

INTERGOVERNMENTAL PARTICIPATION AGREEMENT

This Intergovernmental Participation Agreement (this “Agreement”) is made and entered into by and between the COLLIN COUNTY COMMUNITY COLLEGE DISTRICT (“College”), and the ALLEN INDEPENDENT SCHOOL DISTRICT (“District”). College and District at times are referred to herein as a “party” or collectively as the “parties.”

RECITALS

WHEREAS, College owns that certain real property consisting of 32.016 ± acres, situated in the Thomas Phillips Survey, Abstract No. 727, and the J.W. Parsons Survey, Abstract No. 705, City of Allen, Collin County, Texas, as more particularly described in Exhibit A, attached hereto and incorporated herein for all purposes, and generally located at the northeast corner of the intersection of Ridgeview Drive and Bending Branch Way, Allen, Texas (“Property”); and

WHEREAS, College desires to construct and operate a technical educational and training facility on a portion of the Property comprised of an instructional building approximately 40,000 square feet in size (collectively, the “Facility”); and

WHEREAS, District desires to participate with College in the costs of construction of the Facility, subject to the terms and conditions of this Agreement, for their mutual benefit; and

WHEREAS, in consideration for District’s participation in the Facility, College agrees to provide the District’s students, who are enrolled in College classes, with exclusive use of and access to the Facility during District school hours of 7:30 a.m. to 4:00 p.m. during the District’s academic year, except as otherwise agreed to in writing by the Parties, in order for District’s students to obtain College-provided coursework leading to certificates and degrees, subject to the terms and conditions of this Agreement; and

WHEREAS, the parties recognize that the public interest is served by constructing, maintaining and operating the Facility for their mutual benefit and by reducing duplication of facilities, services and costs; and

WHEREAS, District has determined that participation in this Agreement is necessary in the conduct of its school activities; and

WHEREAS, the parties have investigated and determined that the taxpayers of each party are best served by the maximum utilization of the Facility and the Property; and

WHEREAS, the parties have determined their participation in this Agreement serves a public purpose; and

WHEREAS, the parties will retain public control over the funds subject to this Agreement to ensure that the public purpose is achieved; and

WHEREAS, the parties have determined that they will receive a return benefit for their participation in this Agreement; and

WHEREAS, this Agreement is an interlocal cooperation agreement authorized and governed by Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act, Section 130.0103 of the Texas Education Code and Section 45.109 of the Texas Education Code; and

WHEREAS, each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function that it is authorized to perform individually under the applicable statutes of the State of Texas; and

WHEREAS, each party agrees that any compensation to be paid to the other party under this Agreement is an amount that fairly compensates the performing Party for the services or functions described herein.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

ARTICLE 1. CONSTRUCTION OF FACILITY

1.1 Facility Construction; Plans. College shall cause the design and construction of the Facility on the Premises (hereinafter defined) in accordance with the plans and specifications mutually agreed upon by College and District. If District requests changes to the plans and specifications for the design and construction of the Facility (collectively, “Plans”), College shall make a good faith effort to comply with the District’s requests, provided that such requests do not materially alter the schedule, Plans or the estimated or actual cost of the Facility; and further provided that such requests are made prior to the conclusion of the design phase of the Facility, as determined by College. College shall have no obligation to consider District’s requests to alter the Plans made after the project has been sent out for construction bids.

1.2 Ownership of Improvements. All buildings, improvements, additions, alterations and fixtures constructed, placed or maintained on any portion of the Property on which the Facility is constructed (the “Premises”), including but not limited to the Facility (collectively, the “Improvements”), are considered part of the real property of the Premises and are the sole property of College.

1.3 Construction of the Facility by College. College shall, subject to events of force majeure, substantially complete the Facility in order for it to be ready for use in the fall of 2020.

1.4 Alterations. At any time and from time to time during the term of this Agreement, College may perform alterations, renovations, repairs, refurbishment, renovation and other work (collectively, “Alterations”) with regard to any Improvements, including the Facility, as College may elect, in its sole discretion, provided that the same are done at College’s cost.

1.5 District’s Contribution to College’s Construction Costs. Notwithstanding anything to the contrary herein, District shall pay to College a sum not to exceed twelve million and 00/100s dollars (\$12,000,000.00) to offset a portion of College’s costs of designing and constructing the

Improvements, including the Facility (the “District Contribution”). District’s Contribution shall be made in the following manner: when the College’s construction manager or architect has determined that the College has expended fifty percent (50%) of the College’s total budgeted project cost for the construction and design of the Facility, College shall submit a written copy of such determination to District, and District shall pay College a sum equal to fifty percent (50%) of the College’s total budgeted project cost for construction, up to a maximum of six million and 00/100s dollars (\$6,000,000), within thirty (30) days of receipt thereof. Upon receiving a certificate of occupancy for the Facility, College shall submit a written invoice to District for an additional sum equal to the remaining fifty percent (50%) of the College’s total budgeted project cost for the construction, up to a maximum of six million and 00/100s dollars (\$6,000,000), which shall be paid by District within thirty (30) days of receipt thereof.

ARTICLE 2. TERM, TERMINATION

2.1 Term. The term of this Agreement shall commence on the date all necessary certificates of occupancy have been issued by all governmental authorities with respect to the Facility and College begins operating the Facility (“Commencement Date”) and shall terminate on December 31 of the year following the fiftieth (50th) anniversary of the Effective Date, unless earlier terminated in accordance with the provisions of this Agreement.

2.2 Termination at End of Term. This Agreement will terminate without further notice when the term specified in Section 2.1 expires.

2.3 Termination During Term. Following the twenty-fifth (25th) anniversary of the Commencement Date, either party is entitled to terminate this Agreement for any reason or for no reason by giving the other party at least two complete school years’ prior written notice, after which the Agreement will terminate on June 30th following the second school year. In the event this Agreement is terminated under this Section 2.3 by College, then College shall, within ninety (90) days after such termination, pay to District a prorated portion of the District Contribution based on the following calculation: the amount of the District Contribution multiplied by a fraction, the numerator of which is the number of years remaining under the term of this Agreement at the time of termination and the denominator of which is fifty (50). In the event this Agreement is terminated under this Section 2.3 by District, the District shall not receive any such prorated portion of the District’s Contribution or any other compensation from College of any kind.

ARTICLE 3. USE OF PREMISES

3.1 Use of Facility. College shall use and operate the Facility in its sole discretion for College’s courses and programs. During the term of this Agreement, and subject to the terms and conditions of this Agreement, College shall provide opportunities up to the maximum capacity of the Facility, as jointly determined by College and District, for District’s high school students to concurrently enroll in College’s courses and programs offered at the Facility pursuant to Title 19, Part 1, Chapter 9, Subchapter H of the Texas Administrative Code (governing partnerships between secondary schools and public two-year colleges). College and District shall award concurrent course credit to such students. Concurrent enrollment (dual credit) allows District’s high school students to be awarded both high school and college credit for courses offered by Collin College at the Facility.

District's students may also participate in early admissions programs at the Facility for which no high school credit is given. Except as otherwise provided, this Agreement applies to concurrent enrollment for dual credit only.

3.2 Student Eligibility Requirements. The District's students also must satisfy all of College's local assessment requirements. The District's students must have permission from the District to enroll in College's courses and programs offered at the Facility. Students must provide an official copy of their high school transcript and complete all admissions forms to the satisfaction of the College.

3.3 Facility Qualifications. All instructors at the Facility shall meet the minimum requirements to teach as specified by the Commission on Colleges of the Southern Association of Colleges and Schools. The College shall select, supervise and evaluate instructors for courses which result in the award of concurrent credit at the Facility. Instructors teaching concurrent credit courses shall be required to meet the same standards, reviews and approval procedures used by the College to select all College faculty. Official transcripts of all faculty teaching at the Facility must be kept on file by the College.

3.4 Location and Student Composition of Classes. Concurrent courses may be taught at the Facility or other facilities or campuses of the College. Courses will be comprised of concurrent credit high school students only or of concurrent credit high school students and college credit students. The District's students will not be allowed to enroll in concurrent credit courses for high school credit only. Dual credit courses will follow the College's academic calendar.

3.5 Student Services. District concurrent enrollment students will have access to the College's libraries, writing centers and tutorial services located on College's campuses. Electronic library resources will be made available to concurrent enrollment students. District concurrent enrollment students will be provided with adequate support services including: assessment, admissions and academic advisement. District shall ensure that its concurrent enrollment students understand that upon enrollment they agree to abide by all the policies, procedures and decisions of the College as outlined in the then-current Student Handbook. Students with disabilities must apply for disability services, provide current documentation and be determined eligible for the accommodations at College. Not all students who qualify for modification for District's high school classes will be eligible for accommodations in College's classes. If determined eligible for academic accommodations at College, District students must request accommodations each semester. Dual credit courses offered at the Facility will be provided by College personnel.

3.6 Eligible Courses. All courses offered for concurrent course credit at the Facility will be identified as college level academic courses in the then-current edition of the Community College General Academic Course Guide Manual or as a college-level technical course in an Associate of Applied Science (AAS) degree or certificate program. College does not offer physical education courses for dual credit. All instruction and materials used in the concurrent credit course will be at the equivalent level of the instruction and materials used for identical college credit only courses.

3.7 Grading Criteria. District students will be expected to meet all requirements of the concurrent enrollment class and will receive letter grades on their College transcript. College

faculty will provide numeric grades at the end of the semester to be weighted or factored into the student's high school grade point as determined by the District. Numerical mid-term grades will be provided. Faculty members teaching concurrent courses will alert both the College liaison and the designated District counselor of any students having academic difficulty.

3.8 Transcripting of Credit. High school and college credit will be transcribed immediately by the District and College upon the students' completion of the concurrent credit course.

3.9 Funding Provisions. The state funding for concurrent credit courses will be available to both District and College based upon the then-current agreement between the Commissioner on Education and Commissioner of Higher Education. Tuition and fees will be collected from District's students unless evidence is presented documenting the student's eligibility for the reduced or free lunch program in the District. All dual credit students are responsible for purchasing their own textbooks and other required course materials.

3.10 Unpermitted Uses of the Facility. District shall not use or occupy, or permit the use or occupation of, the Premises in a manner which would (a) in any way make void or voidable any insurance then in force with respect thereto, (b) make it impossible to obtain the insurance required to be furnished by District hereunder, or (iii) violate any present or future laws, regulations, ordinances or requirements of any governmental authority. District acknowledges that College has adopted certain rules and regulations covering the use of the Premises and the conduct of persons at or on such Premises, which rules may be amended from time to time at College's sole discretion, in order to ensure the continued and uninterrupted operation of the Premises and the safety of all users. District shall notify District's students and other District-affiliated users of the Premises of the rules and regulations promulgated by College relating to such Premises. Third party users that fail to comply with the rules shall be suspended from use of the Premises until District and College receive written assurances the rules will be followed in the future, and both parties mutually agree that the suspension from use will be lifted.

3.11 Annual Meeting. Authorized representatives of the parties shall meet in person at least once each year of the term of this Agreement to discuss the operation of the Facility.

ARTICLE 4. MAINTENANCE

4.1 Maintenance. From and after the Commencement Date, College shall maintain the Premises and all the Improvements constructed or installed on the Premises, including, without limitation, the Facility, in a clean, safe and operable condition, and in accordance with the College's usual and customary maintenance schedules and maintenance standards for College's facilities similar to the Facility.

4.2 Capital Expenditures. College shall be responsible for all costs associated with the maintenance and operation of the Premises, including all capital maintenance, improvements, renovations and replacements deemed necessary by College in its sole discretion (collectively, "Capital Expenditures").

4.3 Damage or Destruction. If any Improvement constructed on the Premises is damaged or destroyed by fire or any other casualty during the term of this Agreement, regardless of the extent of the damage or destruction, College shall have the right, but not the obligation, to restore and reconstruct the Improvement or terminate this Agreement by giving written notice to District within one hundred eighty (180) days after the date of damage or casualty. If College elects to terminate this Agreement under this Section, the parties shall have no further rights, duties or obligations under this Agreement, except that College shall be required to pay to District a prorated portion of the District Contribution based on the following calculation: the amount of the District Contribution multiplied by a fraction, the numerator of which is the number of years remaining under the term of this Agreement at the time of termination and the denominator of which is fifty (50). If College elects not to terminate this Agreement under this Section, College shall at its sole cost and expense repair, replace, restore and reconstruct (collectively, the “Restoration”) the Improvements to substantially the condition that existed prior to the occurrence of such casualty. College shall, subject to events of force majeure, pursue such Restoration with reasonable diligence and complete such Restoration within a reasonable period of time thereafter.

ARTICLE 5. INSURANCE AND IMMUNITY

5.1 District Insurance. During the term of this Agreement, District shall, at its sole expense, obtain and maintain the following insurance with reputable insurance companies authorized to transact business in the State of Texas, protecting College and District: (i) workers’ compensation insurance providing statutory coverage under the laws of the State of Texas for all persons employed by District in connection with its activities on the Premises; (ii) employer’s liability insurance with limits of liability for injury by accident or disease of \$1,000,000 for all persons employed by District in connection with its activities on the Premises; (iii) commercial general liability insurance, with a broad form commercial liability endorsement, written on an “occurrence basis” for death, bodily injury and property damage occurring upon, in or about or arising out of or connected with the condition or use of the Premises, with coverage limits not less than \$2,000,000 combined single limit; and (iii) business automobile insurance with limits of liability not less than \$1,000,000 per accident. On or before the Commencement Date, District shall deliver to College a certificate of insurance and all associated endorsements evidencing such insurance coverage, and shall thereafter deliver certificates of insurance and all associated endorsements showing renewal or replacement of such coverage to College not less than thirty (30) days prior to the expiration of the insurance coverage. Each policy described in subsections (ii) and (iii) of Section 5.1 shall name College as an additional insured.

5.2 Application of Proceeds of Property Insurance. All proceeds payable pursuant to the provision of any policies of property insurance required to be carried under the terms of this Agreement (net of reasonable expenses of collection) shall be applied for the following purposes:

- (a) All such net proceeds shall first be used, subject to any other terms and conditions contained in this Agreement, as a fund for the rebuilding, restoration and repair of the portion of the Premises which have become destroyed or damaged for which such proceeds are payable; and

(b) Following completion of all work under subsection (a) above, any proceeds not disbursed pursuant to subsection (a) above shall be retained by College to be available for Capital Expenditures to the Premises.

5.3 Immunity and Defense. This Agreement does not create any liability to third parties for College or District. No joint enterprise is intended by the parties. College does not assume any liability and expressly denies liability for use of the Premises by District, District's students and third-parties. Both College and District retain all immunity and defenses from suit.

5.4 Non-liability of College. Neither College nor its agents, servants, or employees shall be liable for any loss or damage to persons or property resulting from fire, explosion, falling plaster, steam, gas, electricity, rain, or water from any source or any other cause whatsoever. Except as expressly provided in this Agreement to the contrary, College shall not be liable to District, its agents, servants, employees, contractors, customers or invitees for any damage to person or property caused by any act, omission or neglect of District, its agents, servants or employees or of any other District of the premises for which the Premises are a part or of such District's agents, servants, employees, contractors, customers or invitees. College and its agents, servants, and employees shall not be liable to District for any injury to person or damage to property caused by the Premises becoming out of repair or by defect or failure of any structural element of the Premises or of any equipment, pipes or wiring, or broken glass, or by the backing up of drains, or by gas, water, steam, electricity or oil leaking, escaping or flowing into the Premises.

ARTICLE 6. DEFAULT AND REMEDIES

6.1 District Default and College Remedies. District shall be in default in the event of any material breach by District of any covenant or terms under this Agreement and such breach has not been cured within thirty (30) days from and after the date written notice of such breach is given by College to District ("Event of Default"); provided, however, that no Event of Default shall exist if District shall have commenced to remove or to cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach (provided such breach must be cured within sixty (60) days after such notice). Upon the occurrence and during the continuance of an Event of Default, College shall have all remedies available to College at law or in equity; including, without limitation, termination, injunction and specific performance. All remedies of College under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any Event of Default shall not be deemed to be a waiver of such remedy or any subsequent Event of Default.

6.2 College Default and District Remedies. In the event of any material breach by College of any covenant or term under this Agreement, District shall have the right to deliver to College a written notice specifying such breach, and unless within thirty (30) days from and after the date of delivery of such notice College shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within sixty (60) days after such notice), then District shall have all remedies available to it at law or in equity; including,

without limitation, termination, injunction and specific performance. All remedies of District under this Agreement shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of any subsequent event of default.

ARTICLE 7. ASSIGNMENT

7.1 Assignment by District. District may not assign or otherwise transfer this Agreement or any right or interest in this Agreement without the written consent of College, which may be withheld or denied by College in its sole and absolute discretion.

7.2 Assignment by College. College may not assign or otherwise transfer this Agreement or any right or interest in this Agreement without the written consent of District, which may be withheld or denied by District in its sole and absolute discretion.

ARTICLE 8. MISCELLANEOUS

8.1 Notices and Addresses. All notices required under this Agreement must be given by certified mail or registered mail, addressed to the proper party, at the following addresses:

College: Collin County Community College District
3452 Spur 399
McKinney, TX 75069
Attn: Chief Financial Officer

District: Allen Independent School District
612 East Bethany Drive
Allen, TX 75002
Attn: Superintendent

Either party may change the address to which notices are to be sent it by giving the other party notice of the new address in the manner provided in this section.

8.2 Parties Bound. This Agreement shall be binding upon, and inure to the benefit of, the parties to this Agreement and their respective heirs, executors, administrators, legal representatives, successors, and assigns when permitted by this Agreement.

8.3 Governing Law/Venue. The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.

8.4 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any

other provision of the Agreement, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included in the Agreement.

8.5 Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties to the Agreement and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.

8.6 Amendment. No amendment, modification, or alteration of the terms of this Agreement shall be binding unless it is in writing, dated subsequent to the date of this Agreement, and duly executed by the parties to this Agreement.

8.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

8.8 Attorney's Fees and Costs. If, as a result of a breach of this Agreement by either party, the other party employs an attorney or attorneys to enforce its rights under this Agreement, then the breaching party agrees to pay the other party the reasonable attorney's fees and costs incurred to enforce this Agreement.

8.9 Force Majeure. Neither College nor District shall be required to perform any term, condition, or covenant in this Agreement so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions by any governmental authority, civil riots, floods, and any other cause not reasonably within the control of College or District and which by the exercise of due diligence College or District is unable, wholly or in part, to prevent or overcome.

8.10 Time of Essence. Time is of the essence of this Agreement.

8.11 Immunity. The parties acknowledge and agree that, in executing and performing this Agreement, the parties have not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.

8.12 Commissions. Each party hereby warrants and represents to the other party that it has not dealt with any broker in the negotiation of this Agreement.

8.13 No Third Parties Benefitted. The terms and provisions of this Agreement are for the sole benefit of District and College, and no third party is intended to benefit here from.

8.14 District's Joinder. District agrees to join with College in the execution of such applications for permits and licenses from any governmental authority as may be reasonably necessary or appropriate to effectuate the intents and purposes of this Agreement.

8.15 Authority to Execute. The individuals executing this Agreement on behalf of the respective parties below represent to each and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding Agreement on the party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date (hereinafter defined).

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

COLLEGE:

COLLIN COUNTY COMMUNITY COLLEGE
DISTRICT

By: _____
H. NEIL MATKIN, Ed.D., District President
Date: _____

ATTEST:

Name: _____
Title: _____
Date: _____

DISTRICT:

ALLEN INDEPENDENT SCHOOL DISTRICT

By: _____
SCOTT NIVEN, Ed.D., Superintendent
Date: _____

ATTEST:

Name: _____
Title: _____
Date: _____

Exhibit A
Legal Description of the Property