

# AGREEMENT

## BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY SUPERINTENDENT OF SCHOOLS

THIS AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and the SAN MATEO COUNTY SUPERINTENDENT OF SCHOOLS, hereinafter called "Contractor";

### WITNESSETH:

*WHEREAS, it is necessary and desirable that Contractor be engaged by County for the purpose of performing the professional services hereinafter described as prevocational and remedial education programs within the County's detention facilities described in this agreement; and*

*WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of special services to or for County or any Department thereof; and*

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

### **1. EXHIBITS AND ATTACHMENTS.**

The following exhibits and attachments are included hereto and incorporated by reference herein:

Exhibit A - Services

Exhibit B - Payments and rates

Attachment I - §504 Compliance

### **2. SERVICES TO BE PERFORMED BY CONTRACTOR.**

In consideration of the payments set forth herein and in Exhibit "B," Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A."

### **3. PAYMENTS.**

In consideration of the services provided by Contractor in accordance with all terms, conditions and specifications set forth herein and in Exhibit A, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this Agreement exceed **ONE HUNDRED SIXTY-THREE THOUSAND THREE HUNDRED THIRTY-NINE DOLLARS (\$163,339).**

#### **4. TERM AND TERMINATION.**

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **JULY 1, 2008** through **JUNE 30, 2009**.

This Agreement may be terminated by Contractor, the Sheriff or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

#### **5. AVAILABILITY OF FUNDS.**

The County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or Inmate Welfare Fund funds, by providing written notice to Contractor as soon as is reasonably possible after the county learns of said unavailability of outside funding.

#### **6. RELATIONSHIP OF PARTIES.**

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers, or advantages of County employees.

#### **7. HOLD HARMLESS.**

- A. It is agreed that Contractor shall defend, save harmless and indemnify County, its officers and employees from any and all claims which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of Contractor, its officers and/or employees.
- B. It is agreed that County shall defend, save harmless, and indemnify Contractor, its officers and employees from any and all claims for injuries or damage to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of County, its officers and/or employees.
- C. In the event of concurrent negligence of County, its officers and/or employees, and Contractor, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

#### **8. ASSIGNABILITY AND SUBCONTRACTING.**

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without the County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

**9. INSURANCE.**

The Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this paragraph has been obtained and such insurance has been approved by Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. The Contractor shall furnish the Department/Division with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the Department/Division of any pending change in the limits of liability or of any cancellation or modification of the policy.

A. Worker's Compensation and Employer's Liability Insurance. The Contractor shall have in effect during the entire life of this Agreement Workers' Compensation and Employer's Liability Insurance providing full statutory coverage. In signing this Agreement, the Contractor certifies, as required by Section 1861 of the California Labor Code, that it is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I will comply with such provisions before commencing the performance of the work of this Agreement.

B. Liability Insurance. The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractors operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

Such insurance shall include:

- |                                      |             |
|--------------------------------------|-------------|
| 1. Comprehensive General Liability   | \$1,000,000 |
| 2. Motor Vehicle Liability Insurance | \$1,000,000 |
| 3. Professional Liability            | \$1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

## **10. COMPLIANCE WITH LAWS; PAYMENT OF PERMITS/LICENSES**

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

## **11. NON-DISCRIMINATION AND OTHER REQUIREMENTS**

- A. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to:
  1. termination of this Agreement;
  2. disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  3. liquidated damages of \$2,500 per violation;
  4. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- F. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

## **12. COMPLIANCE WITH CONTRACTOR EMPLOYEE JURY SERVICE ORDINANCE**

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

## **13. RETENTION OF RECORDS, RIGHT TO MONITOR AND AUDIT**

- A. Contractor shall maintain all required records for three (3) years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
- B. Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State and local agencies, and as required by the County.
- C. Contractor agrees to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules and regulations, and this Agreement, and to evaluate the quality, appropriateness and timeliness of services performed.

**14. MERGER CLAUSE**

This Agreement, including the Exhibits attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the agreement conflicts with or is inconsistent with any term, condition, provision, requirement or specification in any exhibit and/or attachment to this agreement, the provisions of this body of the agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties.

**15. CONTROLLING LAW**

The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties hereunder, the interpretation, and performance of this Agreement shall be governed by the laws of the State of California.

**16. NOTICES**

**In the case of County, to:**

Greg Munks, Sheriff  
San Mateo County Sheriff's Office  
400 County Center  
Redwood City, CA 94063

**In the case of Contractor, to:**

Judith Tichy, Education Services Manager  
San Mateo County Superintendent of Schools  
Inmate Education Program  
35 Tower Road  
San Mateo, CA 94402

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have affixed their hands.

**COUNTY OF SAN MATEO**

BY: \_\_\_\_\_  
PRESIDENT, BOARD OF SUPERVISORS

DATE: \_\_\_\_\_

**ATTEST:**

BY: \_\_\_\_\_  
CLERK OF SAID BOARD

**SAN MATEO COUNTY  
SUPERINTENDENT OF SCHOOLS**

BY: \_\_\_\_\_  
SIGNATURE

DATE: \_\_\_\_\_

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# EXHIBIT A - SERVICES

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## AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY SUPERINTENDENT OF SCHOOLS

*In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:*

### **1. SERVICES PROVIDED BY CONTRACTOR.**

Contractor agrees to provide educational services to inmates at Maguire Correctional Facility [MCF], Women's Correctional Center [WCC] and Women's Honor Camp [WHC]. Services provided to inmates include:

- A. Intake and assessment for a minimum of 300 inmates selected by Contractor. Each participant will be screened through pre-testing programs for their basic skills and level performance.
- B. Instruction in basic skills improvement and GED preparation [i.e. English, math, social studies, literature/arts, science, vocabulary and reading] to a minimum of 200 inmates.
- C. Conduct GED testing within the facilities on a weekly / bi-monthly basis.
- D. Administer a minimum of 400 GED tests. A minimum of 85 inmates will take the test for the first time and a minimum of 60 inmates shall attain a GED.



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# EXHIBIT B - PAYMENT AND RATES

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## AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY SUPERINTENDENT OF SCHOOLS

*In consideration of the services provided by Contractor in Exhibit A, County shall pay Contractor based on the following fee schedule, with the understanding that all payments to Contractor shall be funded by the Inmate Welfare Fund:*

### 1. SCHEDULE OF CHARGES.

A. Services and Supplies	\$18,746.00
Salaries and Benefits Total	<u>\$144,593.00</u>
<b>TOTAL CONTRACT AMOUNT</b>	<b>\$163,339.00</b>

- B. All monies used to pay Contractor for services provided in this Agreement shall be taken from the Inmate Welfare Fund, and the county's responsibility to make the payments is contingent on and limited to the availability of adequate funds in the Inmate Welfare Fund.
- C. Contractor shall assume full responsibility for payment to sub-contractors. Contractor shall assume full responsibility for filing of any payroll or earnings reports to both state and federal agencies.

### 2. PAYMENT RATE.

- A. Contractor shall submit a **quarterly invoice totaling 1/4** of the "Salaries and Benefits Total" specified above, (\$36,148.25 per quarter), in compliance with the policies and procedures established by the Inmate Welfare Committee and Controller.  
  
In addition, Contractor will also include in the invoice the total for "Services and Supplies" provided that month, which shall be invoiced to County at Contractor's actual retail costs. In any event, the total amount for "Services and Supplies" of Contractor shall not exceed \$18,746.
- B. County will verify the amount of the invoices and pay Contractor accordingly. County shall have the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable.
- C. Contractor shall submit final bill within 90 days from expiration of this Agreement to the MCF Administrative Lieutenant or his/her designee.

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# COUNTY OF SAN MATEO

## CONTRACTOR'S DECLARATION FORM

<b>I. CONTRACTOR INFORMATION</b>			
CONTRACTOR NAME:		PHONE:	
CONTACT PERSON:		FAX:	
ADDRESS:			

<b>II. EQUAL BENEFITS</b> (check one or more boxes)
Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.
<input type="checkbox"/> Contractor complies with the County's Equal Benefits Ordinance by: <ul style="list-style-type: none"> <li><input type="checkbox"/> offering equal benefits to employees with spouses and employees with domestic partners.</li> <li><input type="checkbox"/> offering a cash equivalent payment to eligible employees in lieu of equal benefits.</li> </ul>
<input type="checkbox"/> Contractor does not comply with the County's Equal Benefits Ordinance.
<input type="checkbox"/> Contractor is exempt from this requirement because: <ul style="list-style-type: none"> <li><input type="checkbox"/> Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for less than \$5,000.</li> <li><input type="checkbox"/> Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to offer equal benefits when said agreement expires.</li> </ul>

<b>III. NON-DISCRIMINATION</b> (check appropriate box)
<input type="checkbox"/> Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
<input type="checkbox"/> No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

<b>IV. EMPLOYEE JURY SERVICE</b> (check one or more boxes)
<i>Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.</i>
<input type="checkbox"/> Contractor complies with the County's Employee Jury Service Ordinance.
<input type="checkbox"/> Contractor does not comply with the County's Employee Jury Service Ordinance.
<input type="checkbox"/> Contractor is exempt from this requirement because: <ul style="list-style-type: none"> <li><input type="checkbox"/> the contract is for less than \$100,000</li> <li><input type="checkbox"/> Contractor is a party to a collective bargaining agreement that began on _____ (date) and expires on _____ (date), and intends to comply when the collective bargaining agreement expires.</li> </ul>

***I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.***

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
TITLE

## ATTACHMENT

### ASSURANCE OF COMPLIANCE WITH SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

**The Contractor(s): (Check a or b)**

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

\_\_\_\_\_  
Name of 504 Person - Type or Print

\_\_\_\_\_  
Name of Contractor(s) - Type or Print

\_\_\_\_\_  
Street Address or P.O. Box

\_\_\_\_\_  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title of Authorized Official**

\_\_\_\_\_  
**Date**

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."