

STATE OF TEXAS           §  
   §  
 COUNTY OF FORT BEND   §

**AGREEMENT FOR COMPUTER SKILLS INSTRUCTION BETWEEN  
 WHARTON COUNTY JUNIOR COLLEGE AND FORT BEND COUNTY**

THIS AGREEMENT is made and entered into by and between Fort Bend County, (hereinafter "County"), 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, County intends to offer adult education at the Fort Bend County Jail which will assist incarcerated individuals to become employable, productive, and responsible citizens, workers, and family members; and

WHEREAS, County desires that School provide Computer Skills Instruction at the Fort Bend County Jail; and

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

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

**AGREEMENT**

**I. Scope of Services**

School shall provide Computer Skills Instruction to County as defined in the Scope of Services (attached hereto as Exhibit A).

**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.
- 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 County, is incompetent or by his conduct becomes detrimental to the project shall, upon request of County, immediately be removed from association with the project.

### **III. Compensation and Payment**

- A. The Maximum Compensation for the performance of Services for the Computer Skills Instruction is One Hundred dollars and 00/100, (\$100.00) per student, per twelve hour class. In no case shall the amount paid by County under this Agreement exceed the Maximum Compensation without an approved change order.
- B. 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 County.
- C. County will pay School based on the following procedures: Upon completion of the tasks identified in the Scope of Services, School shall submit to County two (2) original copies of invoices showing the amounts due for services performed in a form acceptable to County. County 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. County shall pay each such approved invoice within thirty (30) calendar days. County reserves the right to withhold payment pending verification of satisfactory work performed.

### **IV. Limit of Appropriation**

- A. School clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred dollars and 00/100, (\$100.00) per student, per twelve hour class; specifically allocated to fully discharge any and all liabilities County may incur.
- B. School does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that School may become entitled to and the total maximum sum that County may become liable to pay to School shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred dollars and 00/100, (\$100.00) per student, per twelve hour class.

### **V. 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.

### **VI. Termination**

- A. The term of this Agreement shall begin Spring 2014 and conclude on or before September 30, 2014, unless sooner terminated pursuant to the terms herein contained.

- B. Termination for Convenience: County may terminate this Agreement at any time upon thirty (30) days written notice.
- C. 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 V (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. 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.

**IX. 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.**

**X. 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.

#### **XI. Independent Contractor**

- A. In the performance of work or services hereunder, School 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 School.
- 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.

## **XII. 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 Sheriff  
1410 Williams Way Blvd.  
Richmond, TX 77469

With a copy to: Fort Bend County  
Attn: County Judge  
401 Jackson Street  
Richmond, Texas 77469

School: Wharton County Junior College  
Attn: Continuing Education Department  
911 Boling Highway  
Wharton, TX 77488

- C. A Notice is effective only if the party giving or making the Notice has complied with Section XI 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.

## **XIII. 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.

**XIV. 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.

**XV. 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.

**XVI. 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.

**XVII. 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.

**XVIII. Third Party Beneficiaries**

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

**XIX. 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.

**XX. 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.

**XXI. 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.

**XXII. Conflict**

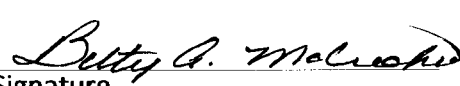
In the event there is a conflict between this Agreement and the attached exhibit, this Agreement controls.

**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 13 day of May, 2014.

FORT BEND COUNTY

  
Robert E. Hebert, County Judge

WHARTON COUNTY JUNIOR COLLEGE

  
Signature

Betty A. McCrohan, President  
Printed Name & Title

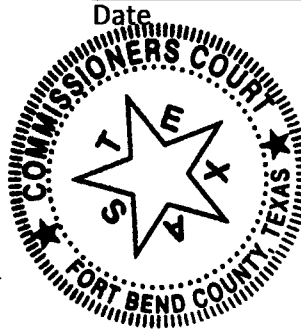
4-14-14  
Date

ATTEST:

  
Dianne Wilson, County Clerk

APPROVED:

  
Troy E. Nehls, Sheriff



I/MTR/Agreements/Law Enforcement/2014 01.23.14/01.29.2014/02.04.2014/03.14.2014

**AUDITOR'S CERTIFICATE**

I hereby certify that funds are available in the amount of \$40,000.00 to accomplish and pay the obligation of Fort Bend County under this contract.

  
Robert Edward Sturdivant, County Auditor



# EXHIBIT A

## Scope of Services

### **Scope of Services**

1. School will provide Computer Skills Instruction Classes which will include: Basic Computer, Keyboard, Excel, PowerPoint, and Microsoft Word classes for up to 15 eligible participants who are incarcerated at the Fort Bend County Jail.
2. Each class will be for 12 hours and will result in a Certificate being issued that shows the student completed specialized training.
3. Jail Participants of the Computer Skills Instruction Classes must provide the program with a valid photo ID or other necessary information and documentation for program entry.
4. Jail Participants of the Computer Skills Instruction Classes must sign an information release allowing their 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 County.
6. Classes will begin Spring 2014 and conclude on or before September 30, 2014.
7. School will collaborate with County to determine weekly schedule and operational hours, of the Classes.
8. The School will attend any professional development specific to security as it pertains to this class that may be provided by County.
9. The School is responsible for training program instructional staff in the operation and reporting requirements of the Computer Skills Instruction Classes.
10. 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.
11. The School will be responsible for all program compliance with state agencies.
12. The School will provide financial support for books, materials, assessments, and instruction for the Computer Skills Instruction Classes.
13. The activation and continuation of this agreement is subject to funding availability by either or both parties.