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# AGREEMENT

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## BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY OFFICE OF EDUCATION

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and SAN MATEO COUNTY OFFICE OF EDUCATION, hereinafter called "Contractor";

### WITNESSETH:

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

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

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

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

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

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. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable.

Total payments under this Agreement, for the term commencing July 1, 2014 through December 31, 2014, shall not exceed **SIXTY-TWO THOUSAND SIX HUNDRED TWELVE DOLLARS AND NO CENTS (\$62,612.00).**

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

Subject to compliance with all terms and conditions, the term of this Agreement shall be from **JULY 1, 2014** through **DECEMBER 31, 2014**.

**The County shall have the option to extend the term of this Agreement, subject to availability of funding, for an additional six months to June 30, 2015 at the same quarterly rate of \$26,793.50 and increasing the services and supply budget by \$9,025 for a total of an additional \$62,612. If the County exercises this option, it will notify Contractor in writing on or before December 15, 2014.**

This Agreement may be terminated by Contractor, the Sheriff of San Mateo County, 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 County and shall be promptly delivered to County. Upon termination, 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**

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after 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 County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

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

- 7.1. 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.
- 7.2. 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.
- 7.3. 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 County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

## 9. **INSURANCE**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by 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 County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- 9.1 **Workers' Compensation and Employer's Liability Insurance.** Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, (a) that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
- 9.2 **Liability Insurance.** Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents 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 Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

- (a) Comprehensive General Liability ..... \$1,000,000
- (b) Motor Vehicle Liability Insurance..... \$1,000,000
- (c) 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 (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants 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, County, 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 and payment pursuant to this Agreement.

## 10. **COMPLIANCE WITH LAWS**

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, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and

Section 504 of the Rehabilitation Act of 1973, 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 any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

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

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

- 11.1. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- 11.2. *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 upon request.
- 11.3. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, 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. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- 11.4. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:
  - ☒ Contractor complies with Chapter 2.84 by:
    - ☒ offering the same benefits to its employees with spouses and its employees with domestic partners.
    - ☐ offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
  - ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.

- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.
- 11.5 *Discrimination Against Individuals with Disabilities.* The Contractor shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.
- 11.6 *History of Discrimination.* Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:
- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.
- 11.7 *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 the following:
- i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation; and/or
  - iv) 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 Section and/or to set off all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement 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.

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

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo

County's jury service ordinance, Contractor certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

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

- 13.1. Contractor shall maintain all required records for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California.
- 13.2. 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 County.
- 13.3. Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or to any of their respective audit agencies 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, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

### **14. MERGER CLAUSE & AMENDMENTS**

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement 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 the body of this 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 the 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 or amendments shall be in writing and signed by the parties.

### **15. CONTROLLING LAW AND VENUE**

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

## 16. **NOTICES**

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

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

San Mateo County Office of Education  
Joan Rosas, Associate Superintendent  
Inmate Education Program  
101 Twin Dolphin Drive  
Redwood City, CA 94065  
  
Telephone: (650) 802-5588  
Facsimile: (650) 802-5564  
Email: jrosas@smcoe.k12.ca.us

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

San Mateo County Sheriff's Office  
Greg Munks, Sheriff  
400 County Center, 3<sup>rd</sup> Floor  
Redwood City, CA 94063  
  
Telephone: (650) 599-1664  
Facsimile: (650) 599-1023  
Email: gmunks@smcgov.org

## 17. **ELECTRONIC SIGNATURE**

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☒ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

**For Contractor:** ☐ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.



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

**COUNTY OF SAN MATEO**

*A Political Sub-division of the  
State of California*


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

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

**ATTEST:**

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

**SAN MATEO COUNTY OFFICE OF EDUCATION**

BY: Denise B. Porterfield   
(SIGNATURE)  
Denise B. Porterfield  
(PRINTED NAME)

DATE: 9/17/14

(Revised 7/1/13)



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# EXHIBIT A

## SERVICES

### AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY OFFICE OF EDUCATION

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

**1. DESCRIPTION OF SERVICES TO BE PROVIDED BY CONTRACTOR.**

Contractor agrees to provide educational services to inmates at the County's correctional facilities (Maguire Correctional Facility [MCF], Women's Correctional Center [WCC], and Women's Transitional Facility [WTF]). Services provided to inmates include:

- A. Intake and assessment for a minimum of 75 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 50 inmates.
- C. Conduct GED testing within the facilities on a monthly basis.
  - 1. Administer a minimum of 100 GED tests.
  - 2. A minimum of 20 inmates will take the test for the first time.

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## EXHIBIT B

### PAYMENTS AND RATES

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#### AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND SAN MATEO COUNTY OFFICE OF EDUCATION

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In consideration of the services provided by Contractor in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

#### 1. RATE SCHEDULE

- A. Salaries and Benefits ..... \$53,587  
Services and Supplies ..... \$9,025  
**TOTAL CONTRACT AMOUNT ..... \$62,612**
  
- 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 to County. County will pay Contractor a flat quarterly rate of \$26,793.50 (1/2 of the "Salaries and Benefits Total").
  
- B. County will reimburse Contractor actual retail cost for supplies purchased in connection with services provided under this Agreement. Cost of services and supplies will not exceed \$9,025 for the term of this Agreement.
  - 1. Request for reimbursement of supplies must be accompanied by receipts.
  - 2. Contractor will include with invoice a quarterly report detailing the services provided to inmates and the number of inmates contacted and/or assisted.
  
- C. 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.
  
- D. Contractor shall submit final bill within 30 days from expiration of this Agreement to the MCF Administrative Lieutenant or Administrative Lieutenant's designee.

## ATTACHMENT I

### 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

San Mateo County Office of Education

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

35 Tower Road

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

San Mateo, CA 94402

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

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

Denise B. Fortierfield  
Signature

Deputy Superintendent  
Title of Authorized Official

9/17/14  
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."