

STATE OF TEXAS
COUNTY OF TRAVIS

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COMPTROLLER OF PUBLIC ACCOUNTS
GRANT AGREEMENT – [Cite to Act/Auth.]
GRANT CONTRACT # _____

Recitals

Whereas, the Comptroller of Public Accounts and Grantee wish to enter into a Grant Agreement (Agreement) to provide Grantee with Jobs and Education for Texans (JET) funds to be utilized for the purposes of the JET Program according to law and Comptroller’s Rules regarding administration of the Program; and

Whereas, House Bill No. 3 and House Bill No. 1935, 81st Texas Legislature, Regular Session (2009), enacted the Jobs and Education for Texans (JET) Program, a new program offering grant funding opportunities for programs that meet the requirements of the JET program to defray the costs associated with the development of new career and technical education programs and courses at public junior colleges and public technical institutes; and

Whereas, Chapter 403, Sections 403.352 and 403.356, Texas Government Code; and Chapter 134, Sections 134.002 and 134.006, Texas Education Code, authorize the Comptroller to award JET funds to public junior colleges and public technical institutes to administer the new Programs; and

Whereas, proposed Comptroller Rules for administration of the JET Program, located at 34 Texas Administrative Code (TAC) chapter 8, authorize the Comptroller to publish a Notice of Availability of grants and scholarships and to make awards of grants under the terms of the Program and this Grant Agreement; and

Whereas, on [redacted], 2009, Grantee, [redacted], executed this Agreement, and under this Agreement, Grantee shall fully comply with all terms, conditions, requirements, and other requirements of the JET Program and this Grant Agreement, as more fully set forth in Attachments A and B; and

Whereas, Comptroller agrees to pay to the Grantee in return for the compliance and utilization of the Grant funds as set forth in Attachment A, the total amount not to exceed [\$---000.00], as more fully detailed in Attachment B, to this Agreement; and

Whereas, the foregoing grant amount shall be utilized by Grantee solely for the purposes of the JET Program and Comptroller’s Rules regarding same, in addition to requirements provided by Comptroller under this Agreement.

Now, Therefore, in consideration of all of the foregoing, the parties hereby agree as follows:

I. Parties

This Grant Agreement (“Agreement”) is made and entered into by the following parties:

The Agency: Comptroller of Public Accounts, (“Agency”)
Educational Opportunities & Investments Division
Jobs and Education for Texans Program (JET)
LBJ State Office Building
111 E. 17th Street, Room #510
Austin, Texas 78774

The Grantee: [redacted]

II. Authority

This Grant Agreement (Agreement) is entered into pursuant to House Bill No. 3 and House Bill No. 1935, 81st Texas Legislature, Regular Session (2009); and Chapter 403, Sections 403.354 and 403.356, Texas Government Code; and Chapter 134, Sections 134.004 and 134.006, Texas Education Code. Funding of this grant is provided by the Comptroller of Public Accounts.

III. Services

Grantee shall utilize the grant funds solely for the purposes authorized by the JET Program and Comptroller and shall maintain full compliance with all terms and conditions described in the Grant Application and Attachment A to this Agreement, which is attached hereto and incorporated herein for all purposes. In addition, Grantee shall fully comply with all provisions of this Agreement and with Agency directives, throughout the term of this Agreement.

Grantee shall retain full control over the personnel, equipment, supplies, and other items Grantee selects as necessary to comply with the terms of this Grant and as described in Attachment A. This Agreement does not involve proprietary rights or intellectual property issues. Title to and control over equipment or license of any software so purchased for Grantee's performance under this Agreement shall remain with Grantee so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

Grantee shall submit such records, information, and reports in such form and at such times as may be required by Agency; these reports shall include, but are not limited to, the reports specified in Attachment B.

IV. Payments

Total payments to Grantee under this Agreement shall not exceed [REDACTED]. Grantor's disbursements shall be made pursuant to the disbursement schedule outlined in Attachment B and in the manner prescribed therein, which is attached hereto and incorporated herein for all purposes. No other amounts shall be paid. All costs must be directly attributable to the project that is the subject of this contract.

V. Inspection, Monitoring and Records

Grantee shall permit Agency to inspect and shall make available to Agency for inspection any and all pertinent records, files, information and other written material pertaining to the operation of programs and expenditure of funds under this Agreement. This information includes, but is not limited to, all information maintained by Grantee or any of its agents, employees or other parties. Grantee shall maintain, keep and preserve at its principal office all such records for a period of four years and make the same available to Agency, other state or federal agencies for auditing or other purposes authorized by applicable federal or state law or guidelines. Agency may also carry out monitoring and evaluation activities to ensure Grantee's compliance with the Program that is the subject of this Agreement and to make available copies of all financial audits and related management letters of Grantee, if any, as required under any applicable federal or state law or guidelines. Grantee shall also comply with the inspection, monitoring and records requirements described in Attachment B.

VI. Termination

Agency, as Grantor, may terminate this Agreement by delivering written notice of the termination to Grantee at least thirty (30) days prior to the effective date of termination specified in the notice.

Upon receipt of notice of termination from Agency, Grantee shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs; Agency shall have no liability whatsoever for any costs incurred after such termination date. If this Agreement is terminated for any reason, all grant funds [REDACTED] be subject to full refund to the Comptroller hereunder.

VII. Indemnification

This is a Grant Agreement and both parties hereby agree that neither party shall indemnify the other in the execution or performance of this Agreement.

VIII. Subcontracting

Grantee, if subcontracting any of its performance hereunder, shall legally bind subgrantees to perform and make such subgrantees subject to all the duties, requirements, and obligations of Grantee under this Agreement. Grantee shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its subgrantees to the extent permitted under the Constitution and laws of the State of Texas.

Grantee represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its subgrantees or subcontractors under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Grantee obtain the prior approval of Agency on Grantee's proposed subcontracts, be construed as relieving Grantee of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by Grantee. If requested by the Comptroller and/or Staff of Comptroller, Grantee shall furnish Agency with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days subsequent to the request.

IX. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Agency may unilaterally amend this Agreement as provided in Paragraph XVIII.

X. Incorporation of Attachments; Incorporation by Reference

All of the following attachments are attached hereto and incorporated into this Agreement for all purposes:

- Attachment A: Scope of Service and Statement of Requirements to be Performed;
- Attachment B: Manner of Disbursements and Reports, Monitoring and Records;
- Attachment C: Statement Authorizing Disclosure of Data for Study Purposes; and
- Attachment D: Subcontracting Provisions.

Grantee represents and warrants that it completed and provided the following Attachments to Agency prior to executing this Agreement. All applicable rules, regulations and all other requirements imposed by law, including, but not limited to, those pertinent rules and regulations of Comptroller and the State of Texas, are incorporated into this Agreement by reference as if specifically written herein.

XI. Funding

Agency's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Agency of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Agency or the JET Board, subject to the availability and receipt of these funds. In addition, Agency's authority and appropriations are subject to the actions of the Texas Legislature. If Agency becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Agency may terminate this Agreement without penalty to Agency or the State of Texas. In the event of a termination or cancellation under this Paragraph, Agency shall not be required to give notice and shall not be liable for damages or losses caused or associated with such termination or cancellation.

XII. Term of Agreement

The term of this Agreement shall begin on the date executed by all parties and be effective until twelve months after the effective date, unless terminated earlier in accordance with other provisions of this Agreement. The provisions of the following shall survive the termination or expiration of this Agreement: Paragraphs V, VII, XV, XVI, XVII; Sections 19.2, 19.3, 19.6; and Attachment B, if applicable.

XIII. Force Majeure

Except as otherwise provided, neither Grantee nor Agency shall be liable to the other for any delay in, or failure of performance of any requirement contained in this Agreement caused by force majeure. The existence of such

causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provide the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

XIV. Assignment

Grantee shall not transfer or assign any rights or duties under or any interest in this Agreement. Grantee shall not delegate its responsibilities or duties under the terms of this Agreement.

XV. Property Rights

For the purposes of this Agreement, both parties agree that this Agreement does not involve intellectual property rights.

XVI. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Dispute Resolution Process

Chapter 2260 of the Texas Government Code ("Chapter 2260") prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Agency has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. Grantee shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by Agency and Grantee to attempt to resolve any claim for breach of contract made by Grantee under this Agreement:

- (A) Grantee's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Grantee shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Agency and Grantee otherwise entitled to notice under this Agreement. Compliance by Grantee with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- (B) The contested case process provided in Chapter 2260 is Grantee's sole and exclusive process for seeking a remedy for an alleged breach of contract by Agency if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civ. Prac. and Rem. Code. Neither the execution of this Agreement by Agency nor any other conduct of any representative of Agency relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

Should a dispute arise out of this Agreement, Agency and Grantee shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Agency and Grantee within fifteen (15) days after written notice by one of them demanding mediation under this Section. Grantee and Agency shall pay all costs of the mediation

equally. By mutual agreement, Agency and Grantee may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Agency and Grantee shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Agency's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Agency of (1) any rights, privileges, defenses, remedies or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency; (2) Agency's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

XVIII. Applicable Law and Conforming Amendments

Grantee shall comply with all laws, regulations, requirements and guidelines applicable to a Grantee providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Agency reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Agency's or Grantee's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. Additional Provisions

19.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

19.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Agency as an agency of the State of Texas or otherwise available to Agency. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Agency under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Agency does not waive any privileges, rights, defenses, or immunities available to Agency as an agency of the State of Texas, or otherwise available to Agency, by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Agency must be in writing, must reference this section, and must be signed by Agency to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Agency shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

19.3 No Liability upon Termination

If this Agreement is terminated for any reason, Comptroller, the Board, the Agency, and the State of Texas shall not be liable for any damages, claims, losses, expenses, costs or any other amounts of any kind whatsoever arising from or related to any such termination.

19.4 Limitation on Authority; No Other Obligations

Grantee shall have no authority to act for or on behalf of Agency or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. Grantee may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Agency.

19.5 No Other Benefits

Grantee shall have no exclusive rights or benefits other than those set forth herein.

19.6 Supporting Documents; Right to Audit; Independent Audits

Grantee shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable Agency and State of Texas requirements. Grantee shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years

after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Grantee shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by Agency, the State of Texas or their authorized representatives. Grantee shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by Agency or the State of Texas. By example and not as exclusion to other breaches or failures, Grantee's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Agency to immediately assess the liquidated damages for such failure. Agency may require, at Grantee's sole cost and expense, independent audits by a qualified certified public accounting firm of Grantee's books and records or the State's property. The independent auditor shall provide Agency with a copy of such audit at the same time it is provided to Grantee. Agency retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex. Gov't Code, the state auditor may conduct an audit or investigation of the Grantee or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Grantee or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Consultant or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by the Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above, (1) the Grantee understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) the Grantee further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) the Grantee shall ensure that this paragraph concerning the authority to audit funds received indirectly by subgrantees through the Grantee and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Grantee relating to this Agreement.

XX. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties.

XXI. Merger

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

AGENCY:

Comptroller of Public Accounts

GRANTEE:

[Redacted]

By: _____

Martin A. Hubert
Deputy Comptroller

By: _____

[Printed Name]
[Title]

Date: _____

Date: _____

ATTACHMENT A

SCOPE OF SERVICE AND STATEMENT OF REQUIREMENTS TO BE PERFORMED

- A. Grantee shall perform all of the following, as described in this Attachment A, or as otherwise required by this Agreement, ("services"). These grant requirements include, but are not limited to, the performance of all requirements of the Grant, compliance with all provisions of this Agreement, and other items necessary for compliance with this Agreement. Grantee shall adhere to all Grant requirements and shall review and implement Agency and Board recommendations, as Agency adopts them from time to time, so that the Grant funds may expended efficiently and effectively for the purposes intended. Grantee shall meet with Agency at such times as Agency may reasonably request to discuss the progress of services and any other matters that may arise in regard to this Agreement.
- B. Grantee shall:
1. Comply fully with all provisions of the Grant Application as submitted by Grantee, and the Request for Applications (RFA) issued for this Grant. Grantee shall update its application information to ensure accurate, complete, and fully updated information is provided;
 2. Comply fully with the provisions of this Agreement, Attachment A, incorporated by reference into this contract for all purposes;
 3. Expend grant funds in full compliance with the JET Program purposes, including the development of new career and technical education courses or programs at a public junior colleges or public technical institutes that meet the requirements of Education Code § 134.006 and Government Code § 403.356 and to be used only in accordance with Attachments A and B of this Agreement, and:
 - a. To support courses or programs that prepare students for career employment in occupations that are identified by local businesses as being in high demand, including courses offered for dual credit;
 - b. To finance initial costs of career and technical education course or program development, including the costs of constructing or renovating facilities, purchasing equipment, and other expenses associated with the development of a new course; and
 - c. To finance a career and technical education course or program that leads to a license, certificate, or postsecondary degree; and
 4. Comply fully with all Comptroller and JET Board Administrative Rules for the JET Program grants, as adopted and as amended, as well as all applicable state laws, rules and regulations, including the Uniform Grant Management Standards Act (UGMS), Office of the Governor;
 5. Provide information related to use of the grant funds, including aggregated information, when available, regarding the number of participants, income levels, college attendance, coursework, educational costs, and grades; and
 6. Prepare and submit required Grant Activity Reports every month by the 10th of each subsequent month to the monthly reporting period, e.g., due on March 10th for February reporting period. The reports may be submitted via e-mail to JETgrants@cpa.state.tx.us.

ATTACHMENT B

MANNER OF DISBURSEMENTS AND REPORTS, MONITORING AND RECORDS

- Subject to Comptroller's discretion, draws against grants will be disbursed no more than monthly.. (each draw must be greater than \$500.00) as follows:
1. Administrative disbursement of up to ten (10%) percent will be made available at the funding of the grant;
 2. After preparing the instructional area for the new course or program, an additional fifteen (15%) percent of grant funding may be made available;
 3. After purchase of the equipment, funded on a reimbursement basis to the institution, an additional sixty-five (65%) percent of the grant funding may be made available; and
 4. After final closeout documents are submitted to Agency and approved by the Comptroller, final ten (10%) percent of grant funding may be made available.
- B. Grantee shall utilize match funding at a rate that causes the match funding to be injected into the project at the same rate as the grant funds – for example, when twenty-five (25%) percent of the grant funds have been paid, not less than twenty-five (25%) percent of the matching funds should have been injected.
- C. Grantee shall submit each request for payment by submitting to Agency a detailed statement listing expenses to be reimbursed. Grantee shall submit invoices that are fully supported by receipts and such other documentation, including contract number and project name; Agency reserves the right, in its sole discretion, to withhold payment of grant funds for which Grantee does not submit documentation acceptable to Agency. Grantee must provide grant activity reports every month by the 10th of each subsequent month to the monthly reporting period, e.g., due on March 10th for February reporting period. The final report is due 60 days after the grant ending date. Reporting requirements are subject to change. The final payment may be withheld until the Comptroller's office is in receipt of the final report.
- D. Grantee shall submit performance reports as required by Attachments A and B.
- E. Grantee shall not be reimbursed for miscellaneous application, travel, or other incidental expenses under the terms of this Agreement, unless the expense or item is budget category in Attachment B. If travel is included in Attachment B, Grantee shall be reimbursed for reasonable out-of-pocket travel expenses at rates not to exceed the approved Texas Comptroller of Public Accounts employee rates.
- F. Agency reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Agency must give prior approval of all such revisions through its execution of a written amendment to this Agreement.
- G. Agency reserves the right, in its sole discretion, to make on-site visits to monitor the projects funded pursuant to this grant, at any time without prior notification.
- H. Grantee shall submit a final report that includes:
- 1.the projected number of students to be trained;
 - 2.duration and frequency of course or program;
 - 3.expected salary and high-demand occupation of participants who complete the course or program; and
 - 4.personnel hired or retained based on development or expansion of course or program.

BUDGET

Salaries

■

Benefits

■

Equipment

■

Supplies or Materials

■

Total Direct Costs

■

Grantee Provided Match

■

SAMPLE