

STATE OF TEXAS

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COUNTY OF FORT BEND

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**2018-19 AGREEMENT BETWEEN WHARTON COUNTY JUNIOR COLLEGE AND THE FORT BEND
COUNTY SHERIFF
FOR ADULT EDUCATION AND LITERARY SERVICES**

THIS AGREEMENT is made and entered into by and between the duly elected Fort Bend County Sheriff, (hereinafter "Sheriff"), and the Wharton County Junior College (hereinafter "College"), an institution of higher education located within the State of Texas.

WITNESSETH

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

WHEREAS, Sheriff desires that College provide adult education and literary services at the Fort Bend County Jail (hereinafter "Services") which will assist the Sheriff in providing classes for the well-being, health, safety, and security of the inmates and the facility; and

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

WHEREAS, the Sheriff may expend commissary proceeds under section 351.0415 of the Local Government Code without the requirements of the County Purchasing Act, chapter 262, subchapter C of the Local Government Code; and

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

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 College will have no obligation to perform services unless College receives a grant from the U.S. Department of Education.
- B. Upon receipt of grant, College shall provide Adult Education and Literacy Classes (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 College 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. College 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 College 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 College shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of College 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 College will have no obligation to perform Services unless College receives a grant from the U.S. Department of Education.
- B. The Parties agree that College will perform Services at no cost to Sheriff with the exception of Classes requested by the Sheriff where Class size is less than 10 students.
 - 1. When Class size is less than 10 students, the Sheriff will pay twenty-three dollars and no/100 per hour (\$23.00) for each hour of in-class instruction by the instructor and two hours paid preparation time at a rate of twenty-three dollars and no/100 (\$23.00) per hour of lesson planning for each month within the time period that Class meets each term.
- C. College's fees shall be calculated at the rates set forth in this Section. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A for the 2018-19 school year is seven thousand seven hundred and twenty eight dollars and no/100 (\$7,728.00). In no case shall the amount paid by the Sheriff under this Agreement exceed the Maximum Compensation without an approved change order.
- D. All performance of the Scope of Services by College 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 the Sheriff.
- E. The Sheriff will pay College based on the following procedures: Upon completion of the tasks identified in the Scope of Services, College shall submit to the Sheriff two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to the Sheriff. The Sheriff shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this

Agreement and forward same to the Auditor for processing. The Sheriff shall pay each such approved invoice within thirty (30) calendar days. The Sheriff reserves the right to withhold payment pending verification of satisfactory work performed.

IV. Limit of Appropriation

- A. College clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that the Sheriff shall have available the total maximum sum of seven thousand seven hundred twenty eight dollars and no/100 (\$7,728.00) specifically allocated to fully discharge any and all liabilities the Sheriff may incur.
- B. College does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that College may become entitled to and the total maximum sum that the Sheriff may become liable to pay to College shall not under any conditions, circumstances, or interpretations thereof exceed seven thousand seven hundred twenty eight dollars and no/100 (\$7,728.00).

V. Term or Performance

The term of this Agreement shall begin on January 1, 2018, and expire on December 31, 2018, unless sooner terminated pursuant to the terms herein contained.

VI. 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.

VII. Termination

- A. Termination for Convenience: Sheriff may terminate this Agreement at any time upon thirty (30) days written notice.
- B. Termination for Default:
 - 1. Sheriff may terminate the whole or any part of this Agreement for cause in the following circumstances:
 - a. If College fails to perform services within the time specified in the Scope of Services or any extension thereof granted by the Sheriff in writing;

- b. If College 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 Sheriff's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from Sheriff specifying such breach or failure.
2. If, after termination, it is determined for any reason whatsoever that College 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 Sheriff in accordance with Section VII (A) above.

VIII. Ownership and Reuse of Documents

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

IX. Inspection of Books and Records

College will permit the Sheriff, or any duly authorized agent of the Sheriff, to inspect and examine the books and records of College 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.

X. Insurance

- A. Prior to commencement of the Services, College shall furnish Sheriff 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 Sheriff. College shall provide certified copies of insurance endorsements and/or policies if requested by Sheriff. College 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. College 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. Sheriff, 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 College shall contain a waiver of subrogation in favor of Sheriff, County and members of Commissioners Court.
- C. If required coverage is written on a claims-made basis, College 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.

XI. Indemnity

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

XII. Confidential and Proprietary Information

- A. College 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 Sheriff. Any and all information of any form obtained by College or its employees or agents from Sheriff in the performance of this Agreement shall be deemed to be confidential information of Sheriff ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by College 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 College) publicly known or is contained in a publicly available document; (b) is rightfully in College'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 College who can be shown to have had no access to the Confidential Information.
- B. College agrees to hold Confidential Information in strict confidence, using at least the same degree of care that College 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 Sheriff hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. College shall use its best efforts to assist Sheriff in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, College shall advise Sheriff immediately in the event College 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 College will at its expense cooperate with Sheriff in seeking injunctive or other equitable relief in the name of Sheriff or College against any such person. College agrees that, except as directed by Sheriff, College 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 Sheriff's request, College will promptly turn over to Sheriff all documents, papers, and other matter in College's possession which embody Confidential Information.

- C. College 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 Sheriff that is inadequately compensable in damages. Accordingly, Sheriff 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. College acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of Sheriff and are reasonable in scope and content.
- D. College in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. College expressly acknowledges that Sheriff 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, Sheriff 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 Sheriff 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.

XIII. Independent Contractor

- A. In the performance of work or services hereunder, College shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of College or, where permitted, of its subcontractors.
- B. College 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 or Sheriff and shall not be entitled to any of the privileges or benefits of County employment.

XIV. 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:

If to Sheriff: Fort Bend County Sheriff's Office
ATTN: Sheriff
1410 Williams Way Blvd.
Richmond, TX 77469

College: 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.

XV. Compliance with Laws

College 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 Sheriff, College shall furnish Sheriff with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.

College shall comply with all requirements and obligations as set forth in the Prison Rape Elimination Act. College recognizes that the Fort Bend County Commissary Fund, as an operation of the Fort Bend County Sheriff's Detention Center will comply with the Prison Rape Elimination Act (PREA). The Detention Center has a Zero Tolerance Policy regarding sexual abuse and sexual harassment. The Detention Center will conduct a background investigation on all proposed volunteers, students, or other contractors that may have contact with inmates. Background checks will be conducted at least every five (5) years for all contractors. The FBCCF shall ensure that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse and sexual harassment prevention, detection, and response policies and procedures. Any contractor or volunteer who engages in sexual abuse is prohibited from contact with inmates and shall be

reported to law enforcement agencies and to relevant licensing bodies, unless the activity was clearly not criminal. The facility will take appropriate remedial measures and prohibit further contact with inmates in the case of violation of sexual abuse or sexual harassment policies by the contractor. The contractor has an affirmative duty to disclose any misconduct in violation of the sexual abuse and sexual harassment policy. Material omissions regarding such misconduct, or the provision of materially false information, are grounds for termination of this Agreement.

XVI. Performance Warranty

- A. College warrants to Sheriff that College has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and College 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. College warrants to Sheriff that the Services will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibit A.

XVII. 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.

XVIII. 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.

XIX. Successors and Assigns

Sheriff and College 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.

XX. Third Party Beneficiaries

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

XXI. 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.

XXII. Publicity

Contact with citizens of Fort Bend County, media outlets, or governmental agencies shall be the sole responsibility of Sheriff. Under no circumstances whatsoever, shall College release any material or information developed or received in the performance of the Services hereunder without the express written permission of Sheriff, except where required to do so by law.

XXIII. 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.

XXIV. Conflict


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

*{Execution Page Follows}
{Remainder Intentionally Left Blank}*

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 _____, 2017.

FORT BEND COUNTY

WHARTON COUNTY JUNIOR COLLEGE


Troy E. Nehls
Fort Bend County Sheriff


Authorized Agent- Signature

Date

Betty A. McCrohan
Authorized Agent- Printed Name

President
Title

10-20-17
Date

Exhibit A: Scope of Services

Recorded by Commissioners Court on:

Date

Laura Richard
Fort Bend County Clerk

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 College will use funds provided by the DOE Adult Basic Education Grant to conduct Adult Education and Literacy classes where class size is equal to 10 to 15 eligible participants. The College will use funds provided by the Sheriff to conduct classes when class size is less than 10 eligible participants for the amount specified in Section III. Class size shall not exceed 15 students.
3. Students of the College's Adult Education and Literacy program must provide the program with a valid photo ID or other necessary information and documentation for program entry.
4. Students of the College's Adult Education and Literacy 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 3 hours per day for up to 2 days per week (exclusive of scheduled College breaks such as Spring Break) unless otherwise agreed to 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 College over the duration of the Agreement.
7. Courses will begin on January 1, 2018, and may continue until December 31, 2018, (exclusive of scheduled College breaks such as Spring Break) unless otherwise agreed by both parties in writing and at the discretion of the Sheriff.
8. College will collaborate with Sheriff to determine weekly schedule, operational hours, and location of the program.
9. The College 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 College will attend any professional development specific to security as it pertains to this class that may be provided by Sheriff.
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 College is responsible for training program instructional staff in the operation and reporting requirements of the College's Adult Education and Literacy Department.
13. The College 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 College will be responsible for all program compliance issues relative to its Texas Workforce Commission Adult Education and Literacy funded program as applicable.
15. The College 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.