

MEMORANDUM OF AGREEMENT

KENT/CHARLESTOWN COMMUNITY SCHOOL COUNCIL, INC.

ADULT EDUCATION PROGRAM

BHA JOB NO. 07P-067

This MEMORANDUM OF AGREEMENT (the "Agreement") dated as of this ____ day of _____, 2008 and effective as of September 1, 2008, by and between the BOSTON HOUSING AUTHORITY, a public body politic and corporate organized and existing under Chapter 121B of the General Laws of the Commonwealth of Massachusetts ("M.G.L.") and Chapter 88 of the Acts of 1989, with its principal office located at 52 Chauncy Street, Boston, Massachusetts 02111 (the "BHA"), and KENT/ CHARLESTOWN COMMUNITY SCHOOLS COUNCIL, INC., d/b/a CHARLESTOWN COMMUNITY CENTERS, a Massachusetts not-for-profit corporation organized and existing under M.G.L. Chapter 180, with its principal office located at 255 Medford Street, Charlestown, Massachusetts 02129 (the "Contractor").

RECITALS

WHEREAS, BHA owns and operates a public housing development in Charlestown, Massachusetts (the "Development"); and

WHEREAS, BHA, through its Community Services Department, operates a Community Resource and Development Center ("CRDC") at the Development located at 76 Monument Street in Charlestown, Massachusetts (the "Program Space"), as further described in the Agreement, below; and

WHEREAS, Contractor, pursuant to (i) the *FY2008 Adult Basic Education Instruction Grant*, dated September 13, 2007 and issued pursuant to funding under the *FY2006-2010 Multi-Year Request for Proposals for Adult Basic Education (Project #)*, by and between the Commonwealth of Massachusetts Department of Education (the "DOE") and Contractor (the "DOE ABE Grant") and (ii) the *FY2008 Adult Literacy Initiative Grant*, dated June 27, 2007, by and among the City of Boston, acting by and through its Mayor's Office of Jobs and Community Services (the "JCS/EDIC"), the Boston Redevelopment Authority, and the Contractor (the "JCS/EDIC Grant" together with the DOE ABE Grant, the "DOE Grant"), provides a course of instruction in "Adult Education Program" (the "Adult Education Program"), which includes, among other things, a sequence of adult basic education ("ABE") and, as prescribed by the terms, conditions, and funding stipulations of the DOE Grant; and

WHEREAS, BHA and Contractor desire to use cooperative efforts to allow Contractor to offer the Adult Education Program to legal residents of the Development (herein, "BHA Residents") in the Program Space, subject to the terms, conditions and funding stipulations of the DOE Grant.

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, the parties agree as follows:

1. Term and Renewal. The initial term of this Agreement shall commence on September 1, 2008 and shall automatically terminate and expire on August 31, 2009 (the "Initial Term"). Within ninety (90) days of the expiration of the Initial Term or any renewal term thereafter, the parties may extend this Agreement for an additional twelve (12) month term (each, a "Renewal Term") by written agreement between the parties specifically referencing this Agreement and the DOE Grant or any subsequent renewal letter thereof.

2. Scope of Services. Subject to the terms, conditions and funding stipulations of the DOE Grant, and any administrative or regulatory board or body having supervisory authority over the Contractor, the Adult Education Program and/or the DOE Grant, Contractor shall provide BHA, through its CRDC, with the following services (the "Services") related to the Adult Education Program at the Program Space:

(a) conduct Adult Education Program classes according to the Program Schedule attached hereto as Exhibit A, which from time to time may be revised in consultation with the BHA; and

(b) within Contractor's ordinary course administration of the Adult Education Program, and using commercially reasonable efforts, (i) provide instruction for approximately ten (10) to twelve (12) students per class, (ii) compile aggregate student attendance at each class, (iii) compile and provide students with ongoing assessment information, and (iv) conduct intake such as initial assessments and placement summaries for potential students, including without limitation BHA Residents; and

(c) upon the written request of BHA, to the extent legally permissible under the terms, conditions, and funding stipulations of the DOE Grant and any applicable rule, law or administrative procedure, and as promptly as practicable, provide BHA with compiled information with respect to BHA Residents participating in the Adult Education Program (including without limitation, statistics on placements, attendance, and assessments); and

(d) assist the CRDC in providing referrals to outside resources regarding basic services to BHA Residents; and

(e) to the extent legally permissible under the terms, conditions, and funding stipulations of the DOE Grant and any relevant local, state or federal rule, law, order or procedure, reserve seventy-five percent (75%) of the program slots for Adult Education Program classes provided at the Program Site for BHA Residents on a first come, first served basis; provided, however, if within thirty (30) days of the enrollment cutoff for any Adult Education Program class provided at the Program Site by the Contractor, Contractor cannot identify and successfully enroll a sufficient number of BHA Residents to meet this threshold, Contractor may fill each empty program slot with other students who otherwise have been qualified through Contractor's normal and usual intake and assessment process; and

(f) within Contractor's ordinary course of administration of the Adult Education Program, maintain a waiting list of BHA Residents and other students to be used as needed to fill vacancies in the program slots for any Adult Education Program classes provided at the Program Site; and

(g) provide computer literacy classes consistent with the Adult Education Program curriculum at the CRDC to those students enrolled in the Adult Education Program; and

(h) within the Contractor's ordinary course of administration of the Adult Education Program, provide students with appropriate periodic holiday events and an end-of-program graduation (which, for the avoidance of doubt, need not take place at the Program Space and may occur in conjunction with the Contractor's administration and operation of its Adult Education Program at such other locations separate and independent from the Program Space); and

(i) follow the Program Schedule, attached hereto as Exhibit A, subject to any revision which from time to time may be made; and

(j) as promptly as practicable, provide BHA with notification of any changes in the program hours of operation that deviate from the Boston Public School Schedule for holiday, vacations and snow days, attached hereto as Exhibit B; and

(k) to the extent practicable and reasonable, participate in regularly scheduled meetings with BHA to discuss BHA Residents' progress, obstacles, and joint projects with regard to the Adult Education Program.

3. BHA Responsibilities. BHA shall:

(a) assist Contractor in identifying appropriate BHA Residents in need of Contractor's Services in the Adult Education Program; and

(b) grant a license to Contractor to use the Program Space; and

(c) provide case management and third-party program referrals to BHA Residents enrolled in the Adult Education Program, which, for the avoidance of doubt and for the purpose of the Services provided to BHA Residents pursuant to this Agreement, will focus on case management that specifically assists such residents in overcoming obstacles that interfere with their successful participation in and completion of the Adult Education Program; and

(d) provide employment services and referrals to BHA Residents participating in the Adult Education Program; and

(e) provide Contractor access to and usage of the CRDC fax machine, photocopy machine, computer lab and other office equipment incidental to the administration of the Adult Education Program, consistent with the terms of the License granted in Article 4, below.

4. Grant of License. For good and valuable consideration set forth in this Agreement, BHA hereby grants to Contractor non-exclusive right and license to use the Program Space subject to the provisions of this Agreement and its terms and conditions:

(a) Program Space at commencement of Agreement. The Program Space constitutes approximately one thousand one hundred and four (1,104) rentable square feet located on the left-hand side of the second floor of the building located at 76 Monument Street in Charlestown, Massachusetts. BHA shall make the Program Space available at such times as is necessary for Contractor to perform the Services and any uses incidental thereto. Upon ninety (90) days written notice to Contractor, BHA may change the physical location of the Program Space in which Services will be provided to BHA (herein, the "Space Change Notice").

(b) No Other Representations as to Use. BHA makes no representations regarding the suitability of the Program Space for the intended use. Contractor shall accept the Program Space in an "as-is" condition.

(c) Contractor's Conditions to Use the License:

(i) *Intended Use.* Contractor shall use the Program space only for the Adult Education Program business and any uses incidental thereto.

(ii) *License Fee.* Contractor shall pay to BHA Community Services Department a user fee (the "License Fee") for Contractor's use of the CRDC's administrative equipment and technology, including but limited to, facsimile and duplication services and the CRDC's computer lab, which shall not exceed \$XXX in the Initial Term or in any subsequent Renewal Term. Contractor shall pay the License Fee in monthly installments of \$XXX during the Initial Term and any subsequent Renewal Term of the Agreement.

(iii) *Manner of Operation.* Contractor shall conduct its activities while on the Development in a safe and reasonable manner at all times. Contractor shall comply with all relevant laws, including laws and regulations of the Commonwealth and ordinances and regulations of the City of Boston. Contractor shall notify BHA as promptly as practicable of known needs for repairs or maintenance to the Program Space. Contractor and its staff shall not bring any pets or animals to the Program Space except as required and practicable for reasonable accommodation of a recognized disability.

(iv) *Condition of Premises.* Contractor shall keep the Program Space clean and change light bulbs and provide other supplies as needed. Contractor shall not modify any structures, or erect any permanent structures or signs, without the prior written approval of BHA, provided, however, without the prior written consent of BHA, Contractor may make any non-permanent, non-structural additions or alterations to the interior of the Program Space, related to any moveable furnishings and equipment therein or as required by the terms, conditions and funding stipulations of the DOE Grant, or any administrative or regulatory board or body having supervisory authority over the Contractor, the Adult Education Program and/or the DOE Grant. Upon the termination of the License, Contractor shall leave the Program Space in a condition at least equal to its condition at the commencement of the Agreement (except for ordinary wear and tear) and Contractor shall remove any temporary structure and signage

constructed by it from the Program Space at its own expense, as promptly as practicable, provided, that such time shall not exceed sixty (60) days trailing such termination date.

(d) BHA's Affirmative Covenants regarding the License:

(i) *Access.* BHA shall provide Contractor with access to the Program Space to the extent deemed by the Contractor necessary to (1) perform its obligations under the Agreement and for all purposes related thereto, including without limitation the operation of the Services and the Adult Education Program, (2) examine the Program Space and make any alterations or improvements deemed necessary by Contractor in order to operate the Adult Education Program and provide the Services in such space, provided, BHA has given prior written approval to such alterations or improvements if required by Section 4(c)(iv), or (3) investigate or document any suspected violation of the terms and conditions of this Agreement. BHA shall provide Contractor with a key to the Program Space, which Contractor shall reasonably maintain and return to BHA upon the expiration or termination of this Agreement.

(ii) *Water and Heat.* BHA shall provide (1) hot and cold water, (2) sewer service, and (3) electricity and reasonable heat during the heating season to the Program Space.

(iii) *Clear Ways.* BHA shall keep all sidewalks, curbs, entrances, passageways, parking lot, and areas adjoining the Program Space in a clean and orderly condition, free from snow, ice, rubbish, and any such other nuisance or obstructions.

(iv) *Building Systems.* BHA shall maintain the building systems to which the Program Space is tied, including plumbing and heating systems, electrical systems, exterior lighting, entry and exit doors, glass window hardware, and screens.

(v) *Rubbish Removal.* BHA shall remove and dispose of all rubbish, trash, garbage, and other waste off-site, provided that Contractor deposits all such trash in the outside receptacle designated for the Program Space by BHA.

(vi) *Repairs and Routine Maintenance.* BHA shall make all necessary repairs and perform routine maintenance in the Program Space, provided Contractor notifies BHA promptly of any needed repairs or maintenance according to instructions from BHA.

(vii) *Parking.* BHA shall provide parking stickers to enable Contractor's authorized staff working at the Program Space to park in BHA parking lots in the Development in accordance with local parking restrictions.

5. Reserved.

6. Reserved.

7. Termination. This Agreement may be terminated in any of the following ways: (a) by mutual agreement of the parties; (b) immediately upon written notice by either party in the event that the other party is no longer authorized to perform its obligations by any operation of law, including, without limitation, the filing of a petition in bankruptcy either by or against such

party, or in the event that either party is causing immediate danger to the staff, residents, or property of the other; or (c) upon thirty (30) calendar days written notice by either party in the event of a material breach of this Agreement uncured upon thirty (30) days written notice thereof (the "Notice Period"). In the event of a breach pursuant to this Paragraph 7, the breaching party shall have the opportunity to cure such breach within the Notice Period; and, in the event that the breaching party either (x) effects a cure or (y) has undertaken promptly and continuously to effect a cure and such cure is effected within a reasonable time thereafter, then the notice of termination from the non-breaching party shall be without effect. For the purposes of this Paragraph 7, "breach" of this Agreement includes, without limitation, (a) the repeated violation or systematic failure to comply with any material term of this Agreement, or (b) the manifestation of an anticipatory intention not to perform the obligations imposed by this Agreement.

8. Designation of Representatives. The parties designate the following individuals as their representatives for the purpose of administering this Agreement:

- (a) For BHA:
- (b) For Contractor:

9. Notice. All notices and other communications required or permitted by this Agreement shall be in writing and shall be deemed given if delivered by hand or mailed by registered mail or certified mail, return receipt requested or by a nationally recognized overnight courier, to the appropriate party at the following address (or such other address for a party as shall be specified by notice pursuant hereto):

- (a) If to BHA:
With copy to:
- (b) If to Contractor:
With copy to:
With copy to:

For the convenience of the parties, either party may contact the other party by email or fax, but official notice shall require follow-up notice in writing pursuant to this paragraph 9.

10. Insurance Requirements. Contractor shall at all times throughout the term of this Agreement carry, and require its contractors and subcontractors to carry, the following insurance policies in the stated form and/or amounts:

(a) Comprehensive General Liability. Contractor shall carry and maintain Comprehensive General Liability Insurance with limits not less than \$1,000,000 per occurrence for bodily injury, death, and property damage and \$2,000,000 general aggregate, covering all work performed under this Agreement. Contractor's Comprehensive General Liability Insurance policy shall include the following coverages:

- (i) independent contractors;
- (ii) severability of interests/cross liability;
- (iii) employees and volunteers as additional insureds;
- (iv) contractual liability;
- (v) extended bodily injury (assault and battery);
- (vi) defense outside of the limit;
- (vii) care, custody, and control;
- (viii) mobile equipment; and
- (ix) additional insureds as required by contract.

BHA shall be named as an additional insured on all general liability policies. Contractor warrants and represents that it will not use or bring its own or its leased automobiles or motor vehicles onto any BHA property as part of the work performed under this Agreement. In the event Contractor needs to use or bring any automobiles or motor vehicles onto BHA property, Contractor shall notify BHA as promptly as practicable and obtain automobile liability insurance with a limit of not less than \$1,000,000 for property damage and for bodily injury and meet the other provisions of this Section 10.

(b) Contractor shall carry and maintain Worker's Compensation Insurance including Employer's Liability Insurance as provided by M.G.L. Chapter 152, as amended, covering all work performed by it under this Agreement and/or any other project plan initiated with the BHA.

(c) Subcontractor Insurance. In the event BHA authorizes Contractor to utilize any subcontractor and/or subconsultant to perform any of the Services, Contractor shall require any such subcontractor, subconsultant, and/or professional employed and/or engaged by Contractor to carry comprehensive general liability, auto liability, and workers compensation insurance with the same scope of coverage and other provisions as described herein. The general liability coverage shall name Contractor and BHA as additional insureds. Contractor shall obtain and keep on file certificates of insurance that show that the subcontractor, subconsultant, and professional are so insured.

(d) Miscellaneous Requirements. All policies of insurance required hereunder shall be issued in a form and type acceptable to BHA and by companies having a minimum A.M. Best's rating of "A-" ("Excellent") and Financial Size Category VII or larger, or as otherwise deemed satisfactory to BHA. Copies of the original certificates of insurance and/or binders of insurance (the "Certificates of Insurance") evidencing the above required insurance coverages satisfactory to the BHA shall be furnished to BHA, and shall be attached to this Agreement as Exhibit C and made a part hereof. The Certificates of Insurance shall provide for not less than ten (10) calendar days prior notice to BHA of any cancellation of/or major change in the policies. Not less than thirty (30) calendar days prior to the expiration date of the policies of insurance required under this Agreement, Contractor shall deliver to BHA renewal certificates of insurance in accordance with all insurance requirements in this Agreement. All policies of general liability insurance required hereunder shall list BHA as a named additional insured as follows: "Boston Housing Authority, Risk Management Center, 52 Chauncy Street, Boston, MA 02111." Failure to provide insurance coverage as required by this Paragraph shall be deemed to be a material breach of this Agreement.

(e) Personal Property Insurance. Contractor may, at its own expense, carry and maintain insurance to cover its own personal property, furniture, fixtures, machinery, and supplies used in the performance of the Scope of Services.

11. Assumption of Risk. Contractor agrees to provide the Services at its own risk and liability. BHA shall have no responsibility or liability for any loss or damage to personal property or fixtures of Contractor or its subcontractors.

12. Mutual Release. Each party, on its behalf and on behalf of its officers, employees, and agents acting on Contractor's behalf, hereby releases the counterparty, its officers, employees, and agents from any and all actions, damages, and other claims, in law or in equity, which such party, its officers, employees, and agents may have against the counterparty, its officers, employees, and agents for loss of life, personal injuries, damage to real or personal property, or other loss arising, directly or indirectly, from any act or omission of such party with respect to this Agreement. The mutual release under this Paragraph 12 shall survive termination or expiration of this Agreement.

13. Mutual Indemnification. Each party shall defend, indemnify, and hold harmless the counterparty from and against all claims, causes of action, suits, losses, damages, fines, and expenses arising from its performance under this Agreement. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to each party that might exist. The obligations of indemnification under this paragraph 13 shall survive termination or expiration of this Agreement.

14. Holder Agreement. Contractor agrees that, as a result of its activities under this Agreement, Contractor and/or its employees, representatives, subcontractors, subconsultants, contractors, and/or agents ("Holders") may be and become "holders" of "personal data" as such terms are defined by M.G.L. Chapter 66A, and that information containing any such personal data will be placed in a system which reasonably assures the confidentiality of the personal data. In its use and maintenance of personal data Contractor shall not disseminate or publish any data provided (except to BHA's or Contractor's designated officers and employees in the ordinary course of business) without the informed consent of the data subject and BHA, or as permitted by law. Contractor further agrees that, upon the expiration of this Agreement, any such data collected shall, as the BHA directs, be either returned to BHA or destroyed, provided, however, that Contractor may retain a copy of such tangible information for compliance and/or archival purposes. The requirements of this paragraph 14 shall remain in effect as long as the Holders are a holder of personal data under this Agreement. Contractor's responsibilities under this Paragraph 14 shall survive the expiration or termination of this Agreement.

15. Binding Agreement. This Agreement is binding on the parties' officers, employees, agents, principals, successors, and assigns.

16. Compliance with Law. Contractor shall comply with all applicable provisions of local, state, or federal law, regulation, or ordinance.

17. Authority. The parties hereto represent and warrant each to the other that they have the authority to enter into this Agreement and that the person executing this Agreement for each is duly authorized to do so.

18. No Assignment. This Agreement may not be assigned, or otherwise transferred by Contractor, without the express prior written consent of BHA.

19. Complete Agreement. This Agreement represents the final, complete and exclusive written expression of the intentions of the parties hereto with respect to its subject matter, and supersedes any and all previous communications, representations, agreements, promises or statements, either oral or written, by or between the parties.

20. No Modification. This Agreement may not be modified, except by written agreement executed by both the parties.

21. Independent Contractors. The parties are acting herein as independent contractors and independent employers. Nothing herein shall create or be construed as creating a partnership, joint venture, or agency agreement between the parties and no party shall have the power to bind the other in any respect.

22. Governing Law; Venue. It is the intention of the parties that the internal laws of the Commonwealth of Massachusetts shall govern the validity of this Agreement, and the interpretation of the rights and duties of the parties hereunder. All actions arising under or as a result of this Agreement shall be brought in the state or federal courts located in Boston, Massachusetts.

23. Counterparts. This Agreement may be executed in one or more counterparts (including by telecopy), each of which, when so executed and delivered, shall be deemed to be an original, but all of which shall together constitute one agreement.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a sealed instrument as of the date first above written.

THE BOSTON HOUSING AUTHORITY

By: _____
Name:
Title: Administrator/CEO

KENT/CHARLESTOWN COMMUNITY SCHOOLS
COUNCIL, INC.

By: _____
Name:
Title: President

EXHIBIT A
PROGRAM SCHEDULE

EXHIBIT B

BOSTON PUBLIC SCHOOL CALENDAR FOR 2008-2009

EXHIBIT C
CERTIFICATES OF INSURANCE