

## FINAL PAYMENT AGREEMENT

This Final Payment Agreement (“Agreement”) is made and entered into by and between the Pogue Construction Co., L.P. (“Pogue”) and Collin County Community College District (“COLLIN COLLEGE”), to be effective on the below-recited date.

### 1.0. Recitals.

1.1. A dispute has arisen between Pogue and COLLIN COLLEGE with respect to payments on a construction project by Pogue, as GMP Construction Manager, for COLLIN COLLEGE, as Owner, for the construction of a Health Science Center, Conference Center, and certain renovations (the “Project”), under that certain Standard Form of Agreement Between Owner and Construction Manager as Constructor (the “Contract”), as audited by Matson Driscoll & Damico, LLP (the “Dispute”). The Parties desire to compromise and settle all their differences and all matters in controversy between them, finally and forever, by and through the execution of this Agreement. This Agreement is subject to approval by the COLLIN COLLEGE Board, and Mark Walsh, attorney for COLLIN COLLEGE, and Neil Matkin, District President of COLLIN COLLEGE, will recommend Board approval. This Agreement and the Change Order referenced in section 2.1 below will be presented to the Board at its June 27, 2017 meeting.

### 2.0. Payment and Other Consideration.

2.1. Conditioned upon Board approval, COLLIN COLLEGE, in consideration of this settlement, and conditioned upon delivery by Pogue to Collin College of a Texas Statutory Final, Unconditional Release on the Project and Consent of Surety to Final Payment, shall pay to Pogue the sum of \$560,000 within one week of June 27, 2017, to be documented by change order closing out the Project, with language acceptable to both parties.

### 3.0. Release.

3.1. Upon completion of the obligations contained in subsections 1.1 and 2.1 above, for and in consideration of the mutual promises and covenants contained herein, Pogue Construction Co., L.P., for itself, as well as its general partners, officers, directors, managers, partners, agents, and representatives, releases and forever discharges Collin County Community College District, as well as its officers, directors, managers, partners, agents, representatives, and legal counsel, of and from any and all claims, demands, damages, actions, causes of action, liens, agreements or suits in equity, of whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to Pogue, arising out of or in any way connected with the accounting and audit of the final payment under the Contract.

3.2. Upon completion of the obligations contained in subsections 1.1 and 2.1 above, for and in consideration of the mutual promises and covenants contained herein, Collin County Community College District, for itself, as well as its officers, directors, managers, partners, agents, and representatives releases and forever discharges Pogue Construction Co., L.P., as well as its officers, directors, managers, partners, agents, representatives, and legal counsel, including of and from any and all claims, demands, damages, actions, causes of action, liens, agreements or suits in equity, of whatsoever kind or nature, whether heretofore or hereafter accruing, or whether now known or not known to COLLIN COLLEGE, arising out of or in any way connected with the accounting and audit of the final payment under the Contract. Expressly excluded from this Release are any claims and/or causes of action arising out of existing warranty obligations owed by Pogue, if any, as well as any claims arising out of presently undiscovered latent defects in the work, if any.

3.3 COLLIN COLLEGE warrants and represents that at this time it has no knowledge of any discrepancies in audits of prior projects between it and Pogue, and that Collin College has no present intention of re-auditing prior projects.

5.0. Modification.

5.1. This Agreement may not be amended or modified except in a writing signed by the party or parties to be bound thereby.

6.0. Severability.

6.1. If any term, covenant, condition or provision of this Agreement is held, in any way, to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the legality, validity, or enforceability of the remaining parts of this Agreement, and all such remaining parts hereof shall be legal, valid and enforceable and have full force and effect as if the illegal, invalid or unenforceable part had not been included.

7.0. Binding Effect.

7.1. This Agreement, and the terms, covenants, conditions, provisions, obligations, undertakings, rights and benefits hereof, shall be binding upon, and shall inure to the benefit of, the undersigned parties and their respective heirs, executors, administrators, representatives, officers, directors, shareholders, successors, agents, servants, employees, principals, partners, limited and general, and assigns.

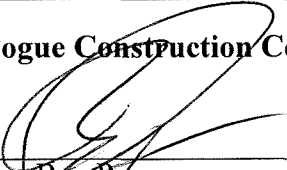
8.0 Governing Law and Venue.

8.1 This Agreement and the performance hereunder shall be construed under and in accordance with the laws of the State of Texas. Venue of any suit under this Agreement shall lie exclusively in the State District Courts of Collin County, Texas.

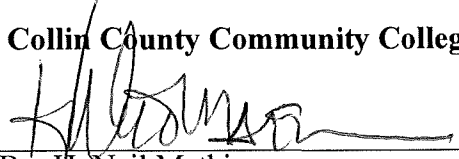
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the 5<sup>th</sup> day of June, 2017.

**AGREED AS TO FORM AND SUBSTANCE:**

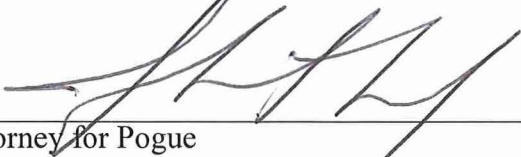
**Pogue Construction Co., L.P.**

  
\_\_\_\_\_  
By: Ben Pogue  
Its: Sole Member of its General Partner,  
Ben Pogue L.C.

**Collin County Community College District**

  
\_\_\_\_\_  
By: H. Neil Matkin  
Its: District President

**AGREED AS TO FORM:**



Attorney for Pogue



Attorney for COLLIN COLLEGE