

STATE OF TEXAS

§

§

**COUNTY OF FORT BEND**

§

## AGREEMENT FOR HVAC HEATING AND AIR CONDITIONING CLASSES BETWEEN WHARTON COUNTY JUNIOR COLLEGE AND FORT BEND COUNTY SHERIFF

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 in the State of Texas.

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 College provide Vocational Classes in HVAC Heating and Air Conditioning (hereinafter "Services") at the Fort Bend County Jail which will assist the Sheriff in protecting the well-being, health, safety, and security of the inmates and the facility;

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

## **Section 1. Scope of Services**

College shall render Services to the Sheriff as defined in the Scope of Services (attached hereto as Exhibit A).

## Section 2. 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 project.

### **Section 3. Compensation and Payment**

- A. College's fees shall be calculated at the rates set forth in the attached Exhibit A. The Maximum Compensation for the performance of Services within the Scope of Services described in Exhibit A is one thousand one hundred thirty dollars and no/100, \$(1,130.00) per student, per Course. 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 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.
- C. 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.

### **Section 4. 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 one thousand one hundred thirty dollars and no/100, \$(1,130.00) per student, per Course 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 one thousand one hundred thirty dollars and no/100, \$(1,130.00) per student, per Course.

### **Section 5. Term of Performance**

The term of this Agreement shall begin January 1, 2019, and conclude on or before December 31, 2019, unless sooner terminated pursuant to the terms herein contained.

## **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 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 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 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 7 (A) above.

- C. Upon termination of this Agreement, the Sheriff shall compensate College 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. College'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 College.

#### **Section 8. Ownership and Reuse of Documents**

All documents, data, reports, research, graphic presentation materials, etc., developed by College 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. College shall promptly furnish all such data and material to the Sheriff on request.

#### **Section 9. 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.

#### **Section 10. Insurance**

- A. Prior to commencement of the Services, College shall furnish the 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 the Sheriff. College shall provide certified copies of insurance endorsements and/or policies if requested by the 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. 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. The Sheriff and Fort Bend County 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 the Sheriff and Fort Bend County.
- 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.

#### **Section 11. Indemnity**

**COLLEGE 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 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.**

#### **Section 12. 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 the Sheriff. Any and all information of any form obtained by College 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 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 the 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 the Sheriff in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, College shall advise the 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 the Sheriff in seeking injunctive or other equitable relief in the name of the Sheriff or College against any such person. College agrees that, except as directed by the 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 the Sheriff's request, College will promptly turn over to the 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 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. College 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. 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 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 13. 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 contractor 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 the Sheriff and shall not be entitled to any of the privileges or benefits of the Sheriff employment.

**Section 14. 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

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

- 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 15. Compliance with Laws**

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



#### **Section 16. Performance Warranty**

- A. College warrants to the 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 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 17. 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 18. 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 19. Successors and Assigns**

The 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.

#### **Section 20. Third Party Beneficiaries**

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

**Section 21. 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 22. 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 College 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 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 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 \_\_\_\_\_, 2018.

**FORT BEND COUNTY SHERIFF**

  
\_\_\_\_\_  
Troy E. Nehls  
Fort Bend County Sheriff

**WHARTON COUNTY JUNIOR COLLEGE**

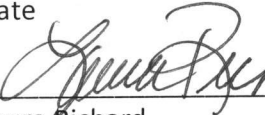
  
\_\_\_\_\_  
Authorized Agent- Signature

Betty McCrunch  
Authorized Agent- Printed Name

President  
Title

10-29-18  
Date

**Recorded by Commissioners Court on:**

11-27-18  
Date  
  
\_\_\_\_\_  
Laura Richard  
Fort Bend County Clerk

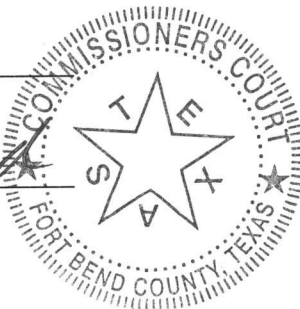


Exhibit A:      Scope of Services

# EXHIBIT A

## Scope of Services

**EXHIBIT A**  
**Scope of Services – HVAC Program**  
**FY 2019**

Related to delivery of HVAC courses, hereafter referred to as *Course*, by Wharton County Junior College, hereafter referred to as *College*, to individuals of the Ft. Bend County Jail, hereafter referred to as the *Jail*, at the request of the Fort Bend County Sheriff's Office, hereafter referred to as *Sheriff*.

The effective date of this agreement is January 1, 2019 or date of approval by the Fort Bend County Commissioner's Court, deferring to the latter. The expiration date of this agreement is December 31, 2019.

**The College's Responsibilities**

1. The College will provide HVAC Instruction Courses to individuals incarcerated at the jail and selected by the Sheriff, or his representatives, to include the following topics: job entry knowledge, introductory skills in the practical application of air-conditioning, heating, refrigeration, residential wiring, and commercial wiring. Instruction will include, but is not limited to, methods of installing, maintaining, diagnosing, and repairing equipment. Specific competencies taught will include gas brazing, soldering, electrical circuits, motor analysis, system troubleshooting, conduit bending, wire size estimating, and circuit installations.
2. Each Course of study will culminate in the Environmental Protection Agency exam. Students who have successfully completed the Course will be allowed to sit for the industry-recognized certification exam. The College will proctor the exam at a time agreed to with the Sheriff.
3. Each Course will be one hundred and twenty-four (124) hours total in length. The College will provide instruction four (4) times a week for three (3) hours each session, for twelve (12) hours per week total. The Courses will take ten weeks and one day to complete.
4. A total of no more than three (3) completed Courses will be provided by the College to the Sheriff during the twelve (12) month agreement. All Courses are provided at the request of the Sheriff, who also has the right to decline the Course be offered.
5. The College will provide an instructor, curriculum, textbooks, EPA exam materials, and test proctor for all Courses. Classroom instruction will provide competency-based learning according to Course learning outcomes assigned to individual Courses. Instruction will include theory based lectures, hands-on application, skills assessments and progress grades.
6. The College requires a minimum of ten (10) students be enrolled in a Course for the Course to proceed

7. At the conclusion of each Course the College will provide students who have successfully completed the curriculum a Certificate of Completion to include the Course name, date of completion, contact hours, and student's name.
8. The College will provide a release form for the Sheriff to share with prospective students, to be signed by all participating students, allowing the College access to personal information as well as permission to share student and Course information with the Sheriff.
9. Upon completion of a Course the college will bill the Sheriff \$1,130 per student for Course tuition.
10. The College is responsible for identifying appropriate substitute faculty if the regularly approved faculty member must be absent from a previously scheduled class time.
11. The College is responsible for compliance and reporting with the Texas Higher Education Coordinating Board (THECB) and the Southern Association of Colleges and Schools – Commission on Colleges (SACS-COC), as well as other agencies and accrediting bodies related to instruction.
12. College staff and faculty will attend any professional development requested by the Sheriff relating to security or otherwise.
13. As an independent contractor of the Sheriff, the College owns all instructional materials related to Coursework. Any equipment, supplies, or consumables provided by the Sheriff remain the property of the Sheriff.
14. At the written request of the Sheriff, the College will provide within 30 days copies of any information related to individual students of the Courses, including, but not limited to, registration information, assessments, grades, attendance records, certificates of completion, etc., as covered by the student signed release form.

#### **The Sheriff's Responsibilities**

1. The Sheriff, or his representatives, will select the students eligible to participate in the Courses.
2. Participating students must sign a release form allowing the College to use pertinent personal information for purposes of Course registration. Personal information required includes full name, address, date of birth, sex, race, and social security number. Students must also provide a valid photo ID. The release form will also allow the College to share student and Course information with the Sheriff, and the Sheriff's representatives.
3. The Sheriff will select only participants willing to share pertinent personal information and will facilitate information collection for the College.
4. The Sheriff will provide a safe and secure instructional environment, as determined by the Sheriff and agreed to by the College.

5. The Sheriff agrees to a tuition rate of \$1,130 per student, per one hundred and twenty-four (124) hour Course. The Sheriff agrees to pay tuition for any student who enrolls in the Course, regardless if the student leaves the program, for any reason, before completion of the Course.
6. The Sheriff will notify College instructional leadership of any issues related to the classroom within 24 hours of an event. Issues include a faculty member arriving late, a faculty or staff member not following Jail protocol, interpersonal communication, etc.
7. The Sheriff will notify College instructional leadership the same day as any student incidents related to the classroom, courses, faculty, staff, or instruction.

This Scope of Services replaces all previous scopes of services signed and ratified by the College and Sheriff.