

STATE OF TEXAS §

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COUNTY OF FORT BEND §

**AGREEMENT BETWEEN REGION 6 E.S.C-GED SERVICES AND  
THE FORT BEND COUNTY SHERIFF  
FOR GED TESTING SERVICES**

THIS AGREEMENT is made and entered into by and between the duly elected Fort Bend County Sheriff, (hereinafter "Sheriff"), and Region 6 E.S.C.-GED Services (hereinafter "Contractor"), a regional education service center created by the Texas Legislature.

WITNESSETH

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;

WHEREAS, the Sheriff desires that Contractor provide testing services (hereinafter "Services") which will assist the Sheriff in protecting the well-being, health, safety, and security of the inmates and the facility;

WHEREAS, Contractor 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**

**Section 1. Scope of Services**

Contractor shall render Services to the Sheriff as defined in the Statement of Work (attached hereto as Exhibit A).

**Section 2. Compensation and Payment**

- A. Contractor shall be paid in accordance with the Scope of Services. In no case shall the amount paid by the Sheriff under this Agreement exceed the Scope of Services without an approved change order. The Sheriff reserves the right to withhold payment pending verification of satisfactory work performed.
- B. All 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.

### **Section 3. 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 amounts listed in Exhibit A 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 amounts listed in Exhibit A.

### **Section 4. 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 5. 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 5 (A) above.
- C. Upon termination of this Agreement, the Sheriff shall compensate Contractor in accordance with Exhibit A for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to The Sheriff.
- 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 6. 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 7. 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 8. Indemnity**

**CONTRACTOR SHALL INDEMNIFY AND DEFEND THE 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.**

#### **Section 9. 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 10. 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 11. 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:

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- C. Notice is effective only if the party giving or making the Notice has complied with subsections 11 (A) and 11 (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 12. 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.

#### **Section 13. 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 Scope of Services.

#### **Section 14. 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 15. 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 16. 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 17. Third Party Beneficiaries**

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

#### **Section 18. 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 19. 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 20. 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.

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 \_\_\_\_\_, 2014.

FORT BEND COUNTY SHERIFF

Troy E. Nehls  
Troy E. Nehls, Sheriff

REGION 6 E.S.C.-GED SERVICES

Kristi Hayman  
Signature

Kristi Hayman - Chief Examiner  
Printed Name and Title

\_\_\_\_\_  
Date

5-30-14  
Date

Recorded by Commissioners Court on:

6/10/14  
Date  
Dianne Wilson  
Dianne Wilson, Fort Bend County Clerk

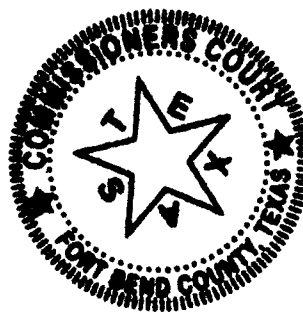


Exhibit A: Statement of Work

I/MTR/Agreements/LawEnf/Sheriff



# Exhibit A

## Statement of Work

## STATEMENT OF WORK



Region 6  
Education Service Center

3332 Montgomery Rd  
Huntsville, TX 77340  
(936) 435-8400  
Fax (936) 435-8484  
www.esc6.net

### GED® Testing

#### 2014 Contract Services Agreement

District: Fort Bend County Sheriffs Dept.

District Contact: Cheryl Hillegeist

Region 6 E.S.C. Chief Examiner: Kristi Hayman

Region 6 E.S.C. Contact: Julieanna McWhorter

Contract Period: May 25, 2014 – December 31, 2014

#### Scope of Service:

##### Education Service Center, Region 6 shall:

1. Provide a tester, a test proctor, tests and all items necessary for the administration of the GED® test in compliance with the federal, state and local guidelines.
2. Provide examiners to test no less than 10 and up to 40 examinees per test administration, with required number of examiners and proctors.
3. Submit test documents for scoring to the Scoring Center following each test administration.
4. Provide GED® Testing at least once a month as requested by Fort Bend Sheriff's Department.
5. Fort Bend County Sheriff's Department will be billed within 30 days after testing.

##### County Sheriffs Dept. shall:

1. Provide a room that is ADA compliant and adequate for testing of no less 10 and no more than 40 adults candidates (desks/tables and chairs). This space shall be clean, well lit, comfortable and quiet.
2. Provide appropriate trained security coverage during testing and while examiners are on premises.
3. Conduct appropriate screening tasks to determine eligible testers. Submit to the appropriate ESC staff: the list of names and social security numbers of each scheduled examinees and enter all demographic information of each examinee into appropriate database, no later than 5 business days prior to the appropriate scheduled test date.
4. Guarantee 10 full testes at \$165.00 per student and \$35.00 per retest. If less than 10 full examinees are scheduled the organization will be charged a flat rate of \$1600.00.
5. Mileage at current state rate for each day traveled.
6. Cooperate with ESC Region 6 in the event of any loss or compromise.

Program Site Contact:  
Fort Bend Sheriff's Department  
1410 Williams Way  
Richmond, TX 77469  
281-342-6116

Region 6 E.S.C -- GED Services  
3332 Montgomery Road  
Huntsville, Texas 77340

Sheriff Troy Nehls  
Name of County Sheriff

Troy L. Nehls  
Signature

Date 05/30/14

Kristi Hayman  
Name of Chief Examiner

Kristi Hayman  
Signature of Chief Examiner

Date 5/27/14