

AGREEMENT BETWEEN
HIDALGO COUNTY JUVENILE PROBATION DEPARTMENT
AND
SOUTHWEST KEY PROGRAMS, INC.
FOR THE OPERATION AND MANAGEMENT OF THE
HIDALGO COUNTY JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM

This Agreement is entered into on this 22nd day of August, 2007, and is effective as of August 1, 2007, by and between the **HIDALGO COUNTY JUVENILE PROBATION DEPARTMENT**, a department of Hidalgo County, Texas (“Department”), having its principle administrative offices at 3100 S. Hwy. 281, Edinburg, Texas 78540, and **SOUTHWEST KEY PROGRAMS, INC.** (“SWK”), a Texas non-profit corporation having its principle place of business located at 3000 South IH-35, Ste. 410, Austin, Texas 78704, for the purposes as set forth below.

WHEREAS, pursuant to Chapter 37 of the Texas Education Code, the Department is charged with the responsibility of providing a Juvenile Justice Alternative Education Program (“JJAEP”) to those youth who have been expelled by one of the school districts in Hidalgo County for the offenses described in Section 37.007(a) and (d), and if applicable, under Texas Education Code §37.007(e); and also under Section 37.303 if the youth is under court supervision or if the school district makes a determination that the youth’s presence in the regular class room (i) threatens the safety of other students or teachers (ii) will be detrimental to the educational process or (iii) it is not in the best interests of the school district’s students; and

WHEREAS, local school districts may contract with the Department for placement of students in the JJAEP who are expelled from school for the offenses described in Texas Education Code §37.007(b), (c), (f) and (e) if not officially arrested, charged and referred to the Department under Texas law; and

WHEREAS, SWK operates the Hidalgo County Learning Center, located at 619 South International Blvd., Weslaco, Texas (“Program”), as a JJAEP in accordance with the requirements of the Texas Education Agency and the Texas Juvenile Probation Commission, as codified in Texas Administrative Code Ch. 348, as amended; and

WHEREAS, Department desires to have the JJAEP operated and managed by a professional education/juvenile management company; and

WHEREAS, Department desires that SWK undertake the operation and management of said JJAEP under the following terms and conditions;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Programs

- 1.1 SWK shall implement the JJAEP consistent with the Proposal submitted to the Department and perform the services required as stated in the Proposal attached hereto as Exhibit A. The parties acknowledge that the Program as set forth in Exhibit A may from time to time be modified for the success of the Program upon written agreement by the parties.
- 1.2 Department has reached an agreement with the Weslaco Independent School District (“Weslaco ISD”) to provide breakfast and lunch to the students as set forth in the Interlocal Agreement (“Interlocal Agreement”) attached hereto as Exhibit B and incorporated herein by this reference for all purposes.

2. Fees

- 2.1 For and in consideration of the above-mentioned services, Department agrees to pay SWK the sum of Thirty-four Thousand, One Hundred Twenty-eight and No/100 Dollars (\$34,128.00) per month for zero to twenty-four (0-24) students enrolled in the Program; Forty-nine Thousand, Seven Hundred Seventy and No/100 Dollars (\$49,770.00) per month for twenty-five to thirty-five (25-35) students enrolled in the Program; and an additional Eight Thousand Five Hundred Thirty-two and No/100 Dollars (\$8,532.00) per month for every six (6) students in excess of thirty-five (35) students enrolled in the Program.
- 2.2. The rates set forth in the preceding paragraph are based on an average of 180 days per school year over a period of ten (10) months and shall continue through the termination of this contract, unless the Department asks SWK to provide additional educational programming during the summer months.
- 2.3 The number of students in the Program will determine the applicable monthly cost for educational services as set forth in Schedule “A” attached hereto and incorporated herein for all purposes.
- 2.4 In the event the number of students enrolled and attending the Program increases past a contractual threshold during a month, as defined in paragraph 2.1 above, the monthly fees for educational services shall not increase until the beginning of the following month and shall only increase for such month if the number of students remains above such contractual threshold on the first instructional day of such following month. Likewise, if the number of students decreases past a contractual threshold during a month, the monthly fee for educational services shall not decrease until the beginning of the following month and shall only decrease if the number of students remains below such contractual threshold on

the first instructional day of such following month. In either event, the fee (whether an increase or decrease) for such following month shall be the fee shown on Schedule "A" for the number of students enrolled and attending the Program as of the first instructional day of such following month.

2.5 Payment for any partial months in which services are performed under this Contract by SWK shall be only for the days services are actually provided. The payment owed shall be the applicable monthly payment multiplied by the quotient of the number of days services are performed during such month over the actual days of such month less the number of Saturdays, Sundays and legal holidays recognized by the Program.

2.6 Department has assigned a probation officer to the Program. SWK shall compensate Department for all expenses of such probation officer as so assigned including but not limited to the officer's salary, fringe benefits, travel and training. The probation officer shall be assigned to the JJAEP provided however such probation officer shall report to and be under the supervision and control of the Department for all purposes.

3. Term

3.1 The term of this Agreement shall be for one year, commencing August 1, 2007 and terminating July 31, 2008. SWK and Department shall have the option to extend this agreement for one year, for a total of three (3) 1-year extension options.

3.2 SWK understands that the term of this Agreement and any other subsequent renewal periods is dependent on funds being available from Hidalgo County. Should funds not be made available, this Agreement shall be terminated and fees will be paid for the services performed to the date in which the Agreement was terminated. Department shall give SWK reasonable notice in writing pursuant to the terms of paragraph 21 below of the anticipated loss of funding, which in no event shall be less than thirty (30) days.

4. Training

Training and staff requirements will be the responsibility of SWK, which will provide training as outlined in the Proposal attached hereto as Exhibit A.

5. Conditions

5.1 If a student in placement with SWK leaves the Program without permission, becomes seriously ill, or is involved in an accident of a serious nature, SWK shall notify Department immediately so that Department may notify the proper authorities.

- 5.2 Department reserves the right to terminate the student's placement with SWK at its discretion. SWK must not release a student to any person or agency other than Department without the express consent of County, which shall be confirmed in writing.
- 5.3 Suspected or alleged cases of child abuse must be immediately reported to the Department and to the Texas Department of Protective and Regulatory Services.

6. Examination of Program and Records

- 6.1 SWK agrees that it will permit Department to examine and evaluate its program of services provided under the terms of this Agreement and to review SWK student records as defined in subparagraph 6.4 herein, subject to the provisions of the Family Educational Rights and Privacy Act ("FERPA") and the Health Insurance Portability and Accountability Act ("HIPAA"), as applicable.
- 6.2 SWK shall provide to the Department such descriptive information on contracted students as requested on forms to be developed jointly by the parties.
- 6.3 Written policies and procedures for the JJAEP shall be established by SWK and submitted to the Department for review and approval.
- 6.4 Information contained in student records shall be consistent with Texas Education Agency's standards and guidelines. All information shall be considered confidential and is subject to release or disclosure only to authorized representatives of the Department. Release of student records to physicians or other health care providers for use in treatment is hereby expressly authorized by the Department, subject to compliance with any and all applicable HIPAA requirements.

7. Standard for Program Operation

- 7.1 While the Program is under the management and control of SWK, SWK's operation of the Program will, subject to limitations beyond the control of SWK, conform to applicable federal, state, and local statutes, ordinances, and regulations, including, but not limited to statutes, regulations, and rulings of the Texas Education Agency. The Program shall be operated in accordance with the operations policies set forth in Exhibit A, subject to compliance with such statutory regulations and rulings.
- 7.2 SWK agrees that its policies and procedures are consistent with Chapter 348 of the Texas Administrative Code, which sets forth the TJPC standards and regulations governing the operation of JJAEP's. A true and correct copy of the TJPC standards are attached hereto as Exhibit C and are incorporated herein by this reference for all purposes.

8. Administration

SWK will appoint a Program Director or designated Lead Teacher to manage on-site the daily operation of the Program. The position shall be staffed by a professional experienced and trained in the field of juvenile justice alternative education programming.

9. Contract Monitor

Department will appoint a Contract Monitor (“Monitor”) to monitor SWK’s implementation of its duties and obligations under the terms of the Agreement. In addition, the Department may appoint a Compliance Board among representatives of the various school districts. The Monitor and the Compliance Board will be responsible to and report to any and all persons as may be directed by the Department. Subject to FERPA, HIPAA, and other applicable laws, the Monitor, the Compliance Board or their designated representative will have unlimited access to the Facility, Program and Student records, excluding program personnel files, as is necessary to monitor contract compliance.

10. Personnel

A representative of the Department shall be given the opportunity to review, but shall have no approval authority, the applications of all prospective employees considered by SWK for employment in the Program. SWK shall perform a background investigation on all employees, including a criminal background check, in accordance with Texas Administrative Code §348.4(d). Employee benefits, including medical insurance, life insurance, worker’s compensation insurance, and other benefits will be the responsibility of SWK. The worker’s compensation insurance shall be maintained by SWK at the limits statutorily required by the State of Texas. SWK shall provide the County with a waiver of subrogation as to the worker’s compensation insurance.

11. Liability Insurance

11.1 SWK shall provide for the comprehensive liability coverage for all of SWK’s agents, servants, employees, personnel and anyone directly or indirectly employed by SWK connected with the operation and management of the Program, and SWK shall provide further comprehensive general liability coverage to include as additional insured Hidalgo County, its agents and employees, and other agents acting in a governmental agency capacity, together with the successors and assignees of all identified persons set out herein during the term of this Agreement.

11.2 It is further agreed by and between the parties hereto that the limits of coverage for any incident or occurrence provided for in the comprehensive general liability as set out herein shall be the greater of the coverage required by law or One

Million and No/100 Dollars (\$1,000,000.00), inclusive of legal fees, expenses or other costs of defense related to any claims or actions.

11.3 All insurance coverage required by this Section shall be procured and maintained with financially sound insurance rated "A" or better. The certificates of insurance shall contain a provision that the Department or its designated representative shall receive written notice at least thirty (30) days prior to the cancellation of any of the coverage provided under the policies.

12. Program Capacity

The parties agree that as of the execution date of this Agreement, the number of students of the Program is undetermined. Such number will depend on the availability of appropriate program space.

13. Student Characteristics

The Department agrees that the student population shall consist of male and female students and shall be consistent with the Memorandums of Understanding by and between the Department and each of the school districts in Hidalgo County, approving the Code of Conduct and setting forth the criteria for attendance. Copies of the Memorandums of Understanding are attached hereto as Exhibit D.

14. Equal Opportunity

Services shall be provided by SWK in compliance with the Civil Rights Act of 1964 and all other applicable laws and regulations. SWK will not discriminate against any employee, applicant for employment or client because of race, religion, color, sex, sexual orientation, national origin, age or disability. SWK will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, sexual orientation, national origin, age or disability.

15. Officials not to Benefit

No officer, member or employee of Hidalgo, no member of its governing body, and no other public officials of the governing body of the locality or localities in which the Program is situated or being carried out who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of terms of this Agreement shall participate in any decision relating to this Agreement which affects his/her personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

16. Termination Without Cause

Notwithstanding anything to the contrary herein, this Agreement may be terminated by either party by giving thirty (30) days' written notice to the other party hereto.

17. Indemnification

SWK will indemnify and hold Department harmless from any and all claims, actions, liability and expenses (including costs of judgments, settlements, court costs, and attorneys' fees, regardless of the outcome of such claim or action) caused by, resulting from, or alleging negligent or intentional acts or omissions or any failure to perform any obligation undertaken or any covenant in this Agreement by SWK, its employees, directors, officers, agents or representatives. Upon written notice from the Department, SWK will resist and defend at SWK's own expense, and by counsel reasonably satisfactory to the Department, any such claim or action. SWK will carry proper insurance with the Department as an additional named insured to the extent such is reasonably available.

18. Breach, Notice and Cure

18.1 In the event of a breach of any obligation or covenant under this agreement, the non-breaching party may give the breaching party written notice of the specifics of the breach, and the breaching party shall have twenty (20) days in which to cure the breach. If the breach is not cured within such period or if a good faith effort to cure the breach has not been undertaken within such period, the breaching party shall be in default and the non-breaching party shall be entitled to pursue any remedies it may have by reason of the breach.

18.2 In the event any provision contained in this Agreement shall be breached by either party and thereafter waived by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach.

19. Default and Termination with Cause

19.1 Upon the occurrence of an "event of default," the non-defaulting party may issue notice to cure in accordance with the provisions of paragraph 20 below.

19.2 The Department may terminate this Agreement immediately upon the occurrence of any of the following events:

- .1** The failure of SWK to obtain or maintain any license, accreditation, right or certification required for the lawful operation of the Program, or the decision by any State department or agency to withhold, withdraw, or disqualify the Program from receiving the funds to which it would otherwise be entitled.
- .2** Any conduct of SWK which jeopardizes the health, safety, or welfare of any person, or the safety, reputation, or the regular functions of the JJAEP.

- .3 The loss of SWK's license to provide the services, or the loss of or failure to provide evidence of liability insurance, as required by paragraphs 11 and 17 herein.
- .4 The conviction of SWK of any crime punishable as a felony involving moral turpitude or immoral conduct.
- .5 The failure of SWK to immediately bar any individual from performing services under this Agreement if such individual does not meet the qualifications required by this Agreement, if such individual commits a material breach of one of the terms of this Agreement, or if one of the events listed in paragraphs 19.2.1 through 19.2.4 above occurs with respect to such individual.

19.3 The Department may terminate this Agreement on the continuation of any of the following without such being corrected or cured within twenty (20) days after written notice from the Department to SWK:

- .1 the dissolution of SWK or the disposition of all or substantially all of its assets;
- .2 the adjudication of SWK to be bankrupt or insolvent;
- .3 the failure of SWK to continuously operate the Program for the purposes contemplated by this Agreement;
- .4 the breach of any other term or condition of this Agreement.

20. Prohibition of Assignment

Southwest acknowledges that the nature of the services to be rendered under this Agreement is unique and based on SWK's expertise and that as a consequence of such, SWK is prohibited from assigning duties or obligations due under the terms of this Agreement without the written consent of the Department, which consent shall not be unreasonably withheld if such is deemed in the best interest of the Program and the service providers selected are fully qualified and are in compliance with all statutes, regulations, standards, and requirements of the Department and that there is no loss of indemnification as described in paragraph 17.

21. Notice

If notice or demand of any kind is to be given by any party to any other party, it shall be in writing, signed by the party giving it, directed to the intended recipient with sufficient postage prepaid, certified mail, addressed as follows:

To the Department: Chief Israel "Buddy" Silva, Jr.
Director, Hidalgo County Juvenile Department
3100 S. Hwy. 281
P.O. Box 267
Edinburg, Texas 78540-0267

To SWK: Dr. Juan J. Sánchez
Presidente/CEO
Southwest Key Programs, Inc.
3000 South IH-35, Ste. 410
Austin, TX 78704

24. Amendments and Waivers

- 23.1** This Agreement, Addenda and all Exhibits hereto and any instruments or agreement incorporated by reference as if set out fully herein comprise the entire understanding of the parties with respect to the transactions contemplated hereby.
- 23.2** No prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied with this Agreement.

25. Taxes and Benefits

The Department will not withhold income tax or Social Security tax on behalf of SWK or any of SWK's officers, directors, employees, subcontractors, agents or representatives. In addition, none of the foregoing will have any claim under this Agreement or otherwise against the Department for vacation pay, sick leave, unemployment insurance, workers compensation, retirement benefits, disability benefits, or employee benefits of any kind. SWK will have exclusive responsibility for the payment of all such taxes and arrangement for insurance coverage and will discharge such responsibility fully.

26. Incurring Financial Obligation

SWK will incur no financial obligation on behalf of the Department without prior written approval of the Department. SWK will be responsible for all personal and professional expenses, including, but not limited to membership fees, dues and expenses of attending conventions and meetings.

27. Fees to SWK

The sole source of compensation to SWK under this Agreement will be the compensation paid by the Department to SWK in accordance with the terms and provisions of Exhibit A and reimbursement applied for and received from the National School Lunch Program in accordance with paragraph 1.2 above. SWK will neither bill nor collect fees for services from students, student's parents, or legal guardians of students attending the JJAEP.

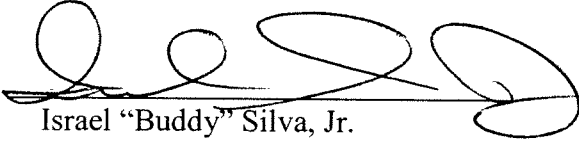
28. Miscellaneous

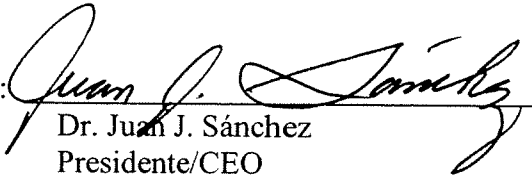
- 28.1** The invalidity or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provision.
- 28.2** No changes to this Agreement shall be made except under written agreement of both parties. No failure on the part of any party to exercise, and no delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver hereof. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.
- 28.3** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof.
- 28.4** The defined terms used herein are for convenience only and do not limit the contents of this Agreement.
- 28.5** All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons or entity may require.
- 28.6** The execution and performance of this Agreement by the Department and SWK have been duly authorized by all necessary laws, resolutions or corporate action, and this Agreement constitutes the valid and enforceable obligations of SWK and the Department in accordance with its terms.
- 28.7** Notwithstanding anything to the contrary contained elsewhere herein, the Department and SWK hereby covenant and agree as follows:
- .1** The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Texas and shall be performable in Hidalgo County, Texas.
 - .2** The compensation to be paid to SWK by the Department is reasonable considering the amounts charged by others in the same or similar geographic area for similar services.

SIGNED AND EXECUTED THIS 22nd day of August, 2007.


**HIDALGO COUNTY JUVENILE
PROBATION DEPARTMENT**

SOUTHWEST KEY PROGRAMS, INC.
A Texas Non-Profit Corporation

By: 
Israel "Buddy" Silva, Jr.
Director and Chief Juvenile
Probation Officer

By: 
Dr. Juan J. Sánchez
Presidente/CEO

**HIDALGO COUNTY JUVENILE
BOARD**

By: 
Hon. Mario E. Ramirez, Jr.
332nd District Court
Juvenile Department Overseer

SCHEDULE A

No. of Students	Fees
0-24	\$34,128.00
25-35	\$49,770.00
36-41	\$58,302.00
42-47	\$66,834.00
48-53	\$75,366.00
54-59	\$83,898.00
60-65	\$92,430.00
66-71	\$100,962.00
72-77	\$109,494.00
78-83	\$118,026.00
84-89	\$126,558.00
90-95	\$135,090.00
96-101	\$143,622.00
102-107	\$152,154.00
108-113	\$160,686.00
114-119	\$169,218.00
120-125	\$177,750.00