Parties agree that School will have no obligation to perform services unless School receives a grant from the U.S. Department of Education.
- B. Upon receipt of grant, School shall provide Adult Basic Education services (hereinafter referred to as "Services" or "Classes") to incarcerated individuals at the Fort Bend County Jail (hereinafter "Students") for the Fort Bend County Sheriff's Office, as defined in the Scope of Services (attached hereto as Exhibit A).
- C. All performance of the Scope of Services by School including any changes in the Scope of Services and revision of work satisfactorily performed will be performed only when approved in advance and authorized by Sheriff.

II. Personnel

- A. School represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Scope of Services required under this Agreement and that Contractor shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of the Sheriff, to perform the Scope of Services when and as required and without delays.
- B. All employees of School shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of School who, in the opinion of the Sheriff, is incompetent or by his conduct becomes detrimental to the project shall, upon request of the Sheriff, immediately be removed from association with the Service.

III. Compensation and Payment

- A. The Parties agree that School will have no obligation to perform Services unless School receives a grant from the U.S. Department of Education.
- B. The Parties agree that School will perform Services at no cost to County.

IV. Modifications and Waivers

- A. The parties may not amend or waive this Agreement, except by a written agreement executed by both parties.
- B. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition.
- C. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

V. Term or Performance

- A. The term of this Agreement shall begin on January 20, 2015, and expire on December 31, 2015, unless sooner terminated pursuant to the terms herein contained.

VI. Termination

- A. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default:
 - 1. County may terminate the whole or any part of this Agreement for cause in the following circumstances:

- a. If School fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the County in writing;
 - b. If School materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in any of these circumstances does not cure such breach or failure to County's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from County specifying such breach or failure.
2. If, after termination, it is determined for any reason whatsoever that School was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the County in accordance with Section VII (B) above.

VII. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by School as a part of its work at the Fort Bend County Jail, shall become the property of County upon completion of this Agreement. School shall promptly furnish all such data and material to County on request.

VIII. Inspection of Books and Records

Contractor will permit the Sheriff, or any duly authorized agent of the Sheriff, to inspect and examine the books and records of Contractor for the purpose of verifying the amount of work performed under the Scope of Services. The Sheriff's right to inspect survives the termination of this Agreement for a period of four years.

IX. Insurance

- A. Prior to commencement of the Services, School shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. School shall provide certified copies of insurance endorsements and/or policies if requested by County. School shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. School shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 1. Workers' Compensation insurance in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.

2. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 3. Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 4. Professional Liability insurance with limits not less than \$1,000,000.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of School shall contain a waiver of subrogation in favor of County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, School warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

X. Indemnity

SCHOOL SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF SCHOOL, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF SCHOOL OR ANY OF SCHOOL'S AGENTS, SERVANTS OR EMPLOYEES.

XI. Confidential and Proprietary Information

- A. School acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by School or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by School shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by School) publicly known or is contained in a publicly available document; (b) is rightfully in School's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of School who can be shown to have had no access to the Confidential Information.
- B. School agrees to hold Confidential Information in strict confidence, using at least the same degree of care that School uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes

whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. School shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, School shall advise County immediately in the event School learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and School will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or School against any such person. School agrees that, except as directed by County, School will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, School will promptly turn over to County all documents, papers, and other matter in School's possession which embody Confidential Information.

- C. School acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. School acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.
- D. School in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. School expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Consultant shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed.

XII. Independent Contractor

- A. In the performance of work or services hereunder, School shall be deemed an independent school, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of School or, where permitted, of its subcontractors.
- B. School and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.

XIII. Notices

- A. Each party giving any notice or making any request, demand, or other communication (each, a “Notice”) pursuant to this Agreement shall do so in writing and shall use one of the following methods of delivery, each of which, for purposes of this Agreement, is a writing: personal delivery, registered or certified mail (in each case, return receipt requested and postage prepaid), or nationally recognized overnight courier (with all fees prepaid).
- B. Each party giving a Notice shall address the Notice to the receiving party at the address listed below or to another address designated by a party in a Notice pursuant to this Section:

County: Fort Bend County
Robert Hebert, County Judge
301 Jackson, Suite 719
Richmond, Texas 77469

Copy to: Fort Bend County Sheriff
1410 Williams Way Blvd.
Richmond, TX 77469

School: Wharton County Junior College
ATTN: Continuing Education Department
911 Boiling Highway
Wharton, TX 77478

- C. A Notice is effective only if the party giving or making the Notice has complied with Section XIII (A) and XIII (B) and if the addressee has received the Notice. A Notice is deemed received as follows:
 - 1. If the Notice is delivered in person, or sent by registered or certified mail or a nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt.
 - 2. If the addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then upon the rejection, refusal, or inability to deliver.

XIV. Compliance with Laws

School shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker’s Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, School shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

XV. Performance Warranty

- A. School warrants to County that School has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and School will apply that skill and knowledge with care and diligence to ensure that the Services provided hereunder will be performed and delivered in accordance with the highest professional standards.
- B. School warrants to County that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

XVI. Assignment and Delegation

- A. Neither party may assign any of its rights under this Agreement, except with the prior written consent of the other party. That party shall not unreasonably withhold its consent. All assignments of rights are prohibited under this subsection, whether they are voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or any other manner.
- B. Neither party may delegate any performance under this Agreement.
- C. Any purported assignment of rights or delegation of performance in violation of this Section is void.

XVII. Applicable Law

The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity.

XVIII. Successors and Assigns

County and School bind themselves and their successors, executors, administrators and assigns to the other party of this Agreement and to the successors, executors, administrators and assigns of the other party, in respect to all covenants of this Agreement.

XIX. Third Party Beneficiaries

This Agreement does not confer any enforceable rights or remedies upon any person other than the parties.

XX. Severability

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

XXI. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of County. Under no circumstances whatsoever, shall School release

any material or information developed or received in the performance of the Services hereunder without the express written permission of County, except where required to do so by law.

XXII. Captions

The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

XXIII. Conflict

In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

Execution Page Follows

IN WITNESS WHEREOF, the parties hereto have signed or have caused their respective names to be signed to multiple counterparts to be effective on the ____ day of _____, 2015.

FORT BEND COUNTY

WHARTON COUNTY JUNIOR COLLEGE

Judge Robert Hebert
Fort Bend County Judge

Authorized Agent- Signature

Date

Authorized Agent- Printed Name

Title

Date

Reviewed by:

Troy E. Nehls, Fort Bend County Sheriff

ATTEST:

Laura Richard, County Clerk

Date

(Seal)

Exhibit A: Scope of Services

I:HNA/Agreement 2015/Sheriff 01.20.15

EXHIBIT A

Scope of Services

Scope of Services

1. A Student must be a currently incarcerated individual of the Fort Bend County Jail.
2. The School will use funds provided by the Adult Education Grant to conduct Adult Basic Education classes to 10 to 15 eligible participants who are incarcerated at the Fort Bend County Jail.
3. Students of the School's Adult Basic Education program must provide the program with a valid photo ID or other necessary information and documentation for program entry.
4. Students of the School's Adult Basic Education program must sign an information release allowing the student's information to be shared with authorized agencies for program purposes only.
5. Classes will be held in an appropriate and secure space in the Jail, as determined by the Sheriff.
6. The program will operate up to 8 hours per day for up to 7 days per week (exclusive of scheduled School breaks such as Spring Break) unless otherwise agreed by both Parties in writing. Per the Sheriff's discretion, the Sheriff will have the exclusive right to request the number of Courses provided by the School over the duration of the Agreement.
7. Courses will begin on January 20, 2015, and may continue until December 31, 2015, (exclusive of scheduled School breaks such as Spring Break) unless otherwise agreed by both parties in writing and at the discretion of the Sheriff.
8. School will collaborate with County to determine weekly schedule, operational hours, and location of the program.
9. The School will provide the assessment for each participant of this/these classes as required by the Adult Education Grant, specifically, the assessment schedule for each participant (Formal Assessment after every 40 hours of instruction).
10. The School will attend any professional development specific to security as it pertains to this class that may be provided by County.
11. In addition to receiving instruction in basic academic skills, participants in this program will be able to transfer, if released prior to completion of attaining the GED Certificate, to an existing WCJC ABE Department Class, and access the services and programs of The Work Source-Gulf Coast Career Center.
12. The School is responsible for training program instructional staff in the operation and reporting requirements of the School's Adult Basic Education Department.
13. The School will be responsible for identifying substitute staff and ensuring that such staffs are available during times of absence of the regular program staff.

14. The School will be responsible for all program compliance issues relative to its Texas Workforce Commission Adult Basic Education and Literacy funded program as applicable.
15. The School will continue to provide financial support for books, materials, assessments, and instruction for the Adult Education Classes as funding allows.
16. The activation and continuation of this agreement is subject to funding availability by either or both parties.