

STATE OF TEXAS

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COUNTY OF FORT BEND

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**AGREEMENT BETWEEN LAUREN L. MARTIN AND
THE FORT BEND COUNTY SHERIFF FOR HORTICULTURE SERVICES AT THE JAIL**

THIS AGREEMENT is made and entered into by and between the duly elected Fort Bend County Sheriff, (hereinafter "Sheriff"), and Lauren L. Martin (hereinafter "Contractor"), an individual residing in Richmond, Texas.

WITNESSETH

WHEREAS, the Sheriff is authorized to operate a commissary and may expend jail 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, the Sheriff desires that Contractor provide a horticulture services plan that will provide inmates of the Fort Bend County Jail with training and education in the art of horticulture which will assist the Sheriff in protecting the well-being, health, safety, and security of the inmates and the facility; and

WHEREAS, Contractor represents that he is a licensed Master Gardner with experience teaching horticulture to individual for educational purposes; and

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

AGREEMENT

Section 1. Scope of Services

- A. Contractor shall coordinate and implement a Horticulture Services Plan for inmates of the Fort Bend County Jail.
- B. The plan will include:
 - 1. Consultation services to vocational staff and educational services to inmates.
 - 2. Procedures that allow inmates to gain knowledge in gardening thru Horticulture.
 - 3. A hands-on training program utilizing inmates.
- C. Contractor will:
 - 1. Provide recommendation to the Jail's Vocational program staff on direction, updates and needed items to maintain a successful program.
 - 2. Provide vision for future project(s).

- D. All services provided by Contractor hereunder are subject to, and must operate within, all applicable security restrictions.
- E. Contractor services are as needed and are not to exceed 8 hours per week.

Section 2. Personnel

- A. Contractor 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 Contractor shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee of Contractor 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 project.
- C. In this regard, Contractor, its representatives, agents, volunteers or employees, including without limitation any chaplain affiliated or associated with Contractor or its program, shall comply with all applicable federal, state and county laws, regulations, rules and ordinances, as well as all jail practices and procedures promulgated by the Sheriff, including without limitation any and all security restrictions.

Section 3. Compensation and Payment

- A. The Maximum Compensation for the performance of Services within the Scope of Services described in Section 1 shall be twenty-five dollars and no/cents (\$25.00) per hour with a total weekly amount not to exceed two hundred dollars and no/100 (\$200.00) per week. In no case shall the amount paid by the Sheriff under this Agreement exceed the Maximum Compensation without an approved change order.
- B. All performance of the Scope of Services by Contractor 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.
- C. The Sheriff will pay Contractor based on the following procedures: Upon completion per month of the tasks identified in the Scope of Services, Contractor shall submit to the Sheriff two (2) original copies of invoices showing the days and hours worked and the amount due for services performed for the current month 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.

Section 4. Limit of Appropriation

- A. Contractor 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 certified as available by the Fort Bend County Auditor specifically allocated to fully discharge any and all liabilities the Sheriff may incur.
- B. Contractor does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Contractor may become entitled to and the total maximum sum that the Sheriff may become liable to pay to Contractor shall not under any conditions, circumstances, or interpretations thereof exceed the Maximum Compensation stated in Section 3 of this Agreement.

Section 5. Time of Performance

The time for performance of the Scope of Services by Contractor shall begin on January 1, 2019 and end no later than December 31, 2019. Contractor shall complete the tasks described in the Scope of Services within this time or within such additional time as may be extended by the Sheriff.

Section 6. 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.

Section 7. Termination

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

- a. If Contractor 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 Contractor 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 the Sheriff's reasonable satisfaction within a period of ten (10) calendar days after receipt of notice from the Sheriff specifying such breach or failure.
- 2. If, after termination, it is determined for any reason whatsoever that Contractor 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 7 (A) above.
- C. Upon termination of this Agreement, the Sheriff shall compensate Contractor in accordance with Section 3, above, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to The Sheriff. Contractor's final invoice for said services will be presented to and paid by The Sheriff in the same manner set forth in Section 3 above.
- D. If the Sheriff terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the Termination Date, shall thereafter be paid to Contractor.

Section 8. Ownership and Reuse of Documents

All documents, data, reports, research, graphic presentation materials, etc., developed by Contractor as a part of its work under this Agreement, shall become the property of the Sheriff upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under Section 3 for work performed. Contractor shall promptly furnish all such data and material to the Sheriff on request.

Section 9. 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.

Section 10. Indemnity

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

In this regard, Contractor shall timely report all such matters to Sheriff upon the receipt of any such claim, demand, suit, action, proceeding, lien or judgment and shall, not later than the fifteenth (15th) day of each month, provide Sheriff with a written report on each such matter covered by this Article V. and setting forth the status of each matter, the scheduled or planned proceedings with respect to each matter and the cooperation or assistance, if any, of Sheriff required by Jail Chaplaincy in the defense of each matter.

Section 11. Confidential and Proprietary Information

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

- C. Contractor 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 the Sheriff that is inadequately compensable in damages. Accordingly, the 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. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of the Sheriff and are reasonable in scope and content.
- D. Contractor in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.
- E. Contractor expressly acknowledges that the 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, the 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 the 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. The terms and conditions of the Agreement are not proprietary or confidential information.

Section 12. Independent Contractor

- A. In the performance of work or services hereunder, Contractor 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 contractor or, where permitted, of its subcontractors.
- B. Contractor 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 the

Sheriff and shall not be entitled to any of the privileges or benefits of the Sheriff employment.

Section 13. 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:

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

Contractor: Master Gardner
 Lauren L. Martin
 2530 Esperanza
 Richmond, Texas 77406

- C. Notice is effective only if the party giving or making the Notice has complied with subsections 14 (A) and 14 (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.

Section 14. Compliance with Laws

Contractor 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 the Sheriff, Contractor shall furnish the Sheriff

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

Contractor shall comply with all requirements and obligations as set forth in the Prison Rape Elimination Act. Contractor 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.

Section 15. Performance Warranty

- A. Contractor warrants to the Sheriff that Contractor has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Contractor 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. Contractor warrants to the 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.

Section 16. 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.

Section 17. 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 Sheriff's sovereign immunity.

Section 18. Successors and Assigns

The Sheriff and Contractor 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.

Section 19. Third Party Beneficiaries

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

Section 20. 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.

Section 21. Publicity

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

Section 22. Certain State Law Requirements for Contracts

The Contents of this Section are required by Texas Law and are included by County regardless of content.

- A. **Agreement to Not Boycott Israel Chapter 2270 Texas Government Code.** By signature below, Contractor verifies that Contractor does not boycott Israel and will not boycott Israel during the term of this Agreement.
- B. **Texas Government Code Section 2251.152 Acknowledgement.** By signature below, Contractor represents pursuant to Section 2252.152 of the Texas Government Code, that Contractor is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153.

Section 23. 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.

Section 24. Conflict

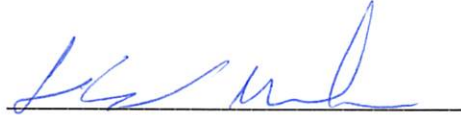
In the event there is a conflict between this Agreement and any previous agreements, this Agreement controls.

{EXECUTION PAGE FOLLOWS}

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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 _____, 2018.

FORT BEND COUNTY SHERIFF



Troy E. Nehls
Fort Bend County Sheriff

12 04 18
Date

CONTRACTOR



Lauren L. Martin

Dec. 3, 2018
Date

Recorded by Commissioners Court on:

Date

Laura Richard
Fort Bend County Clerk