

PROFESSIONAL SERVICES CONSULTING CONTRACT

This Professional Services Consulting Contract ("Contract") is made by and between Collin County Community College District, a public community college district organized under Chapter 130 of the Texas Education Code and political subdivision of the State of Texas, whose main office address is at 3452 Spur 399, McKinney, Texas 75069, ("Collin" or "College") and Toni P. Jenkins, LLC, whose address is 6518 Festival Lane, Frisco, TX 75034 ("Contractor"), effective as of January 3, 2018 ("Effective Date"). As used herein the term "Party" shall mean the College or the Contractor individually and the term "Parties" shall mean the College and the Contractor collectively.

RECITALS

1. **WHEREAS**, the College desires to contract for professional and consulting services to include those responsibilities set forth in the Contract Deliverables Addendum attached to this Contract and other services as may be described in this Contract, or may be requested by the College from time to time shall be referred to herein as "Services"; and

1.1 **WHEREAS**, the Services to be performed by the Contractor shall be considered the project under this Contract ("Project"); and

1.2 **WHEREAS**, the College estimates that the Services will be on-going during the Term (as hereinafter defined); and

1.3 **WHEREAS**, Contractor has demonstrated competence and the requisite qualifications to perform and complete the Services as required under this Contract based on work performed as a higher education administrator, knowledge of the community, and demonstrated continuous and progressive complex successes; and

1.4 **WHEREAS**, Contractor desires to and has agreed to perform the requested Services; and

1.5 **WHEREAS**, the College finds that it is a public purpose to procure such Services and enter into this Contract.

1.6 **NOW THEREFORE**, for the mutual covenants and promises and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the College and Contractor, agree to the following:

TERMS AND CONDITIONS OF CONTRACT

2. SERVICES AND PROGRESS REPORTS

2.1 General Purpose; Services. The Contractor shall provide the consulting and professional services necessary to assist Collin College in planning and start-up activities for facility and program expansion outlined in the Collin College Master Plan and as described in the Contract Deliverables Addendum all in accordance with and under the terms and conditions set forth in this Contract.

2.2 Standards of Performance. The Contractor shall perform and complete the Services to the satisfaction of the College. The Contractor shall allocate adequate time and resources as necessary to perform the Services. The Contractor shall review or has reviewed the College's strategic goals and has discussed with the District Executive Vice President the objectives for the Project and specific requirements of the Contract. The Contractor shall diligently perform all Services under this Contract and shall coordinate its work under the Contract with the timelines and expectations for targets and goals of the College. The Contractor represents that all Services shall be of a professional quality. Notwithstanding anything contained in this Contract to the contrary, the Contractor shall determine the means and methods of performing the Services and the allocation of time required to perform the Services. The Parties acknowledge and agree that some of the Services will be performed at the offices or other facilities of the College and some will be performed at the offices of the Contractor.

2.3 Professional Services. The Contractor shall use professional efforts, skill, judgment, and abilities in performing the Services that are similar to those of similarly credentialed educational administrators in the locale where the College's main office is located. The Contractor agrees and acknowledges that the College is entering this Contract in reliance on the Contractor's ability to provide professional advice, opinions, efforts, skill, judgment, and abilities in performing the Services under this Contract.

2.4 College Representative. The College designates the District Executive Vice President as the contact person for the College ("College Representative"). The Contractor shall devise and execute the plan to provide the Services in collaboration with the College Representative. The College Representative shall have the authority to determine whether the Services rendered by the Contractor are satisfactory in accordance with Sections 2 and 5.

2.5 Contractor Representative. The Contractor designates Toni P. Jenkins to serve as Project Team Leader ("Project Leader") to monitor the progress of Services and oversee timely and satisfactory delivery of the Services. The Contractor shall not change the Project Leader without receiving prior written approval from the College.

2.6 Reports. The Project Leader shall provide to the College Representative written monthly progress reports outlining the Services performed and completed during the prior month. The progress reports shall include a description of the Services performed during the reporting month. The Parties will agree on the timing of the monthly progress reports.

3. **EVALUATION OF SERVICES**

3.1 Periodic Review. The College Representative will periodically evaluate the Services performed by the Contractor to determine if such Services meet the standards expected by the College. In the event that the College is not satisfied that the Contractor has performed the Services in an acceptable manner and/or that such Services do not meet the standards required by the College and/or that the Work Product (as hereinafter defined) does not meet the expectations of the College, the College will notify the Contractor in writing of such determination with specifics on the deficiencies observed and determined and the Contractor shall have thirty (30) days to remedy and cure the deficiencies identified by the College in the notice. If after such 30-day period or any

additional time agreed upon by the Parties, the Contractor has not cured the deficiencies or improved its performance, the College shall have the right to: (a) require the Contractor to re-perform any unsatisfactory or non-conforming Services at no cost to the College; or (b) terminate the Contract, with no further obligations for either Party hereunder except for the obligation to pay any Fees (as hereinafter defined) attributable to Services that were satisfactorily performed, but not yet paid.

4. **BOARD APPROVAL; CHANGE IN SERVICES**

4.1 The Board, by majority vote, is the only representative of the College having the authority to approve material changes in the scope of Services, to authorize any change in this Contract that would result in an increase in the total monthly Fee of \$10,000.00 during the contract period.

5. **TERM; RENEWAL; TERMINATION**

5.1 Term. The term of this Contract shall be from **January 3, 2018** through **December 31, 2018** ("Term") unless renewed or earlier terminated as set forth herein.

5.2 Termination.

(a) Termination for Convenience. This Contract may be terminated for convenience by either Party with or without cause upon thirty (30) days prior written notice to the other Party. In the event of termination without cause, except for the obligation of the College to pay the Contractor any undisputed amounts not previously paid for Services actually and satisfactorily performed up to the effective date of termination, neither Party shall have any further rights or obligations under the Contract after such date.

(b) Termination for Non-Appropriation. The term of this Contract is contingent upon the availability of appropriated funds. The College shall have the right to terminate the Contract at the end of the current fiscal year if the Board does not allocate funds for the next fiscal year to continue the Contract. The College fiscal year begins on September 1 and ends on August 31. In the event that the Board does not allocate funds for the next fiscal year, the College will provide written notice to the Contractor within ten (10) days prior to the end of the current fiscal year or as soon as possible after the action taken by the Board. Termination under this Section will occur at the end of the current fiscal year for which funds were allocated, shall be without penalty, and upon the effective date of termination, except for the obligation of the College to pay the Contractor any undisputed amounts not previously paid for Services actually and satisfactorily performed up to the date of termination. Neither Party shall have any further rights or obligations under the Contract after such date.

(c) Termination for Breach. This Contract may be terminated by either Party in the event of breach of this Contract by the other Party. A breach occurs when a Party fails to perform its obligations under this Contract or fails to comply with the terms of this Contract. In the event of a breach, the Party claiming such breach shall provide the other Party with written notice of such breach setting forth the basis for such claim of breach. The breaching Party shall have thirty (30) days from the receipt of the notice of breach to cure such breach. If the breaching Party fails to cure the breach

within thirty (30) days of receipt of the notice, the aggrieved Party shall have the right to terminate the Contract immediately and pursue any remedies available under law for breach of contract.

6. COMPENSATION: FEES

6.1 Fee. As consideration for the Services provided by the Contractor, during the Term, the College will pay the Contractor a fixed fee of \$10,000.00 per month for each month Contractor performs Services under this Contract. Compensation in the amount set forth herein for Services performed under this Contract is referred to herein as "Fee". The Fee will be billed to the College monthly in the manner described in Section 6.3 and paid by the College in accordance with Section 6.4. The total Fee for the entire Term of the Contract shall not exceed One Hundred Twenty Thousand Dollars (\$120,000.00) ("Anticipated Fee"); except that the Anticipated Fee may be less than \$120,000.00 in the event that the Contractor in consultation with the College determines that the anticipated number of months of Services are not required to meet the goals and objectives of the Project, that factors beyond the control of either Party affect the number of months that may be devoted to performing Services, the Contract is terminated earlier than the end of the Term as may be permitted hereunder, or any other condition or provision of this Contract that affects the number of months of Services to be performed or the Fee.

6.2 Expenses. The College shall not be liable to the Contractor for any costs and expenses paid or incurred by Contractor in performing the Services for the College under this Contract, except as follows: If in the opinion of the College and the Contractor and as mutually agreed by the Parties, it would be beneficial and necessary for the Contractor to travel outside of Collin County, Texas, and the College's service area, which includes Rockwall and portions of Denton Counties, in its performance of the Services, the College shall reimburse the Contractor for its reasonable out-of-pocket costs incurred in connection therewith and as specifically authorized in advance by the College.

6.3 Invoices. On or before the 10th day of each month during the Term, the Contractor shall send an Invoice (as hereinafter defined) for the Fee for the past month's Services and out-of-pocket expenses (as applicable) to the College Representative for review. The Invoice shall include (either on the invoice or as an attachment) a detailed description of Services performed during that Fee period and any other information requested by the College (the invoice showing the Fee owed and all attachments and descriptions and other information to be included with the submittal of the invoice collectively shall be referred to herein as "Invoice").

6.4 Manner of Payment. Upon receipt of the Invoice, the College Representative shall review same and if he/she agrees that the Services have been performed in a satisfactory manner, the Invoice shall be processed for payment. The Fee or applicable undisputed portion thereof shall be paid within thirty (30) days from receipt of the Invoice. If Services or Work Product has not met the satisfactory approval of the College Representative, current and future payments of the Fee shall not be made until both Parties agree that Services have been completed in a satisfactory manner. Notwithstanding anything contained herein, no payment of amounts owed hereunder shall be considered past due or not paid when due except in accordance with Section 2251.021 of the Texas Government Code.

7. **APPLICABLE LAW**

7.1 The Contractor agrees to perform the Services in compliance with all applicable federal, state, and local laws, implementing regulations, executive orders, 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; the Age Discrimination Act of 1975; the Americans with Disabilities Act; The Family Educational Rights and Privacy Act of 1974; the Texas Government Code; the Texas Local Government Code; and all applicable College policies and procedures ("Applicable Laws" or "Applicable Law").

8. **RECORDS AND RECORDKEEPING**

8.1 The Parties shall comply with all Applicable Laws regarding Project records including, but not limited to, the Family Educational and Privacy Rights Act ("FERPA"); the Texas Public Information Act ("PIA"); and the Texas Records Retention laws ("RR laws").

8.2 All working papers, records and reports either generated, prepared, assembled, or maintained by the Contractor in relation to the Project become the sole property of the College.

9. **CONFIDENTIALITY**

9.1 As used herein, Confidential Information shall mean all information that is disclosed by either Party ("disclosing Party") to the other Party ("receiving Party"), including without limitation, trade secrets; know how; business and product plans; student information; marketing information and other confidential or proprietary business information, including all information relating to either Party's governing board, and their respective clients, customers, and employees. Confidential Information shall not include information which (a) is information already known by or in the possession of the receiving Party and which was acquired in a lawful manner other than subject to any ongoing obligation of confidentiality already in the recipient Party's possession at the time of disclosure thereof; (b) is information which is now or hereafter becomes a part of the public domain through no wrongful act or omission of the receiving Party or those acting in concert with the receiving Party or later becomes part of the public domain through no fault of the recipient Party; (c) is information lawfully received, without ongoing obligation of confidentiality, from a third party who is free to disclose such information without having any obligation of confidentiality to the disclosing Party; (d) is information which the receiving Party can show predates disclosure thereof by the disclosing Party or had been independently developed entirely without reference to confidential information received from the disclosing Party independently developed by the recipient Party; or (e) is disclosed pursuant to any judicial or governmental order, required by law or regulation to be disclosed, including, but not limited to, the PIA, provided that, to the extent permitted by law, the receiving Party gives the disclosing Party sufficient prior notice to contest such order.

9.2 Each Party will use reasonable efforts to prevent the disclosure of the other Party's Confidential Information to third parties, but in no event shall those efforts be less than those employed by that Party to protect its own confidential information of like kind. Except as may be required by law, the receiving Party's obligation shall be for a period of

three (3) years from receipt of the Confidential Information or such other time period as set forth in the RR Laws.

9.3 The provisions of this Section 9 survive the expiration of the Term or earlier termination of this Contract.

10. **DISCLOSURE OF CERTAIN INFORMATION**

10.1 To the extent that the Contractor comes into possession of student educational records and/or any personally identifiable information of a student incidental to its Services under this Contract, Contractor agrees to comply with all requirements of the FERPA and shall not disclose any such information to a third party.

10.2 In the event that the College is required to furnish information or records pursuant to the PIA, Contractor shall furnish all such information and records to the College and the College shall have the right to disclose such information and records.

10.3 The provisions of this Section 10 survive the expiration of the Term or earlier termination of this Contract.

11. **INTELLECTUAL PROPERTY**

11.1 This Contract is a work-for-hire in which Contractor provides Services to the College. Any deliverables, designs, implementation, know how, or any other intangibles prepared, designed, or produced by the Contractor in performing the Services under this Contract ("Work Product") shall be owned by the College; except that Work Product shall not include (a) those created by Contractor prior to the Effective Date; (b) derivative works based on work, documents, or designs created by Contractor prior to the Effective Date; (c) works created by third parties and derivative work based on work by third parties; and/ or (d) Project work papers prepared or created by the Contractor. The Contractor shall not own or claim a copyright or any other form of intellectual property right in the Work Product.

11.2 The provisions of this Section 11 survive the expiration of the Term or earlier termination of this Contract.

12. **NOTIFICATION OF CRIMINAL HISTORY**

12.1 Contractor must give prior written notice to the College if the Contractor, or any owner, or operator of Contractor, or any employee who will be performing Services under this Contract has been convicted of a felony. The notice required hereunder shall include a general description of the criminal offense.

12.2 The College has the right to terminate this Contract immediately if it determines that Contractor has failed to give the notice required under Section 12.1.

13. **TAXES; INDEBTEDNESS**

13.1 Contractor must not be delinquent in any taxes owed to the College, including, any ad valorem taxes or other indebtedness. Delinquent taxes or other indebtedness shall be considered a breach of this Contract.

14. **RELATIONSHIP OF THE PARTIES**

14.1 Nothing herein will be construed to create a partnership or joint venture by or between the College and the Contractor. Neither party will be the agent of another except to the extent otherwise specifically provided by this Contract. The Contractor does not have either the express or implied authority, will in any case represent to third parties, and will whenever needed disclaim to such parties, any ability to bind the College to any duty imposed by contract, unless the Board has specifically authorized such action at a Board meeting held in accordance with the Texas Open Meetings Act (appearing in minutes of such meeting).

14.2 The Contractor shall be solely responsible for the wages, benefits, and other compensation of its personnel, including the withholding and payment of employment taxes (income tax and social security), worker's compensation, disability, and any similar taxes, benefits, and expenses associated with employment.

14.3 The Parties acknowledge that the Contractor has and may enter into contracts with other clients and may provide services similar to the Services provided hereunder to other clients so long as no legal conflict exists.

15. **CONFLICTS OF INTEREST**

15.1 The Contractor warrants, represents, and covenants that it presently has no interest and will not acquire any interest, direct or indirect which would conflict in any manner or degree with the performance of its Services hereunder. The Contractor further warrants, represents, and covenants that, in performing this Contract, it will employ no person who has any such interest.

15.2 The Contractor shall comply with the obligations of Texas Local Government Code Chapter 176 and any other applicable law regarding conflicts of interest.

16. **DEBARMENT**

16.1 The Contractor warrants, represents, and covenants that it is not listed on the General Services Administration's List of Parties Excluded from Federal Procurement and is not otherwise debarred, suspended, or excluded by state or federal agencies or declared ineligible for government contracting under statutory or regulatory authority.

17. **NOTICE**

17.1 All notices and other communications required by the terms of this Contract will be in writing and sent to the Parties hereto at the addresses set forth below (and such addresses may be changed upon proper notice to such addressees in the manner as set forth herein). Unless otherwise agreed in writing by the receiving party, notice may be given by: (i) certified or registered mail, postage prepaid, return receipt requested; (ii) reputable overnight carrier, postage prepaid; (iii) electronic mail; or (iv) personal delivery (with written receipt confirming such delivery). Notice will be deemed to have been given (i) two business or school days (any date on which the College is officially open for business) after mailing; (ii) the next day after deposited for overnight

delivery; (iii) on the date of transmission of electronic mail; and (iv) on the date of personal delivery. The addresses of the Parties for such notices shall be:

Contractor: **Toni P. Jenkins, LLC**
6518 Festival Lane
Frisco, TX 75034
214-908-3249
Electronic Mail: toni.p.jenkins@gmail.com

College: **Collin County Community College District**
Attn: District Executive Vice President
3452 Spur 399
McKinney, TX 75069
972-758-3809
Electronic Mail: bkihl@collin.edu

18. **NO ASSIGNMENT**

18.1 Neither this Contract nor any duties or obligations hereunder shall be assignable by either Party without the prior written consent of the other Party.

19. **NO WAIVER OF IMMUNITY**

19.1 Nothing contained in this Contract nor the execution of this Contract, or the performance of any obligation hereunder shall operate to or be deemed to waive any immunity or defense any College trustee, officer, employee, volunteer, representative, or agent may be entitled under law.

20. **NO WAIVER OF BREACH**

20.1 No waiver of a breach of any provision of this Contract shall be construed to be a waiver of any breach of any other provision or be deemed to constitute a continuing waiver of same. No delay in acting with regard to any breach and any provision shall be construed to be a waiver of such breach or requirement that such obligation be performed.

21. **SEVERABILITY OF PROVISIONS**

21.1 If any term or provision of this Contract is deemed invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

22. **GOVERNING LAW**

22.1 This Contract and the rights and obligations arising hereunder shall be governed by, construed and enforced in accordance with the laws of the State of Texas without regard to the conflicts or choice of law principles thereof.

23. **JURISDICTION; VENUE**

23.1 The Parties irrevocably and unconditionally consent to the jurisdiction of the State of Texas, and agree that any court of competent jurisdiction located in Collin County, Texas, shall be an appropriate and convenient place of venue, and shall be the sole and exclusive place of venue, to resolve any dispute with respect to this Contract.

24. **AUTHORIZATION**

24.1 Each Party represents and warrants to the other that the execution of this Contract has been duly authorized, and that this Contract constitutes a valid and enforceable obligation of such Party according to its terms.

25. **NO THIRD-PARTY RIGHTS**

25.1 This Contract is made for the sole benefit of the College and Contractor and their respective successors and permitted assigns. Nothing in this Contract shall create or be deemed to create a relationship between the Parties to this Contract and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.

26. **HEADINGS AND CAPTIONS**

26.1 The headings and captions appearing in this Contract have been included only for convenience and shall not affect or be taken into account in the interpretation of this Contract.

27. **COUNTERPARTS; ELECTRONIC SIGNATURES AND TRANSMISSION**

27.1 It is understood and agreed that this Contract 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. A facsimile or other electronic signature to this Contract shall be sufficient to prove the execution hereby by any Party. The Parties consent to the transmission of copies of this Contract and any documents related to this Contract by electronic means and intend that the Texas Electronics Transaction Act will apply to this transaction.

28. **AMENDMENTS**

28.1 Any amendment to the Contract must be in writing and signed by both Parties. No waiver, alteration or modification of any of the provisions of this Contract shall be binding on any Party unless in writing and signed by the Party against whom enforcement of such waiver, alteration, or modification is sought.

29. **EXHIBIT**

29.1 The attached exhibit is annexed to this Contract and incorporated herein for all purposes:

Contract Deliverables Addendum

30. **ENTIRE AGREEMENT**

30.1 This Contract, including the Recitals and any exhibits or addenda that are incorporated into this Contract, supersedes all prior contracts, agreements, and discussions, whether verbal or written, relating to the subject matter contemplated under this Contract and constitutes the entire agreement between the College and the Contractor with regard to these matters.

IN WITNESS WHEREOF, the Parties have executed this Contract effective as of the Effective Date:

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT

By: _____
Dr. H. Neil Matkin
District President

TONI P. JENKINS, LLC

By: _____
Toni P. Jenkins

Contract Deliverables Addendum

- I. Provide consulting and professional services to assist Collin College in planning and start-up activities for the Collin Technical Center, as needed. Consulting and professional services may include, but are not limited to:
 - a. Researching required equipment, space, partnerships, and other programmatic needs for the new programs being considered for the Collin Technical Center.
 - b. Identifying and consulting with industry representatives on specific training needs, program outcomes, and certification expectations.
 - c. Researching and reviewing similar programs at other institutions, as needed, regarding strengths, challenges, and other issues to consider.
 - d. Facilitating the curriculum development and approval process with industry representatives and Collin College faculty and staff.
 - e. Determine the potential for establishing apprenticeship programs.
 - f. Explore partnerships and grant opportunities that are financially beneficial to the college and technical programs.
 - g. Complete ROI modeling for technical programs and advise the college regarding fees, costs, and staffing.
 - h. Collaborating with Collin College employees and architects to incorporate all program and student service needs into the Collin Technical Center.
 - i. Facilitate the transition of program development, facility planning, and partnership development to Collin College faculty, staff, and administrators.

- II. Provide consulting and professional services to assist Collin College in planning and start-up activities for the Wylie Campus, Farmersville Center, and Celina Center, as needed. Consulting and professional services may include, but are not limited to:
 - a. Researching required equipment, space, partnerships, and other programmatic needs for the new academic and workforce programs being considered for facilities in Wylie, Farmersville and Celina.
 - b. Consulting with Collin College faculty and deans to identify facility needs for programs and student services planned for implementation at the new campus and centers.
 - c. Researching innovative and interactive campus designs for consideration at new facilities.
 - d. Developing a five year cost estimate and staffing plan for campus and center start-up.