

**AGREEMENT**  
**FOR**  
**PROGRAM MANAGER SERVICES**  
**FOR THE PROPOSED COLLIN COUNTY COMMUNITY COLLEGE DISTRICT 2017**  
**BOND CAPITAL IMPROVEMENT PROGRAM**  
**BETWEEN**  
**COLLIN COUNTY COMMUNITY COLLEGE DISTRICT**  
**AND**  
**AECOM TECHNICAL SERVICES, INC.**

**APRIL 26, 2017**

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## **Agreement for Program Manager Services**

This Agreement for Program Manager Services (“Agreement”) is made by and between **COLLIN COUNTY COMMUNITY COLLEGE DISTRICT** (“Owner”) and **AECOM TECHNICAL SERVICES, INC.** (“Program Manager”) effective as of April 26, 2017 (“Effective Date”). For purposes of this Agreement, the term “Program Manager” includes the person designated as Program Manager in the RFQ Response (as hereinafter defined) as well as all directors, principals, officers, employees, agents, and representatives of AECOM Technical Services, Inc. As used herein, the term “Party” means Collin County Community College District or the Program Manager individually and the term “Parties” means Collin County Community College District and the Program Manager collectively.

The Owner and Program Manager enter into this Agreement under the Collin College Request for Qualifications for Bond Project Management Services – RFQ #4027 dated January 9, 2017 (“RFQ”) for the purpose of setting forth the respective rights and obligations regarding the Services to be performed by the Program Manager in connection with the oversight, management, and construction of the Owner’s proposed 2017 Bond Capital Improvement Program and related Projects.

The Owner and the Program Manager agree as set forth below:

### **ARTICLE 1 DEFINITIONS**

The following words and phrases appearing in initial capitalization shall for the purposes of this Agreement have the following meanings:

- 1.1 Program. The Program consists of the \$600 million proposed 2017 Bond Capital Improvement Program measure that will be voted on by the voters on May 6, 2017. As set forth in this Agreement and in accordance with Attachment A (“Scope of Services”), the Program Manager will provide Services (as hereinafter defined) for a portion of Program.
- 1.2 Project; Projects. Any project and/or all of the projects listed in Attachment B of this Agreement.
- 1.3 Services. The services to be performed by the Program Manager under this Agreement for the Projects, which shall consist of the Basic Services described in Article 3 and Attachment A; any Additional Services that may be performed as described in Article 7; and as otherwise described as obligations of the Program Manager under this Agreement.
- 1.4 Basic Services. Basic Services shall consist of the Services as set forth in Attachment A and as otherwise described as obligations of the Program Manager under this Agreement, other than Additional Services, to be performed and provided by the Program Manager under this Agreement in connection with the Program.

- 1.5 Additional Services. Additional Services shall consist of the Services performed by the Program Manager in connection with the Program that are not Basic Services and that the Program Manager and the Owner agree to in writing in advance, such Additional Services being further described in and managed and administered in accordance with Article 7. All Services performed by the Program Manager will be treated as Basic Services unless the Owner specifically approves a particular service in writing, in advance of performance as an Additional Service or obligation of Owner to pay the Program Manager for the Additional Services.
- 1.6 Work. The Work is the provision by the Contractor of all services, labor, materials, supplies, and equipment that are required or reasonably inferable to complete a specific Project in strict accordance with the requirements of the Construction Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Owner and Contractor that not every detail of the Work will be shown in the Construction Contract Documents.
- 1.7 Construction Contract Documents. The Construction Contract Documents consist of the Agreement for Construction Services between Collin College and the Contractor (“Agreement for Construction Services”); the General Conditions for the Agreement for Construction Services, attached as an exhibit to the Construction Agreement (“General Conditions of the Contract”); any properly agreed amendments to the Agreement for Construction Services or the General Conditions of the Contract; all addenda issued prior to the effective date of the Agreement for Construction Services; the Project manuals developed for the construction of the Projects, or a portion thereof, by the Design Team and all documents required thereunder; and the Drawings; the Plans and Specifications developed by Design Team; the most current version of the Collin College Guidelines for Construction; the Owner’s solicitation documents for the Agreement for Construction Services, the Contractor’s proposal, the Contractor’s bonds and proof of insurance and other documents listed in the Construction Contract Documents. The Construction Contract Documents form the contract between Owner and Contractor and shall be incorporated herein upon execution. The form of the Agreement for Construction Services and the General Conditions of the Contract shall be on Collin College standard forms as adapted for the specific Projects.
- 1.8 Contractor; Contractors. A contractor is any person or entity that is procured by the Owner in accordance with Chapter 2269 of the Texas Government Code and that enters into an Agreement for Construction Services with the Owner to perform any part of the Work in connection with one or more Projects, including, without limitation, the providing of labor, materials, and equipment incorporated or to be incorporated into any Project or sub-project within the Program. The Parties acknowledge and agree that the Owner may elect to contract with one Contractor or multiple Contractors to perform Work on the Projects assigning a Contractor to a Project based on the evaluation criteria required or permitted by Applicable Law. The term “Contractor” means the Contractor or its authorized representative, but excludes the Program Manager or any member of the Design Team.

- 1.9 Design Team. The Design Team shall consist of and the term shall mean licensed professionals or firms employing such licensed professionals as required under and in accordance with the Texas Occupations Code, engaged by Owner as independent consultants for design of all or a portion of the Program and to prepare Drawings and Specifications for the construction of the Projects. More than one such professional or firm may be employed by Owner.
- 1.10 Drawings. The Drawings are the graphic and pictorial portions of the Construction Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.11 Specifications; Plans and Specifications. Plans and Specifications has the same meaning as set forth in the agreement between the Owner and the Design Team, including, without limitation, all drawings; specifications; written requirements for materials, equipment, systems, standards and workmanship for the Work and performance of related services; and instructions to Contractor.
- 1.12 Basic Services Compensation. Basic Services Compensation shall be the fee to be paid by the Owner to the Program Manager as consideration for the performance of the Basic Services by the Program Manager as set forth in and further described in Article 4., except that Program Manager agrees that should the Collin College called bond election on May 6, 2017 in the amount of \$600 million be defeated by the voters, Program Manager agrees that there will be no charge for services provided between the Effective Date and May 6, 2017 and this Agreement will be null and void in all respects.
- 1.13 Additional Services Compensation. Additional Services Compensation shall be the fees determined in accordance with Section 7.3 to be paid by the Owner to the Program Manager in consideration for the performance of Additional Services or on account of the occurrence of an event specified in Section 7.2.
- 1.14 Project Team. The Project Team consists of the Owner, Contractor, any or all members of the Design Team, the Program Manager, any separate contractors employed by Owner, and other consultants employed for the purpose of programming, design, construction, commissioning, start-up and move-in of the Projects. The constitution of the Project Team may vary at different phases of the Program. The Project Team will be designated by Owner and may be modified from time to time by Owner at its discretion.
- 1.15 Applicable Law; Applicable Laws. Applicable Law or Applicable Laws shall consist of all applicable federal, state, and local laws and ordinances, implementing regulations, executive orders, building codes, and interpreting authorities including, but not limited to, Title VI of the Civil Rights Act of 1964, as amended; Title VII of the Civil Rights Act; Age Discrimination Act of 1975 (42 USC 6101 et seq.), Non-segregated Facilities (41 CFR 60-1); Fair Labor Standards Act; Immigration Reform and Control Act of 1986; the Americans with Disabilities Act of 1990 (42 USC 12101 et seq.); the Civil Rights Act of 1991; Title IX of the Education Amendments of 1974; Section 504 of the Rehabilitation Act of 1973; Environmental Laws (as hereinafter defined); the Texas Government Code Chapters 2251, 2253, 2258, and 2269; the Texas Education Code; Texas Labor Code

Chapters 401 and 406; Texas Health and Safety Code Section 756.02; the Texas Insurance Code; the Texas Local Government Code; the Texas Civil Practices and Remedies Code; the Texas Family Code; the Texas Administrative Code; the Owner's Board policies with respect to construction, contractors, vendors, and building use.

- 1.16 Other Defined Terms. Any capitalized terms not defined in this Agreement shall have the meanings set forth in an attachment to this Agreement, the Agreement for Construction Services, and/or the General Conditions of the Contract.

## **ARTICLE 2 RELATIONSHIP OF THE PARTIES**

- 2.1 REPRESENTATIVE OF OWNER. The Program Manager shall provide the Services as set forth in this Agreement and shall be the Owner's agent and representative as described in Chapter 2269, Subchapter E of the Texas Government Code and as further described herein.
- 2.2 STANDARD OF CARE. The Program Manager will represent the best interest of the Owner and will represent the Owner in a professional manner with the utmost good faith, honesty and fairness as required by Applicable Law. The Program Manager covenants with the Owner to furnish its professional skill and judgment with due care in accordance with the generally accepted standards of construction program management practice in the same or similar locality and in accordance with Applicable Law that are applicable to the performance of the Services and which are in effect on the date of this Agreement or as may be amended during the term hereof. The Program Manager shall not be regarded as a guarantor with respect to any work product provided hereunder.
- 2.3 RELATIONSHIP WITH PROJECT TEAM. In providing Services, the Program Manager shall maintain a working relationship with the Project Team Members on behalf of the Owner and shall monitor and have oversight, in conjunction with the Owner, of the Project Team members' activities to ensure that the Projects are properly accomplished and achieve Substantial Completion (as defined in the Construction Contract Documents) in accordance with Owner's schedule. In addition to the reports and deliverables required of the Program Manager as Basic Services, the Program Manager will make periodic reports to the Owner's Board of Trustees and the Owner's Representative (as hereinafter defined) and will assist in the day-to-day management of the Program. The Program Manager personnel shall be responsible for the transfer of knowledge in all phases between the Program Manager and the Owner's Representative and other designated individuals including, but not limited to, the Owner's Vice President of Administrative Services/CFO and the Executive Director of Facilities & Construction. The Program Manager, along with the Owner's Representative, will provide guidance and coordination for the activities of the other members of the Project Team. The Program Manager will use its professional efforts to monitor the Work of other members of the Project Team in accordance with the Scope of Services set forth in Attachment A. The Program Manager shall be responsible for its own activities at each Project site or office including the safety of its employees, but shall not assume control of or responsibility for the site or office, or the safety of persons not in the Program Manager's employ or otherwise

under the Program Manager's control, such as the Professional Consultants with which the Program Manager contracts. Notwithstanding the foregoing, the Program Manager will verify that the Contractor selected for a particular Project has a safety plan in place and will notify the Owner of any violations that the Program Manger observes or of which the Program Manager reasonably should be aware. Subject to this requirement, the Program Manager shall not be responsible for construction means, methods, sequences or procedures utilized by the Contractor or the Contractor's breach of contract; or Contractor's failure to carry out safety or security in connection with the Program or the performance of the Work; inspection of the Work on the Projects (unless otherwise specified as a Basic Service in Attachment A); acts or omissions of the Design Team; or adequacy or accuracy of any part or all of the Program design.

- 2.4 ASSIGNMENT OF PROGRAM MANAGER; SUBSTITUTION OF PERSONNEL. Attached to this Agreement as Attachment D are an organizational chart and the Program Manager Team Roles, Responsibilities, and Selected Tasks Summary. The Program Manager will assign personnel to the positions set forth in Attachment D in coordination with the Owner. The Parties acknowledge and agree that the initial assignments for the following positions will consist of Luis Delgado, CCM, PMP, as the Principal in Charge; and David Dailey, CCM, LEED AP, as Program Manager. The persons assigned as Principal in Charge, Program Manager, Deputy Program Manager/Project Manager Technical Training Center, Project Manager Wylie Campus, Project Manager Farmersville Campus, Project Manager Renovations and Celina Campus, Program Documents Manager, Scheduling, Program Controls Manager, Cost Estimating, Programming Support Services, Construction Oversight/QA, and Design Manager (see Attachment D) shall not be changed except with the consent of the Owner. Subject to the foregoing, each Party may substitute duly qualified personnel for persons with substantially the same experience, knowledge, and skill to carry out that person's respective responsibilities under this Agreement.

### **ARTICLE 3 BASIC SERVICES**

- 3.1 The Program Manager, which is the entity with which the Owner is contracting under this Agreement and which includes the persons enumerated in the preamble of this Agreement and those described in Attachment D, shall perform the Basic Services set forth in this Agreement, including those set forth in Attachment A, for the Projects set forth in Attachment B, and in the time frames set forth in Attachment C. The Program Manager shall perform the Services in accordance with this Agreement and Applicable Law.

**ARTICLE 4  
COMPENSATION**

4.1 AGREEMENT TO PAY BASIC SERVICES COMPENSATION. As a dependent covenant conditioned on the performance of the Basic Services by the Program Manager in accordance with this Agreement and Applicable Law, the Owner shall pay the Program Manager any undisputed amounts owed for the Basic Services Compensation calculated in accordance with Section 4.2.

4.2 BASIC SERVICES COMPENSATION AMOUNT.

4.2.1 Calculation of Basic Services Compensation. The Basic Services Compensation shall be a total of Nine Million Six Hundred Thousand and no/100 dollars (\$9,600,000.00), paid in accordance with Attachment E. The Program Construction Budget includes the amounts budgeted for design, engineering, surveying, permitting, procurement, furniture and fixtures and installation, equipment and installation, and construction costs of the Projects as assigned to Program Manager listed in Attachment B. The Parties acknowledge that throughout the Term, the Program Construction Budget for each of the Projects may be adjusted. However, except as otherwise set forth herein, any such adjustment shall not affect the Basic Services Compensation to be paid under this Agreement.

4.2.2 Expansion or Decrease in Services. The Owner reserves the right to expand or decrease the Scope of Services and/or extend the Term and duration of Basic Services under this Agreement. Any such increase or decrease that affects the number of personnel assigned by and labor load of the Program Manager required to satisfactorily perform Basic Services will be discussed and agreed upon by the Parties in advance of the change with the Parties negotiating any corresponding upward or downward adjustment to the Basic Services Compensation. Any change agreed to by the Parties pursuant to this Section 4.2.2 or other provisions of this Agreement shall be set forth in writing and signed by both Parties as an amendment to this Agreement.

4.2.2.1 For assignment of additional phases of work the corresponding adjustment will be based on predetermined fees for those phases as set forth on Attachment F (“Schedule of Hourly Billing Rates & Pre-Established Fees for Additional Phase Assignments”). Upon assignment of additional phases of work Attachment B, Attachment D and Attachment E shall be updated to include additional assigned projects, additional staff, and an updated schedule of payments.

4.2.2.2 For an extension of the Term and duration of the Basic Services not addressed in 4.2.2.1, the corresponding adjustment will be based on the applicable hourly billable rate for the personnel set forth on Attachment F (“Schedule of Hourly Billing Rates & Pre-Established Fees for Additional Phase Assignments”).



- 4.3 **INVOICES.** The Program Manager shall submit invoices no more frequently than monthly to the Owner for payment of the Basic Services Compensation as per Attachment E and any approved Additional Services. The Program Manager shall attach to its invoices information related to the Services covered under that invoice with such information documenting the Projects on which the Program Manager worked during that period, the tasks performed during that period, and any other information the Owner reasonably may request be included on the invoices.
- 4.4 **PAYMENTS WITHHELD.** Except as otherwise specifically set forth herein, there will be no retainage held by Owner under this Agreement and no liquidated damages payable under this Agreement.
- 4.5 **PAYMENT.** The Owner shall pay all undisputed amounts invoiced and owed but not yet paid within thirty (30) days following receipt of the invoice, except that no payment shall be considered not paid when due or past due except in accordance with Chapter 2251 of the Texas Government Code (“Prompt Pay Act”). Payment of undisputed amounts that are due but not yet paid to the Program Manager and that remain unpaid for more than the period required under the Prompt Pay Act days from the date due shall bear interest at the rate permitted in Section 2251.025 of the Texas Government Code.
- 4.6 **CONDITIONS FOR BASIC SERVICES COMPENSATION.** In addition to the conditions otherwise set forth herein, the payment of the Basic Services Compensation and any increase or decrease in the Basic Services Compensation will also be subject to the conditions set forth in this Section 4.6. The Program includes the Projects described in Attachment B and the preliminary timeline set forth in Attachment C, which Projects and timeline may be adjusted through the construction of the Projects. So long as there is no material deviation in the Program, the Basic Services Compensation shall not change. If there is a material deviation, then the amount of the Basic Services Compensation shall be treated as set forth in Section 4.2.2.
- 4.7 **ADDITIONAL SERVICES COMPENSATION.** Additional Services Compensation shall be determined and paid in accordance with the provisions of Article 7 and paid in the same manner as set forth in this Agreement, including Section 4.5.
- 4.8 **CESSATION OR SUSPENSION OF SERVICES.** In the event a payment of an undisputed amount under an invoice submitted by the Program Manager for Services rendered is not paid within 30 days of the day it is past due under the Prompt Pay Act, the Program Manager shall have the right to cease or suspend all performance required under this Agreement in accordance with Section 2251.051 of the Texas Government Code or other applicable provisions of the Prompt Pay Act. Notwithstanding anything herein to the contrary, such cessation or suspension of Services by the Program Manager for the failure of the Owner to pay an undisputed amount within the time frame set forth in Applicable Law shall not be deemed a breach of this Agreement in whole or in part or the fault of the Program Manager. The decision by the Program Manager not to cease or suspend performance if there is a non-payment shall not constitute a waiver of its right to stop work as long as a non-payment condition exists. If the Program Manager ceases or suspends

performance for non-payment under this Section 4.8, the Program Manager shall not be liable to the Owner for any increase in construction or other costs, for delay in the time for completion of the Program, or for any indirect or consequential damages that may arise from the Program Manager's exercise of this right to cease or suspend performance.

- 4.9 **ADDITIONAL CONDITION FOR INCREASE IN COMPENSATION.** Notwithstanding anything in this Agreement that would result in an increase in the Basic Services Compensation, including, without limitation, Sections 4.2.2, 4.6, 4.7, or Article 7, Owner's Board of Trustees, by majority vote, is the only representative of the Owner, a Texas public community college, having the power to approve any change that would increase the Basic Services Compensation by \$50,000.00 or more in the aggregate. Upon approval by the Board of Trustees of a change that increases the amount to be paid to the Program Manager under this Agreement, any additional increase that would result in the Total Compensation (the term "Total Compensation" means the Basic Services Compensation, the Additional Services Compensation, any amount paid under the Hourly Billing Rate, or any amount otherwise owed to the Program Manager under this Agreement) being \$50,000 or more over the approved amount would require additional approval from the Board of Trustees.

## **ARTICLE 5 TERM OF THE AGREEMENT; DURATION OF BASIC SERVICES**

- 5.1 **TERM OF THE AGREEMENT; TOTAL DURATION OF BASIC SERVICES.** The term of this Agreement ("Term") shall commence on the Effective Date and expire on December 31, 2020. The duration of Basic Services under this Agreement shall be for the full Term unless extended or earlier terminated as set forth herein.
- 5.2 **EXTENSION OF THE TERM.** The Parties may agree to extend the Term in accordance with Sections 7.2, 10.3, and 11.5 of this Agreement.

## **ARTICLE 6 OWNER'S RESPONSIBILITIES**

- 6.1 **OWNER'S DECISIONS; APPROVALS.** The Owner agrees to review the information submitted by the Program Manager to the Owner and provide input or decisions as may be applicable on a timely basis in order to avoid delay in the progress of the Work and Services. The Owner shall furnish information that may be necessary for the Program Manager to perform its Services and shall provide approvals for orderly progress of the Work. If the Program Manager knows of a particular item on which a decision, information, or approval is needed from the Owner, the Program Manager shall notify the Owner of that need in writing.
- 6.2 **INFORMATION, SURVEYS, REPORTS.** The Owner shall retain separate consultants to perform environmental/hazardous material assessments and if applicable, mitigation efforts; soil and surveyor services; and structural, mechanical, chemical, electrical, conductivity, and other laboratory tests, inspections and reports as deemed necessary by the Owner.

- 6.3 NOTICE OF FAULT OR DEFECT. If the Owner's Representative obtains actual knowledge of any fault or defect in the Program, the Work on the Projects, or the nonconformance with the Construction Contract Documents, the Owner will provide to Program Manager prompt written notice of the fault, defect, or nonconformance.
- 6.4 DESIGN TEAM AGREEMENTS. The Owner shall retain and contract separately with the Design Team members for design services. Both Parties acknowledge and agree that the Owner's standard form of agreements for professionals will be used for the contracts with the Design Team members but will be amended to include specifics of the applicable Project and may be amended, if not already included, to reference the Program Manager and its role in being the Owner's agent for oversight and management of the Program.
- 6.5 PROGRAM CONSTRUCTION BUDGET. The Program Construction Budget for each of the Projects is set forth in Attachment B. The Program Construction Budget for each of the Projects is subject to amendment and adjustment during the Term.
- 6.6 CONTRACTOR AGREEMENT. The Owner shall retain and contract separately with the Contractors doing any part of the Work on the Projects, which contracts will be in accordance with the Owner's standard form of agreements for contractors. Both Parties acknowledge and agree that the Owner's standard form of agreements will be used for the agreements with the Contractors but will be amended to include specifics of the applicable Project and may be amended, if not already included, to reference the Program Manager and its role in being the Owner's agent for oversight and management of the Program.
- 6.7 CONSTRUCTION CONTRACT DOCUMENTS. Owner will provide a copy of the final, executed Construction Contract Documents to the Program Manager and will coordinate with the Program Manager the number of copies of the Construction Contract Documents that may be needed for the members of the Project Team.
- 6.8 PERMITS AND LICENSES. The Program Manager shall not be obligated to pay for any necessary permits, licenses, fees, approvals, easements, assessments, and charges required for the construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.
- 6.9 PROGRAM COMMUNICATION. The Program Manager will work with the Owner to select, procure, and oversee installation of the Project Management Communication Software, which Program Manager shall be required to utilize, and which shall become the property of the Owner.
- 6.10 OWNER'S REPRESENTATIVE. The Owner shall designate an employee to act in the Owner's behalf with respect to the Program ("Owner's Representative"). This person will be available during working hours as reasonably necessary to examine information submitted by the Program Manager, to render decisions subject to those that may require approval from the Owner's Board of Trustees, to furnish information in a timely manner, to provide assistance regarding Collin College requirements, expectations, and the Program, and otherwise serve as liaison between the Owner and the Program Manager.

The Owner is a public body and as such, the Parties acknowledge that certain decisions of the Owner may be made only by the Owner's Board of Trustees or the President or his designee, including approval for an increase in Total Compensation as set forth in Section 4.9 and execution of contracts that bind the Owner. This provision does not require the Owner's Representative to perform acts appropriately reserved for the Board of Trustees or the President or his designee.

## **ARTICLE 7 CHANGES IN SERVICES AND PROGRAM**

- 7.1 CHANGES IN THE GENERAL SCOPE OF PROGRAM. Changes, including change orders, to the Construction Contract Documents, additional services under the Design Team agreements, and changes in the general Program that do not result in a substantial deviation in the Program are to be expected, and do not result in changes to the Basic Services Compensation hereunder. When there is a substantial change to the Scope of Services, the Parties will negotiate whether such a change will require Additional Services, whether Additional Services Compensation fee may be owed, or whether a reduction in the Budget and Basic Services Compensation may occur. The Owner reserves the right to modify, by addition or reduction, the scope and duration of the Program, with an appropriate corresponding adjustment in the Basic Services Compensation, to be calculated on the basis of the value of the additional or reduced manpower and overhead required for the Program, and agreed upon by both Parties in writing as an amendment to this Agreement.
- 7.2 EXTENSION OF THE TERM, DURATION OF BASIC SERVICES AND PHASES; ADDITIONAL SERVICES. Should the Term of this Agreement be extended and/or the duration of Basic Services be extended, the Program Manager may be entitled to Additional Services Compensation in accordance with Section 4.2.2, or should the Owner request that the Program Manager perform Additional Services, the Program Manager shall be entitled to receive Additional Services Compensation pursuant to Article 7.3.
- 7.3 ADDITIONAL SERVICES COMPENSATION. The amount of Additional Services Compensation for Services that are not Basic Services shall be agreed upon between the Owner and Program Manager and set forth in a written amendment to this Agreement and executed by the Owner and the Program Manager. The amendment shall include a description of the Additional Services performed and the amount of and basis for the amount of Additional Services Compensation to be paid to the Program Manager. In the event the Parties are unable to reach agreement on the amount of Additional Services Compensation to be paid to the Program Manager, the Program Manager shall provide to the Owner a list of the Additional Services expected to be required, an estimate of the time required to perform such Additional Services, the Expenses expected to be incurred, and the Professional Consultant Costs that the Program Manager believes will be required. Then, if after reviewing the information provided by the Program Manager the Owner issues written notice to proceed, the Program Manager will proceed with the Additional Services with the Additional Services Compensation for such Additional Services being determined in accordance with Section 4.2.2.

- 7.4 EXPENSES. Owner shall not be charged any reimbursable expenses resulting from Basic Services. In connection with Additional Services, Expenses are those actually paid by the Program Manager, its employees, or the professional consultants with which the Program Manager contracts for Services to be performed on the Projects (“Professional Consultants”) that are a direct result of performing the Additional Services. No Expenses shall be chargeable to the Owner unless such costs are specifically agreed between Owner and the Program Manager prior to performance of Additional Services and if requested by Owner, the Program Manager will provide evidence of payment and other supporting documentation related to such Expenses.
- 7.5 PROFESSIONAL CONSULTANTS. As part of the Additional Services Compensation, Program Manager will include the actual costs paid to third party Professional Consultants retained by the Program Manager for such Additional Services with no markup. The Owner shall not be liable for payment to the Program Manager of any Professional Consultant Costs unless agreed to in writing by Owner prior to performance of any Additional Services.
- 7.6 PAYMENT FOR SERVICES UNDER THIS ARTICLE. The Program Manager shall submit invoices for the Additional Services Compensation, Expenses, and Professional Consultant Costs, if approved in advance in writing by Owner, which shall be paid in the same manner as set forth in Section 4.5 of this Agreement and conditioned as set forth in Section 4.1 and this Article 7.

**ARTICLE 8  
NOTICES**

8.1 NOTICES. All notices, demands, and requests and other communications required or permitted hereunder shall be in writing, shall be sent by certified mail, return receipt requested; by courier; or by electronic communications including email and telephonic facsimile and shall be deemed to be delivered (i) upon first attempted delivery if sent by mail or by courier and (ii) upon transmittal if sent by electronic communications. The Parties' respective addresses for purposes of this Agreement, and to which all notices required hereunder shall be sent, are as follows:

To Owner: Collin County Community College District  
Attn: Vice President of Administrative Services/CFO  
3452 Spur 399  
McKinney, TX 75069  
Telephone: 972.758.3831  
Email: [klynn@collin.edu](mailto:klynn@collin.edu)

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.  
Attn: Robert H. Roeder  
1700 Redbud Blvd., Suite 300  
McKinney, Texas 75069  
Facsimile No. (214) 544-4044  
Telephone: (214) 544-4003  
Email: [roeder@abernathy-law.com](mailto:roeder@abernathy-law.com)

To Program Manager: Rigo Salinas Jr.  
Vice President  
AECOM Technical Services, Inc.  
112 Pecan Street, Suite 400  
San Antonio, TX 78205  
(210) 253-7555 (Office)  
(210) 781-0024 (Cell)  
Email: [Rigo.Salinas@aecom.com](mailto:Rigo.Salinas@aecom.com)

With a copy to: Luis Delgado, CCM, PMP  
Associate Vice President  
AECOM Technical Services, Inc.  
1950 N. Stemmons Freeway, Suite 6000  
Dallas, TX 75207  
(972) 735-3032 (Office)  
(972) 809-6985 (Cell)  
Email: [Luis.delgado@aecom.com](mailto:Luis.delgado@aecom.com)

**ARTICLE 9**

## INSURANCE

9.1 Program Manager shall submit an insurance certificate evidencing the following coverage. These insurance limits are the minimum limits required.

1. Program Manager shall maintain, for the full term of Contract:

1.1. Errors and omissions insurance to be carried by technology professionals and consultants for the project with limits of at least one million dollars (\$1,000,000) single occurrence, with a deductible in an amount not to exceed the sum of twenty-five thousand Dollars (\$25,000). The project-specific insurance shall be maintained for a period of not less than one (1) year after the completion of Services to be performed under Contract. **[Because the insured's cost of defense is typically deducted from the limits, I recommend increasing the required minimum E&O coverage to \$1,500,000]**

1.2. Comprehensive or commercial general liability insurance, with limits not less than \$1,000,000 per each occurrence, combined single limit, for bodily injury and property damage. Such policy/ies shall include within its scope coverage for claims including, but not limited to:

1.2.1. damages because of bodily injury (including emotional distress), sickness, disease, or death of any person other than Program Manager's employees, or

1.2.2. damages arising from personal or advertising injury applicable to Program Manager's obligations under Contract, including liability assumed by and the indemnity and defense obligations of Contractor and subcontractors.

1.3. Comprehensive or business automobile liability insurance, with limits not less than \$1,000,000 per each occurrence, combined single limit, for bodily injury and property damage, including coverage for owned, non-owned, and hired automobiles.

1.4. Workers' Compensation, including employers' liability insurance, with limits not less than \$1,000,000 each accident, occurrence or disease. Notwithstanding the foregoing, Program Manager shall carry Worker's Compensation in the amounts and as required under Texas law.

2. General liability insurance shall be on an occurrence basis. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.

3. Insurance companies shall be legally licensed and admitted through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to the Owner.

4. Before commencement of Services under this Contract, certificates of insurance shall be furnished to the Owner, with complete copies of policies to be furnished to the District promptly upon request.
  5. Certificates of insurance shall state in particular those insured, the extent of insurance, location and operation to which the insurance applies, the expiration date, and cancellation and reduction notices. Certificates and insurance policies shall include the following clause: "This policy shall not be non-renewed, canceled, or reduced in required limits of liability or amounts of insurance until notice has been mailed to the Owner. Date of cancellation or reduction may not be less than thirty (30) days after the date of mailing notice." Each policy except worker's compensation and professional liability shall add the Owner, the Owner's employees, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them as additional insured's.
  6. Should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such annual general aggregate limit shall apply separately to the project (with the insurer's endorsement provided to the Owner) or shall be two times the occurrence limits stipulated.
  7. If Program Manager fails to maintain any required insurance, the Owner, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and to deduct the amount of the premium for such insurance from any Fees due Program Manager.
- 9.2 CERTIFICATE OF INSURANCE. Certificates and endorsements evidencing Program Manager's compliance with the insurance requirements under this Article 9 and in a form acceptable to the Owner shall be provided by the Program Manager to the Owner upon execution of the Agreement.
- 9.3 ADDITIONAL INFORMATION ON GENERAL LIABILITY INSURANCE. General liability insurance shall be on an occurrence basis. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.
- 9.4 INSURANCE COMPANIES. Insurance companies shall be legally licensed and admitted or authorized through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to the Owner.
- 9.5 ADDITIONAL INSURED. The Owner shall be added as an additional insured / loss payee on all policies required under this Article 9 except for the Workers Compensation insurance and the professional liability/ errors and omissions insurance.



- 9.6 **WAIVER OF SUBROGATION.** With respect to the coverage described in this Article 9, except for Professional Liability, whenever any loss, cost, damage or expense occurs that is a covered loss in whole or part under the Program Manager’s insurance hereunder, then the Program Manager’s insurance shall be primary and the Program Manager will cause its insurance company to waive any right of subrogation which otherwise might exist in or accrue on account thereof; provided that such release of liability and waiver of the right of subrogation shall not be operative in any case where the effect thereof is to invalidate such insurance coverage or increase the cost thereof.

**ARTICLE 10  
INDEMNIFICATION/RELEASE/DAMAGES**

- 10.1 **INDEMNIFICATION BY PROGRAM MANAGER.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE PROGRAM MANAGER AGREES TO AND HEREBY DOES INDEMNIFY AND HOLD HARMLESS THE OWNER AS WELL AS ITS TRUSTEES, EMPLOYEES, DESIGNATED AGENTS, REPRESENTATIVES, OFFICERS, DIRECTORS, FROM AND AGAINST OBLIGATIONS, DEBTS, LIABILITIES, LOSSES, DAMAGES, CLAIMS, COSTS, LAWSUITS, AND/OR JUDGMENTS (COLLECTIVELY “CLAIMS”) THAT ARISE FROM ANY NEGLIGENT ACT OR OMISSION OR BREACH BY THE PROGRAM MANAGER UNDER THIS AGREEMENT, INCLUDING ANY REASONABLE ATTORNEYS’ AND/OR ACCOUNTING FEES, AND COSTS OF COURT, INCURRED BY THE OWNER AND FOR ALL CLAIMS FOR DAMAGES TO PROPERTY OR FOR INJURY TO ANY PERSON OR PERSONS TO THE EXTENT CAUSED BY THE PROGRAM MANAGER’S WILLFUL MISCONDUCT, NEGLIGENCE (EITHER SIMPLE OR GROSS), OR FAULT. The indemnity obligations of Program Manager under this Section 10.1 shall survive expiration or earlier termination of this Agreement.
- 10.2 **ACTS AND OMISSIONS.** Notwithstanding the foregoing, the Program Manager shall not be responsible for the acts or omissions of the Owner or any Contractor, or any subcontractor or sub-subcontractor, any Design Team member, or their agents or employees, or any other persons performing any of the Work. Nothing in this Section 10.2 shall be construed to excuse the Program Manager from liability for its own negligent acts or omissions or those over whom the Program Manager has control. The Program Manager will include in its contracts with any third parties, including Professional Consultants, a provision whereby such Professional Consultant indemnifies the Owner to the same extent as Program Manager as set forth in Section 10.1.
- 10.3 **EXCUSABLE DELAY.** The Program Manager and the Owner shall not be liable to each other for any delays in the performance of their obligations and responsibilities occurring beyond their reasonable controls and/or without their fault or negligence, including, but not limited to, any of the following events or occurrences: fire, flood, earthquake, epidemic, unusually severe weather events, archaeological finds, acts of terrorism, war and strikes. If the Owner determines that the excusable delay would cause a delay in Substantial Completion of the Work on a Project and additional time is required to complete such

Work, the Parties will negotiate whether an extension of the Term of this Agreement or the performance of Additional Services would be necessary to mitigate the effects of the Excusable Delay.

- 10.4 RELEASE BY OWNER. TO THE EXTENT PERMITTED BY STATE LAW, OWNER AGREES TO RELEASE THE PROGRAM MANAGER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS FROM ALL CLAIMS, ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY CAUSED BY THE SOLE NEGLIGENCE OR INTENTIONAL ACT OF THE OWNER. The release under this Section 10.4 shall survive expiration or earlier termination of this Agreement.

## **ARTICLE 11 TERMINATION AND SUSPENSION**

- 11.1 TERMINATION FOR CONVENIENCE. This Agreement may be terminated by the Owner for its convenience, without penalty or default, upon thirty (30) days written notice to the Program Manager.
- 11.2 TERMINATION FOR CAUSE. This Agreement may be terminated by either Party due to a breach or default by the other Party. In the event that either Party believes the other Party has failed to perform or is otherwise in breach or default of this Agreement, then the aggrieved Party shall provide the Party alleged to be in default written notice specifying the breach and providing the Party a reasonable opportunity to cure the breach. Should the Party receiving the notice fail to cure the breach or substantially to perform in accordance with the terms of this Agreement within thirty (30) days of receiving such notice (provided that if the Party alleged to be in breach uses good faith efforts to cure, the other Party may extend the time to perform), then the Party alleging the breach may terminate this Agreement at the end of such thirty (30) day period.
- 11.3 EFFECTS OF TERMINATION. In the event of a termination for convenience under Article 11.1, the Owner shall pay the Program Manager the undisputed amount owed but not yet paid for the Services performed up to the date of termination and thereafter neither Party have any further rights or obligations under the Agreement. In the event of termination for cause under Section 11.2, the non-breaching Party may pursue any remedy in equity or at law that is permitted under this Agreement or Applicable Law.
- 11.4 SUSPENSION ORDERED BY OWNER. Upon written notice, the Owner may order the Program Manager to suspend, delay, or interrupt all or any part of the Services on the Program for a period of up to sixty (60) day for the convenience of the Owner or because of events beyond the control of the Owner or the Program Manager. Any time after the sixty (60) day suspension period, the Program Manager, at its sole option, may elect to terminate this Agreement or remobilize Work on the Program or that portion of the Program and resume the Services that had been suspended. The Program Manager shall restore its construction site personnel and office personnel to its former size as quickly as is reasonably feasible upon its election to remobilize. Program Manager personnel assigned to another project during the suspension period and not available to return to the Program upon the conclusion of the

suspension, delay, or interruption shall be replaced by new personnel so long as such personnel meet the qualifications set forth in Section 2.4 and are acceptable to the Owner.

11.5 SUSPENSION OF WORK FOR HAZARDOUS MATERIALS. Except in the event that Program Manager and/or its Professional Consultants are directly responsible for introducing Hazardous Materials to the site, the Program Manager and its Professional Consultants shall have no responsibility for the discovery, presence handling, removal or disposal of, or exposure of persons to Hazardous Materials considered as such under Environmental Laws. In the event the Program Manager discovers or is notified by a Contractor that there are materials that reasonably are believed to be Hazardous Materials that have not been rendered harmless and which are not part of the Work to be performed by the Contractor on the one of the Projects, the Program Manager immediately shall stop Work in the affected area and report the condition to the Owner in writing. The Work in the affected area shall resume in accordance with the Construction Contract Documents. The Owner shall not require the Program Manager to perform any Services relating to Hazardous Materials without the prior written consent of the Program Manager. In the event of any suspension, delay, or interruption of any or all of the Services provided on the Program pursuant to this Section 11.5, the Term or duration of Basic Services may be extended by a period of time corresponding to the impact such suspension has on the completion of all of the Work on the Projects if the Contractor is unable to overcome the delays on the Project or Projects so as to get the Project back on schedule and the Owner agrees to an extension of the Term and duration of Basic Services subject to approvals as set forth in this Agreement. For purposes of this Agreement, the term "Hazardous Materials" means pollutants, contaminants and other materials, substances and wastes which are hazardous, toxic, caustic, harmful or dangerous to human health or the environment, including (a) petroleum or petroleum products and polychlorinated biphenyls; (b) any flammable substances or explosives; (c) all asbestos (friable or non-friable) and lead-based paint; and (d) any substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances," "solid waste," "toxic chemicals," "toxic pollutants," "contaminants," "pollutants," under any Environmental Law. For purposes of this Agreement, the term "Environmental Law" or "Environmental Laws" mean any federal, state, or local laws, ordinances, codes, rules, regulations, judicial or administrative orders or judgments, governing, addressing, or imposing liability for use, storage, treatment, handling, disposal, or other standards of conduct with respect to or otherwise relating to (i) protection of human health, natural resources, or the environment; or (ii) manufacturing, processing, distribution, use, treatment, storage, disposal, release or threatened release, spilling, leaking, pumping, pouring, emitting, injecting, depositing, discharging, escaping, dumping, leaching or leaking of Hazardous Materials (as herein defined). Such laws shall include, but not be limited to, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9.601 et. seq.); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 69.01 et. seq.); the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Safe Drinking Water Act, and in the regulations adopted in publications promulgated pursuant to the foregoing acts.

- 11.6 EFFECT OF DELAY OR SUSPENSION. Except as otherwise set forth herein, a suspension, delay or interruption of the Services on the Program or the Work on the Projects shall not operate to terminate or void this Agreement.

## **ARTICLE 12 DISPUTE RESOLUTION**

- 12.1 NON-BINDING MEDIATION. If a dispute arises out of or relates to this Agreement, or its alleged breach, and if that dispute has not been settled through direct discussions within a reasonable period, except in the event that mediation would pose a hardship on either of the Parties or cause a Party to lose substantial rights under this Agreement or under Applicable Law, the Parties agree to mediate the dispute prior to resorting to litigation. The Parties will agree on a mediator and shall share in the expenses of mediation. Mediation shall not be subject to the American Arbitration Association rules or any similar rules or procedures except as may be agreed to by the Parties at the time of mediation. The Owner expressly rejects any binding dispute resolution except for suit through a court of competent jurisdiction.

## **ARTICLE 13 SUCCESSORS/ASSIGNMENT/THIRD PARTIES**

- 13.1 SUCCESSORS. This Agreement shall inure to the benefit of and be binding on the heirs, successors, permitted assigns, trustees and personal representatives of the Owner, as well as the permitted assigns and trustees of the Program Manager.
- 13.2 ASSIGNMENT. Neither the Owner nor the Program Manager shall assign, sublet or transfer its interest in this Agreement or any of the obligations or liabilities of that Party under this Agreement without the written consent of the other Party. Program Manager may not assign accounts receivable to a commercial bank or financial institution for securing loans without the prior approval of the Owner.
- 13.3 NO THIRD PARTY BENEFICIARIES. This Agreement is made for the sole benefit of the Owner and the Program. Nothing in this Agreement will create or be deemed to create a relationship between the Parties to this Agreement and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

## **ARTICLE 14 ADDITIONAL PROVISIONS**

- 14.1 OWNERSHIP OF DOCUMENTS AND RECORDS. All documents, Drawings, Plans and Specifications, work-product, reports, Program documents, and other documents, including any deliverables created, prepared, or compiled by the Program Manager, any member of the Design Team, and/or any Professional Consultant with whom the Program Manager has contracted in connection with the Services to be provided under this

Agreement (collectively "Work-Product") shall become the Owner's property upon proper payment for the Program Manager's Services for work already performed hereunder. To this end, Program Manager agrees to include in all agreements and contracts with Professional Consultants provisions whereby the design consultant or other person agrees to assign, grant, transfer, and convey to Owner, its successors and assigns, that person's entire right, title, interest and ownership in and to such Work Product, including, without limitation, the right to secure copyright registration and confirms that Owner shall own all right, title, interest in and to, including the right to use and reproduce, to perform publicly, and to display, all such Work Product, whether or not such Work Product constitutes a "Work Made for Hire" as defined in 17 U.S.C. § 201 (b). Upon expiration or earlier termination of this Agreement, the Program Manager shall deliver to the Owner all Work Product; return to the Owner all documents and records provided by the Owner which are in the Program Manager's possession or control; and shall deliver all Program files maintained by the Program Manager for the Program. However, the Program Manager shall be allowed to make copies of all such documents, records, information and material. Notwithstanding the foregoing, Program Manager shall bear no liability or responsibility for Work-Product that has been modified post-delivery or used for a purpose other than that for which they were prepared under this Agreement.

- 14.2 GOVERNING LAW. This Agreement shall be governed by and interpreted in accordance with the law of the State of Texas without regard to its choice of law or conflict of laws provisions. Exclusive venue of any dispute shall be in a court of competent jurisdiction in Collin County, Texas.
- 14.3 ENTIRE AGREEMENT. This Agreement, including all attachments, the Owner's RFQ, and the Program Manager's statement of qualifications dated January 19, 2017 and submitted in response to the RFQ ("RFQ Response"), represents the entire and integrated agreement between the Owner and the Program Manager and except as set forth herein supersedes all prior negotiations, representations or agreements, either written or oral. In the event of any conflict between the components of the Agreement, the documents will have the following precedence: (1) this Agreement; (2) an attachment to this Agreement; (3) the RFQ; then (4) the RFQ Response.
- 14.4 MODIFICATION OF AGREEMENT. This Agreement may be amended only by written instrument signed by both the Owner and the Program Manager.
- 14.5 SEVERABILITY. If any one or more of the provisions contained in this Agreement, for any reason, are held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 14.6 CALENDAR DAYS. Except where specifically stated otherwise, all periods of time stated in terms of days shall be considered periods calculated in calendar days.

- 14.7 HEADINGS. The headings or captions within this Agreement shall be deemed set forth in the manner presented for the purposes of reference only and shall not control or otherwise affect the information set forth therein or interpretation thereof.
- 14.8 INTERPRETATION OF CERTAIN WORDS. For the purpose of this Agreement unless the context clearly indicates otherwise, the singular includes the plural, and the plural includes the singular.
- 14.9 COUNTERPARTS; ELECTRONIC SIGNATURES AND TRANSMISSION. The Parties agree that this Agreement may be executed in identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one document; provided each of the Parties hereto executes at least one counterpart. A facsimile or other electronic signature to this Agreement shall be sufficient to prove the execution hereby by any Party. The Parties consent to the transmission of copies of this Agreement and any documents related to this Agreement by electronic means and intend that the Texas Electronics Transaction Act will apply to this transaction.
- 14.10 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY, AFFILIATES AND SUBSIDIARIES OR THEIR RESPECTIVE DIRECTORS, OFFICERS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

BY SIGNING BELOW, the Parties have executed and bound themselves to this Agreement as of the Effective Date of April 26, 2017.

Owner:  
**Collin County Community College  
 District**

Program Manager:  
**AECOM Technical Services, Inc.**

By: \_\_\_\_\_  
 H. Neil Matkin, Ed.D.  
 District President

By: \_\_\_\_\_  
 Rigo Salinas Jr.  
 Vice President