

AGREEMENT FOR INMATE VOCATIONAL EDUCATION SERVICES

This agreement ("Agreement"), dated as of July 1, 2020 ("Effective Date") is by and between the County of Sonoma, a political subdivision of the State of California (hereinafter "County"), and Five Keys Schools and Programs, a nonprofit 501(c)(3), (hereinafter "Contractor").

RECITALS

WHEREAS, Contractor is a duly qualified provider of vocational training for incarcerated adults housed in facilities operated by the Sonoma County Sheriff's Office; and

WHEREAS, in the judgement of the Sheriff's Office, it is necessary and desirable to employ the services of the Contractor for the Jail Industries Program at the North County Detention Facility.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services.

1.1 Contractor's Specified Services.

Contractor shall perform the services described in Exhibit "A," attached hereto and incorporated herein by this reference (hereinafter "Scope of Work"), and within the times or by the dates provided for in Exhibit "A" and pursuant to Article 7, Prosecution of Work. In the event of a conflict between the body of this Agreement and Exhibit "A", the provisions in the body of this Agreement shall control.

1.2 Cooperation With County. Contractor shall cooperate with County and County staff in the performance of all work hereunder. In addition, Contractor shall comply with the following rules and procedures set by the Sheriff's Office.

- a) Adhere to all regulations and procedures that pertain to jail management, safety and security, facility access, and the standards of conduct that govern interactions with members of the inmate population, and to comply with direction by Sheriff's Office staff in this regard.
- b) Notify the Sheriff's Office correctional staff immediately of any problems relating to inmate behavior or performance, or safety or security issues.
- c) Assign the overall management for services provided under this Agreement to the Five Keys Area Superintendent, who will work with the Sheriff's Office Programs Sergeant.
- d) Contractor will contact the Sheriff's Office Programs Sergeant on any issues related to this Agreement.

1.3 Performance Standard. Contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's profession. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as

well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release. If County determines that any of Contractor's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Contractor to meet with County to review the quality of the work and resolve matters of concern; (b) require Contractor to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of Article 4; or (d) pursue any and all other remedies at law or in equity.

1.4 Assigned Personnel.

- a) Contractor shall assign only competent personnel to perform work hereunder. In the event that at any time County, in its sole discretion, desires the removal of any person or persons assigned by Contractor to perform work hereunder, Contractor shall remove such person or persons immediately upon receiving written notice from County.
- b) Any and all persons identified in this Agreement or any exhibit hereto as the project manager, project team, or other professional performing work hereunder are deemed by County to be key personnel whose services were a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Contractor shall not remove, replace, substitute, or otherwise change any key personnel without the prior written consent of County.
- c) In the event that any of Contractor's personnel assigned to perform services under this Agreement become unavailable due to resignation, sickness or other factors outside of Contractor's control, Contractor shall be responsible for timely provision of adequately qualified replacements.

1.5 Security Clearance. Contractor and each of its employees and sub-contractors who may perform services under this Agreement shall be subject to a background investigation to the satisfaction of the Sheriff's Office. To enable the Sheriff's Office to properly conduct such background investigation, Contractor and all of its employees and sub-contractors shall also submit a consent and waiver form permitting County to obtain personal employment or professional information from third parties, and releasing such third parties from any and all liability for disclosing such information to the County. All personal information provided will be maintained by the County in strictest confidence to the extent allowed by law. Contractor shall not perform any services under this Agreement unless and until such background investigation has been completed and clearance has been obtained in writing from the Sheriff's Office.

2. Payment. For all services and incidental costs required hereunder, Contractor shall be paid in accordance with Exhibit "B" of this Agreement. The total for this Agreement shall not exceed Five Hundred Thousand dollars (\$500,000) over the three-year term of the Agreement. Such amount is not an estimate or minimum guarantee of payment under the Agreement.

Upon completion of the work, Contractor shall submit its bill[s] for payment in a form approved by County's Auditor and the Head of the County Department receiving the services. The bill[s] shall identify the services completed and the amount charged.

Unless otherwise noted in this Agreement, payments shall be made within the normal course of County business after presentation of an invoice in a form approved by the County for services performed. Payments shall be made only upon the satisfactory completion of the services as determined by the County.

Pursuant to California Revenue and Taxation code (R&TC) Section 18662, the County shall withhold seven percent of the income paid to Contractor for services performed within the State of California under this agreement, for payment and reporting to the California Franchise Tax Board, if Contractor does not qualify as: (1) a corporation with its principal place of business in California, (2) an LLC or Partnership with a permanent place of business in California, (3) a corporation/LLC or Partnership qualified to do business in California by the Secretary of State, or (4) an individual with a permanent residence in the State of California.

If Contractor does not qualify, County requires that a completed and signed Form 587 be provided by the Contractor in order for payments to be made. If Contractor is qualified, then the County requires a completed Form 590. Forms 587 and 590 remain valid for the duration of the Agreement provided there is no material change in facts. By signing either form, the Contractor agrees to promptly notify the County of any changes in the facts. Forms should be sent to the County pursuant to Article 12. To reduce the amount withheld, Contractor has the option to provide County with either a full or partial waiver from the State of California.

3. Term of Agreement. The term of this Agreement shall be from July 1, 2020 to June 30, 2023. Unless terminated earlier in accordance with the provisions of Article 4 below.

4. Termination.

4.1 Termination Without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County shall have the right, in its sole discretion, to terminate this Agreement by giving 5 days written notice to Contractor.

4.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should Contractor fail to perform any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County may immediately terminate this Agreement by giving Contractor written notice of such termination, stating the reason for termination.

4.3 Delivery of Work Product and Final Payment Upon Termination.

In the event of termination, Contractor, within 14 days following the date of termination, shall deliver to County all reports, original drawings, graphics, plans, studies, and other data or documents, in whatever form or format, assembled or prepared by Contractor or Contractor's subcontractors, consultants, and other agents in connection with this Agreement and shall submit to County an invoice showing the services performed, hours worked, and copies of receipts for reimbursable expenses up to the date of termination.

4.4 Payment Upon Termination. Upon termination of this Agreement by County, Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and reimbursable expenses properly incurred hereunder, an amount which bears the same ratio to the total payment specified in the Agreement as the services satisfactorily rendered hereunder by Contractor bear to the total services otherwise required to be performed for such total payment; provided, however, that if services which have been satisfactorily rendered are to be paid on a per-hour or per-day basis, Contractor shall be entitled to receive as full payment an amount equal to the number of hours or days actually worked prior to the termination times the applicable hourly or daily rate; and further provided, however, that if County terminates the Agreement for cause pursuant to Section 4.2, County shall deduct from such amount the amount of damage, if any, sustained by County by virtue of the breach of the Agreement by Contractor.

4.5 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Purchasing Agent or Sheriff, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County.

5. Indemnification. Contractor agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Contractor, that arise out of, pertain to, or relate to Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such Contractor's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Contractor's obligations under this Section apply whether or not there is concurrent or contributory negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at Contractor's expense, subject to Contractor's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

6. Insurance. With respect to performance of work under this Agreement, Contractor shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit C, which is attached hereto and incorporated herein by this reference.

7. Prosecution of Work. The execution of this Agreement shall constitute Contractor's authority to proceed immediately with the performance of this Agreement. Performance of the services hereunder shall be completed within the time required herein, provided, however, that if the performance is delayed by earthquake, flood, high water, or other Act of God or by strike, lockout, or similar labor disturbances, the time for Contractor's performance of this Agreement shall be extended by a number of days equal to the number of days Contractor has been delayed.

8. Extra or Changed Work. Extra or changed work or other changes to the Agreement may be authorized only by written amendment to this Agreement, signed by both parties. Minor changes, which do not exceed the delegated signature authority of the Department Head and which do not significantly change the scope of work or significantly lengthen time schedules may be executed by the Department Head in a form approved by County Counsel. The Board of Supervisors must authorize all other extra or changed work. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive Agreement requirements. Failure of Contractor to secure such written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the Agreement price or Agreement time due to such unauthorized work and thereafter Contractor shall be entitled to no compensation whatsoever for the performance of such work. Contractor further expressly waives any and all right or remedy by way of restitution and quantum meruit for any and all extra work performed without such express and prior written authorization of the County.

9. Representations of Contractor.

9.1 Standard of Care. County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

9.2 Status of Contractor. The parties intend that Contractor, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Contractor is not to be considered an agent or employee of County and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, or similar benefits County provides its employees. In the event County exercises its right to terminate this Agreement pursuant to Article 4, above, Contractor expressly agrees that it shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9.3 No Suspension or Debarment. Contractor warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Contractor also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Contractor becomes debarred, contractor has the obligation to inform the County

9.4 Taxes. Contractor agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Contractor agrees to indemnify and hold County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Contractor 's failure to pay, when due, all such taxes and obligations. In case County is audited for compliance regarding any withholding or other applicable taxes, Contractor agrees to furnish County with proof of payment of taxes on these earnings.

9.5 Records Maintenance. Contractor shall keep and maintain full and complete documentation and accounting records concerning all services performed that are compensable under this Agreement and shall make such documents and records available to County for inspection at any reasonable time. Contractor shall maintain such records for a period of four (4) years following completion of work hereunder.

9.6 Conflict of Interest. Contractor covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interests shall be employed. In addition, if requested to do so by County, Contractor shall complete and file and shall require any other person doing work under this Agreement to complete and file a "Statement of Economic Interest" with County disclosing Contractor 's or such other person's financial interests.

9.7 Statutory Compliance/Living Wage Ordinance. Contractor agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies, including but not limited to the County of Sonoma Living Wage Ordinance, applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Contractor expressly acknowledges and agrees that this Agreement may be subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

9.8 Nondiscrimination. Without limiting any other provision hereunder, Contractor shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

9.9 AIDS Discrimination. Contractor agrees to comply with the provisions of Chapter 19, Article II, of the Sonoma County Code prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

9.10 Assignment of Rights. Contractor assigns to County all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Contractor in connection with this Agreement. Contractor agrees to take such actions as are necessary to protect the rights assigned to County in this Agreement, and to refrain from taking any action which would impair those rights. Contractor's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County. Contractor shall not use or permit another to use the plans and specifications in connection with this or any other project without first obtaining written permission of County.

9.11 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Contractor.

10. Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Article 4.

11. Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

12. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

TO: COUNTY:

Sonoma County Sheriff's Office
Attn: Liz Parra
2796 Ventura Avenue
Santa Rosa CA 95401
707-565-3116
liz.parra@sonoma-county.org

TO: CONTRACTOR:

Five Keys Schools and Programs
Attn: Steve Good, Executive Director
70 Oak Grove Street
San Francisco CA 94107
Phone: 415-734-3310
steveg@fivekeys.org

When a notice, bill or payment is given by a generally recognized overnight courier service, the notice, bill or payment shall be deemed received on the next business day. When a copy of a notice, bill or payment is sent by facsimile or email, the notice, bill or payment shall be deemed received upon transmission as long as (1) the original copy of the notice, bill or payment is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date), (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

13. Miscellaneous Provisions.

13.1 No Waiver of Breach. The waiver by County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

13.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Contractor and County acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Contractor and County acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.

13.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.

13.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

13.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in Santa Rosa or the forum nearest to the city of Santa Rosa, in the County of Sonoma.

13.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

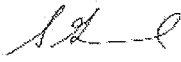
13.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13.8. Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

13.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

FIVE KEYS SCHOOLS AND PROGRAMS:

By: 
Steve Good, Executive Director

Date: 4/28/20

COUNTY OF SONOMA:

By: _____
Chair of the Board of Supervisors

Date: _____

ATTEST: _____

By: _____
Clerk of the Board

Date: _____

APPROVED AS TO FORM FOR CC

By: 
Deputy County Counsel

Date: 5/5/2020

CERTIFICATE OF INSURANCE ON
FILE WITH THE SHERIFF'S OFFICE

BY: 

DATE: 5/5/2020

REVIEWED AS A TO SUBSTANCE:

BY: _____
Mark Essick, Sheriff-Coroner

Date: _____

EXHIBIT A

SCOPE OF WORK

I. Services

Five Keys Schools and Programs will operate a vocational horticultural instruction program for the Sonoma County Sheriff's Office (SCSO) Jail Industries Program at the North County Detention Facility (NCDF).

Five Keys will provide an instructor / business developer to instruct 10-20 inmates at a time in various aspects of horticulture and plant cultivation, while operating a horticulture retail operation, through development and fulfillment of contracts producing earned revenues to support the program. The program will include classroom instruction, hands-on projects, and work in the production gardens. Curriculum and skills development will include:

1. Nursery and Greenhouse Management Introduction and Safety
2. Greenhouse/Shadehouse Construction, Design, and Irrigation
3. Growing Media
4. Plant Structure, Function and Growth
5. Sustainable Plant Production
6. Disease, Disorders, and Pests
7. Nursery Business Management
8. Safe and correct operation of tools
9. Use of organic and chemical pesticides
10. Plant identification methods
11. Asexual and sexual plant propagation techniques
12. Production through the life cycle of an individual crop
13. Record-keeping and inventory
14. Pruning techniques
15. Installation and repair of irrigation systems
16. Customer service skills for assisting customers at plant sales
17. Personal skill development, including positive attitude, honesty, willingness to work, time management, and cooperation.

The instructor / business developer will seek to sustain existing business relationships, and as the program develops, cultivate additional collaborations with local schools and nonprofit groups, as well as with City, County, and State agencies. Commercial and government contracts may include providing food, plants, trees, landscaping materials, and services. Projects for school and community gardens could include development of a demonstration garden of natives and "superstar" plants, vermiculture demonstrations to reduce kitchen waste, and the sale of vegetable starts.

The program will be open to adult inmates at Sonoma County detention facilities who have a high school diploma, and to students who are enrolled in Five Keys Independence High School (FKIHS) to earn elective or other academic credits toward their high school completion.

The program will be supervised by the Principal of FKIHS, with technical advice and support from off-site Five Keys farming and horticulture programs.

Instructional Methodology: The classes will meet four times per week, or as agreed upon by SCSO and FKHS for in-field and classroom instruction featuring lectures, PowerPoint, hand-outs and videos.

Schedule: The program schedule will include in-class lectures, in-field application of the instruction, and additional time for work in the nursery finalized and approved by the FKHS and the Sheriff's Office Programs Sergeant. A minimum of one day will be allocated for the instructor to conduct business development and community engagement activities.

Mode of Delivery: Classroom instruction & In-Field instruction

Methods of Evaluation: Students will be evaluated on the basis of examinations and in-field assessments.

II. FKHS agrees that it shall:

1. Not be responsible for any costs of the program. All costs will either be subsidized by the SCSO or by revenue generated through the program plant sales, contracts or other retail activities to support the program. Should these revenues fall short of budgeted amounts, Five Keys is not responsible for making up the difference or paying back the Sheriff's Office for any expenses incurred.

Five Keys will work to achieve a financially sustainable program. Should Five Keys be able to recoup all of its operating cost from this program from revenue generated from sales, contracts and other revenue sources, the excess profit shall be split between SCSO and Five Keys, 75%/25%, respectively.

2. Designate the Five Keys Operations Coordinator or Principal to liaise between FKHS instructors and the SCSO Programs Unit.
3. Recruit and provide instructors who are appropriately qualified for the courses they are assigned to teach, and who are able to pass the security clearance requirements of the SCSO. Screening conducted by the SCSO will include warrants check and background investigation, at a minimum. Support service providers must also adhere to security clearance requirements. Candidates for either instructional or support services who do not meet the security clearance requirements will be precluded from providing services under this Agreement.
4. Have a plan for substitutes that have passed security clearance so that substitutes are available in the event an instructor is not able to make their regularly assigned class.
5. Provide classes during the continuous Academic School Year (July 1 through June 30).
6. Provide all textbooks and basic curriculum materials to participants.
7. Track enrollment, attendance, and completion of assignments.
8. Provide a weekly attendance report to SCSO Programs Unit.
9. Collect and report summary data on enrollment, attendance, program completion, and assessment scores to the Programs Lieutenant and Programs Sergeant, upon request.
10. Prepare an annual report of all summary data to the SCSO in writing by June 30 of each calendar

year for the duration of the contract.

11. Exercise appropriate classroom management techniques with inmates while they are actively engaged in educational programming. In conjunction with Corrections staff, the supervision and control of inmates in educational programs will include: monitoring inmate activities, behavior and conduct; identifying contraband; directing work and study assignments; ensuring compliance with instructor directives and Corrections Facility regulations; and ensuring compliance with established health and safety regulations. Promptly notify Corrections staff of any violations of the aforementioned regulations. Promptly take corrective action when advised by Corrections staff.
12. Provide documentation of attendance and course credit completion to participants.
13. Provide industry certificates of completion, as appropriate.
14. Ensure the protection of inmate privacy rights and confidential information, as set forth in Exhibit A, Section IV. Other Terms, 3. Confidentiality.
15. Share information and resources to best meet the needs of inmates, to the extent allowed by law.
16. Follow all SCSO policies and procedures pertaining to safety, security and professional conduct while in the institution, and conform to all applicable SCSO policies, standards, procedures, regulations, general orders, requirements, and restrictions.
17. Ensure that FKIHS staff members report to the adult detention facilities on time and follow all regulations while on site.
18. Ensure that FKIHS staff complies with the dress code required by SCSO when in the County adult detention facilities.
19. Maintain all required minimum levels of insurance coverage as required by Exhibit "C" of this Agreement.
20. Attend applicable SCSO trainings concerning safety and security issues involving inmates.

III. The County agrees that it shall:

1. Complete the County's required clearance process for each FKIHS staff member so that they can access the County detention facilities as necessary to perform work under this Agreement. The County shall have the right to terminate any FKIHS staff member's jail clearance for any material breach of SCSO Policy.
2. Designate SCSO staff to coordinate working relationships with FKIHS.
3. Provide adequate teacher workspace and secure administrative office space, including furnishings and equipment listed below.

4. Provide FKIHS staff with fax, copier, copier supplies and paper, telephones, stand-alone printers, and internet access via the "Sonoma" Open Wi-Fi. County will provide up to \$1,000 annually to Five Keys for computers, scanners and cellphones, if needed.
5. Provide safety, security and dress code training to FKIHS staff.
6. Retain full responsibility for care of County inmates.
7. Provide information necessary to allow FKIHS staff to serve inmate student enrollees, consistent with Exhibit A, Section IV. Other Terms, 3. Confidentiality.
8. Hold monthly program meetings among FKIHS and SCSO staff to communicate and exchange ideas.
9. Coordinate and determine agendas for multi-disciplinary team meetings to track program progress, including on student enrollment and completion of assignments, to occur on a quarterly basis at a minimum. Coordinate and determine agendas for case conferencing meetings as needed.
10. Provide program support and access to inmates to meet FKIHS minimum teacher/student ratio.
11. Make every effort possible not to cancel regularly scheduled class meetings. FKIHS, as a public school, is required by law to offer a minimum number of instructional days and minutes.

IV. Other Terms

1. **Intellectual Property Rights.** FKIHS retains all intellectual and property rights to all materials, curriculum, and documents created under this agreement. FKIHS will share with the County any documents or materials under this Agreement, however, FKIHS retains ownership. FKIHS acknowledges that all original works of authorship which are made by FKIHS (solely or jointly with others) within the scope of this Agreement and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C., Section 101), and shall belong solely to the County. If requested to, and at no further expense to the County, FKIHS will execute in writing any acknowledgments or assignments of copyright ownership of such copyrightable works as may be appropriate for preservation of the worldwide ownership in the County and its nominees of such copyrights. However, as to FKIHS' preexisting educational materials, FKIHS shall retain all right, title and interest, and shall grant to the County an exclusive, royalty-free, paid-up, worldwide license to reproduce, digitally perform, copy, or otherwise use the materials developed and shared under this Agreement, solely for the purposes of the services under, and for the term of, this Agreement.
2. **Intellectual Property Indemnity.** FKIHS represent and warrant for the benefit of the County and its users that, to its knowledge, as of the effective date of this Agreement, FKIHS is the exclusive owner of all rights, title and interest in the Deliverables and/or services provided by each of them pursuant to this Agreement. FKIHS shall defend, indemnify and hold the County harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverables and/or services provided by each of them pursuant to this Agreement infringe upon any intellectual property rights of third parties.

3. Confidentiality

- a. In the course of providing services under this Agreement, FKIHS may receive from the SCSO the following Confidential Client Information relating to inmate student enrollees in order to enable FKIHS to appropriately tailor and deliver services: names, booking numbers, language preference, Person File Numbers, housing unit information, and information regarding educational accommodations.
- b. FKIHS shall promptly transmit to SCSO all requests for disclosure of Confidential Client Information, limited to the categories of information listed in the previous paragraph. SCSO shall obtain written consent from the subject of the information prior to sharing such information. FKIHS shall not use this Confidential Client Information for any purpose other than carrying out its obligations under this Agreement.
- c. In obtaining and storing Confidential Client Information, FKIHS agrees to comply with all applicable privacy and data protection laws, including but not limited to Section 13102, Sections 13201-13202, and Section 13300 of the California Penal Code, as well as County policies governing data access, and not to make any disclosures to any third parties in violation of these laws or policies. In particular, FKIHS shall prevent unauthorized disclosure of Confidential Client Information, except for statistical information not identifying a particular client.

EXHIBIT B
FEE SCHEDULE

Five Keys Schools and Programs - Vocational Education Program				
Expenditures	Detail	Year 1	Year 2	Year 3
PERSONNEL SALARIES				
Instructor	1 FTE	\$75,000	\$77,250	\$79,568
Principal	0.10 FTE	\$12,500	\$12,875	\$13,261
Farming Consultant	0.10 FTE	\$11,000	\$11,330	\$11,670
BENEFITS				
39 %	FICA; SUI; Health Benefits; Retirement; Vacation /Comp Time; Workers Comp.	\$38,415	\$39,567	\$40,754
SUPPLIES				
Curriculum materials		\$1,000	\$1,020	\$1,040
Computer/s, scanner/s, cellphone/s		\$1,000	\$1,000	\$1,000
TRAVEL				
Travel (long distance) for consultants, mileage associated long distance travel, per diem	Technical support visits between LA horticulture/farming staff & Sonoma horticulture staff, per diem for traveling consultants	\$3,500	\$3,500	\$3,500
TOTAL DIRECT COSTS		\$142,415	\$146,542	\$150,793
Indirect Costs	10%	\$14,142	\$14,554	\$15,079
Total:		\$155,557	\$160,097	\$165,872
THREE YEAR TOTAL NOT TO EXCEED				\$500,000

The Sheriff's Office will be responsible for costs associated with the following expenditures:

SUPPLIES	DETAIL
Printing	Promotional, business development materials
RETAIL OPERATION EXPENSES	
Horticulture and agriculture supplies and materials	Fertilizers, plants, debris removal, planter boxes, etc.
Truck, tractor golf cart, tractor maintenance and fuel	
Minor equipment, small tools	
Permit for nursery license and industry certificates	State nursery license permit, student pest industry certificate, certificate for produce sent to market
IN-KIND SERVICES & PRODUCTS	
Planting containers, compost	

EXHIBIT C INSURANCE REQUIREMENTS

Contractor shall maintain and require all of its subcontractors and other agents to maintain the insurance listed below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Contractor shall not commence Work, nor allow its employees, subcontractors or anyone to commence Work until the required insurance has been submitted and approved by County. Any requirement for Contractor to maintain insurance after completion of the Work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. County's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or County's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

Workers Compensation and Employers Liability Insurance

- a. Required if Contractor has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- e. *Required Evidence of Insurance:*
 - i. Subrogation waiver endorsement; and
 - ii. Certificate of Insurance.

If Contractor currently has no employees as defined by the Labor Code of the State of California, Contractor agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should any employees be engaged during the term of this Agreement or any extensions of the term.

General Liability Insurance

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The General Aggregate shall apply separately to each Project. The required limits may be satisfied by a combination of General Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance. If Contractor maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Contractor.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Contractor is responsible for any deductible or self-insured retention and shall fund it upon County's written request, regardless of whether Contractor has a claim against the insurance or is named as a party in any action involving the County.
- d. Insurance shall be continued for one (1) year after completion of the Work.

- e. The County of Sonoma shall be endorsed as additional insureds for liability arising out of ongoing and completed operations by or on behalf of the Contractor in the performance of this Agreement. The foregoing shall continue to be additional insureds for one (1) year after completion of the Work under this Agreement.
- f. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- g. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
- h. The policy shall be endorsed to include a written waiver of the insurer's right to subrogate against County.
- i. The policy shall cover inter-insured suits between the additional insureds and Contractor and include a "separation of insureds" or "severability" clause which treats each insured separately.
- j. *Required Evidence of Insurance:*
 - i. Copy of the additional insured endorsement or policy language granting additional insured status; and
 - ii. Certificate of Insurance.

Automobile Liability Insurance

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limit may be satisfied by a combination of Automobile Liability Insurance and either Commercial Excess or Commercial Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Contractor currently owns no autos, Contractor agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. *Required Evidence of Insurance:* Certificate of Insurance.

Standards for Insurance Companies

Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best's rating of at least A:VII.

Documentation

- a. The Certificate of Insurance must include the following reference: Five Keys Vocational Educational Services.
- b. Contractor shall submit all required Evidence of Insurance prior to the execution of this Agreement. Contractor agrees to maintain current Evidence of Insurance on file with County as specified in Sections 1 – 3 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: Sonoma County Sheriff's Office, 2796 Ventura Avenue, Santa Rosa, CA 95403.
- d. Contractor shall submit required Evidence of Insurance for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
- e. Contractor shall provide immediate written notice if: (1) any of the required insurance policies are terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, Contractor shall provide certified copies of required insurance policies within thirty (30) days.

Policy Obligations

Contractor's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

Material Breach

If Contractor fails to maintain insurance which is required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Contractor resulting from said breach. Alternatively, County may purchase the required insurance, and without further notice to Contractor, County may deduct from sums due to Contractor any premium costs advanced by County for such insurance. These remedies shall be in addition to any other remedies available to County.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/29/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Heffernan Insurance Brokers 1350 Carback Avenue Walnut Creek, CA 94596	CONTACT NAME: Stephanie Lawrence PHONE (A/C, No, Ext): 925-934-8500 E-MAIL ADDRESS: StephanieL@heffins.com FAX (A/C, No): 925-934-8278
INSURED Five Keys Schools and Programs 70 Oak Grove St San Francisco, CA 94107	INSURER(S) AFFORDING COVERAGE INSURER A: New York Marine & General Insurance Company INSURER B: Philadelphia Indemnity Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:
FIVEKEY-01	NAIC # 16608 18058

COVERAGES**CERTIFICATE NUMBER:** 1631334861**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		PHPK2125188	4/23/2020	4/23/2021	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK2125188	4/23/2020	4/23/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			PHUB719728	4/23/2020	4/23/2021	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WC201900006263	7/1/2019	7/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	<input checked="" type="checkbox"/> SEXUAL ABUSE/MISCONDUCT <input checked="" type="checkbox"/> MISC PROF LIABILITY			PHPK2125188 PHPK2125188	4/23/2020 4/23/2020	4/23/2021 4/23/2021	PER PERSON/AGGREGATE \$1M/\$2M EACH ACT/AGGREGATE \$1M/\$2M

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: As Per Contract or Agreement on File with Insured, Sonoma County Sheriff's Office is included as an additional insured (Primary and Non-contributory) includes Completed Operations on General Liability policy, if required. The Additional Insured, Completed Operations and Primary and Non-contributory endorsements have been requested for the General Liability policy from the insurance company and if approved will be forwarded when received. Waiver of Subrogation is included on Workers Compensation policy, if required. The Waiver of Subrogation endorsement has been requested for the Worker's Compensation policy from the insurance company and if approved will be forwarded when received.

CERTIFICATE HOLDER**CANCELLATION**

Sonoma County Sheriff's Office
2777 Ventura Avenue
Santa Rosa, CA 95403

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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Independent Professional Service Contracts: Administrative Policy #4-6
Criteria for Determining Independent Contractor Status (Checklist)

Name of Contractor: Five Keys Schools and Programs
County Department: Sonoma County Sheriff's Office Date: 5/8/2020
Dept. Contact Person: Liz Parra Phone: x3116

SECTION I Please Answer the Following Questions For Determining Consistency with IRS Contractual Relationships:

- | | YES | NO |
|---|-------------------------------------|-------------------------------------|
| a. Do I, as the employer, have the <u>right</u> to control not only the result of the work, but also the way in which it is done? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b. Am I setting the independent contractor's hours? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c. Is the independent contractor restricted from taking jobs from other businesses at the same time he/she is working for me? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| d. Do I or other departments, to the best of my knowledge, have employee(s) with similar duties as the independent contractor? (Consult with the Personnel Department.) | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| e. Does the County supply assistants to the contractor? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| f. Does the County furnish training, tools, or equipment to the contractor? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

SECTION II Please Answer the Following Question for Determining Compliance with County Administrative Policy #4 6:

- | | YES | NO |
|---|--------------------------|-------------------------------------|
| a. Have you executed more than one contract (or any renewal, reissuance, change order, or extension of a contract) with this vendor for the same scope of work in the same fiscal year? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Signature: _____ Date: _____
Department Head or Authorized Representative

COUNTY COUNSEL REVIEW (for consistency with IRS criteria for independent contractual relationships):

- ☐ All questions in Section I. have a "NO" response and personal service contract is less than \$100,000; therefore, County Counsel signature not required.
- ☐ All questions in Section I. have a "NO" response and contract is less than \$150,000 for ISD, GS, ACTTC, & CAO; therefore, County Counsel signature not required.
- ☒ Approved, even though a "yes" is marked _____ 5/11/20
County Counsel *Date*

County Counsel explanation of exception (use back of form if necessary):

Even though "f" is checked, this work still qualifies as independent contractor status

- ☐ Not approved _____
County Counsel *Date*

Instruction for Distribution:

This form must accompany all independent contractor agreements submitted to County Counsel for approval, the Board or Purchasing Agent for execution, and the Auditor-Controller/Treasurer-Tax Collector Department for payment. The Purchasing Agent shall not execute, nor Auditor-Controller/Treasurer-Tax Collector pay, any contract not approved. All contracts marked "not approved" will be returned to the department.

- ☐ IRS Form W-9 included for first time contract or Vendor No. _____ data incorrect.
- ☐ EFS Vendor No. _____ has correct 1099 information.