CITY OF McKINNEY, TEXAS

Agenda

City Council Work Session

Monday, May 2, 2016 | **5:30 PM** | **Council Chambers, 222 N. Tennessee Street, McKinney, Texas 75069**

CALL TO ORDER

DISCUSS REGULAR MEETING AGENDA ITEMS

WORK SESSION ITEMS

16-449 Discuss an Amendment to the Interlocal Agreement for the Construction and Use of a Public Safety Training Facility Between the City of McKinney and Collin County Community College District

Attachments: Amended and Restated ILA-Redline
Amended and Restated ILA

16-450 Discuss Potential Naming of the All-Abilities Playground

Attachments: Municipal Facility Naming Policy
PROS Board Role in Naming Parks

16-451 Regional Mobility Planning, Specifically Related to Major Projects in Collin County

Attachments: Commissioners Court Memo and Info
Letter from RTC
McKinney Thoroughfare Plan (2015)
Mobility 2040 Project Maps
Presentation

16-453 Performance Management Program Review

Attachments: Presentation

COUNCIL LIAISON UPDATES

EXECUTIVE SESSION

In Accordance with the Texas Government Code:

A. Section 551.071 (2). Consultation with City Attorney on any Work Session, Special or Regular Session agenda item requiring confidential, attorney/client advice necessitated by the deliberation or discussion of said items (as needed) and legal consultation on the following item(s), if any:
- Texas Tax Code Sec. 11.13
- Policy on Board and Commission Member Appointment and Eligibility

B. Section 551.072. Deliberations about Real Property
- A portion of Lots 30a 30b 31c 34e, Block 4 of the McKinney Original Donation, City of McKinney

C. Section 551.074 Discuss Personnel Matters
- City Manager Transition

D. Section 551.087 – Discuss Economic Development Matters
- Project A99 – UV
- Project A132 – Expense
- Project A139 – Destination
- Project A140 - Rest

ACTION ON EXECUTIVE SESSION

ADJOURN

Posted in accordance with the Texas Government Code, Chapter 551, on the 29th day of April, 2016 at or before 5:00 p.m.

_____
Sandy Hart, TRMC, MMC
City Secretary

Accommodations and modifications for people with disabilities are available upon request. Requests should be made as far in advance as possible, but no less than 48 hours prior to the meeting. Call 972-547-2694 or email contact-adacompliance@mckinneytexas.org with questions or for accommodations.

16-449

TITLE: Discuss an Amendment to the Interlocal Agreement for the Construction and Use of a Public Safety Training Facility Between the City of McKinney and Collin County Community College District

COUNCIL GOAL: Safe and Secure Community

MEETING DATE: May 3, 2016

DEPARTMENT: Public Safety

CONTACT: Police Chief Greg Conley
Fire Chief Danny Kistner

RECOMMENDED CITY COUNCIL ACTION: Discuss and provide direction.

ITEM SUMMARY:

- This agreement amends the existing Interlocal Agreement between the City and Collin College for the construction and use of a public safety training facility.

- The only changes for the Fire Department identifies a separate "flashover" chamber and dedicates two offices at the facility to Fire Department staff.

- The Police Department has been added to the agreement to include:
    - For an additional payment of $1,500,000 by the City to the College, the College will grant access to the law enforcement portion of the training facility as follows:
        - 800 training hours for City's law enforcement personnel.
        - Up to 1,200 additional training hours for City's law enforcement personnel will be provided on weekends and/or between the hours of 11 p.m. and 6 a.m.
        - The Facility will include 2 office spaces for the dedicated use of the City's law enforcement administrators.
        - The Facility will include a separate, lockable armory of steel cage construction with a minimum of 150 square feet exclusively

for use of City's law enforcement training program.

- The Facility shall include a tactical simulation village and force simulator; law enforcement defensive tactics room; indoor shooting range consisting of a minimum of 15 lanes that are 50 yards in length and 10 lanes that are 100 yards in length; classrooms and administrative areas; an apparatus bay with indoor training spaces; restrooms and showers; outdoor classroom.

- The burn tower improvements may be used for K-9 and other police training.

- An addition to the amendment includes an agreement that the City of Allen may be admitted as a party to the Agreement for law enforcement training under substantially the same training terms as the City, and that no other parties may be admitted to the Agreement without the express written consent of the College and the City.

BACKGROUND INFORMATION:

- On June 16, 2015, the City Council approved an Interlocal Agreement with Collin County Community College District for the construction and use of a Public Safety Training Facility.
- The lack of a Fire Department training facility was the basis of the original agreement and to provide access to local training facility in order to remain prepared, to meet requirements and maintain the current ISO level.

FINANCIAL SUMMARY:

- The additional $1,500,000 will be funded out of bond proceeds from the 2015 authorization.

BOARD OR COMMISSION RECOMMENDATION: N/A

SUPPORTING MATERIALS:

Amended and Restated ILA-Redline
Amended and Restated ILA

AMENDED AND RESTATED INTERLOCAL AGREEMENT

CITY OF McKINNEY, TEXAS
and
COLLIN COUNTY COMMUNITY COLLEGE DISTRICT
for the
CONSTRUCTION AND USE
of a
PUBLIC SAFETY TRAINING FACILITY

This Amended and Restated Interlocal Agreement for the Construction and Use of a Public Safety Training Facility (the "**Agreement**") is entered into between the City of McKinney (the "**City**") and the Collin County Community College District (the "**College**") (collectively the "**Parties**" or "**parties**" or individually referred to as the "**Party**" or "**party**") and this Agreement shall be effective as of June 17, 2015~~on the date it is executed by all Parties hereto~~ ("**Effective Date**").

R E C I T A L S

WHEREAS, the Parties agree to construct and operate a Public Safety Training Facility (the "**Facility**") comprised of an indoor virtual firearms training center for optimized tactical training; law enforcement defensive tactics room; indoor shooting range consisting of a minimum of 15 lanes that are 50 yards in length and 10 lanes that are 100 yards in length; classrooms and administrative areas; an apparatus bay with indoor training spaces; restrooms and showers; outdoor classroom; a minimum of four (4) outdoor, live fire training structures with 1 burn tower having at least 4 stories; a stand-alone flash over chamber; landscaping; parking and support facilities~~comprised of an indoor, virtual firearms training center known as a shoot house for optimized tactical training (the "**S.H.O.T.T. House**"), two (2) outdoor, live fire training structures (the "**Burn Towers**") with one (1) burn tower having at least four (4) stories, and associated classrooms, landscaping, parking, and support facilities~~ in McKinney, Texas for their mutual benefit in the manner described below; and

WHEREAS, the City agrees to allow the College to design, construct, and operate the Facility on an approximate twenty-five acre tract of real property owned by the City, described on **Exhibit A** attached hereto and incorporated herein (the "**Land**"); and

WHEREAS, the Parties agree to cooperate in the financing of the construction of the Facility; and

WHEREAS, the Parties have each adopted a resolution supporting the construction and operation of the Facility to assist in the ongoing education and training of law enforcement personnel and firefighters in the region; and

WHEREAS, this Agreement is an interlocal agreement authorized and governed by Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act; 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/or (as applicable) its home rule charter; and

WHEREAS, each Party agrees that any compensation to be paid to the other Party described in this Agreement is an amount that fairly compensates the performing Party for the services or functions described herein, and such compensation shall be paid from current revenues available to the paying Party; and.

WHEREAS, the Parties executed that one certain Interlocal Agreement for the Construction and Use of a Public Safety Training Facility effective June 17, 2015 (the "Original Agreement"); and

WHEREAS, the Parties desire to modify the Original Agreement primarily to address the use of the Facility by McKinney law enforcement employees, and including related matters.

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

Term of the Agreement

1.1 **Effective Date Defined**. June 17, 2015 shall beThe date upon which the last of the Parties executes this Agreement is referred to as the "**Effective Date**" of the Agreement.

1.2 **Initial Due Diligence Term**. The "**Initial Due Diligence Term**" shall mean the period of time commencing with the Effective Date and ending on the earlier of (i) the day College receives all required site plan approvals and building permits or (ii) the one hundred eightieth (180^{th}) day following the Effective Date.

1.3 **Original Term**. The "**Original Term**" shall mean the period of time commencing on the day immediately following the Delivery Date and ending at midnight (McKinney, Texas time) on the date which is fifty (50) years following the Rent Commencement Date.

1.4 **Delivery Date.** The **"Delivery Date"** shall mean the date after the expiration of the Initial Due Diligence Term on which City delivers the Premises to College, including substantial completion of all utilities and roadwork described as the responsibility of the City in Articles 3 and 6 below (the **"City Work"**), which shall in no event be later than one hundred eighty (180) days after the last day of the Initial Due Diligence Term (the "**Delivery Deadline**"), subject to

College Delay (hereinafter defined). "**College Delay**" means any act or omission of College or its agents, employees, vendors or contractors that delays the substantial completion of the City Work, including: (i) College's failure to furnish information or approvals within any time period specified in this Agreement; or (ii) written changes requested or made by College to the City Work, and approved by the City.

1.5 **Renewal Terms**. This Agreement will automatically renew for a term following the Original Term, unless a Party expressly declines the automatic renewal in writing. The duration of the renewal term shall be for a period of five (5) years (each of which is referred to as a "**Renewal Term**"). Each renewal shall be upon the same terms and conditions as this Agreement, including Base Rent, except as modified by subsequent written agreements between the Parties, and shall continue thereafter until such time as any of the Parties explicitly determine not to renew this Agreement. A Party may decline to automatically renew this Agreement at any time during or after the Original Term, provided that such Party notifies the other Party in writing of its intent to decline automatic renewal at least one-hundred eighty days (180) prior to the automatic renewal date.

1.6 **Term**. The Initial Due Diligence Term, Original Term and any Renewal Term, if applicable, are referred to herein collectively as the "**Term**" or "**term**".

ARTICLE 2

Initial Due Diligence Term

2.1 **Inspections and Approvals**. During the Initial Due Diligence Term, College shall have the right to conduct soil, engineering, environmental and other tests with regard to the Land; investigate the applicable governmental requirements relating to signage and construction of improvements on the Land, the availability of necessary permits and licenses relating to signage and construction of any improvements; investigate the condition of title to the Land; and determine generally the desirability and utility of the Land for College's purposes. At all times during the Initial Due Diligence Term, College shall have access to the Land to conduct such tests, inspections, and investigations. Upon its receipt thereof during the Due Diligence Period, College shall deliver all environmental tests and reports to the City. College shall have the right, at any time during the Initial Due Diligence Term, to terminate this Agreement by delivery of written notice to City, in which event any Rent paid to City shall be returned to College by City, and the parties shall have no further rights or obligations to the other; provided, however, the College promptly shall repair and restore all damage to the Land and the property adjacent to the Land to its condition before the Due Diligence Term. If College does not deliver written notice to City of its election to terminate this Agreement prior to the expiration of the due Initial Diligence Term, the conditions of this Section shall be deemed to have been fully satisfied, and College may not thereafter terminate this Agreement pursuant to this Section, except as provided in Section ~~Article~~ 7.7.

ARTICLE 3

Roads and Utilities

3.1 **Roads and Utilities**.

(a) **City's Off-Site Construction Obligations**. On or before the Delivery Deadline, City shall construct at City's sole cost and expense all public roads, median cuts, and curb cuts depicted on **Exhibit B**, attached hereto and made a part hereof, in accordance with City's ordinances (collectively, the "**City's Off-Site Work**").

(b) **City's Utilities Obligations**. On or before the Delivery Deadline, City, at its sole cost and expense, construct and install the following utilities to the leasehold line as designated by the College being: water, fire hydrants, storm and sanitary sewer. The City shall dedicate the necessary easements for access thereto required for the Facility and College's intended use of the Land (collectively, the "**City's Utilities Obligations**") as depicted on **Exhibit B**. City shall maintain and repair all city-owned utility lines and connections to the farthest point of: a) the point of meter connection or b) to the leasehold line, as applicable, during the entire Term of this Agreement and such maintenance and repair obligation are included in City's Utilities Obligations. All other utilities and maintenance shall be the obligation of others. **City's Off-Site Work** and **City's Utilities Obligations** shall collectively be referred to as **"City's Work"**.

(c) **College's Utilities Obligations**. Except as set forth in Section~~Article~~ 3.1(b), College shall, at its sole cost and expense, connect utility services brought to the Land by the City, and shall pay all charges for gas, electricity, telephone, and other utilities supplied to the Premises. The College is responsible for payment of all water, sewer service, electricity, telephone and other utilities charged against, or in connection with, the Premises.

ARTICLE 4

Lease of Land

4.1 **Lease of the Land**. In consideration of the rents, covenants, agreements and conditions set out below, City leases to College, and College rents and leases from City, the Land, together with all of City's rights, interests, estates and appurtenances thereto, all improvements thereon and all other rights, titles, interests and estates, if any, of the City in adjacent non-public streets and roads.

4.2 **Premises Defined**. The Land and the rights, interests, estates and appurtenances leased to College pursuant to Section~~Article~~ 4.1, together with all improvements now or hereafter constructed thereon, are collectively referred to as the "**Premises**" or land, said Premises being more particularly described in **Exhibit A**.

4.3 **Permitted Uses of the Premises**. The College may use the premises for public safety training. The words "public safety" shall mean police, fire and EMS employees, participants in courses or programs related to public safety or students in curricula seeking a degree or

certification in public safety employment. The parties agree the Facility is a fire and police training facility that constitutes use of the premises for public safety training. If improvements in addition to the Facility are constructed by the College, which improvements shall be constructed in accordance with the Construction Standards, the College and City agree to discuss whether the City will have access to and use of the improvements and if so, upon what terms and conditions.

4.4 **Habendum**. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging, exclusively unto College, its successors and assigns, for the Term set forth in Article 1, subject to termination as provided, and subject to and upon the covenants, agreements, terms, provisions and limitations set out below.

ARTICLE 5

Rent

5.1 **Rent Commencement Date Defined**. "**Rent Commencement Date**" shall mean the date which is the earliest of (i) 12 months following the Delivery Date, or (ii) the date the College opens the Premises for training. The aforementioned 12-month period shall be extended one (1) day for each day past the sixtieth (60^{th}) day following the Delivery Deadline that the City Work is not completed.

5.2 **Base Rent**. During the Original Term and each Renewal Term of this Agreement, as the same may be extended, College shall pay rent of $10.00 per year ("**Base Rent**") to City. The Base Rent for the entire term of this Agreement or any portion thereof may be prepaid in full or in part at College's sole discretion.

5.3 **Additional Rent and Rent Defined**. The term "**Additional Rent**" shall mean all amounts required to be paid by College under the terms of this Agreement other than Base Rent. The term "**Rent**" shall mean Base Rent and Additional Rent.

ARTICLE 6

City's Warranties and Covenants

6.1 **Warranties of Title**. City warrants and represents to College that, as of the Effective Date, City has fee simple title to the Land and that City has full right, power and authority to enter into this Agreement. City further warrants that, to City's knowledge, (i) no construction has been performed on the Land during the six (6) month period prior to the execution of this Agreement for which there are unpaid bills, and (ii) there are no mortgages or other liens affecting the Land which are superior to this Agreement or which could result in the termination of this Agreement.

6.2 **City's Construction, Repair, and Maintenance Obligations.** All work included in the City's Off-Site Work and the City's Utilities Obligations as depicted on **Exhibit B** will be performed at City's sole cost and expense in accordance with Article 3 and shall be substantially complete on or before the Delivery Deadline, in accordance with all applicable laws. All maintenance and repair obligations included in the City's Off-Site Work and the City's Utilities Obligations shall be promptly performed at City's sole cost and expense in accordance with all applicable laws. Notwithstanding the foregoing, in the event the City Work is not completed prior to the Delivery Deadline, despite City's good faith efforts to complete same by such date, City may complete such work following the Delivery Deadline, but in no event more than sixty (60) days thereafter.

6.3 **Dedications and Easements**. In order to develop the Land with the Improvements, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines and other easements, dedications and similar rights be granted to third-party utility or service providers or dedicated over or within portions of the Land by grant, deed or other appropriate instrument. The City shall be responsible to timely obtain the execution and delivery of such documents, in recordable form, prior to the Delivery Deadline, as may be reasonably appropriate, necessary or required by any governmental authority, public utility or service provider for the purpose of granting such easements and dedications. College shall have the right to review and approve any and all documents regarding declarations, development and easements affecting the Premises, or any portion thereof. The Land shall not require platting.

ARTICLE 7

Construction

7.1 **Construction of New Improvements**. College shall have the right, from time to time and at any time, at its sole cost and risk except as otherwise expressly provided in this Agreement, subject to the subsequent provisions of this Section, to demolish and remove any improvements or portions of improvements situated upon the Land as of the Effective Date hereof, to construct replacement improvements for improvements so removed, and to construct, remove and reconstruct any new improvements so long as such improvements are related to public safety training uses of the Premises and the College obtains all necessary permits and approvals for such demolition, construction or reconstruction. Any improvements constructed by College on the Land shall be constructed in accordance with the Construction Standards (defined in Section 7.3). "**Improvements**" shall mean any buildings, structures, signage or other improvements installed or constructed upon the Land by College.

7.2 **Alterations**. At any time and from time to time during the Term, College may perform such alteration, renovation, repair, refurbishment and other work with regard to any Improvements as College may elect, provided that the same is done in accordance with the Construction Standards and provided the same are done at College's cost except as expressly set forth otherwise in this Agreement.

7.3 **Construction Standards and Liens**.

(a) **Standards**. Any Improvements shall be constructed, and any alteration, renovation, repair, refurbishment or other work with regard thereto shall be performed, in accordance with the following standards ("**Construction Standards**"):

(1) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question.

(2) Except as expressly set forth otherwise herein, all such construction or work shall be done at College's sole cost and expense in compliance with all applicable building codes, and ordinances of the City.

(3) No construction or work shall be commenced until all licenses, permits, inspections, and authorizations required by the City are obtained. City agrees to cooperate in good faith with College with respect to any such licenses, permits, inspections, and authorizations required by the City.

(4) College shall have obtained and shall maintain in force and effect the insurance coverage required in Article 9.

(5) After commencement, such construction or work shall be pursued with due diligence to its completion.

(6) Except as otherwise provided in this Agreement, College shall pay for all costs incurred by College in constructing the alterations and Improvements, including but not limited to, all building permit and inspection fees; however expressly excluding impact fees.

(7) College shall, at its expense, be responsible for compliance with the Americans with Disabilities Act and any other law pertaining to disabilities and architectural barriers (collectively, "**ADA**") in the Premises.

(b) **College's Signage**. College shall, at College's sole cost and expense, have the right to construct, install, maintain, repair and replace signs on the Premises, in accordance with all applicable laws, regulations and restrictions.

(c) **Mechanic's and Materialmen's Liens**. College shall have no right, authority or power to bind City or any interest of City in the Premises for any claim for labor or for material or for any other charge or expense incurred in constructing any Improvements or performing any alteration, renovation, repair, refurbishment or other work with regard thereto, nor to render City's interest in the Premises liable for any lien or right of lien for any labor, materials or other charge or expense incurred in connection therewith. College shall not be considered the agent of City in the construction, erection or operation of any such Improvements. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Premises are filed, College shall fully discharge the lien in the manner prescribed by the applicable lien Law.

7.4 **College's Equipment Defined**. The term "**College's Equipment**" means all trade fixtures and personal property, including, without limitation, furnishings, furniture, equipment, computers, computer related equipment on property, and other equipment or property useful to College in its operations, and, in certain circumstances, vaults, for use in connection with the conduct of College's use of the Premises regardless of the manner in which they are installed.

7.5 **Ownership and Removal of College's Equipment**. College's Equipment shall be solely the property of College. Within sixty (60) days following the expiration or termination of the Term, College shall have the obligation to remove all College's Equipment from the Premises except as otherwise permitted by City. College shall repair any damage caused by such removal. If College fails to remove all College's Equipment within such sixty (60) day period, City, at its option, may (i) remove College's equipment and, in addition to any other right or remedy of City, charge College for all costs incurred in the removal of such and the repair of damage, and College shall pay such costs to City within thirty (30) days after receipt of an invoice from City for such costs, or (ii) deem all or any part of College's Equipment remaining on the Premises to be abandoned, and title to such remaining portions of the College's Equipment shall be deemed to be immediately vested in City without any credit or compensation to College.

7.6 **Ownership of Improvements**. During the Term, all Improvements shall be solely the property of College. Upon expiration or termination of the Term, the Improvements (excluding College's Equipment) shall revert to and become the property of City.

7.7 **Creation and Review of Plans and Specifications.** Within three hundred thirty (330) days following the Effective Date, after discussion with, and/or input from the City on preliminary plan development, College shall, at its sole cost and expense, submit to City for its review preliminary plans and specifications, together with a site plan, utility plan and building elevations ("**Preliminary Plans**") in the format required by applicable City ordinances, depicting the Improvements. The Improvements depicted on the Preliminary Plans shall include the improvements necessary for the Facility and shall, at a minimum, include the items depicted in the conceptual plan depicted on **Exhibit C**, which are attached hereto and incorporated herein. Within thirty (30) days after its receipt of the Preliminary Plans, City shall give College written notice of any changes it requests. If City does not provide College with a written response within thirty (30) days, the Preliminary Plans shall be deemed approved, and the City shall be deemed to have requested no changes. If City requests changes to the Preliminary Plans, City shall clearly specify its suggested changes in its notice. College will attempt to implement changes requested by City to materially conform the Preliminary Plans to the items depicted on **Exhibit C** and shall make reasonable efforts to implement any additional changes to the Preliminary Plans reasonably requested by City; provided, however, College shall have no obligation to make any such additional changes, even if reasonable, if such additional changes constitute a material variance to the design of the Improvements as shown in the Preliminary Plans or any such additional changes that College reasonably believes will cause the College to exceed its budgeted costs for the construction of the Improvements. If College makes any of the changes proposed by the City, College shall resubmit the revised Preliminary Plans within thirty (30) days following receipt of City's written requests for changes thereto. Thereafter, College shall prepare the final plans and specifications ("**Final Plans**") in accordance with the

Preliminary Plans and the Construction Standards and make application to all applicable governmental authorities for all approvals and permits required to construct the Improvements in accordance with the Final Plans. If College is unable to obtain any such required approvals or permits or is unable to obtain any such approvals or permits without changes which constitute a material variance to the design of the Improvements from the Final Plans, College shall have the right to terminate this Agreement, in which event the parties shall have no further rights, duties or obligations hereunder. City has reviewed and approved **Exhibit C** and agrees that City shall not request any change which would cause a deviation from **Exhibit C**, unless City pays for the full construction cost of such change and unless such changes result in Improvements that are related to emergency services training uses of the Premises and the College is willing to use and manage such additional Improvements. Notwithstanding the foregoing, any changes to the Final Plans required by the City to obtain compliance with the Construction Standards shall not constitute City's request for a deviation from **Exhibit C**. City agrees that should the City desire the Facility to include any such Improvements beyond those described or depicted on **Exhibit C**, College will not construct such additional Improvements unless City pays the full construction costs for the same in a manner and on a timeline acceptable to the College.

7.8 **Construction of the Improvements by College.** College shall substantially ~~complete the~~complete the Improvements necessary to operate the Facility within thirty (30) months following the Delivery Date, subject to Force Majeure (as defined in **Article 16** below). The College warrants that it has committed funds in the amount of $11,285,000.00 as primary construction funds for the Facility to be used for design, construction and certification of the Facility.

7.9 **City's Contribution to Tenant's Construction Costs.** Notwithstanding anything to the contrary herein, City shall reimburse College for one-third (1/3) of the College's design and construction costs for the Improvements; however, such reimbursement shall not exceed the sum of $2,200,000. When the College's construction manager or architect has determined that the College has expended 50% of the College's total budgeted project cost for construction and design of the Improvements depicted on **Exhibit C**, College shall submit a written copy of such determination to City, and City shall pay College $1,100,000 within thirty (30) days of receipt. Upon receiving a certificate of occupancy for the Facility, College shall submit a written invoice to the City for an additional $1,100,000, which shall be paid by City within thirty (30) days of receipt. The City warrants that it has appropriated and committed funds in the amount of $2,200,000 for the reimbursement of the College's expenses in designing and constructing the Improvements. In addition to the foregoing payments and simultaneously therewith, the City shall make two (2) additional payments of $750,000 each ($1,500,000 in the aggregate) as consideration for the City's law enforcement training hours described in Section 8.3 below.

ARTICLE 8

Use, Maintenance and Repairs

8.1 **Use**. Subject to the terms and provisions hereof, College shall have the right to use and enjoy the Premises as primarily a fire and firearm training and educational facility (including through credit and non-credit courses) for its students and patrons as well as the public at large, including City personnel, and for any lawful purpose. College shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by College hereunder, or (iii) violate any present or future laws, regulations, ordinances or requirements of any governmental authority.

8.2 **Maintenance and Repairs**. Subject to College's rights under **Article 7,** College shall maintain all of the Improvements on the Premises, make all repairs thereto, interior and exterior, structural and nonstructural. College will not do, knowingly permit or suffer any waste, damages, disfigurement or injury to or upon the Premises or any part thereof, but this Section shall not be construed as limiting College's rights under **Article 7**. The City shall maintain and keep, or cause to be maintained and kept, the utility lines, roadways, sidewalks, and any other improvements that City is required to install as part of **City's Work** as depicted on **Exhibit B** or that City requests to be installed by College at City's expense, in good order, repair and condition at all times. The City shall have no obligation to repair any other Improvements.

8.3 **Use of the Facility by the City**. As part of the consideration provided to the City in exchange for its obligations hereunder, the College shall grant the City non-exclusive access to the Facility free of charge (rather than at the rates the College charges to other users) except for charges for reimbursement of the College's costs for the Facility's supplies that are expended while under use by the City. In addition to the foregoing, the Facility will include two (2) office spaces for the dedicated use of the City's Fire administrators, two (2) office spaces for the dedicated use of the City's law enforcement administrators, and a separate, lockable armory of steel cage construction with a minimum of 150 square feet exclusively for use of City's law enforcement training program. City's use and scheduling of the Facility shall be sufficient to allow for 1,000 hours of training annually by the City's fire department. For purposes of this Section, "hours" shall mean actual time allocated to training the City's employees at any component structure at the Facility (burn tower, emergency services training center, outdoor classroom, etc.), irrespective of how many City employees are occupying the Facility, or any component thereof. As such, "hours" shall not be calculated as "man-hours" or hours multiplied by the number of employees present and utilizing the Facility. Concurrent use of separate components of the Facility shall be aggregated in the calculation of hours. For example, if 20 firefighters are in the emergency services training center classroom for 3 hours and 5 firefighters are concurrently training on the burn tower during the same 3 hour period, the City's use shall be calculated at 6 hours. The City may provide its own training to its personnel during its use of the Facility. However, should the City desire the College to provide City any training services during the City's use of the Facility, City shall reimburse the College for the College's cost to provide such services. In conjunction with the foregoing, the burn tower may also be used for K-9 and other police training, however, fire training will take precedence in the event of a conflict and no chemical irritants will be utilized in the burn structures. The College shall regularly deliver to the City an itemized invoice for the reimbursement of the College's costs for any training services provided and the Facility's supplies expended while under use by the City. The City

shall pay College the amount indicated in each of such invoices within thirty (30) days after receipt thereof. In addition to the City's fire department use as described above, the College shall provide to the City's law enforcement personnel and employees access to the law enforcement portion of the training facility as follows:

a. 800 training hours for City's law enforcement personnel, such quantity of training hours to be determined in the same manner as the City's fire training hours under this Section 8.3;

b. Up to 1200 additional training hours for City's law enforcement personnel will be provided on weekends and/or between the hours of 11 p.m. and 6 a.m. This training must be scheduled with the College in advance.

8.4 **Scheduling of the Facility**. During the Term of the Agreement, the College shall establish from time to time, but at least annually, a schedule for the College's use of the Facility for credit and non-credit courses offered by the College. –Once the College's schedule is established, the City and College shall promptly work together to establish a schedule for the City's use of the Facility so long as such schedule is not in conflict with the College's schedule. Following the establishment of the City's scheduled use of the Facility, or in the absence of the City's scheduled use of the Facility, the College shall schedule use of the Facility for the public, which use by the public may include use by members of the public and the City on a first-come first-serve basis. Use of the Facility, whether by the College, the City, or the public, shall only be at times when the College's staff or designee is present at the Facility. College and City agree that the City of Allen may be added as a party to the Agreement for law enforcement training only under substantially the same law enforcement training terms, including payments as described in Section 7.9, as the City. No other parties may be added as a party to the Agreement without the express written consent of the College and the City. The foregoing limitation on added parties shall in no way interfere, impede or prevent the College from charging rental fees for use of the Facility to persons other than the City as scheduling permits. In a like manner, should a potential city partner be located that is able to bring substantial value to the Facility, such partner may be added to this Agreement upon written consent of the College and City.

ARTICLE 9

Insurance

9.1 **City's Insurance**. City shall maintain during this Agreement, commercial general liability insurance, with limits of not less than $1,000,000 per occurrence, $2,000,000 aggregate, for bodily injury, personal injury and property damage, and all-risk property damage insurance at full replacement cost covering the improvements for which the City installed or maintains as part of the City's Work.

9.2 **College's Insurance**. College shall maintain during this Agreement, commercial general liability insurance, with limits of not less than $1,000,000 per occurrence, $2,000,000 aggregate, for bodily injury, personal injury and property damage, with the City as an additional insured, and all-risk property damage insurance covering the Improvements and any Alterations at full replacement cost.

ARTICLE 10

Casualty Loss

10.1 **College's Rights**. Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty, College shall have the right to restore and reconstruct the Improvements or terminate this Agreement, by giving written notice to City within one hundred eighty (180) days after the date of damage or casualty. If College elects to terminate this Agreement under this Section, College shall at the request of City, cause the Improvements to be razed and the Land to be leveled, cleaned and otherwise put in good order. Thereafter, the parties shall have no further rights, duties or obligations under this Agreement. If College elects not to terminate this Agreement under this Section, College shall repair, replace, restore and reconstruct any Improvements, all in compliance with the Construction Standards. Should any of the improvements installed by the City as part of the City Work be wholly or partially destroyed or damaged by fire or other casualty, and none of the Improvements installed by College are destroyed or damaged, then City shall promptly repair, replace, restore and reconstruct all of such improvements in accordance with the Construction Standards. Should any of the improvements installed by the City as part of the City Work be wholly or partially destroyed or damaged by fire or other casualty and some or all Improvements installed by College are also so destroyed or damaged, then City shall promptly repair, replace, restore and reconstruct all of such improvements in accordance with the Construction Standards unless the College elects to terminate this Agreement as set forth in the foregoing provisions of this Section.

10.2 **Notice of Damage**. College shall promptly notify City of any destruction or damage to the Premises.

ARTICLE 11

Condemnation

11.1 **Total Taking**. Should the entire Premises be taken (which term, as used in this Article, shall include any conveyance in avoidance or settlement of eminent domain, condemnation or other similar proceedings) by any governmental authority, corporation or other entity under the right of eminent domain, condemnation or similar right, other than City or College, then College's right of possession under this Agreement shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award, (ii) second, to College in an amount equal to the cost or value of the Improvements (whichever is greater), less the value of City's reversionary interest in those Improvements (calculated as if this Agreement terminates on the expiration of the Original Term and not following any or all renewal terms) and (iii) the balance of the award shall be equitably apportioned between City and College based on the then respective fair market values of City's interest in the Premises (appraised by reference to all relevant factors including the income stream derivable by City under this Agreement and the then present value of City's reversionary interest in the entire Premises after expiration of the Original Term) and College's interest in the Premises (appraised by reference to all relevant factors, including College's moving expenses and the income stream

derivable by College from the Premises for the remainder of the Original Term). After the determination and distribution of the condemnation award as herein provided, the Agreement shall terminate, and the parties shall have no further rights, duties or obligations under the Agreement. The parties agree that neither party will condemn the Premises, in whole or in part, temporary or permanent.

11.2 **Partial Taking**. Should a portion of the Premises be taken by any governmental authority, corporation or other entity under the right of eminent domain, condemnation or similar right, other than City or College such that (i) the Improvements shall be so taken as to make it commercially unreasonably for College to use the remainder for the use and purposes contemplated hereby, or (ii) so much of the Premises shall be so taken as to cause College's available parking spaces to be less than those required by any governmental authority, or (iii) any reasonably necessary access to the Premises is taken, then College may elect to terminate this Agreement as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section~~Article~~ 11.1. Should any other partial taking of the Premises occur, then this Agreement nevertheless shall continue in effect as to the Premises, or the remainder thereof, as the case may be.

11.3 **Award on Partial Taking**. In the event of a partial taking where this Agreement is not terminated, and as a result thereof College will need to restore, repair or refurbish the remainder of the Premises in order to put them in a usable condition, then (i) the award shall first be paid to College for payment of such restoration, repair and refurbishment in accordance with the Construction Standards and (ii) the remainder shall be apportioned and paid as provided in (i) and (iii) of Section~~Article~~ 11.1, considering the respective interests of City and College in the portion of the Premises taken. If a portion of the Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned and paid as provided in (i) and (iii) of Section~~Article~~ 11.1, considering the respective interests of City and College in the portion of the Premises taken.

11.4 **Temporary Taking**. If the whole or any portion of the Premises is taken for temporary use or occupancy, the Term shall not be reduced or affected, and College shall continue to pay the Rent in full. Except to the extent College is prevented from so doing pursuant to the terms of the order of the condemning authority, College shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Agreement. In the event of any temporary taking, College shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to City therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between City and College as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

11.5 **Notice of Taking, Cooperation**. City and College shall immediately notify the other of the commencement of any eminent domain, condemnation or other similar proceedings with regard to the Premises. City and College covenant and agree to fully cooperate in any

condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof. Any termination of this Agreement pursuant to this Article 11 shall not affect the rights of City and College to any such award.

ARTICLE 12

Assignment and Subletting

12.1 **Right to Assign or Sublease**. The City may not assign, sell the Land, or assign its interests in this Agreement without the prior written consent of College. College may not assign its rights hereunder or sublease any portion of the Premises to any other governmental entity without the City's approval or to any other party with City's prior written approval. The party from whom approval is sought shall indicate its written approval or disapproval of any proposed buyer, assignee or sublessee within thirty (30) days after the party seeking approval gives to such party notice of the proposed sale, assignment or sublease, including the identity of the proposed buyer, assignee or sublessee and reasonably sufficient information as to the proposed buyer, assignee or sublessee and the proposed use to enable the party from whom approval is sought to evaluate such buyer, assignee's or sublessee's character, reputation and financial strength and to determine compliance of the intended use. If the party from whom such approval is sought fails to indicate its approval or disapproval within such thirty (30) day period, then the other party shall give a second notice which shall state in bold all capital letters that failure to respond shall be deemed approval of the requested assignment or sublease. If the party from whom approval is sought fails to respond within five (5) business days after such second notification, the party from whom approval is sought shall be deemed to have approved the requested sale, assignment or sublease. Any assignment, sublease, or sale of all or any portion of the Premises under this Agreement that are not in accordance with this Section shall be void.

ARTICLE 13

Environmental Provisions

13.1 **Hazardous Materials**. For purposes of this Agreement, "**Hazardous Materials**" shall include, but shall not be limited to, any substances, materials or wastes that are regulated by any local governmental authority, the state in which the Premises is located, or the United States of America, because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment. Hazardous Materials also include, without limitation, any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time. College agrees that it will not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any Hazardous Materials in, on, under, around or above the Premises now or at any future time (except in quantities permitted by applicable laws).

ARTICLE 14

Warranty of Peaceful Possession

14.1 **Peaceful Possession**. City covenants that College, on paying the Rent and performing and observing the covenants and agreements herein contained and provided to be performed by College, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise all of its rights hereunder, subject only to the provisions of this Agreement and applicable governmental laws, rules and regulations. City may enter upon the Land at reasonable times to inspect the Improvements for compliance with applicable City codes and ordinances. City agrees to warrant and forever defend College's right to such occupancy, use and enjoyment and the title to the Premises against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof subject only to the provisions of this Agreement, and all applicable governmental laws, rules and regulations.

ARTICLE 15

Default and Remedies

15.1 **College's Default**. Each of the following shall be deemed a "**College's Default**" by College hereunder and a material breach of this Agreement:

(a) If College fails to pay any installment of Rent on the date upon which the same is due to be paid and such failure continues for ninety (90) days after College is given a written notice from the City specifying such failure.

(b) If College fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Agreement that are to be kept or performed by College except items (e) and (f) below and other than with respect to payment of Rent or other liquidated sums of money and College fails to commence and take such steps as are necessary to remedy the same within ninety (90) days after College is given written notice from the City specifying the same, or for items that cannot be remedied within such ninety (90) days, thereafter fails to commence to remedy the same within such ninety (90) days and to proceed diligently and with continuity to remedy the same.

(c) If an involuntary petition is filed against College under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of College, or of all or substantially all of the property of College, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.

(d) If College makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

(e) If College fails to complete the Facility by the Completion Date plus twelve (12) months, subject to force majeure.

(f) If College abandons the Facility. For purposes of this Section, "abandon" means the College's failure to continuously operate the Facility for twelve (12) consecutive months as a fire and firearm training facility.

15.2 **City's Remedies**. If a College's Default occurs, the City shall give the College written notice that a College's Default has occurred and such notice shall specify the particular College's Default.

(a) If the default relates to Sections 15.1(a)-(d) and the College does not remedy the Default within thirty (30) days thereafter, the City may seek specific performance as its sole remedy.

(b) If the College defaults on either Section 15.1(e) or (f) above after City has provided thirty (30) days written notice to College of such default, City may terminate this Agreement by giving College written notice thereof, in which event this Agreement and the leasehold estate hereby created and all interest of College and all parties claiming by, through or under College shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 1 for the expiration of the Term. City, its agent or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. All Improvements shall revert to the City upon termination.

(c) In addition to City's remedy under Section 15.2(b) above if the College fails to continuously operate the Facility for three (3) consecutive months, City may utilize the Facility solely for fire and firearms training without terminating this Agreement or the leasehold estate created hereby, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of the Agreement, operate the Premises for the above-referenced purposes only. In no event shall City be liable to the College for such utilization, nor shall such utilization reduce College's liability under the Agreement. If City elects to proceed under this Section, it may at any time thereafter elect to terminate this Agreement as provided in Section~~Article~~ 15.2(b).

15.2.1. Notwithstanding anything contained herein to the contrary, City shall never be entitled to dispossess College of the Premises pursuant to any "lock out" or other nonjudicial remedy, City hereby waiving its right to forcibly dispossess College from the Premises, whether peaceably or otherwise, without judicial process, such that City shall not be entitled to any "commercial lock-out" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.

15.3 **City's Default**. Each of the following shall be deemed a "**City's Default**" by City hereunder and a material breach of this Agreement:

(a) If City fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Agreement that are to be kept or performed by City and City fails to commence and take such steps as are necessary to remedy the same within ninety (90) days after City is given written notice specifying the same, or for items that cannot be remedied within such ninety (90) days, thereafter fails to commence to remedy the same within such ninety (90) days and to proceed diligently and with continuity to remedy the same.

(b) If an involuntary petition is filed against City under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of City, or of all or substantially all of the property of City, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.

(c) If City makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

15.4 **College's Remedies**. If a City's Default occurs, the College shall give the City written notice that a City's Default has occurred and such notice shall specify the particular City's Default, and if the City does not remedy the City's Default within thirty (30) days thereafter, the College may do any one or both of the following, in addition to any other remedies that may be available at law or in equity:

(a) College may, but is not obligated to, perform City's obligations hereunder, save and except the City's Work, at its sole cost and expense, which costs and expense City agrees to pay upon demand.

(b) If City's Default renders all or any portion of the Premises untenantable for those uses incidental to or customarily associated with the operation of the Facility for more than sixty (60) days, College may terminate this Agreement, in which event College shall have no further rights, duties or obligations hereunder, and the ownership of the Improvements shall revert to the City.

ARTICLE 16

Miscellaneous

16.1 **Notices**. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section, (ii) delivering the same to the party to be notified via hand delivery or local courier service, or (iii) delivering the same via a nationally recognized overnight courier service. Notice given in accordance herewith shall be effective upon receipt or refusal at the address of the addressee, as evidenced by the executed postal receipt or other receipt or refusal for delivery. For purposes of notice relating to all matters, the addresses of the parties hereto shall, until changed, be as follows:

City: City of McKinney

222 N. Tennessee Street
McKinney, Texas 75069

Attn: Tom Muehlenbeck

With a copy to: Mark S. Houser
740 E. Campbell, Suite 800
Richardson, TX 75081

College: Collin County Community College District
3452 Spur 399
McKinney, TX 75069

Attn: Ralph Hall

With a copy to: Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud, Ste. 300
McKinney, TX 75070-1210
Attn: Richard Abernathy

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

16.2 **Performance of Other Party's Obligations**. If either party hereto fails to perform or observe any of its covenants, agreements or obligations required after the Initial Due Diligence Term hereunder, save and except the **City's Work**, for a period of ninety (90) days after notice of such failure is given by the other party, then the other party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements or obligations which are asserted to have not been performed or observed at the expense of the failing party and to recover all costs or expenses incurred in connection therewith, together with interest thereon at ten percent (10%) per annum from the date expended until repaid. Notwithstanding the foregoing, if either party determines, in its or his reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of $100,000.00 exists due to the other party's failure to observe or perform its or his covenants, agreements and obligations hereunder, then such party may immediately perform or observe the covenants, agreements and obligations which give rise to such emergency at the expense of the failing party. Any performance or observance by a party pursuant to this Section shall not constitute a waiver of the other party's failure to perform or observe.

16.3 **Dispute Resolution.** Prior to filing any actions in any court of law with respect to a dispute concerning this Agreement, the Parties shall endeavor to resolve the dispute through mediation. Should the Parties be unable to resolve the dispute via mediation within thirty (30) days after a Party first notifies the other of its desire to mediate, then the Parties shall be free to file any actions in any court of competent jurisdiction.

16.4 **Modification and Non-Waiver**. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition or provision hereof shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

16.5 **Governing Law**. This Agreement, the entire relationship of the parties hereto, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas and venue shall be in Collin County, Texas.

16.6 **Number and Gender; Caption; References**. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Agreement are for convenience of reference and shall not affect the construction or interpretation of this Agreement. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this Agreement they shall be construed as referring to this Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Agreement. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited.

16.7 **Exhibits**. All exhibits and addenda attached hereto are incorporated herein for all purposes.

16.8 **Severability**. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

16.9 **Surrender of Premises**. College shall surrender the Premises at the expiration or earlier termination of this Agreement. The Premises shall be broom clean, in good condition and repair, except for ordinary wear and tear, damage by eminent domain, fire and casualty, and all alterations, additions and improvements.

16.10 **Relation of Parties**. Nothing in this Agreement shall be construed to make City and College partners or joint venturers or to render either party hereto liable for any obligation of the other.

16.11 **Force Majeure**. As used herein "**Force Majeure**" shall mean any contingency or cause beyond the reasonable control of Obligor, including Acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, fires, explosions, floods, strikes or shortages of essential materials; however exclusive of weather delays. If the

obligor shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure (and the obligor shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by the obligor: (i) the obligor shall give prompt written notice of such occurrence to the other party and (ii) the obligor shall diligently attempt to remove, resolve or otherwise eliminate such event, keep the other party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination.

16.12 **Entire Agreement**. This Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between City and College of even date herewith are not, however, merged herein. In entering into this Agreement, each Party agrees it is relying solely on its own judgment and not any statement by the other Party.

16.13 **Recordation**. City and College will, at the request of the other, promptly execute a memorandum of the Agreement, setting forth the principal terms thereof in a manner customary for ground leases, which shall be filed for record in the Office of the County Clerk of Collin County, Texas, or at the request of either party this Agreement shall be so filed for record.

16.14 **Successors and Assigns**. This Agreement shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to College's rights to assign, sublet or encumber, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

16.15 **City's Joinder**. City 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, provided that no such application shall constitute an encumbrance of or with respect to the Premises, and City shall not incur any cost or expense or become liable for any obligation as a result thereof.

16.16 **No Third Parties Benefitted**. The terms and provisions of this Agreement are for the sole benefit of City and College, and no third party is intended to benefit herefrom.

16.17 **Survival**. Any terms and provisions of this Agreement pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Agreement shall survive the end of the Term.

16.18 **Landlord's Lien**. City hereby waives and releases any statutory, common law, or contractual Landlord's lien with respect to the property of College now or hereafter located in the Premises.

16.19 **Transfer of City's Interest**. City may not transfer its interest in the Premises or in this Agreement without the prior written consent of College.

16.20 **City and College Defined**. The word "**City**", as used in this Agreement, shall include the original City named in this Agreement and all persons, natural or artificial, who at any time or

from time to time during the Term of this Agreement succeed to the estate of City in the Land and the interest of City under this Agreement. The word "**College**", as used in this Agreement, shall include the original College named in this Agreement and all persons, natural or artificial, who at any time or from time to time during the Term of this Agreement succeed to the estate of College in the Premises and the interest of College under this Agreement.

16.21 **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.

16.22 **Holding Over.** If College or any party claiming by, through or under College fails to surrender the Premises at the expiration or earlier termination of this Agreement, the continued occupancy of the Premises shall be that of a tenancy from month to month, terminable by the City in accordance with state law. College shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to the market rental value of similar governmental property and improvements leased between governmental entities in Collin County, Texas for the Premises due for the period of the holdover.

16.23 **Authority.** City and College hereby represent to the other that: (i) City is a duly authorized and existing municipality and College is a duly authorized and existing college district, and each is organized under the laws of the State of Texas, (ii) each has full right and authority to enter into this Agreement, (iii) each person signing on behalf of the City and College are authorized to do so, and (iv) the execution and delivery of this Agreement by City and College will not result in any breach of, or constitute a default under any agreement or other contract or instrument to which either City or College is a party or by which either such party may be bound.

16.24 **Time of Essence.** Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

16.25 **Holidays**. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

[the remainder of this page is intentionally left blank;
signature pages to follow]

EXECUTED as of the dates set forth below.

COLLEGE:

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT
3452 Spur 399
McKinney, Texas 75069

BY:_____
~~NAME:~~ ~~_____~~H. NEIL MATKIN, Ed.D.
District President~~_____~~
~~TITLE:~~ ~~_____~~
DATE:_____

ATTEST:

_____
NAME:_____
TITLE: _____
DATE: _____

CITY:

CITY OF MCKINNEY, TEXAS
222 N. Tennessee Street
McKinney, Texas 75069

BY: _____
TOM MUEHLENBECK
Interim City Manager
DATE: _____

ATTEST:

_____
SANDY HART, TRMC, MMC
City Secretary
DATE: _____

EXHIBIT A

~~Legal Description of the Premises to be provided by the College (after survey is completed)~~
Same as Original Agreement

EXHIBIT B

~~City's Work~~
Same as Original Agreement

Exhibit C

~~College's Conceptual Plan~~Same as Original Agreement



AMENDED AND RESTATED INTERLOCAL AGREEMENT

CITY OF McKINNEY, TEXAS
and
COLLIN COUNTY COMMUNITY COLLEGE DISTRICT
for the
CONSTRUCTION AND USE
of a
PUBLIC SAFETY TRAINING FACILITY

This Amended and Restated Interlocal Agreement for the Construction and Use of a Public Safety Training Facility (the "**Agreement**") is entered into between the City of McKinney (the "**City**") and the Collin County Community College District (the "**College**") (collectively the "**Parties**" or "**parties**" or individually referred to as the "**Party**" or "**party**") and this Agreement shall be effective as of June 17, 2015 ("**Effective Date**").

R E C I T A L S

WHEREAS, the Parties agree to construct and operate a Public Safety Training Facility (the "**Facility**") comprised of an indoor virtual firearms training center for optimized tactical training; law enforcement defensive tactics room; indoor shooting range consisting of a minimum of 15 lanes that are 50 yards in length and 10 lanes that are 100 yards in length; classrooms and administrative areas; an apparatus bay with indoor training spaces; restrooms and showers; outdoor classroom; a minimum of four (4) outdoor, live fire training structures with 1 burn tower having at least 4 stories; a stand-alone flash over chamber; landscaping; parking and support facilities in McKinney, Texas for their mutual benefit in the manner described below; and

WHEREAS, the City agrees to allow the College to design, construct, and operate the Facility on an approximate twenty-five acre tract of real property owned by the City, described on **Exhibit A** attached hereto and incorporated herein (the "**Land**"); and

WHEREAS, the Parties agree to cooperate in the financing of the construction of the Facility; and

WHEREAS, the Parties have each adopted a resolution supporting the construction and operation of the Facility to assist in the ongoing education and training of law enforcement personnel and firefighters in the region; and

WHEREAS, this Agreement is an interlocal agreement authorized and governed by Chapter 791 of the Texas Government Code, the Interlocal Cooperation Act; 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/or (as applicable) its home rule charter; and

WHEREAS, each Party agrees that any compensation to be paid to the other Party described in this Agreement is an amount that fairly compensates the performing Party for the services or functions described herein, and such compensation shall be paid from current revenues available to the paying Party; and

WHEREAS, the Parties executed that one certain Interlocal Agreement for the Construction and Use of a Public Safety Training Facility effective June 17, 2015 (the "Original Agreement"); and

WHEREAS, the Parties desire to modify the Original Agreement primarily to address the use of the Facility by McKinney law enforcement employees, and including related matters.

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

Term of the Agreement

1.1 **Effective Date Defined**. June 17, 2015 shall be the "**Effective Date**" of the Agreement.

1.2 **Initial Due Diligence Term**. The "**Initial Due Diligence Term**" shall mean the period of time commencing with the Effective Date and ending on the earlier of (i) the day College receives all required site plan approvals and building permits or (ii) the one hundred eightieth (180^{th}) day following the Effective Date.

1.3 **Original Term**. The "**Original Term**" shall mean the period of time commencing on the day immediately following the Delivery Date and ending at midnight (McKinney, Texas time) on the date which is fifty (50) years following the Rent Commencement Date.

1.4 **Delivery Date.** The **"Delivery Date"** shall mean the date after the expiration of the Initial Due Diligence Term on which City delivers the Premises to College, including substantial completion of all utilities and roadwork described as the responsibility of the City in Articles 3 and 6 below (the **"City Work"**), which shall in no event be later than one hundred eighty (180) days after the last day of the Initial Due Diligence Term (the "**Delivery Deadline**"), subject to College Delay (hereinafter defined). "**College Delay**" means any act or omission of College or its agents, employees, vendors or contractors that delays the substantial completion of the City Work, including: (i) College's failure to furnish information or approvals within any time period specified in this Agreement; or (ii) written changes requested or made by College to the City Work, and approved by the City.

1.5 **Renewal Terms**. This Agreement will automatically renew for a term following the Original Term, unless a Party expressly declines the automatic renewal in writing. The duration of the renewal term shall be for a period of five (5) years (each of which is referred to as a "**Renewal Term**"). Each renewal shall be upon the same terms and conditions as this Agreement, including Base Rent, except as modified by subsequent written agreements between the Parties, and shall continue thereafter until such time as any of the Parties explicitly determine not to renew this Agreement. A Party may decline to automatically renew this Agreement at any time during or after the Original Term, provided that such Party notifies the other Party in writing of its intent to decline automatic renewal at least one-hundred eighty days (180) prior to the automatic renewal date.

1.6 **Term**. The Initial Due Diligence Term, Original Term and any Renewal Term, if applicable, are referred to herein collectively as the "**Term**" or "**term**".

ARTICLE 2

Initial Due Diligence Term

2.1 **Inspections and Approvals**. During the Initial Due Diligence Term, College shall have the right to conduct soil, engineering, environmental and other tests with regard to the Land; investigate the applicable governmental requirements relating to signage and construction of improvements on the Land, the availability of necessary permits and licenses relating to signage and construction of any improvements; investigate the condition of title to the Land; and determine generally the desirability and utility of the Land for College's purposes. At all times during the Initial Due Diligence Term, College shall have access to the Land to conduct such tests, inspections, and investigations. Upon its receipt thereof during the Due Diligence Period, College shall deliver all environmental tests and reports to the City. College shall have the right, at any time during the Initial Due Diligence Term, to terminate this Agreement by delivery of written notice to City, in which event any Rent paid to City shall be returned to College by City, and the parties shall have no further rights or obligations to the other; provided, however, the College promptly shall repair and restore all damage to the Land and the property adjacent to the Land to its condition before the Due Diligence Term. If College does not deliver written notice to City of its election to terminate this Agreement prior to the expiration of the due Initial Diligence Term, the conditions of this Section shall be deemed to have been fully satisfied, and College may not thereafter terminate this Agreement pursuant to this Section, except as provided in Section 7.7.

ARTICLE 3

Roads and Utilities

3.1 **Roads and Utilities**.

(a) **City's Off-Site Construction Obligations**. On or before the Delivery Deadline, City shall construct at City's sole cost and expense all public roads, median cuts, and curb cuts depicted on **Exhibit B**, attached hereto and made a part hereof, in accordance with City's ordinances (collectively, the "**City's Off-Site Work**").

(b) **City's Utilities Obligations**. On or before the Delivery Deadline, City, at its sole cost and expense, construct and install the following utilities to the leasehold line as designated by the College being: water, fire hydrants, storm and sanitary sewer. The City shall dedicate the necessary easements for access thereto required for the Facility and College's intended use of the Land (collectively, the "**City's Utilities Obligations**") as depicted on **Exhibit B**. City shall maintain and repair all city-owned utility lines and connections to the farthest point of: a) the point of meter connection or b) to the leasehold line, as applicable, during the entire Term of this Agreement and such maintenance and repair obligation are included in City's Utilities Obligations. All other utilities and maintenance shall be the obligation of others. **City's Off-Site Work** and **City's Utilities Obligations** shall collectively be referred to as **"City's Work"**.

(c) **College's Utilities Obligations**. Except as set forth in Section 3.1(b), College shall, at its sole cost and expense, connect utility services brought to the Land by the City, and shall pay all charges for gas, electricity, telephone, and other utilities supplied to the Premises. The College is responsible for payment of all water, sewer service, electricity, telephone and other utilities charged against, or in connection with, the Premises.

ARTICLE 4

Lease of Land

4.1 **Lease of the Land**. In consideration of the rents, covenants, agreements and conditions set out below, City leases to College, and College rents and leases from City, the Land, together with all of City's rights, interests, estates and appurtenances thereto, all improvements thereon and all other rights, titles, interests and estates, if any, of the City in adjacent non-public streets and roads.

4.2 **Premises Defined**. The Land and the rights, interests, estates and appurtenances leased to College pursuant to Section 4.1, together with all improvements now or hereafter constructed thereon, are collectively referred to as the "**Premises**" or land, said Premises being more particularly described in **Exhibit A**.

4.3 **Permitted Uses of the Premises**. The College may use the premises for public safety training. The words "public safety" shall mean police, fire and EMS employees, participants in courses or programs related to public safety or students in curricula seeking a degree or certification in public safety employment. The parties agree the Facility is a fire and police training facility that constitutes use of the premises for public safety training. If improvements in addition to the Facility are constructed by the College, which improvements shall be constructed in accordance with the Construction Standards, the College and City agree to discuss whether the City will have access to and use of the improvements and if so, upon what terms and conditions.

4.4 **Habendum**. TO HAVE AND TO HOLD the Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging, exclusively unto College, its successors and assigns, for the Term set forth in Article 1, subject to

termination as provided, and subject to and upon the covenants, agreements, terms, provisions and limitations set out below.

ARTICLE 5

Rent

5.1 **Rent Commencement Date Defined**. "**Rent Commencement Date**" shall mean the date which is the earliest of (i) 12 months following the Delivery Date, or (ii) the date the College opens the Premises for training. The aforementioned 12-month period shall be extended one (1) day for each day past the sixtieth (60^{th}) day following the Delivery Deadline that the City Work is not completed.

5.2 **Base Rent**. During the Original Term and each Renewal Term of this Agreement, as the same may be extended, College shall pay rent of $10.00 per year ("**Base Rent**") to City. The Base Rent for the entire term of this Agreement or any portion thereof may be prepaid in full or in part at College's sole discretion.

5.3 **Additional Rent and Rent Defined**. The term "**Additional Rent**" shall mean all amounts required to be paid by College under the terms of this Agreement other than Base Rent. The term "**Rent**" shall mean Base Rent and Additional Rent.

ARTICLE 6

City's Warranties and Covenants

6.1 **Warranties of Title**. City warrants and represents to College that, as of the Effective Date, City has fee simple title to the Land and that City has full right, power and authority to enter into this Agreement. City further warrants that, to City's knowledge, (i) no construction has been performed on the Land during the six (6) month period prior to the execution of this Agreement for which there are unpaid bills, and (ii) there are no mortgages or other liens affecting the Land which are superior to this Agreement or which could result in the termination of this Agreement.

6.2 **City's Construction, Repair, and Maintenance Obligations.** All work included in the City's Off-Site Work and the City's Utilities Obligations as depicted on **Exhibit B** will be performed at City's sole cost and expense in accordance with Article 3 and shall be substantially complete on or before the Delivery Deadline, in accordance with all applicable laws. All maintenance and repair obligations included in the City's Off-Site Work and the City's Utilities Obligations shall be promptly performed at City's sole cost and expense in accordance with all applicable laws. Notwithstanding the foregoing, in the event the City Work is not completed prior to the Delivery Deadline, despite City's good faith efforts to complete same by such date, City may complete such work following the Delivery Deadline, but in no event more than sixty (60) days thereafter.

6.3 **Dedications and Easements**. In order to develop the Land with the Improvements, it may be necessary or desirable that street, water, sewer, drainage, gas, power lines, set back lines and other easements, dedications and similar rights be granted to third-party utility or service providers or dedicated over or within portions of the Land by grant, deed or other appropriate instrument. The City shall be responsible to timely obtain the execution and delivery of such documents, in recordable form, prior to the Delivery Deadline, as may be reasonably appropriate, necessary or required by any governmental authority, public utility or service provider for the purpose of granting such easements and dedications. College shall have the right to review and approve any and all documents regarding declarations, development and easements affecting the Premises, or any portion thereof. The Land shall not require platting.

ARTICLE 7

Construction

7.1 **Construction of New Improvements**. College shall have the right, from time to time and at any time, at its sole cost and risk except as otherwise expressly provided in this Agreement, subject to the subsequent provisions of this Section, to demolish and remove any improvements or portions of improvements situated upon the Land as of the Effective Date hereof, to construct replacement improvements for improvements so removed, and to construct, remove and reconstruct any new improvements so long as such improvements are related to public safety training uses of the Premises and the College obtains all necessary permits and approvals for such demolition, construction or reconstruction. Any improvements constructed by College on the Land shall be constructed in accordance with the Construction Standards (defined in Section 7.3). "**Improvements**" shall mean any buildings, structures, signage or other improvements installed or constructed upon the Land by College.

7.2 **Alterations**. At any time and from time to time during the Term, College may perform such alteration, renovation, repair, refurbishment and other work with regard to any Improvements as College may elect, provided that the same is done in accordance with the Construction Standards and provided the same are done at College's cost except as expressly set forth otherwise in this Agreement.

7.3 **Construction Standards and Liens**.

(a) **Standards**. Any Improvements shall be constructed, and any alteration, renovation, repair, refurbishment or other work with regard thereto shall be performed, in accordance with the following standards ("**Construction Standards**"):

(1) All such construction or work shall be performed in a good and workmanlike manner in accordance with good industry practice for the type of work in question.

(2) Except as expressly set forth otherwise herein, all such construction or work shall be done at College's sole cost and expense in compliance with all applicable building codes, and ordinances of the City.

(3) No construction or work shall be commenced until all licenses, permits, inspections, and authorizations required by the City are obtained. City agrees to cooperate in good faith with College with respect to any such licenses, permits, inspections, and authorizations required by the City.

(4) College shall have obtained and shall maintain in force and effect the insurance coverage required in Article 9.

(5) After commencement, such construction or work shall be pursued with due diligence to its completion.

(6) Except as otherwise provided in this Agreement, College shall pay for all costs incurred by College in constructing the alterations and Improvements, including but not limited to, all building permit and inspection fees; however expressly excluding impact fees.

(7) College shall, at its expense, be responsible for compliance with the Americans with Disabilities Act and any other law pertaining to disabilities and architectural barriers (collectively, "**ADA**") in the Premises.

(b) **College's Signage**. College shall, at College's sole cost and expense, have the right to construct, install, maintain, repair and replace signs on the Premises, in accordance with all applicable laws, regulations and restrictions.

(c) **Mechanic's and Materialmen's Liens**. College shall have no right, authority or power to bind City or any interest of City in the Premises for any claim for labor or for material or for any other charge or expense incurred in constructing any Improvements or performing any alteration, renovation, repair, refurbishment or other work with regard thereto, nor to render City's interest in the Premises liable for any lien or right of lien for any labor, materials or other charge or expense incurred in connection therewith. College shall not be considered the agent of City in the construction, erection or operation of any such Improvements. If any liens or claims for labor or materials supplied or claimed to have been supplied to the Premises are filed, College shall fully discharge the lien in the manner prescribed by the applicable lien Law.

7.4 **College's Equipment Defined**. The term "**College's Equipment**" means all trade fixtures and personal property, including, without limitation, furnishings, furniture, equipment, computers, computer related equipment on property, and other equipment or property useful to College in its operations, and, in certain circumstances, vaults, for use in connection with the conduct of College's use of the Premises regardless of the manner in which they are installed.

7.5 **Ownership and Removal of College's Equipment**. College's Equipment shall be solely the property of College. Within sixty (60) days following the expiration or termination of the Term, College shall have the obligation to remove all College's Equipment from the Premises except as otherwise permitted by City. College shall repair any damage caused by such removal. If College fails to remove all College's Equipment within such sixty (60) day period, City, at its option, may (i) remove College's equipment and, in addition to any other right or

remedy of City, charge College for all costs incurred in the removal of such and the repair of damage, and College shall pay such costs to City within thirty (30) days after receipt of an invoice from City for such costs, or (ii) deem all or any part of College's Equipment remaining on the Premises to be abandoned, and title to such remaining portions of the College's Equipment shall be deemed to be immediately vested in City without any credit or compensation to College.

7.6 **Ownership of Improvements**. During the Term, all Improvements shall be solely the property of College. Upon expiration or termination of the Term, the Improvements (excluding College's Equipment) shall revert to and become the property of City.

7.7 **Creation and Review of Plans and Specifications.** Within three hundred thirty (330) days following the Effective Date, after discussion with, and/or input from the City on preliminary plan development, College shall, at its sole cost and expense, submit to City for its review preliminary plans and specifications, together with a site plan, utility plan and building elevations ("**Preliminary Plans**") in the format required by applicable City ordinances, depicting the Improvements. The Improvements depicted on the Preliminary Plans shall include the improvements necessary for the Facility and shall, at a minimum, include the items depicted in the conceptual plan depicted on **Exhibit C**, which are attached hereto and incorporated herein. Within thirty (30) days after its receipt of the Preliminary Plans, City shall give College written notice of any changes it requests. If City does not provide College with a written response within thirty (30) days, the Preliminary Plans shall be deemed approved, and the City shall be deemed to have requested no changes. If City requests changes to the Preliminary Plans, City shall clearly specify its suggested changes in its notice. College will attempt to implement changes requested by City to materially conform the Preliminary Plans to the items depicted on **Exhibit C** and shall make reasonable efforts to implement any additional changes to the Preliminary Plans reasonably requested by City; provided, however, College shall have no obligation to make any such additional changes, even if reasonable, if such additional changes constitute a material variance to the design of the Improvements as shown in the Preliminary Plans or any such additional changes that College reasonably believes will cause the College to exceed its budgeted costs for the construction of the Improvements. If College makes any of the changes proposed by the City, College shall resubmit the revised Preliminary Plans within thirty (30) days following receipt of City's written requests for changes thereto. Thereafter, College shall prepare the final plans and specifications ("**Final Plans**") in accordance with the Preliminary Plans and the Construction Standards and make application to all applicable governmental authorities for all approvals and permits required to construct the Improvements in accordance with the Final Plans. If College is unable to obtain any such required approvals or permits or is unable to obtain any such approvals or permits without changes which constitute a material variance to the design of the Improvements from the Final Plans, College shall have the right to terminate this Agreement, in which event the parties shall have no further rights, duties or obligations hereunder. City has reviewed and approved **Exhibit C** and agrees that City shall not request any change which would cause a deviation from **Exhibit C**, unless City pays for the full construction cost of such change and unless such changes result in Improvements that are related to emergency services training uses of the Premises and the College is willing to use and manage such additional Improvements. Notwithstanding the foregoing, any changes to the Final Plans required by the City to obtain compliance with the Construction Standards shall not

constitute City's request for a deviation from **Exhibit C**. City agrees that should the City desire the Facility to include any such Improvements beyond those described or depicted on **Exhibit C**, College will not construct such additional Improvements unless City pays the full construction costs for the same in a manner and on a timeline acceptable to the College.

7.8 **Construction of the Improvements by College.** College shall substantially complete the Improvements necessary to operate the Facility within thirty (30) months following the Delivery Date, subject to Force Majeure (as defined in **Article 16** below). The College warrants that it has committed funds in the amount of $11,285,000.00 as primary construction funds for the Facility to be used for design, construction and certification of the Facility.

7.9 **City's Contribution to Tenant's Construction Costs.** Notwithstanding anything to the contrary herein, City shall reimburse College for one-third (1/3) of the College's design and construction costs for the Improvements; however, such reimbursement shall not exceed the sum of $2,200,000. When the College's construction manager or architect has determined that the College has expended 50% of the College's total budgeted project cost for construction and design of the Improvements depicted on **Exhibit C**, College shall submit a written copy of such determination to City, and City shall pay College $1,100,000 within thirty (30) days of receipt. Upon receiving a certificate of occupancy for the Facility, College shall submit a written invoice to the City for an additional $1,100,000, which shall be paid by City within thirty (30) days of receipt. The City warrants that it has appropriated and committed funds in the amount of $2,200,000 for the reimbursement of the College's expenses in designing and constructing the Improvements. In addition to the foregoing payments and simultaneously therewith, the City shall make two (2) additional payments of $750,000 each ($1,500,000 in the aggregate) as consideration for the City's law enforcement training hours described in Section 8.3 below.

ARTICLE 8

Use, Maintenance and Repairs

8.1 **Use**. Subject to the terms and provisions hereof, College shall have the right to use and enjoy the Premises as primarily a fire and firearm training and educational facility (including through credit and non-credit courses) for its students and patrons as well as the public at large, including City personnel, and for any lawful purpose. College shall not use or occupy, knowingly permit the Premises to be used or occupied, nor do or knowingly permit anything to be done in or on the Premises in a manner which would (i) in any way make void or voidable any insurance then in force with respect thereto, (ii) make it impossible to obtain the insurance required to be furnished by College hereunder, or (iii) violate any present or future laws, regulations, ordinances or requirements of any governmental authority.

8.2 **Maintenance and Repairs**. Subject to College's rights under **Article 7,** College shall maintain all of the Improvements on the Premises, make all repairs thereto, interior and exterior, structural and nonstructural. College will not do, knowingly permit or suffer any waste, damages, disfigurement or injury to or upon the Premises or any part thereof, but this Section

shall not be construed as limiting College's rights under **Article 7**. The City shall maintain and keep, or cause to be maintained and kept, the utility lines, roadways, sidewalks, and any other improvements that City is required to install as part of **City's Work** as depicted on **Exhibit B** or that City requests to be installed by College at City's expense, in good order, repair and condition at all times. The City shall have no obligation to repair any other Improvements.

8.3 **Use of the Facility by the City**. As part of the consideration provided to the City in exchange for its obligations hereunder, the College shall grant the City non-exclusive access to the Facility free of charge (rather than at the rates the College charges to other users) except for charges for reimbursement of the College's costs for the Facility's supplies that are expended while under use by the City. In addition to the foregoing, the Facility will include two (2) office spaces for the dedicated use of the City's Fire administrators, two (2) office spaces for the dedicated use of the City's law enforcement administrators, and a separate, lockable armory of steel cage construction with a minimum of 150 square feet exclusively for use of City's law enforcement training program. City's use and scheduling of the Facility shall be sufficient to allow for 1,000 hours of training annually by the City's fire department. For purposes of this Section, "hours" shall mean actual time allocated to training the City's employees at any component structure at the Facility (burn tower, emergency services training center, outdoor classroom, etc.), irrespective of how many City employees are occupying the Facility, or any component thereof. As such, "hours" shall not be calculated as "man-hours" or hours multiplied by the number of employees present and utilizing the Facility. Concurrent use of separate components of the Facility shall be aggregated in the calculation of hours. For example, if 20 firefighters are in the emergency services training center classroom for 3 hours and 5 firefighters are concurrently training on the burn tower during the same 3 hour period, the City's use shall be calculated at 6 hours. The City may provide its own training to its personnel during its use of the Facility. However, should the City desire the College to provide City any training services during the City's use of the Facility, City shall reimburse the College for the College's cost to provide such services. In conjunction with the foregoing, the burn tower may also be used for K-9 and other police training, however, fire training will take precedence in the event of a conflict and no chemical irritants will be utilized in the burn structures. The College shall regularly deliver to the City an itemized invoice for the reimbursement of the College's costs for any training services provided and the Facility's supplies expended while under use by the City. The City shall pay College the amount indicated in each of such invoices within thirty (30) days after receipt thereof. In addition to the City's fire department use as described above, the College shall provide to the City's law enforcement personnel and employees access to the law enforcement portion of the training facility as follows:

a. 800 training hours for City's law enforcement personnel, such quantity of training hours to be determined in the same manner as the City's fire training hours under this Section 8.3;

b. Up to 1200 additional training hours for City's law enforcement personnel will be provided on weekends and/or between the hours of 11 p.m. and 6 a.m. This training must be scheduled with the College in advance.

8.4 **Scheduling of the Facility**. During the Term of the Agreement, the College shall establish from time to time, but at least annually, a schedule for the College's use of the Facility for credit and non-credit courses offered by the College. Once the College's schedule is established, the City and College shall promptly work together to establish a schedule for the City's use of the Facility so long as such schedule is not in conflict with the College's schedule. Following the establishment of the City's scheduled use of the Facility, or in the absence of the City's scheduled use of the Facility, the College shall schedule use of the Facility for the public, which use by the public may include use by members of the public and the City on a first-come first-serve basis. Use of the Facility, whether by the College, the City, or the public, shall only be at times when the College's staff or designee is present at the Facility. College and City agree that the City of Allen may be added as a party to the Agreement for law enforcement training only under substantially the same law enforcement training terms, including payments as described in Section 7.9, as the City. No other parties may be added as a party to the Agreement without the express written consent of the College and the City. The foregoing limitation on added parties shall in no way interfere, impede or prevent the College from charging rental fees for use of the Facility to persons other than the City as scheduling permits. In a like manner, should a potential city partner be located that is able to bring substantial value to the Facility, such partner may be added to this Agreement upon written consent of the College and City.

ARTICLE 9

Insurance

9.1 **City's Insurance**. City shall maintain during this Agreement, commercial general liability insurance, with limits of not less than $1,000,000 per occurrence, $2,000,000 aggregate, for bodily injury, personal injury and property damage, and all-risk property damage insurance at full replacement cost covering the improvements for which the City installed or maintains as part of the City's Work.

9.2 **College's Insurance**. College shall maintain during this Agreement, commercial general liability insurance, with limits of not less than $1,000,000 per occurrence, $2,000,000 aggregate, for bodily injury, personal injury and property damage, with the City as an additional insured, and all-risk property damage insurance covering the Improvements and any Alterations at full replacement cost.

ARTICLE 10

Casualty Loss

10.1 **College's Rights**. Should any Improvements be wholly or partially destroyed or damaged by fire or any other casualty, College shall have the right to restore and reconstruct the Improvements or terminate this Agreement, by giving written notice to City within one hundred eighty (180) days after the date of damage or casualty. If College elects to terminate this Agreement under this Section, College shall at the request of City, cause the Improvements to be razed and the Land to be leveled, cleaned and otherwise put in good order. Thereafter, the parties shall have no further rights, duties or obligations under this Agreement. If College elects not to terminate this Agreement under this Section, College shall repair, replace, restore and

reconstruct any Improvements, all in compliance with the Construction Standards. Should any of the improvements installed by the City as part of the City Work be wholly or partially destroyed or damaged by fire or other casualty, and none of the Improvements installed by College are destroyed or damaged, then City shall promptly repair, replace, restore and reconstruct all of such improvements in accordance with the Construction Standards. Should any of the improvements installed by the City as part of the City Work be wholly or partially destroyed or damaged by fire or other casualty and some or all Improvements installed by College are also so destroyed or damaged, then City shall promptly repair, replace, restore and reconstruct all of such improvements in accordance with the Construction Standards unless the College elects to terminate this Agreement as set forth in the foregoing provisions of this Section.

10.2 **Notice of Damage**. College shall promptly notify City of any destruction or damage to the Premises.

ARTICLE 11

Condemnation

11.1 **Total Taking**. Should the entire Premises be taken (which term, as used in this Article, shall include any conveyance in avoidance or settlement of eminent domain, condemnation or other similar proceedings) by any governmental authority, corporation or other entity under the right of eminent domain, condemnation or similar right, other than City or College, then College's right of possession under this Agreement shall terminate as of the date of taking possession by the condemning authority, and the award therefor will be distributed as follows: (i) first, to the payment of all reasonable fees and expenses incurred in collecting the award, (ii) second, to College in an amount equal to the cost or value of the Improvements (whichever is greater), less the value of City's reversionary interest in those Improvements (calculated as if this Agreement terminates on the expiration of the Original Term and not following any or all renewal terms) and (iii) the balance of the award shall be equitably apportioned between City and College based on the then respective fair market values of City's interest in the Premises (appraised by reference to all relevant factors including the income stream derivable by City under this Agreement and the then present value of City's reversionary interest in the entire Premises after expiration of the Original Term) and College's interest in the Premises (appraised by reference to all relevant factors, including College's moving expenses and the income stream derivable by College from the Premises for the remainder of the Original Term). After the determination and distribution of the condemnation award as herein provided, the Agreement shall terminate, and the parties shall have no further rights, duties or obligations under the Agreement. The parties agree that neither party will condemn the Premises, in whole or in part, temporary or permanent.

11.2 **Partial Taking**. Should a portion of the Premises be taken by any governmental authority, corporation or other entity under the right of eminent domain, condemnation or similar right, other than City or College such that (i) the Improvements shall be so taken as to make it commercially unreasonably for College to use the remainder for the use and purposes contemplated hereby, or (ii) so much of the Premises shall be so taken as to cause College's available parking spaces to be less than those required by any governmental authority, or (iii) any

reasonably necessary access to the Premises is taken, then College may elect to terminate this Agreement as of the date of taking of possession by the condemning authority in the same manner as if the whole of the Premises had thus been taken, and the award therefor shall be distributed as provided in Section 11.1. Should any other partial taking of the Premises occur, then this Agreement nevertheless shall continue in effect as to the Premises, or the remainder thereof, as the case may be.

11.3 **Award on Partial Taking**. In the event of a partial taking where this Agreement is not terminated, and as a result thereof College will need to restore, repair or refurbish the remainder of the Premises in order to put them in a usable condition, then (i) the award shall first be paid to College for payment of such restoration, repair and refurbishment in accordance with the Construction Standards and (ii) the remainder shall be apportioned and paid as provided in (i) and (iii) of Section 11.1, considering the respective interests of City and College in the portion of the Premises taken. If a portion of the Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned and paid as provided in (i) and (iii) of Section 11.1, considering the respective interests of City and College in the portion of the Premises taken.

11.4 **Temporary Taking**. If the whole or any portion of the Premises is taken for temporary use or occupancy, the Term shall not be reduced or affected, and College shall continue to pay the Rent in full. Except to the extent College is prevented from so doing pursuant to the terms of the order of the condemning authority, College shall continue to perform and observe all of the other covenants, agreements, terms and provisions of this Agreement. In the event of any temporary taking, College shall be entitled to receive the entire amount of any award therefor unless the period of temporary use or occupancy shall extend beyond the expiration of the Term, in which case such award, after payment to City therefrom for the estimated cost of restoration of the Premises to the extent that any such award is intended to compensate for damage to the Premises, shall be apportioned between City and College as of the day of expiration of the Term in the same ratio that the part of the entire period for such compensation is made falling before the day of expiration and that part falling after, bear to such entire period.

11.5 **Notice of Taking, Cooperation**. City and College shall immediately notify the other of the commencement of any eminent domain, condemnation or other similar proceedings with regard to the Premises. City and College covenant and agree to fully cooperate in any condemnation, eminent domain, or similar proceeding in order to maximize the total award receivable in respect thereof. Any termination of this Agreement pursuant to this Article 11 shall not affect the rights of City and College to any such award.

ARTICLE 12

Assignment and Subletting

12.1 **Right to Assign or Sublease**. The City may not assign, sell the Land, or assign its interests in this Agreement without the prior written consent of College. College may not assign its rights hereunder or sublease any portion of the Premises to any other governmental entity without the City's approval or to any other party with City's prior written approval. The party from whom approval is sought shall indicate its written approval or disapproval of any proposed

buyer, assignee or sublessee within thirty (30) days after the party seeking approval gives to such party notice of the proposed sale, assignment or sublease, including the identity of the proposed buyer, assignee or sublessee and reasonably sufficient information as to the proposed buyer, assignee or sublessee and the proposed use to enable the party from whom approval is sought to evaluate such buyer, assignee's or sublessee's character, reputation and financial strength and to determine compliance of the intended use. If the party from whom such approval is sought fails to indicate its approval or disapproval within such thirty (30) day period, then the other party shall give a second notice which shall state in bold all capital letters that failure to respond shall be deemed approval of the requested assignment or sublease. If the party from whom approval is sought fails to respond within five (5) business days after such second notification, the party from whom approval is sought shall be deemed to have approved the requested sale, assignment or sublease. Any assignment, sublease, or sale of all or any portion of the Premises under this Agreement that are not in accordance with this Section shall be void.

ARTICLE 13

Environmental Provisions

13.1 **Hazardous Materials**. For purposes of this Agreement, "**Hazardous Materials**" shall include, but shall not be limited to, any substances, materials or wastes that are regulated by any local governmental authority, the state in which the Premises is located, or the United States of America, because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment. Hazardous Materials also include, without limitation, any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time. College agrees that it will not use, handle, generate, treat, store or dispose of, or permit the use, handling, generation, treatment, storage or disposal of any Hazardous Materials in, on, under, around or above the Premises now or at any future time (except in quantities permitted by applicable laws).

ARTICLE 14

Warranty of Peaceful Possession

14.1 **Peaceful Possession**. City covenants that College, on paying the Rent and performing and observing the covenants and agreements herein contained and provided to be performed by College, shall and may peaceably and quietly have, hold, occupy, use and enjoy the Premises during the Term and may exercise all of its rights hereunder, subject only to the provisions of this Agreement and applicable governmental laws, rules and regulations. City may enter upon the Land at reasonable times to inspect the Improvements for compliance with applicable City codes and ordinances. City agrees to warrant and forever defend College's right to such occupancy, use and enjoyment and the title to the Premises against the claims of any and all persons whomsoever lawfully claiming the same, or any part thereof subject only to the provisions of this Agreement, and all applicable governmental laws, rules and regulations.

ARTICLE 15

Default and Remedies

15.1 **College's Default**. Each of the following shall be deemed a "**College's Default**" by College hereunder and a material breach of this Agreement:

(a) If College fails to pay any installment of Rent on the date upon which the same is due to be paid and such failure continues for ninety (90) days after College is given a written notice from the City specifying such failure.

(b) If College fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Agreement that are to be kept or performed by College except items (e) and (f) below and other than with respect to payment of Rent or other liquidated sums of money and College fails to commence and take such steps as are necessary to remedy the same within ninety (90) days after College is given written notice from the City specifying the same, or for items that cannot be remedied within such ninety (90) days, thereafter fails to commence to remedy the same within such ninety (90) days and to proceed diligently and with continuity to remedy the same.

(c) If an involuntary petition is filed against College under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of College, or of all or substantially all of the property of College, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.

(d) If College makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

(e) If College fails to complete the Facility by the Completion Date plus twelve (12) months, subject to force majeure.

(f) If College abandons the Facility. For purposes of this Section, "abandon" means the College's failure to continuously operate the Facility for twelve (12) consecutive months as a fire and firearm training facility.

15.2 **City's Remedies**. If a College's Default occurs, the City shall give the College written notice that a College's Default has occurred and such notice shall specify the particular College's Default.

(a) If the default relates to Sections 15.1(a)-(d) and the College does not remedy the Default within thirty (30) days thereafter, the City may seek specific performance as its sole remedy.

(b) If the College defaults on either Section 15.1(e) or (f) above after City has provided thirty (30) days written notice to College of such default, City may terminate this Agreement by giving College written notice thereof, in which event this Agreement and the leasehold estate hereby created and all interest of College and all parties claiming by, through or under College shall automatically terminate upon the effective date of such notice with the same force and effect and to the same extent as if the effective date of such notice were the day originally fixed in Article 1 for the expiration of the Term. City, its

agent or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the Premises and remove all persons and property therefrom with or without process of law, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches hereof. All Improvements shall revert to the City upon termination.

(c) In addition to City's remedy under Section 15.2(b) above if the College fails to continuously operate the Facility for three (3) consecutive months, City may utilize the Facility solely for fire and firearms training without terminating this Agreement or the leasehold estate created hereby, without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of Rent or existing breaches of the Agreement, operate the Premises for the above-referenced purposes only. In no event shall City be liable to the College for such utilization, nor shall such utilization reduce College's liability under the Agreement. If City elects to proceed under this Section, it may at any time thereafter elect to terminate this Agreement as provided in Section 15.2(b).

15.2.1. Notwithstanding anything contained herein to the contrary, City shall never be entitled to dispossess College of the Premises pursuant to any "lock out" or other nonjudicial remedy, City hereby waiving its right to forcibly dispossess College from the Premises, whether peaceably or otherwise, without judicial process, such that City shall not be entitled to any "commercial lock-out" or any other provisions of applicable law which permit landlords to dispossess tenants from commercial properties without the benefit of judicial review.

15.3 **City's Default**. Each of the following shall be deemed a "**City's Default**" by City hereunder and a material breach of this Agreement:

(a) If City fails to keep, perform or observe any of the covenants, agreements, terms or provisions contained in this Agreement that are to be kept or performed by City and City fails to commence and take such steps as are necessary to remedy the same within ninety (90) days after City is given written notice specifying the same, or for items that cannot be remedied within such ninety (90) days, thereafter fails to commence to remedy the same within such ninety (90) days and to proceed diligently and with continuity to remedy the same.

(b) If an involuntary petition is filed against City under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of City, or of all or substantially all of the property of City, is appointed without acquiescence, and such petition or appointment is not discharged or stayed within sixty (60) days after the happening of such event.

(c) If City makes an assignment of its property for the benefit of creditors or files a voluntary petition under any bankruptcy or insolvency law, or seeks relief under any other law for the benefit of debtors.

15.4 **College's Remedies**. If a City's Default occurs, the College shall give the City written notice that a City's Default has occurred and such notice shall specify the particular City's

Default, and if the City does not remedy the City's Default within thirty (30) days thereafter, the College may do any one or both of the following, in addition to any other remedies that may be available at law or in equity:

(a) College may, but is not obligated to, perform City's obligations hereunder, save and except the City's Work, at its sole cost and expense, which costs and expense City agrees to pay upon demand.

(b) If City's Default renders all or any portion of the Premises untenantable for those uses incidental to or customarily associated with the operation of the Facility for more than sixty (60) days, College may terminate this Agreement, in which event College shall have no further rights, duties or obligations hereunder, and the ownership of the Improvements shall revert to the City.

ARTICLE 16

Miscellaneous

16.1 **Notices**. Any notice provided for or permitted to be given hereunder must be in writing and may be given by (i) depositing same in the United States Mail, postage prepaid, registered or certified, with return receipt requested, addressed as set forth in this Section, (ii) delivering the same to the party to be notified via hand delivery or local courier service, or (iii) delivering the same via a nationally recognized overnight courier service. Notice given in accordance herewith shall be effective upon receipt or refusal at the address of the addressee, as evidenced by the executed postal receipt or other receipt or refusal for delivery. For purposes of notice relating to all matters, the addresses of the parties hereto shall, until changed, be as follows:

City:	City of McKinney 222 N. Tennessee Street McKinney, Texas 75069 Attn: Tom Muehlenbeck
With a copy to:	Mark S. Houser 740 E. Campbell, Suite 800 Richardson, TX 75081
College:	Collin County Community College District 3452 Spur 399 McKinney, TX 75069 Attn: Ralph Hall
With a copy to:	Abernathy, Roeder, Boyd & Joplin, P.C. 1700 Redbud, Ste. 300 McKinney, TX 75070-1210 Attn: Richard Abernathy

The parties hereto shall have the right from time to time to change their respective addresses for purposes of notice hereunder to any other location within the United States by giving a notice to such effect in accordance with the provisions of this Section.

16.2 **Performance of Other Party's Obligations**. If either party hereto fails to perform or observe any of its covenants, agreements or obligations required after the Initial Due Diligence Term hereunder, save and except the **City's Work**, for a period of ninety (90) days after notice of such failure is given by the other party, then the other party shall have the right, but not the obligation, at its sole election (but not as its exclusive remedy), to perform or observe the covenants, agreements or obligations which are asserted to have not been performed or observed at the expense of the failing party and to recover all costs or expenses incurred in connection therewith, together with interest thereon at ten percent (10%) per annum from the date expended until repaid. Notwithstanding the foregoing, if either party determines, in its or his reasonable good faith judgment that an emergency, involving imminent danger of injury or death to persons or damage to property in excess of $100,000.00 exists due to the other party's failure to observe or perform its or his covenants, agreements and obligations hereunder, then such party may immediately perform or observe the covenants, agreements and obligations which give rise to such emergency at the expense of the failing party. Any performance or observance by a party pursuant to this Section shall not constitute a waiver of the other party's failure to perform or observe.

16.3 **Dispute Resolution.** Prior to filing any actions in any court of law with respect to a dispute concerning this Agreement, the Parties shall endeavor to resolve the dispute through mediation. Should the Parties be unable to resolve the dispute via mediation within thirty (30) days after a Party first notifies the other of its desire to mediate, then the Parties shall be free to file any actions in any court of competent jurisdiction.

16.4 **Modification and Non-Waiver**. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in writing executed by both parties hereto. No waiver by either party of any breach or default of any term, condition or provision hereof shall be deemed a waiver of any other or subsequent breaches or defaults of any kind, character or description under any circumstance. No waiver of any breach or default of any term, condition or provision hereof shall be implied from any action of any party, and any such waiver, to be effective, shall be set out in a written instrument signed by the waiving party.

16.5 **Governing Law**. This Agreement, the entire relationship of the parties hereto, and any litigation between the parties (whether grounded in contract, tort, statute, law or equity) shall be governed by, construed in accordance with, and interpreted pursuant to the laws of the State of Texas and venue shall be in Collin County, Texas.

16.6 **Number and Gender; Caption; References**. Pronouns, wherever used herein, and of whatever gender, shall include natural persons and corporations and associations of every kind and character, and the singular shall include the plural wherever and as often as may be appropriate. Article and section headings in this Agreement are for convenience of reference and shall not affect the construction or interpretation of this Agreement. Whenever the terms "hereof," "hereby," "herein" or words of similar import are used in this Agreement they shall be construed as referring to this Agreement in its entirety rather than to a particular section or

provision, unless the context specifically indicates to the contrary. Any reference to a particular "Article" or "Section" shall be construed as referring to the indicated article or section of this Agreement. Whenever placed before one or more items, the words "include," "includes," and "including" shall mean considered as part of a larger group, and not limited to the item(s) recited.

16.7 **Exhibits**. All exhibits and addenda attached hereto are incorporated herein for all purposes.

16.8 **Severability**. If any provision of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, and the basis of the bargain between the parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

16.9 **Surrender of Premises**. College shall surrender the Premises at the expiration or earlier termination of this Agreement. The Premises shall be broom clean, in good condition and repair, except for ordinary wear and tear, damage by eminent domain, fire and casualty, and all alterations, additions and improvements.

16.10 **Relation of Parties**. Nothing in this Agreement shall be construed to make City and College partners or joint venturers or to render either party hereto liable for any obligation of the other.

16.11 **Force Majeure**. As used herein "**Force Majeure**" shall mean any contingency or cause beyond the reasonable control of Obligor, including Acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action, fires, explosions, floods, strikes or shortages of essential materials; however exclusive of weather delays. If the obligor shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure (and the obligor shall not otherwise be in default hereunder) the time for performance of such obligation shall be extended for the period of such delay, provided that the following requirements are complied with by the obligor: (i) the obligor shall give prompt written notice of such occurrence to the other party and (ii) the obligor shall diligently attempt to remove, resolve or otherwise eliminate such event, keep the other party advised with respect thereto, and commence performance of its obligations hereunder immediately upon such removal, resolution or elimination.

16.12 **Entire Agreement**. This Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter, and all prior agreements with respect thereto are merged herein. Any agreements entered into between City and College of even date herewith are not, however, merged herein. In entering into this Agreement, each Party agrees it is relying solely on its own judgment and not any statement by the other Party.

16.13 **Recordation**. City and College will, at the request of the other, promptly execute a memorandum of the Agreement, setting forth the principal terms thereof in a manner customary for ground leases, which shall be filed for record in the Office of the County Clerk of Collin County, Texas, or at the request of either party this Agreement shall be so filed for record.

16.14 **Successors and Assigns**. This Agreement shall constitute a real right and covenant running with the Premises, and, subject to the provisions hereof pertaining to College's rights to assign, sublet or encumber, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Whenever a reference is made herein to either party, such reference shall include the party's successors and assigns.

16.15 **City's Joinder**. City 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, provided that no such application shall constitute an encumbrance of or with respect to the Premises, and City shall not incur any cost or expense or become liable for any obligation as a result thereof.

16.16 **No Third Parties Benefitted**. The terms and provisions of this Agreement are for the sole benefit of City and College, and no third party is intended to benefit herefrom.

16.17 **Survival**. Any terms and provisions of this Agreement pertaining to rights, duties or liabilities extending beyond the expiration or termination of this Agreement shall survive the end of the Term.

16.18 **Landlord's Lien**. City hereby waives and releases any statutory, common law, or contractual Landlord's lien with respect to the property of College now or hereafter located in the Premises.

16.19 **Transfer of City's Interest**. City may not transfer its interest in the Premises or in this Agreement without the prior written consent of College.

16.20 **City and College Defined**. The word "**City**", as used in this Agreement, shall include the original City named in this Agreement and all persons, natural or artificial, who at any time or from time to time during the Term of this Agreement succeed to the estate of City in the Land and the interest of City under this Agreement. The word "**College**", as used in this Agreement, shall include the original College named in this Agreement and all persons, natural or artificial, who at any time or from time to time during the Term of this Agreement succeed to the estate of College in the Premises and the interest of College under this Agreement.

16.21 **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.

16.22 **Holding Over.** If College or any party claiming by, through or under College fails to surrender the Premises at the expiration or earlier termination of this Agreement, the continued occupancy of the Premises shall be that of a tenancy from month to month, terminable by the City in accordance with state law. College shall pay an amount (on a per month basis without reduction for partial months during the holdover) equal to the market rental value of similar governmental property and improvements leased between governmental entities in Collin County, Texas for the Premises due for the period of the holdover.

16.23 **Authority.** City and College hereby represent to the other that: (i) City is a duly authorized and existing municipality and College is a duly authorized and existing college district, and each is organized under the laws of the State of Texas, (ii) each has full right and

authority to enter into this Agreement, (iii) each person signing on behalf of the City and College are authorized to do so, and (iv) the execution and delivery of this Agreement by City and College will not result in any breach of, or constitute a default under any agreement or other contract or instrument to which either City or College is a party or by which either such party may be bound.

16.24 **Time of Essence.** Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

16.25 **Holidays**. If a date for performance by either party falls on a Saturday, Sunday or on a legal holiday, such date for performance shall instead be the next following business day.

[the remainder of this page is intentionally left blank;
signature pages to follow]

EXECUTED as of the dates set forth below.

COLLEGE:

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT
3452 Spur 399
McKinney, Texas 75069

BY:_____
___H. NEIL MATKIN, Ed.D.
District President
DATE:_____

ATTEST:

_____
NAME:_____
TITLE: _____
DATE: _____

CITY:

CITY OF MCKINNEY, TEXAS
222 N. Tennessee Street
McKinney, Texas 75069

BY: _____
TOM MUEHLENBECK
Interim City Manager
DATE: _____

ATTEST:

_____
SANDY HART, TRMC, MMC
City Secretary
DATE: _____

EXHIBIT A

Same as Original Agreement

EXHIBIT B

Same as Original Agreement

Exhibit C

Same as Original Agreement

16-450

TITLE: Discuss Potential Naming of the All-Abilities Playground

COUNCIL GOAL: Operational Excellence

MEETING DATE: May 2, 2016

DEPARTMENT: Parks, Recreation and Open Space

CONTACT: Rhoda L. Savage, Director of Parks, Recreation and Open Space

RECOMMENDED CITY COUNCIL ACTION:

- Discuss the City Council allowing the naming of the All-Abilities Playground based on City Policy and corporate donations received by the Rotary Clubs of McKinney.

ITEM SUMMARY:

- The City is currently working with the Rotary Clubs of McKinney on the design of Bonnie Wenk Phase 2.
- Bonnie Wenk Phase 2 includes an All-Abilities Playground.
- The Rotary Clubs are currently soliciting funds as needed for construction of the All-Abilities Playground as part of the park project.
- Representatives from the Rotary Club requested the ability to offer naming rights for the playground to potential sponsors / donors.
- Staff requested the PROS Board consider this item at their April 14, 2016 regular meeting.
- A copy of the Municipal Facility Naming Policy, 2014-01-008(R), was provided to the Board and is attached herein.
- A copy of the duties of the PROS Board's role in naming parks was also provided to the Board and is attached herein.

BACKGROUND INFORMATION:

- The PROS Board agreed with the naming rights contingent on satisfaction of the City Council naming policy.

FINANCIAL SUMMARY:

- N/A

BOARD OR COMMISSION RECOMMENDATION:

- The PROS Board was in support of this item as long as the City Council policy was adhered to re: the level of funding at greater than 50% of the construction cost.
- The PROS Board and City Council would vote to approve the name recommended by the Rotary Club prior to naming the amenity.

SUPPORTING MATERIALS:

Municipal Facility Naming Policy
PROS Board Role in Naming Parks

RESOLUTION NO. 2014-01-008 (R)

A RESOULTION OF THE CITY COUNCIL OF THE CITY OF McKINNEY, TEXAS, AUTHORIZING THE CITY MANAGER TO ESTABLISH PROCEDURES FOR NAMING MUNICIAL FACILITIES

WHEREAS, the City Council has determined the need to revise the naming procedures for municipal facilities; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF McKINNEY, TEXAS, THAT:

Section 1. That the City Council of the City of McKinney, Texas, hereby adopts the Guidelines and Procedures for Naming Municipal Facilities, and shall read as follows:

PURPOSE. To establish guidelines and procedures for the naming of municipal facilities.

DEFINITIONS. The definition of municipal facility or municipal facilities shall be any real properties that are owned by the City of McKinney such as, but not limited to, parks and public buildings or portions thereof.

GUIDELINES. The name of municipal facilities shall promote ready identification and/or geographical association by the public. The following guidelines to accomplish the above shall be used:

A. Outstanding and/or predominant geographical or physical features of the land. Geographical and physical features will include those naturally occurring, (e.g. vegetation materials, streams, rivers, creeks, lakes or forested areas), and those man-made, (e.g., subdivisions, streets, office/industrial complexes or other commercial areas).
B. Outstanding and/or predominant historical features of significance. Historical features will include the names of early residents or citizens and/or events of significance to the area's development.
C. Contributions of land for a park site and/or money (equal to or greater than 50% of the total cost of the project) by individuals or organizations.
D. In honor of: 1) community leaders or individuals (either deceased or living) who have made significant contributions to the community based on excellence or duration of commitment; and, 2) deceased national and/or state historical leaders and/or heroes.
    - o No community (City or County) leader or individual currently serving in an elected or appointed capacity may be eligible.
    - o No individual currently employed by the City or County may be eligible.
E. Municipal facilities may be given the same name as a school site, where the sites abut one another.
F. Subdivision names where park lands are adjacent to or lie within the subdivision.
G. Municipal recreation centers that are a part of or lie within the boundaries of a park shall bear the name of that park unless the park name cannot be incorporated in the facility name.
H. Sections of a municipal facility, such as a pavilion, meeting room, or ballfield, may be given a name, which is different from that of the overall park or facility. The guidelines and procedures for naming such a section shall be the same as for naming an entire municipal facility.
I. The renaming of municipal facilities may be considered if exceptional circumstances exist, but should not be a common practice. In such circumstances, care must be taken to avoid renaming because the purpose of the prior naming had become obscured over time (and thus eliminate appropriate recognition or honor).

PROCEDURES

A. Municipal facilities will generally be named immediately prior to or during development.
B. The Parks, Recreation and Open Space Advisory Board, or other Board as appropriate, will be notified of the need to name a municipal park or other facility at least two months in advance of the City Council Meeting at which names will be considered.
C. The Board considering the recommendation will forward such recommendation to the City Manager's office at least one week prior to the City Council Meeting at which the recommendation will be considered.

Section 2. This Resolution shall become effective from and after the date of its passage and is so resolved.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF McKINNEY, TEXAS ON THE 21st DAY OF JANUARY, 2014.

CITY OF McKINNEY, TEXAS

_____
BRIAN LOUGHMILLER
Mayor

ATTEST:

_____
SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

_____
MARK S. HOUSER
City Attorney

ARTICLE II. - PARKS, RECREATION AND OPEN SPACE ADVISORY BOARD

Sec. 74-21. - Created.

There is hereby created a Parks, Recreation and Open Space Advisory Board.

Sec. 74-22. - Members.

Members of the Board shall be appointed pursuant to the Board and Commission Policy. The Board shall consist of not less than five (5) or more than nine (9) members, as determined by the City Council.

Sec. 74-23. - Term of members.

(a) Members of the Board shall serve terms in accordance with the Board and Commission Policy.

(b) Board member term limits are established by the Board and Commission Policy.

(c) Each member shall serve on the Board until removed by the City Council or until their successors are appointed, whichever occurs first.

Sec. 74-24. - Officers and duties.

(a) *Officers enumerated*. The Board shall elect annually, at the first regular Board meeting in October, the following officers from among its members:

(1) Chairperson; and

(2) Vice-chairperson.

(b) *Duties described*.

(1) *Chair*person: The Chairperson shall preside at all meetings and shall perform all other duties as usually pertain to the office of Chairperson, or as may be instructed by the City Council.

(2) *Vice-chairperson*: It shall be the duty of the Vice-chairperson to perform the duties of the Chairperson in his/her absence.

Sec. 74-25. - Compensation.

Members of the Board shall serve without compensation.

Sec. 74-26. - Powers and Duties.

The Board shall act in an advisory capacity to the Director, City Manager and City Council in matters pertaining to Parks, Recreation and Open Space, and shall:

(1) Become familiar with the location and current condition of the Parks system;

(2) Recommend sites to be purchased and used as City Parks in accordance with the City's Parks and Recreation Master Plan;

(3) Recommend improvements to be made to existing Park property, structures, facilities, athletic areas and other improvements;

(4) Recommend the removal of specific structures, facilities, athletic areas and other improvements or Park properties from the City's Park system in the best interest of the public;

(5) Recommend rules and regulations governing the use of facilities including those related to youth sports associations, as necessary;

(6) Perform other duties as the City Council may prescribe;

(7) Establish goals and standards for the Board's governance and for the performance of its duties, as necessary;

(8) Assist in informing citizens about Department policies and functions; and

(9) Assist in educating the community about park related items including bond programs, capital projects, partnership opportunities, land donations and various other resource needs for Department operations.

Sec. 74-27. - Removal from Board; vacancies.

Members of the Board shall serve at the will and pleasure of the City Council. Any Member of the Board may be removed by the City Council at any time, with or without cause. Any vacancy in the membership of the Board may be filled by the City Council.

Sec. 74-28. - Meetings.

(a) The Board will meet the second Thursday of each month as necessary and at such other times as needed, or by written request sent to the Chairperson or Vice-chairperson by the Director or City Council.

(b) Notice of meetings shall be posted in accordance with the Texas Open Meetings Act, and shall be held at the Department's administration office, unless otherwise specified.

(c) A simple majority of the Board members then appointed and qualified shall constitute a quorum.

(d) Regular attendance at meetings is required in accordance with the City Council Policy on Board and Commission Member Appointment and Eligibility. The absence of any member from any meeting shall be noted in the minutes of the meeting. The Director shall submit to the City Council upon request information related to the Board.

(e) The Director shall attend Board meetings, post notice of meetings and record minutes in accordance with state law.

Sec. 74-29. - Subcommittees.

(a) The Board, by majority vote at any regular or special meeting, may establish one or more *ad hoc* subcommittees necessary to serve a limited need or purpose of the Board and appoint members of the Board to serve on such subcommittee(s).

(b) *Ad hoc* subcommittees are not standing committees and shall be terminated in the same manner as they are appointed upon the resolution of the limited need or purpose for which they were established.

(c) All meetings of any *ad hoc* subcommittees shall conform to the requirements of the Texas Open Meetings Act.

Sec. 74-30. - Naming of Parks.

The Board will be responsible for recommending to the City Council names for Parks.

(1) The Board shall be responsible, with the assistance of the Department, for research, study and recommendation of a proposed name for Parks to the City Council.

(2) Names for Parks should have meaning and be recommended utilizing the direction of the City Council as described in Resolution No. 2014-01-008 (R).

(3) The recommended name will be communicated to the City Council for its consideration and approval.

(4) The Board may recommend that a Park name be changed for any reason at any time.

16-451

TITLE: Regional Mobility Planning, Specifically Related to Major Projects in Collin County

COUNCIL GOAL: Direction for Strategic and Economic Growth

MEETING DATE: May 2, 2016

DEPARTMENT: Development Services

CONTACT: Gary Graham, P.E., P.T.O.E., CIP and Transportation Engineering Manager
Jennifer Arnold, Planning Manager

RECOMMENDED CITY COUNCIL ACTION:

- Discuss and provide feedback.

ITEM SUMMARY:

- This item is to discuss potential long term transportation needs for Collin County, including major projects, limited access roadways (LARs), and recent actions of the Collin County Commissioners Court.

- The Regional Transportation Council (RTC) and Texas Department of Transportation (TxDOT) recently completed an update to the Regional Mobility Plan known as Mobility 2040.

- Following approval of the plan, the RTC requested that each Collin County municipality provide a recommendation of three major projects (e.g. highways/freeways) that would help advance and improve the long term transportation needs of the County. Recommended projects should be limited to those contained in the Mobility 2040 Plan.

- Similarly, the Collin County Commissioners Court recently reviewed the 2014 Mobility Plan for Collin County and concluded that “limited access roadways” (LARs) was a major element that should be added to the Collin County Mobility Plan.

- As such, the Court signed an Order to establish a list of priority LARs to be considered for inclusion in the Collin County Mobility Plan. Locations included are: (1) US Highway 380; (2) State Highway 78; (3) a North-South corridor west of Lavon; and (4) the Collin County Outer Loop. A memorandum to Collin County Mayors, a copy of the Court Order, and a map of the four identified LARs locations are attached to this agenda item for your reference.

- At the request of RTC, Staff is asking that City Council consider what three major projects might most be needed in McKinney to help the city and county achieve long term growth and mobility goals.

- Additionally, due to potential implications to the transportation element of the ONE McKinney 2040 Comprehensive Plan Update, Staff is also requesting Council feedback related to the LARs locations identified by the Collin County Commissioners Court.

BACKGROUND INFORMATION:

- For more information about the Collin County 2014 Mobility Plan, visit: <http://www.co.collin.tx.

- For more information about the Regional Mobility Plan (Mobility 2040 Plan), visit: www.nctcog.org/mobility2040 <http://www.nctcog.org/mobility2040>.

SUPPORTING MATERIALS:

Commissioners Court Memo and Info
Letter from RTC
McKinney Thoroughfare Plan (2015)
Mobility 2040 Project Maps
Presentation

COLLIN COUNTY

Office of the County Judge
Jack Hatchell Admin Building
2300 Bloomdale Rd., Suite 4192
McKinney, Texas 75071
Office 972-548-4631
Fax 972-548-4699
www.collincountytx.gov

April 20, 2016

TO: Collin County Mayors

Dear Mayors:

The Commissioners Court of Collin County is greatly concerned about the future mobility of those who will live and work in the many fine cities in Collin County as well as the rural areas of the County. The Commissioners Court approved an updated Mobility Plan in 2014 which is used by the County, the cities, TxDOT and others as a guide to assuring adequate future mobility. However, it became evident from this update that current transportation planning is not adequate for the long term.

At our meeting on February 1, 2016, Commissioners Court concluded that one of the major elements that has to be added to the Mobility Plan is more "limited access roadways" (LARs). Any type of smaller roadway does not have the capacity needed to accommodate Collin County's growth. The Commissioners Court adopted a Court Order (attached) that established their perspective of priority LARs to be considered for inclusion into the Mobility Plan in the County as well as the Regional plan and State plan. Also attached is a map identifying the corridors of the proposed LARS. The Court is committed to working with the cities and all other transportation agencies in the County to implement the priorities in this Court Order. Members of the Commissioners Court are available to present this information to your City Council; just contact your Commissioner or the County Judge.

You received a letter dated March 25, 2016, from Michael Morris (NCTCOG) and Kelly Selman (TxDOT) asking for your recommendation of three major projects to advance through the environmental process. Although they asked for our submissions by April 15, we have learned that this was not a rigid deadline. If you have not submitted anything we encourage you to do so as soon as possible.

Finally our consultant is completing traffic projections for the population and employment when our county is "built-out". This is critical to be able to determine what transportation facilities will be required and for us to make wise transportation decisions as we grow. We will be sharing this information with you soon and asking all the transportation agencies in the County to join together to develop a "master plan" to guide us as we all implement our parts of the plan.

Thank you for your service to your city. We look forward to working with you as we provide for the future residents and employees of our Cities and County.

Sincerely,

Keith Self
County Judge

cc: City Secretary/City Managers/Administrators

COURT ORDER NO. 2016- 089 -02-01

THE STATE OF TEXAS

COUNTY OF COLLIN

Subject: Limited Access Roadways (LARs) Priority List – Commissioner Precinct 4

On **February 1, 2016,** the Commissioners Court of Collin County, Texas, met in **regular session** with the following members present and participating, to wit:

Keith Self	**County Judge, Presiding**
Susan Fletcher	**Commissioner, Precinct 1**
Cheryl Williams	**Commissioner, Precinct 2**
Chris Hill	**Commissioner, Precinct 3**
Duncan Webb	**Commissioner, Precinct 4**

During such session the court considered a request for approval to recommend and support the Limited Access Roadways (LARs) priority list.

Thereupon, a motion was made, seconded and carried with a majority vote of the court for approval to recommend the following transportation corridors be prioritized, planned, supported and funded as Limited Access Roadways (LARs): 1.) Highway 380 2.) Highway 78 3.) North-South Corridor west of Lavon and 4.) Outerloop (from Denton County line east to US 75) and the Court requests the Regional Transportation Council and TxDOT work with Collin County in getting these priority projects planned, cleared and funded. Same is hereby approved in accordance with the attached documentation.

Keith Self, County Judge

Susan Fletcher, Commissioner, Pct. 1

Cheryl Williams, Commissioner, Pct. 2

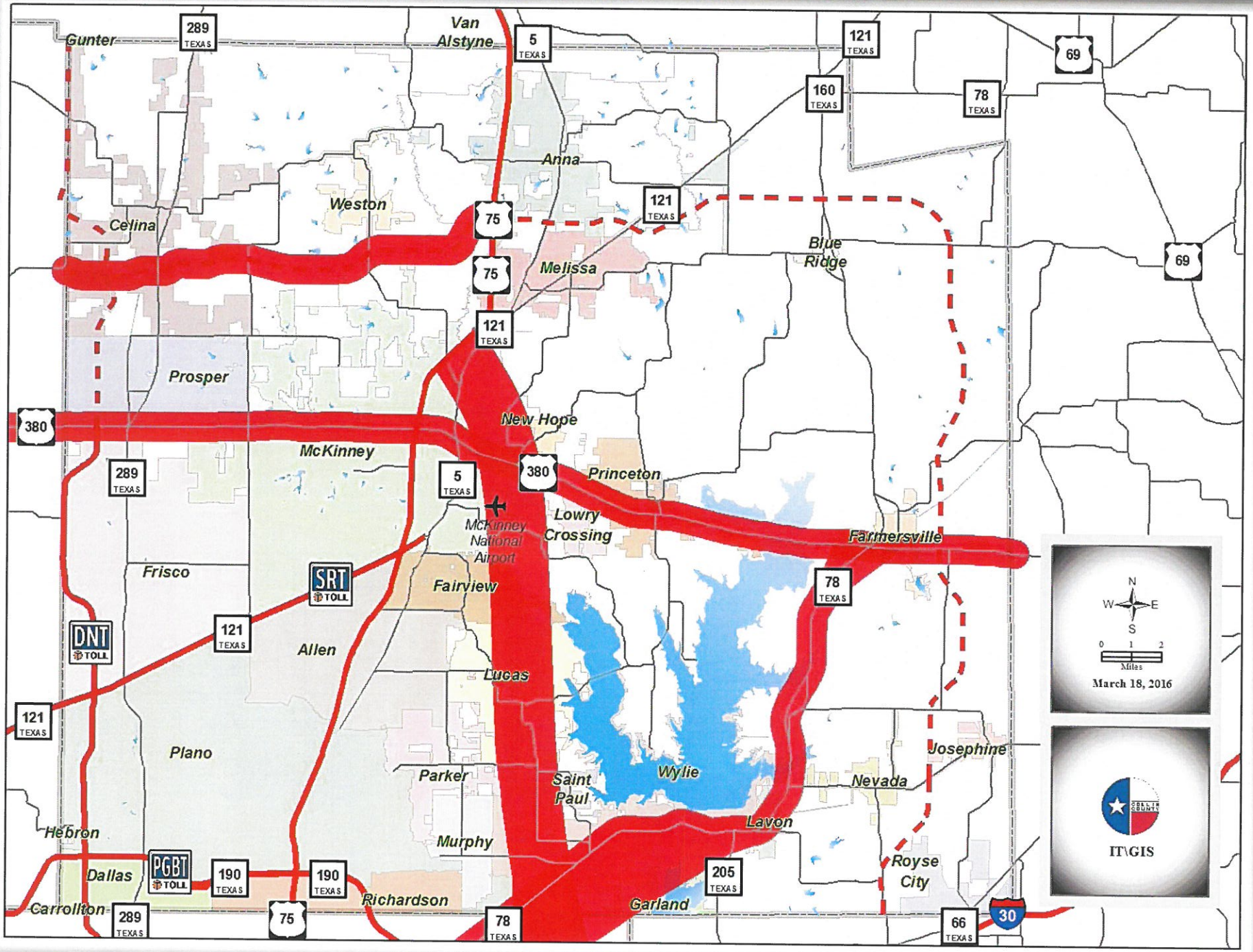
Chris Hill, Commissioner, Pct. 3

Duncan Webb, Commissioner, Pct. 4

COMMISSIONERS COURT COLLIN COUNTY TEXAS

ATTEST:

Stacey Kemp, Ex-Officio Clerk
Commissioners Court
Collin County, T E X A S


Gunter
289 TEXAS
Van Alstyne
5 TEXAS
121 TEXAS
69
160 TEXAS
78 TEXAS
Anna
Weston
Celina
75
121 TEXAS
Blue Ridge
Melissa
75
69
121 TEXAS
Prosper
380
New Hope
McKinney
289 TEXAS
5 TEXAS
380
Princeton
McKinney National Airport
Lowry Crossing
Farmersville
Frisco
SRT TOLL
Fairview
78 TEXAS
DNT TOLL
121 TEXAS
Allen
Lucas
121 TEXAS
Plano
Parker
Saint Paul
Wylie
Josephine
Nevada
Lavon
Hebron
Murphy
Dallas
PGBT TOLL
190 TEXAS
190 TEXAS
Richardson
205 TEXAS
Royse City
Carrollton
289 TEXAS
75
78 TEXAS
Garland
66 TEXAS
30
N
W
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Miles
March 18, 2016
COLLIN COUNTY
IT\GIS

Regional Transportation Council

The Transportation Policy Body for the North Central Texas Council of Governments
(Metropolitan Planning Organization for the Dallas-Fort Worth Region)

TO: Collin County Judge, Mayors, Commissioners, City Managers, and Regional Transportation Council Member Representatives

DATE: March 25, 2016

FROM: Michael Morris, P.E.
Kelly Selman, P.E.

SUBJECT: Advancing Freeway/Highway Projects in Collin County

The Regional Transportation Council approved Mobility 2040, the metropolitan transportation plan for the Dallas-Fort Worth area on March 10, 2016. While population growth is an issue for the entire region, growth is particularly rapid in Collin County. That fact, coupled with the comparative lack of non-tolled highway type transportation facilities presents current and future traffic congestion problems in the County.

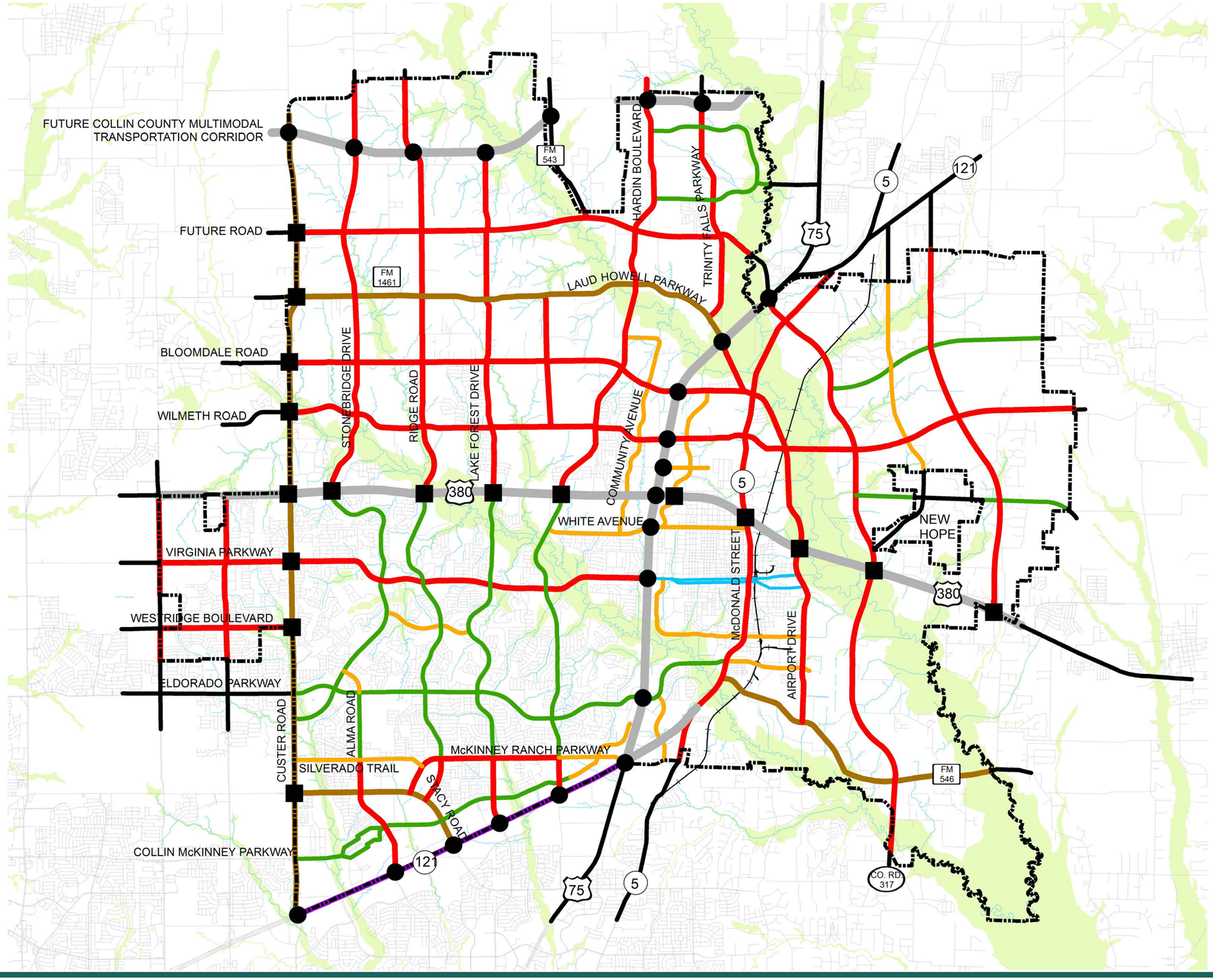
As we look to implement projects from Mobility 2040, it is imperative that we begin working on environmental studies now to be prepared for funding in the near term. This will be a collaborative process amongst local governments, the Regional Transportation Council, and the Texas Department of Transportation. At this time, we would like to ask each city in Collin County to identify three candidate major freeway/highway type projects that should advance through the environmental process. Please respond back to Michael Morris or Kelly Selman by April 15, 2016, with your entity's recommendations. Again, we are looking for three candidate highway/freeway projects contained in the Mobility 2040 Plan, www.nctcog.org/mobility2040.

We look forward to working with elected officials and the community in Collin County to advance needed transportation projects. Please let us know if you have any questions or concerns.

Michael Morris, P.E.
Director of Transportation
North Central Texas Council of Governments

James K. Selman, P.E.
Dallas District Engineer
Texas Department of Transportation

AW:ch



CITY OF MCKINNEY

COMPREHENSIVE PLAN

MASTER THOROUGHFARE PLAN

- High Capacity at Grade Intersections
- Grade Separated Intersections
- Extraterritorial Jurisdiction (ETJ)
- Rail Line
- Floodplain

Roadway Classifications

- Major Regional Highway / Multi-Modal
- Tollway
- Principal Arterial: (P6D - 130'-150' ROW, 6 lanes)
- Major Arterial: (M6D - 120' ROW, 6 lanes)
- Minor Arterial: (M4D,M5U,M4U,M3U)
- Greenway Arterial: (G4D - 120' ROW, 4 lanes)
- Town Thoroughfare
- Road By Others

* Original Adoption (Ordinance No. 2004-03-035)
* Amendment #1 (Ordinance No. 2005-10-133) Revised to reflect changes to Ridge Road and Stonebridge Drive north of Bloomdale Road.
* Amendment #2 (Ordinance No. 2010-01-001) Revised to reflect actual alignments of recently built roads, the Future Collin County Multimodal Transportation Corridor alignment, the Trinity Falls Municipal Utility District, assorted roadway classification changes, and boundary changes between McKinney, Fairview and Princeton.
* Amendment #3 (Ordinance No. 2012-11-160) Revised to reflect new Custer Rd. /Wilmeth Rd. Alignment.
* Amendment #4 (Ordinance No. 2013-07-070) Revised to reflect actual alignments of recently built roads, the Future Collin County Multimodal Transportation Corridor alignment, the Trinity Falls Municipal Utility District, Custer Rd. north of U.S. 380, Stonebridge Dr. north of U.S. 380, Hardin Blvd. north of U.S. 380, FM 546, and assorted roadway classification changes.
* Amendment #5 (Ordinance No. 2015-06-048) Revised to reflect actual alignment of recently built roads, changes to the Ridge Rd., Lake Forest Dr. and Laud Howell Pkwy. alignments, assorted roadway classification changes, boundary changes between McKinney and Fairview, and floodplain changes.

Source: City of McKinney GIS Department Data

2 June 2015

FIGURE 8.3

0 1 2 Miles

100 Acres

1 Square Mile

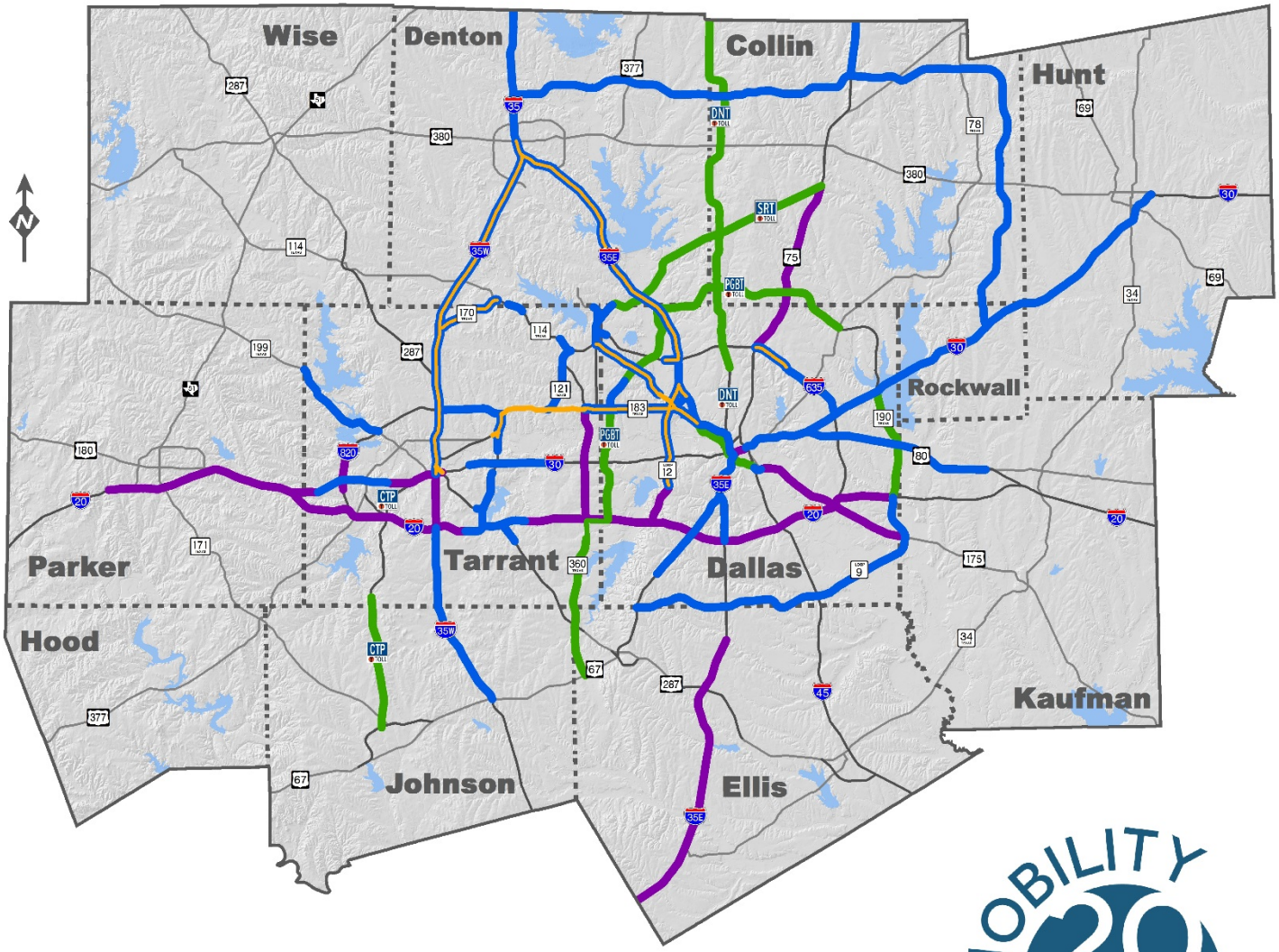
Disclaimer: The Master Thoroughfare Plan provides generalized locations for future thoroughfares. Alignments may shift as roads are engineered and designed to accomodate floodplain areas and to meet sound engineering and urban planning principles. The roadway lines shown on the plan are not precise (site specific) locations of future thoroughfares.



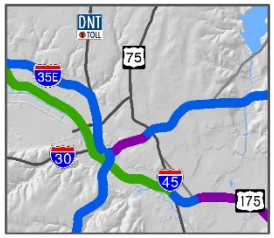
Map Package

Major Roadway Recommendations

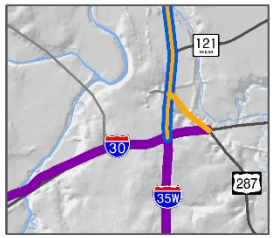
- New or Additional Freeway Capacity
- Additional Freeway Capacity and New Tolled Managed Lanes
- New or Additional Tolled Managed Capacity
- New or Additional Toll Road Capacity
- Capacity Maintenance
- Freeways/Tollways
- Other Major Roadways



Dallas CBD



Fort Worth CBD



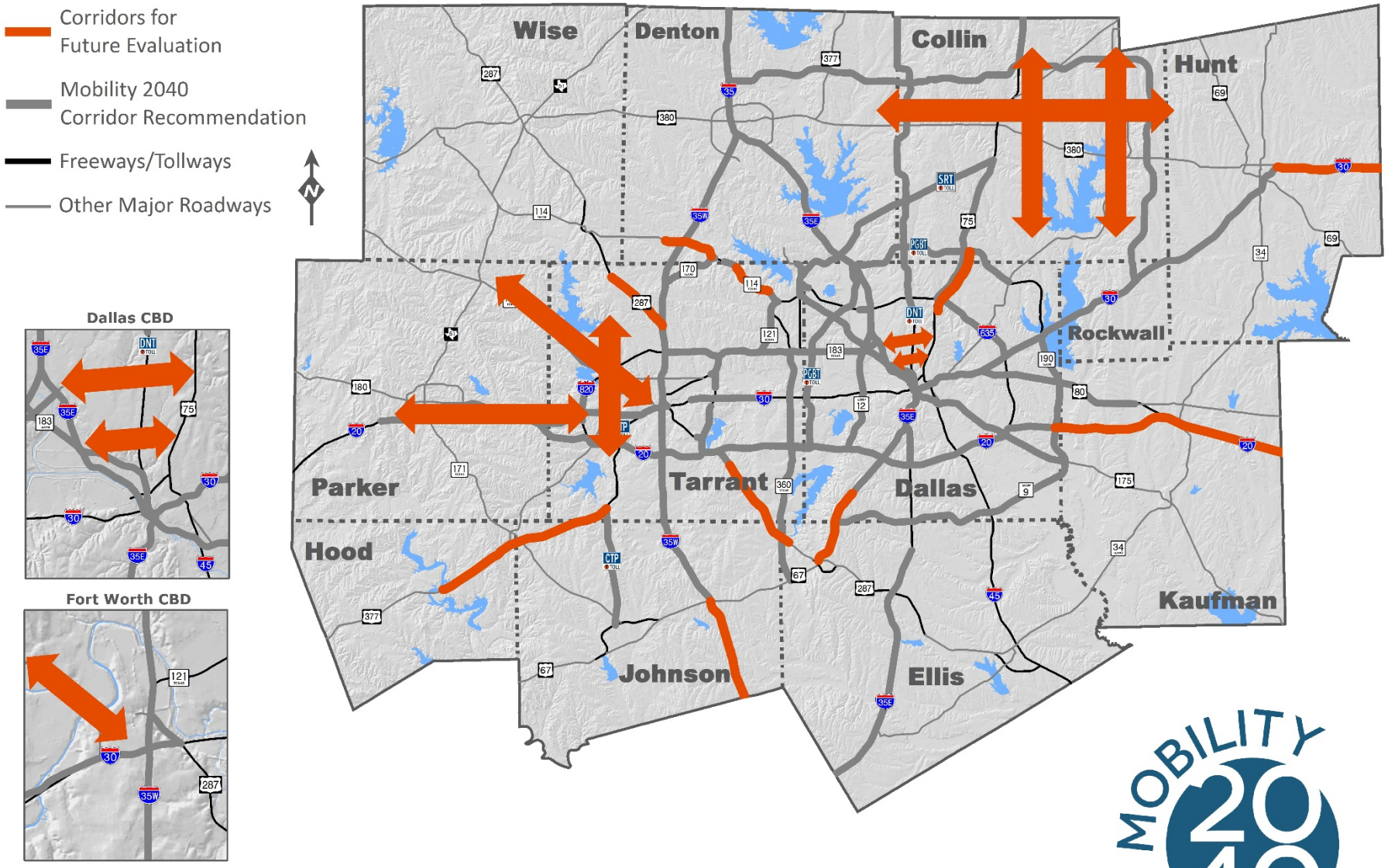
MOBILITY 2040

North Central Texas Council of Governments

March 2016

Facility recommendations indicate transportation need. Corridor-specific alignment, design, and operational characteristics will be determined through ongoing project development.

Illustrative Major Roadway Corridors for Future Evaluation



Illustrative roadway corridors indicate an identified transportation need and do not represent recommendations or specific alignments. Recommendations may be developed for future MTPs through feasibility analyses, thoroughfare plans, and environmental studies.

North Central Texas Council of Governments

March 2016



Regional Mobility Priorities

May 3, 2016

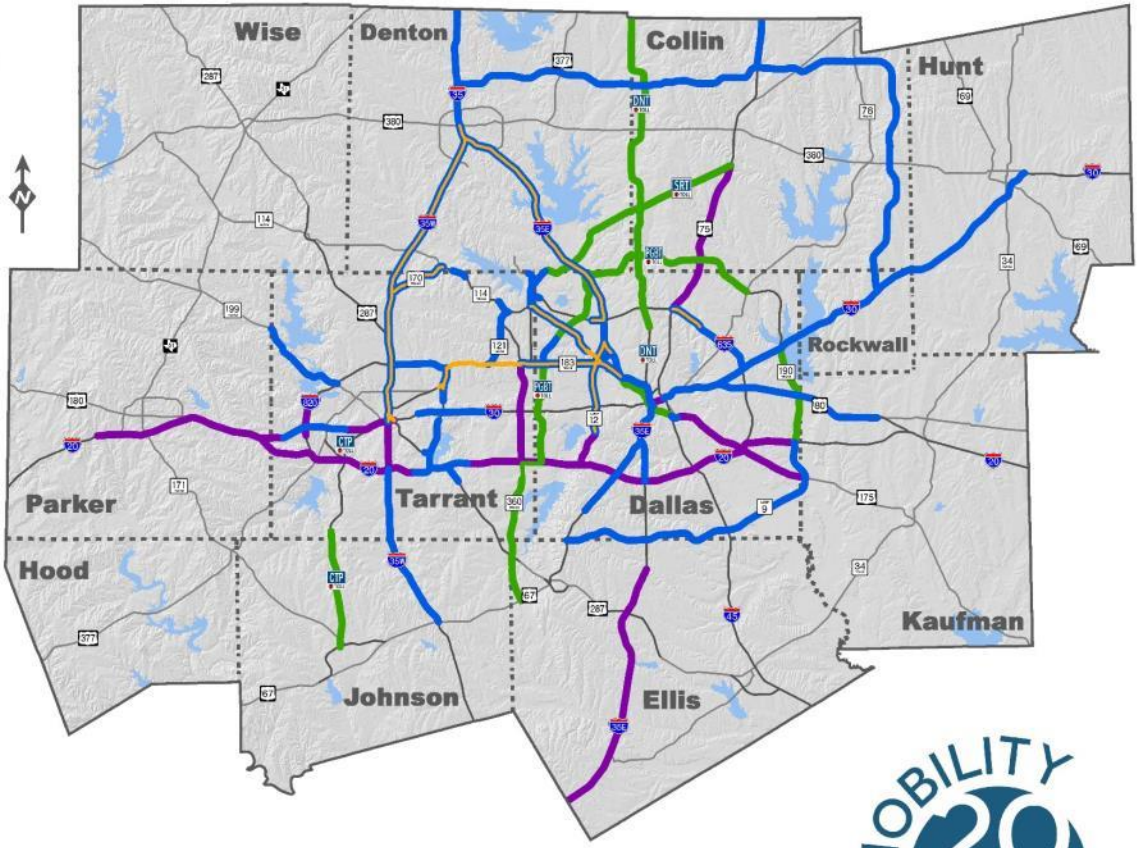
- MONEY MAGAZINE 2014 -

Regional Transportation Council Request

- Identify three candidate major freeway/highway type projects contained in the Mobility 2040 Plan to advance through the environmental process

Major Roadway Recommendations

- New or Additional Freeway Capacity
- Additional Freeway Capacity and New Tolled Managed Lanes
- New or Additional Tolled Managed Capacity
- New or Additional Toll Road Capacity
- Capacity Maintenance
- Freeways/Tollways
- Other Major Roadways



Dallas CBD



Fort Worth CBD

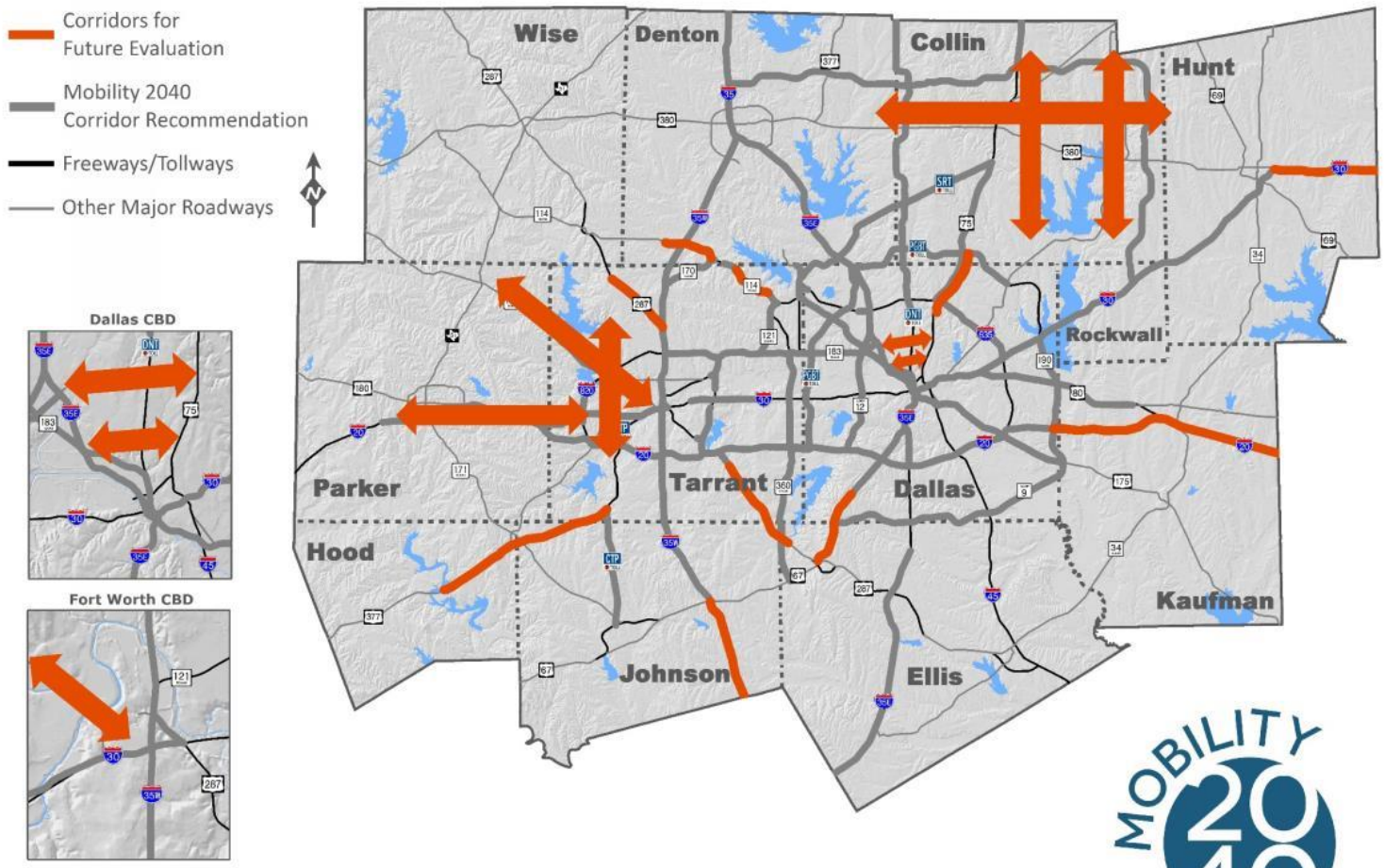


North Central Texas Council of Governments

March 2016

Facility recommendations indicate transportation need. Corridor-specific alignment, design, and operational characteristics will be determined through ongoing project development.

Illustrative Major Roadway Corridors for Future Evaluation



North Central Texas Council of Governments

March 2016

Illustrative roadway corridors indicate an identified transportation need and do not represent recommendations or specific alignments. Recommendations may be developed for future MTPs through feasibility analyses, thoroughfare plans, and environmental studies.

Possible Priorities

Regional Priorities

- US 75 Alternate Route
- US 75 south of SH 121 – However, include the section of US 75 in McKinney in the Project Development Process
- Outer Loop
- US 78
- Extension of FM 546 to US 380 in Princeton

- The City of McKinney does not support the conversion of US 380 to a Limited Access Roadway but does support improvements to the roadway to improve capacity and mobility.

Possible Priorities

Local Priorities

- FM 546 – SH5 to the Airport
- Virginia Parkway – Ridge to US 75
- SH 5 Reconstruction – US 380 to FM 546
- SH 5 Reconstruction – FM 546 to Industrial
- Laud Howell Parkway (FM 1461) – US 75 to the Dallas North Tollway
- Custer Road – US 380 to FM 1461

16-453

TITLE: Performance Management Program Review

COUNCIL GOAL: Operational Excellence

MEETING DATE: May 2, 2016

DEPARTMENT: City Manager's Office

CONTACT: Chandler Merritt

RECOMMENDED CITY COUNCIL ACTION:

- Discuss and provide feedback.

ITEM SUMMARY:

- This is a review of the current performance management system as implemented during FY2016 and the subsequent individual performance processes put in place by individual departments.

- This presentation also includes information on a new system which is being reviewed to potentially implement going forward to better meet the performance needs of the City of McKinney.

BACKGROUND INFORMATION:

- At the beginning of FY2016, the City of McKinney implemented a performance management plan to begin assessing city performance from a city wide level.

- The City began by using the ICMA Insights system for this purpose measuring several hundred key performance indicators (KPI's).

- The City continues to use this system currently, but is reviewing its options on how to best measure its performance in the future.

SUPPORTING MATERIALS:

Presentation



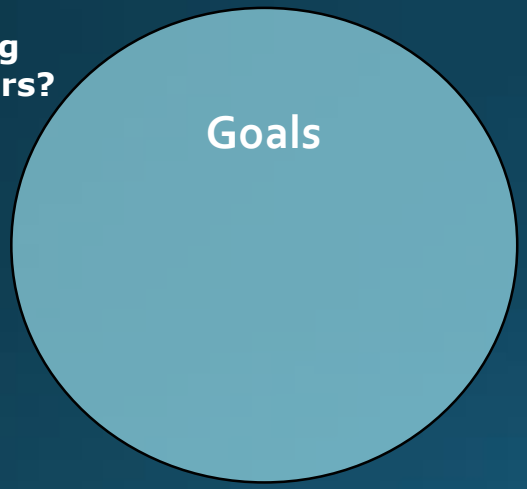
McKinney First

Performance Management

Aligning Operations and Resources to Council Strategic Goals

Performance Management Framework

How are we doing it? Are we measuring what matters?



2016 McKinney City Council Goals & Strategies



Direction for Strategic & Economic Growth

Operational Excellence





Maximize the Development Potential of the McKinney National Airport

Financially Sound Government





Enhance the Quality of Life in McKinney

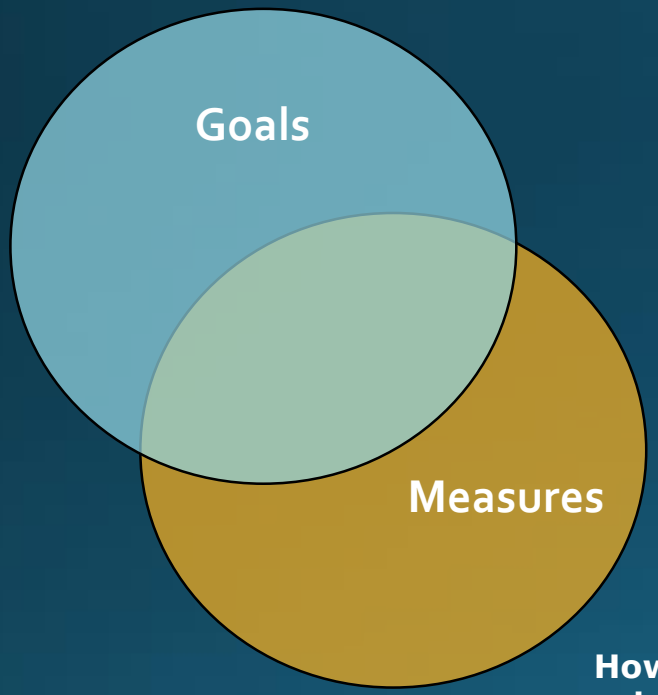
Safe & Secure Community



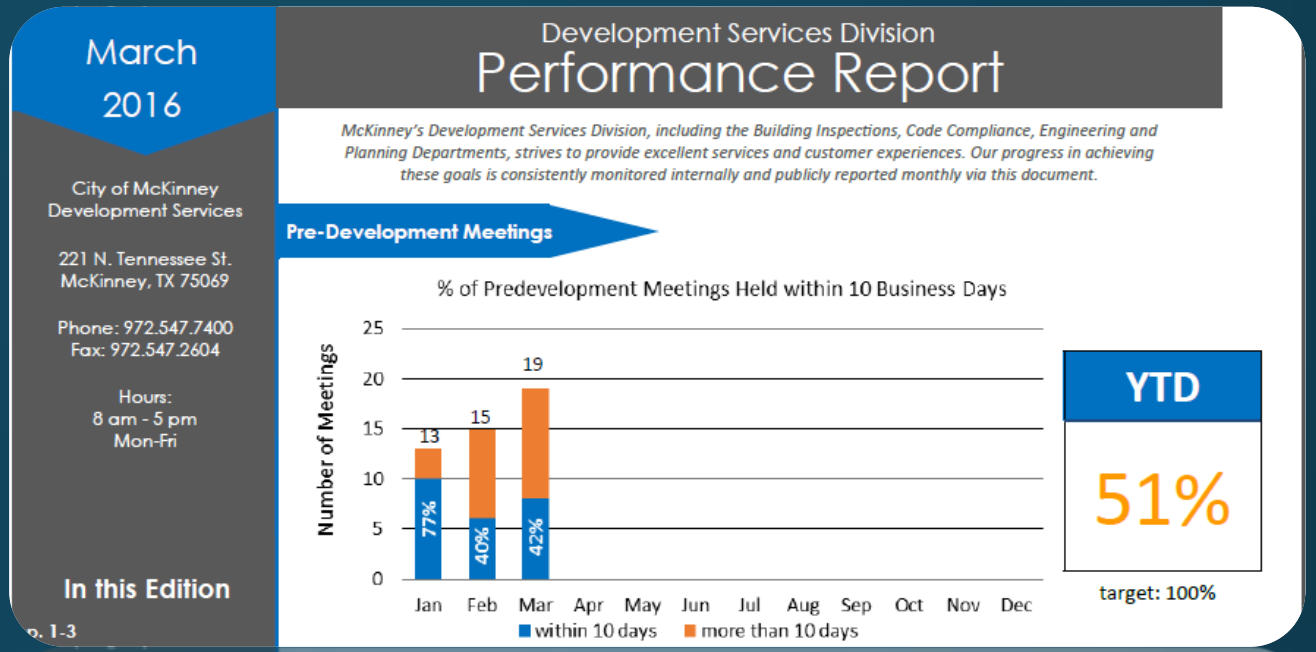
Aligning Operations and Resources to Citywide Goals

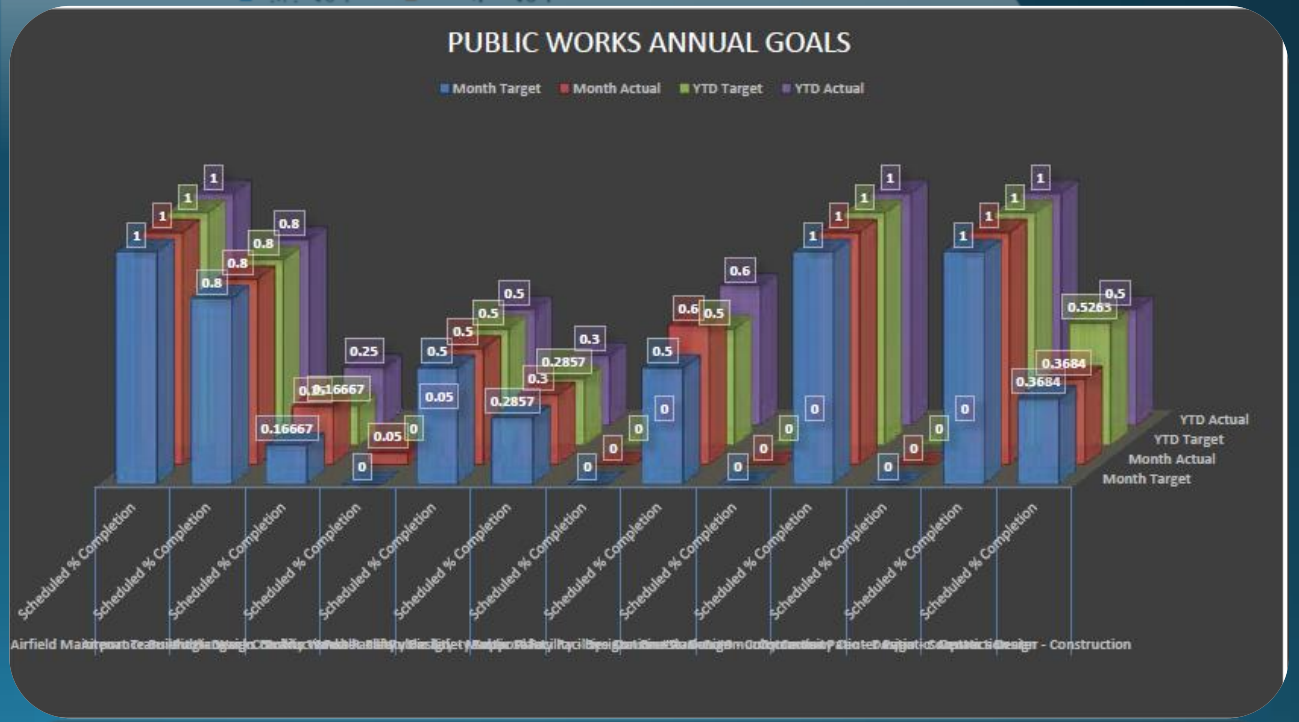
Performance Management Framework

What are we doing? How will we reach our objectives?



How are we doing it? Are we measuring what matters?





Aligning Operations and Resources to Citywide Goals

Performance Management Framework



Division	Month
Facility Maintenance	March

Annual Goals & Projects

Goal/Project	Measure	Month		YTD	
		Target	Actual	Target	Actual
Carpet and flooring replacement	Number of facilities replaced	1	0	5	3
Replace faucets and flush valves to reduce facility water consumption	Number of faucets replaced	4	1	12	28
Replace faucets and flush valves to reduce facility water consumption	Number of valves replaced	6	5	18	36
Increase energy efficiency by replacing facility HVAC units	Number of units replaced	1	7	4	7
Increase energy efficiency by replacing facility light fixtures	Number of fixtures replaced	25	22	100	36
Increase energy efficiency by replacing facility roofs with cool roofs	Number of roofs replaced	2	0	7	3
Re-painting of city facilities	Number of facilities painted	2	1	4	7
Prompt Response to Work Order requests - Low	72 Hour Response/4 Day Resolution	0.9	0.76	0.9	0.76
Prompt Response to Work Order requests - Medium	48 Hour Response/2 Day Resolution	0.9	0.64	0.9	0.64
Prompt Response to Work Order requests - High	30 Minute Response/24 Hour Resolution	0.9	0.89	0.9	0.89
MPAC Door Replacement	Project Completion - February 2016	0	1	0	1
Expand Fleet Service Center	Project Completion - April 2017	0.3	0	0.3	0

Aligning Operations and Resources to Citywide Goals

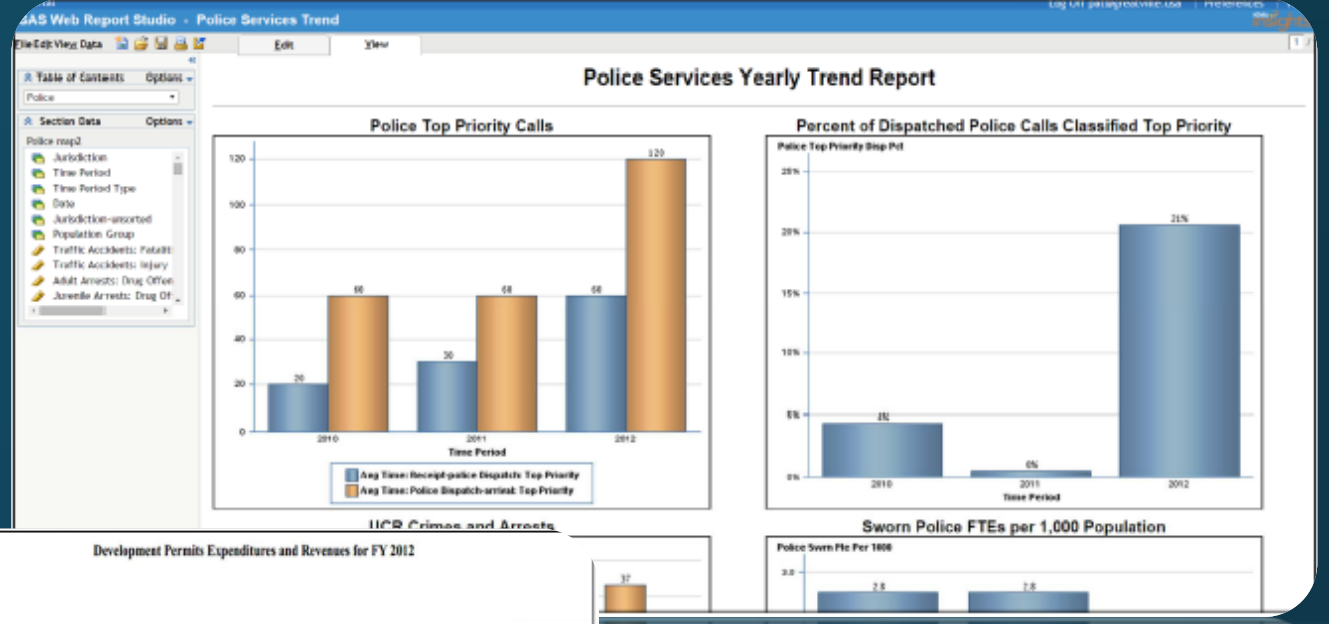
Performance Management Framework

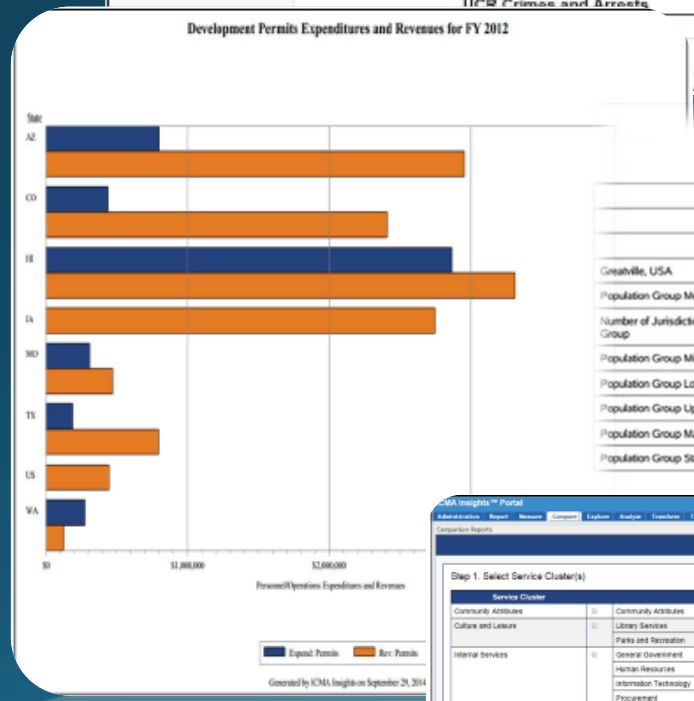




ICMA Insights

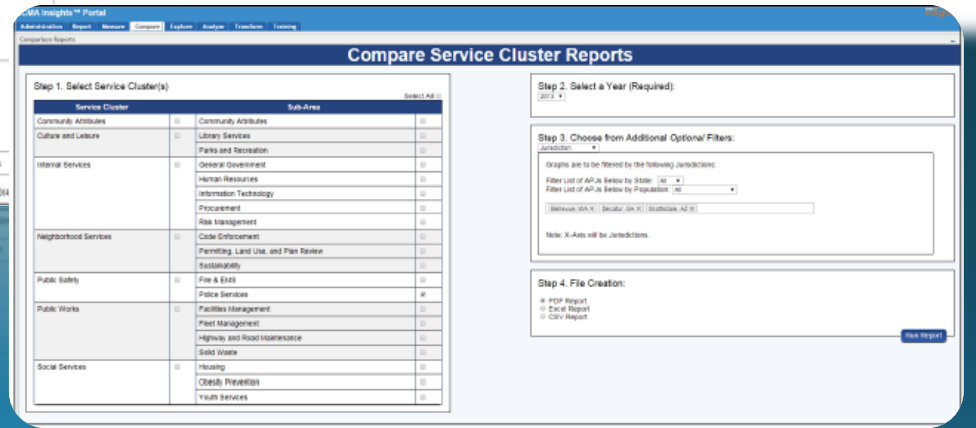
- **Advantages**
  - Introductory level of Performance Management Philosophy
  - Pre-Determined Key Performance Indicators (KPI's)
  - External benchmarking against other cities throughout the nation using the program
  - Hosted Solution requiring little operational maintenance
- **Disadvantages**
  - Restrictive KPI's (inability to customize performance measures to council strategic goals & city operations)
  - Current lack of comparable cities to benchmark against externally
  - Limited technical capabilities for reporting functions





Development Permits Expenditures and Revenues
GREATVILLE, USA
Population Group All

	measure													
	Expend: Permits							Rev: Permits						
	FY_2009	FY_2010	FY_2011	FY_2012	FY_2013	FY_2014	FY_2015	FY_2009	FY_2010	FY_2011	FY_2012	FY_2013	FY_2014	FY_20
Greatville, USA	.	$58,000	$58,000	.	$785,416	$785,416	.	.	.	.	$445,312	$445,312	$445,312	
Population Group Median	.	$60,000	$58,000	$54,427	$83,309	$785,416	.	.	.	.	$207,793	$401,903	$445,312	
Number of Jurisdictions in Population Group	.	11	13	18	17	1	.	.	0	0	9	11	1	
Population Group Minimum	.	$24,397	$38,579	$0	$12,100	$785,416	.	.	.	.	$6,775	$22,858	$445,312	
Population Group Lower Quartile	.	$34,637	$44,757	$36,090	$60,784	$785,416	.	.	.	.	$89,418	$82,138	$445,312	
Population Group Upper Quartile	.	$196,542	$102,293	$132,880	$181,011	$785,416	.	.	.	.	$371,255	$445,312	$445,312	
Population Group Maximum	.	$455,528	$291,681	$523,233	$785,416	$785,416	.	.	.	.	$3,328,690	$639,831	$445,312	
Population Group Standard Deviation	.	$131,508	$72,998	$119,266	$188,832	.	.	.	.	.	$1,055,751	$194,386	.	



Strategy to Execution

Typical Strategy to Execution Lifecycle



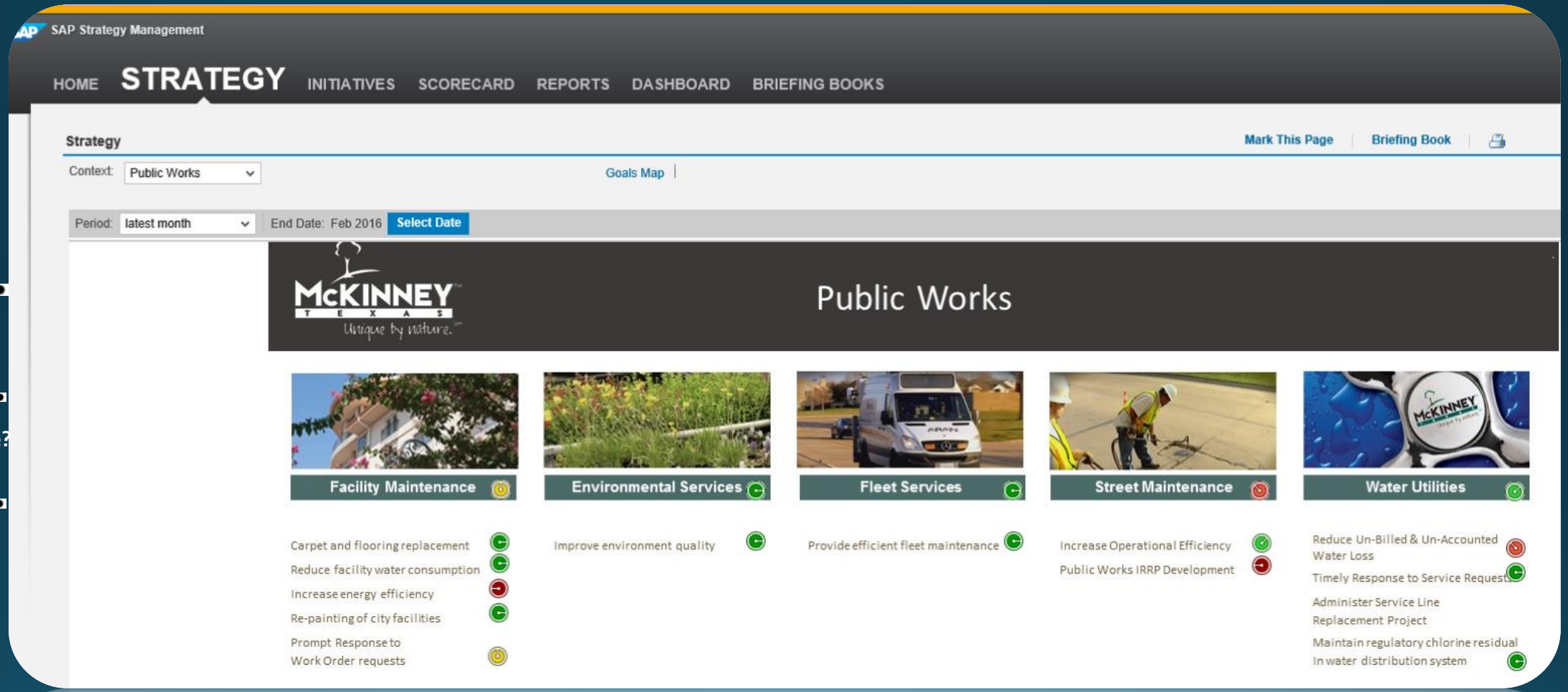
Strategy must be clear and measurable

Effective communication. What to achieve? How to measure it?

What is the area for improvement

What do we want to achieve?

How is achievement measured and tracked?

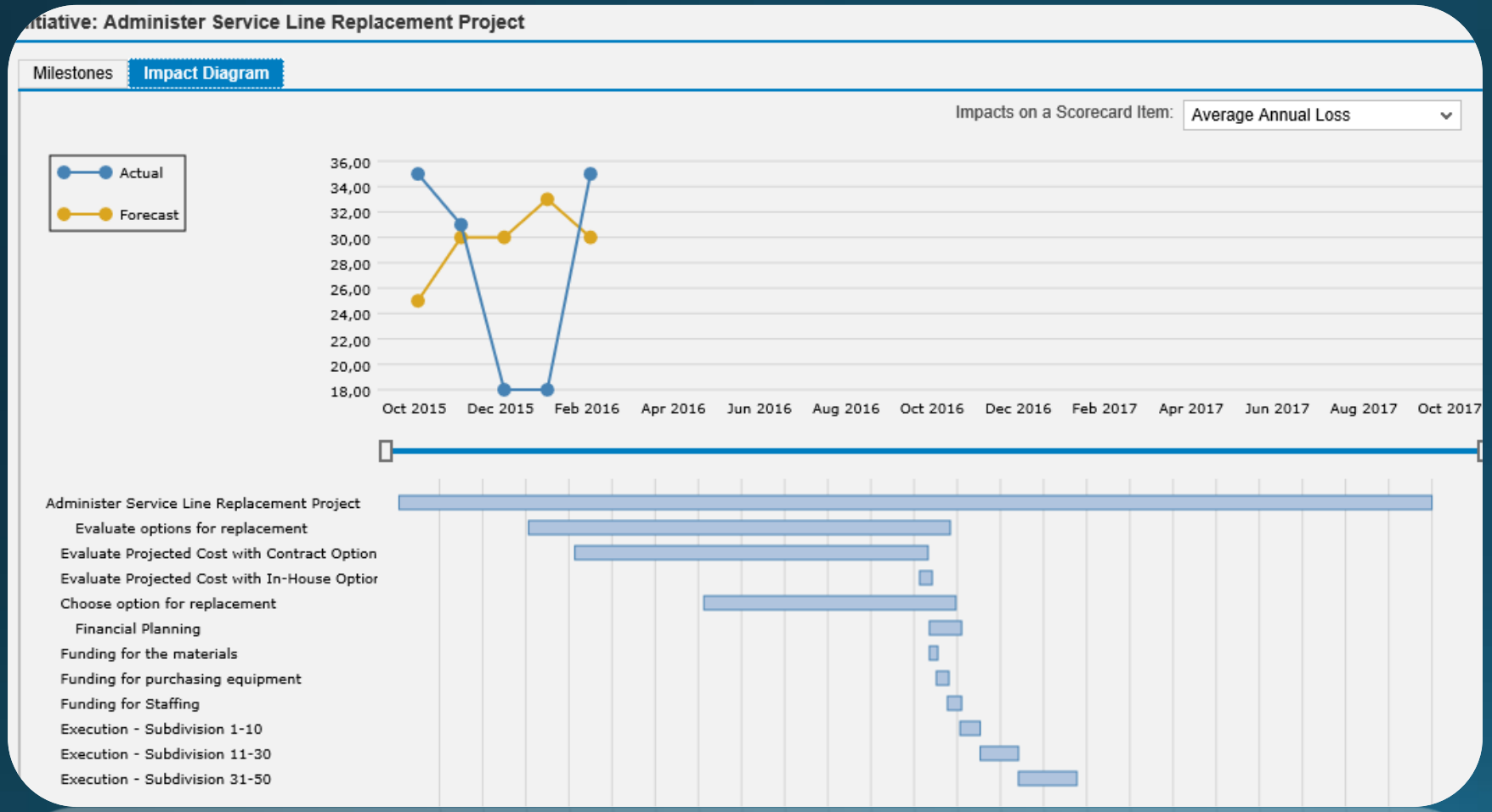


Communicate Strategies and customized KPIs with better reporting features and functionality

Transform adopted goals developed by City Council into living documents which can be used by staff to define, discuss, share, and update council on city performance.

Strategy must be clear and measurable

What are the initiatives? What's their impact?



Drive Execution for Better Performance

- Provides the tools needed to effectively communicate and manage strategic goals, initiatives, and key performance indicators (KPIs) – from initial definition to completed execution.
- Leverage collective intelligence towards common goals by enabling management to prioritize and weight initiatives based on their impact on strategic goals, employees know how to focus their daily actions.

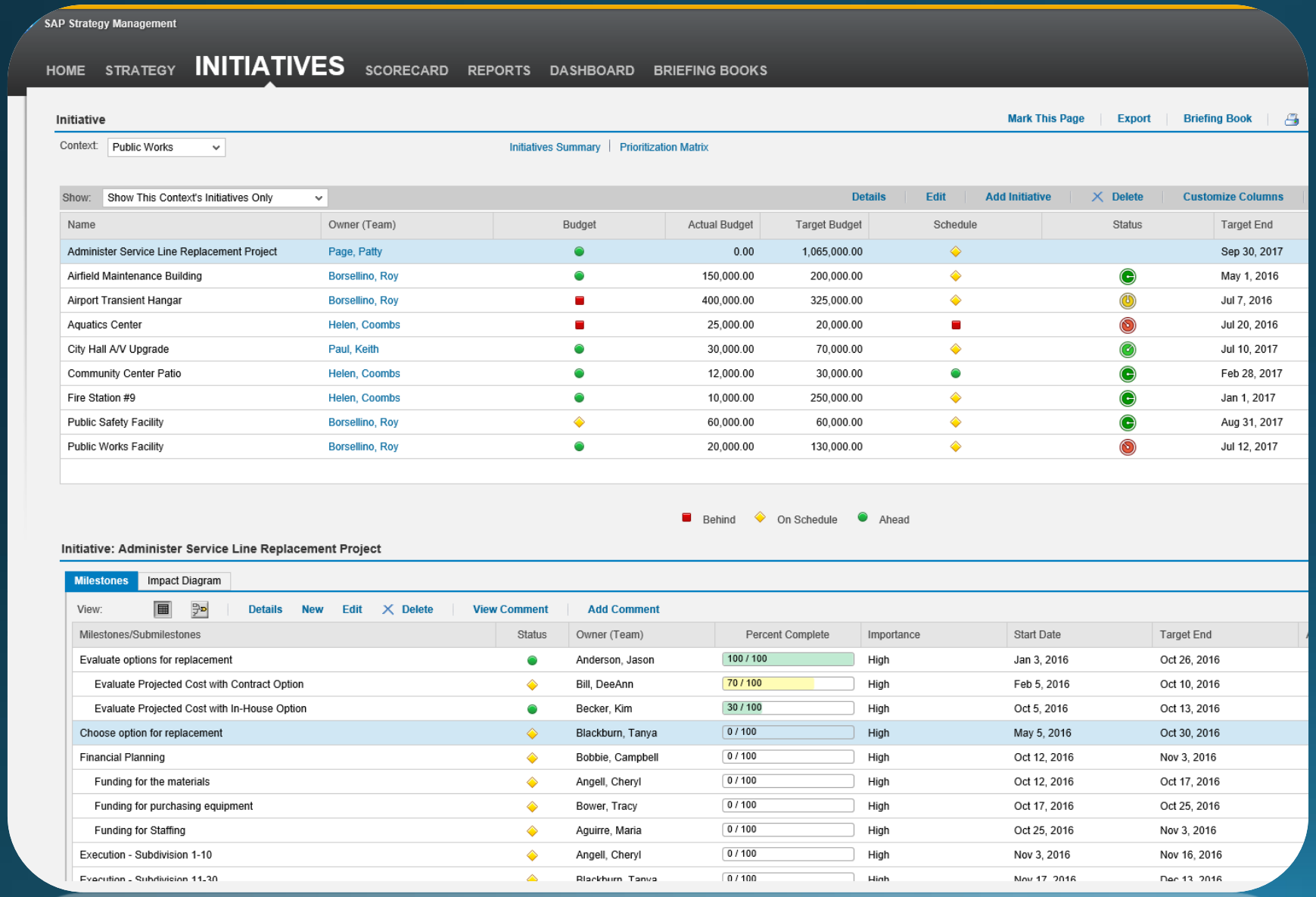
Strategy to Execution

Typical Strategy to Execution Lifecycle



Strategy must be clear and measurable

Align financial and operational plans with strategic goals

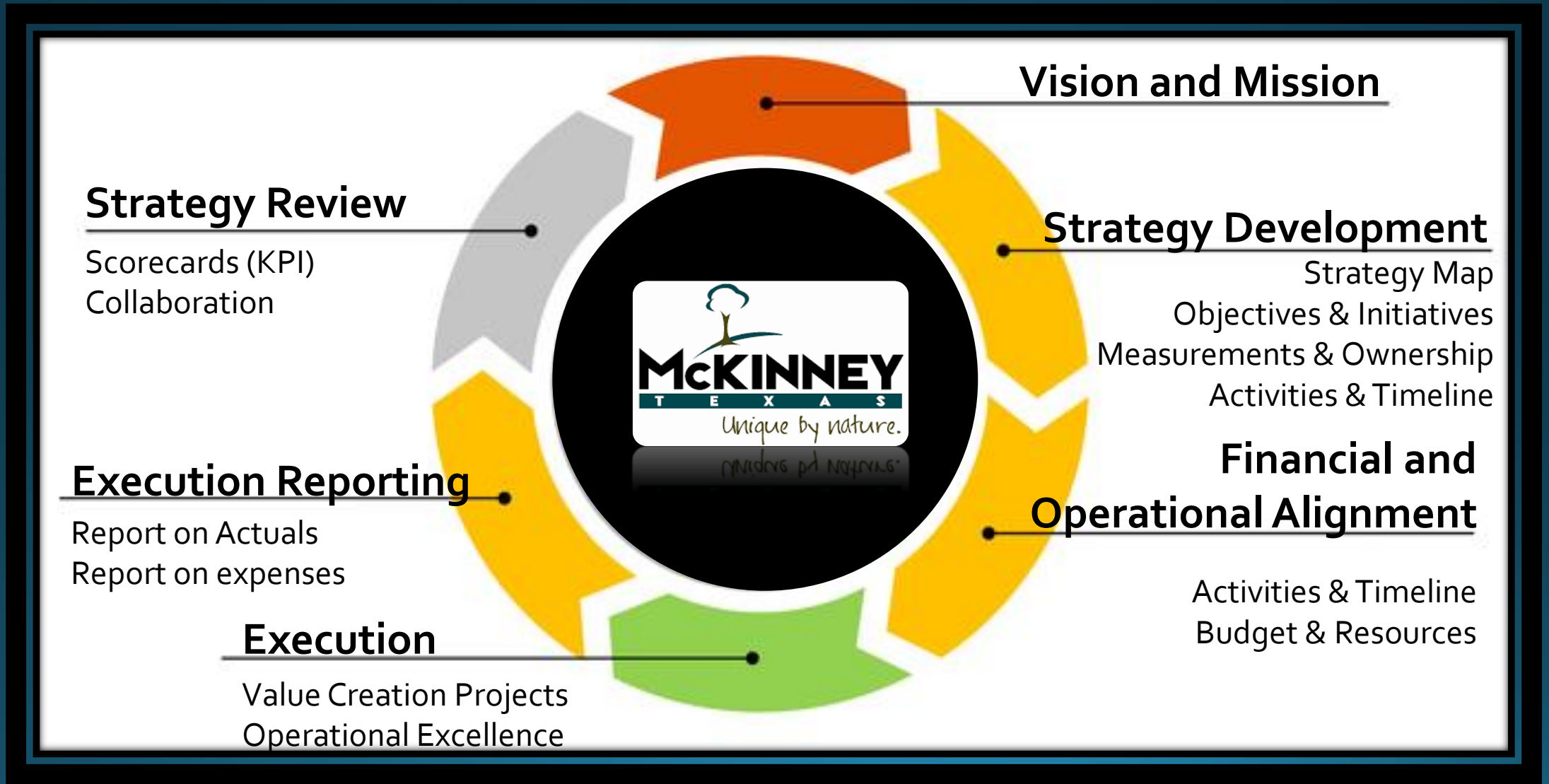


Drive Execution for Better Performance

- By clearly linking strategic plans to initiatives, performance measures, and people, we can set clear priorities and tasks that employees can act on with confidence and purpose.
- Gain greater visibility into and control over the factors that affect the city's performance – which can lead to more agile execution.

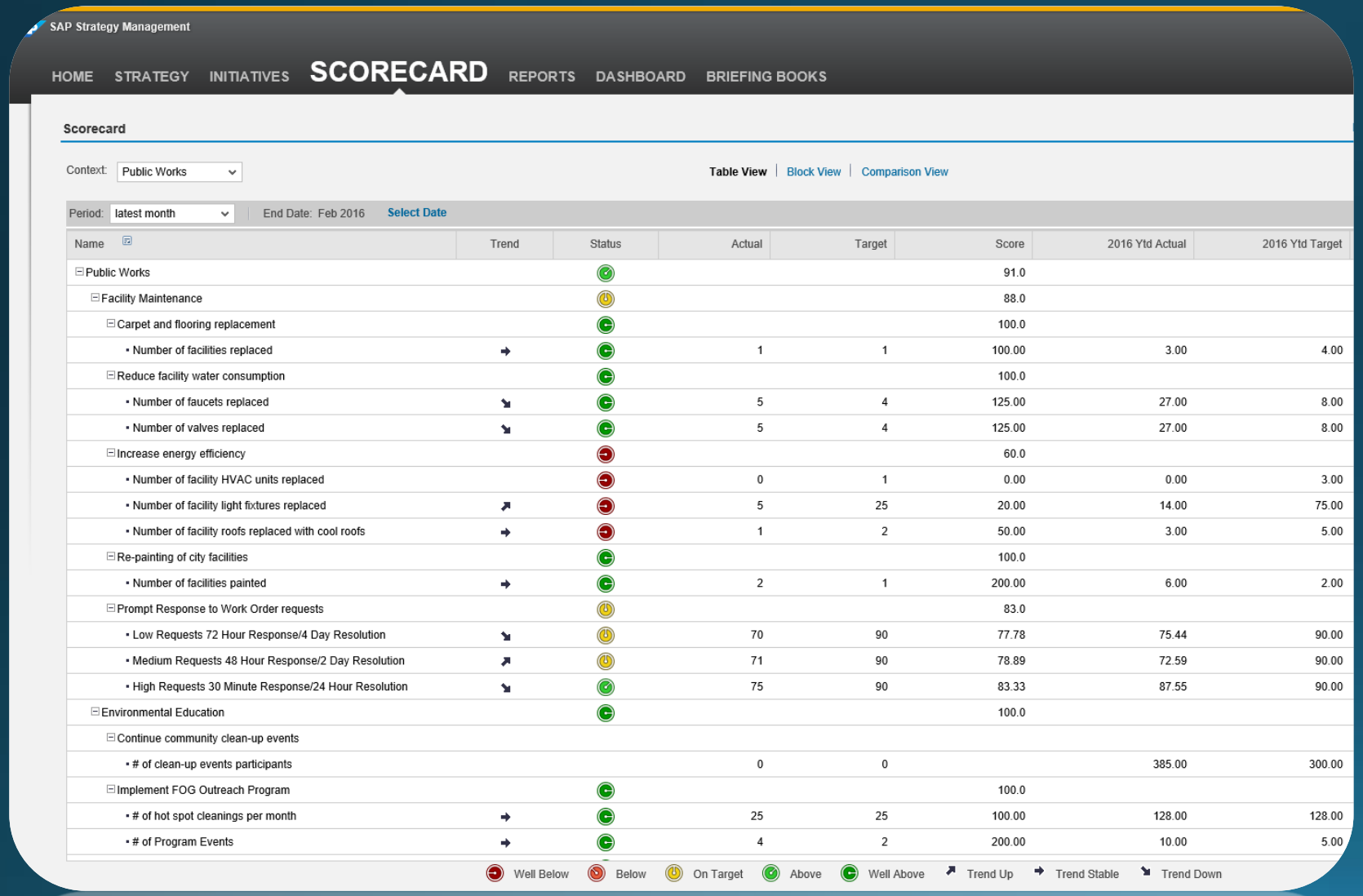
Strategy to Execution

Typical Strategy to Execution Lifecycle



Reporting

Progress Report and Operational Performance



Name	Trend	Status	Actual	Target	Score	2016 Ytd Actual	2016 Ytd Target
Public Works					91.0		
Facility Maintenance					88.0		
Carpet and flooring replacement					100.0		
▪ Number of facilities replaced	→		1	1	100.00	3.00	4.00
Reduce facility water consumption					100.0		
▪ Number of faucets replaced	↘		5	4	125.00	27.00	8.00
▪ Number of valves replaced	↘		5	4	125.00	27.00	8.00
Increase energy efficiency					60.0		
▪ Number of facility HVAC units replaced			0	1	0.00	0.00	3.00
▪ Number of facility light fixtures replaced	↗		5	25	20.00	14.00	75.00
▪ Number of facility roofs replaced with cool roofs	→		1	2	50.00	3.00	5.00
Re-painting of city facilities					100.0		
▪ Number of facilities painted	→		2	1	200.00	6.00	2.00
Prompt Response to Work Order requests					83.0		
▪ Low Requests 72 Hour Response/4 Day Resolution	↘		70	90	77.78	75.44	90.00
▪ Medium Requests 48 Hour Response/2 Day Resolution	↗		71	90	78.89	72.59	90.00
▪ High Requests 30 Minute Response/24 Hour Resolution	↘		75	90	83.33	87.55	90.00
Environmental Education					100.0		
Continue community clean-up events							
▪ # of clean-up events participants			0	0		385.00	300.00
Implement FOG Outreach Program					100.0		
▪ # of hot spot cleanings per month	→		25	25	100.00	128.00	128.00
▪ # of Program Events	→		4	2	200.00	10.00	5.00

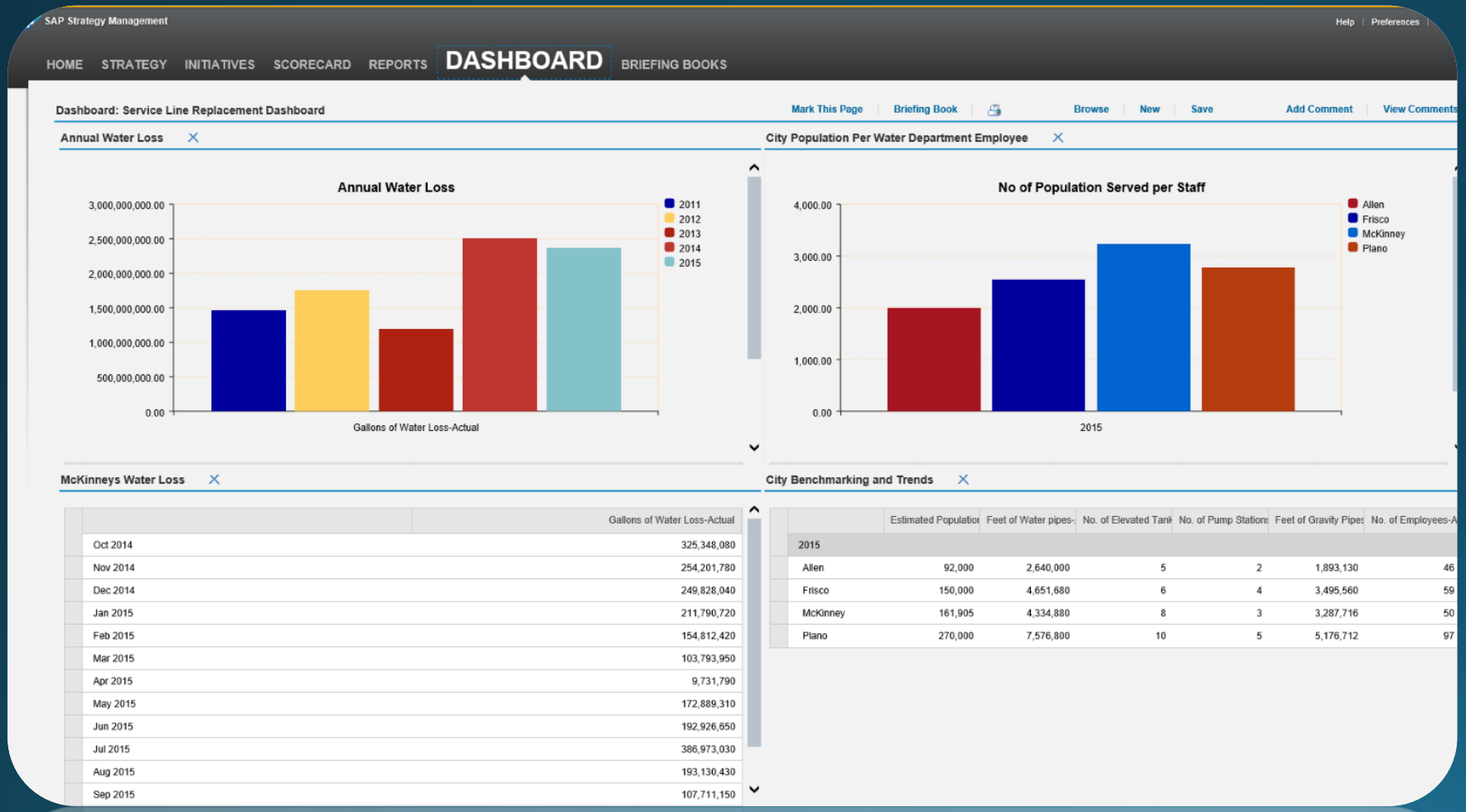
Well Below | Below | On Target | Above | Well Above | Trend Up | Trend Stable | Trend Down

Simplify Monitoring and Intelligently Manage Performance

- Performance reports and operational reviews are part of city activities and involve different audiences ranging from staff and committee members to the city council and the public.
- New program would staff to ensure operational review is centralized, consistent, and more readily available.

Reporting

Progress Report and Operational Performance

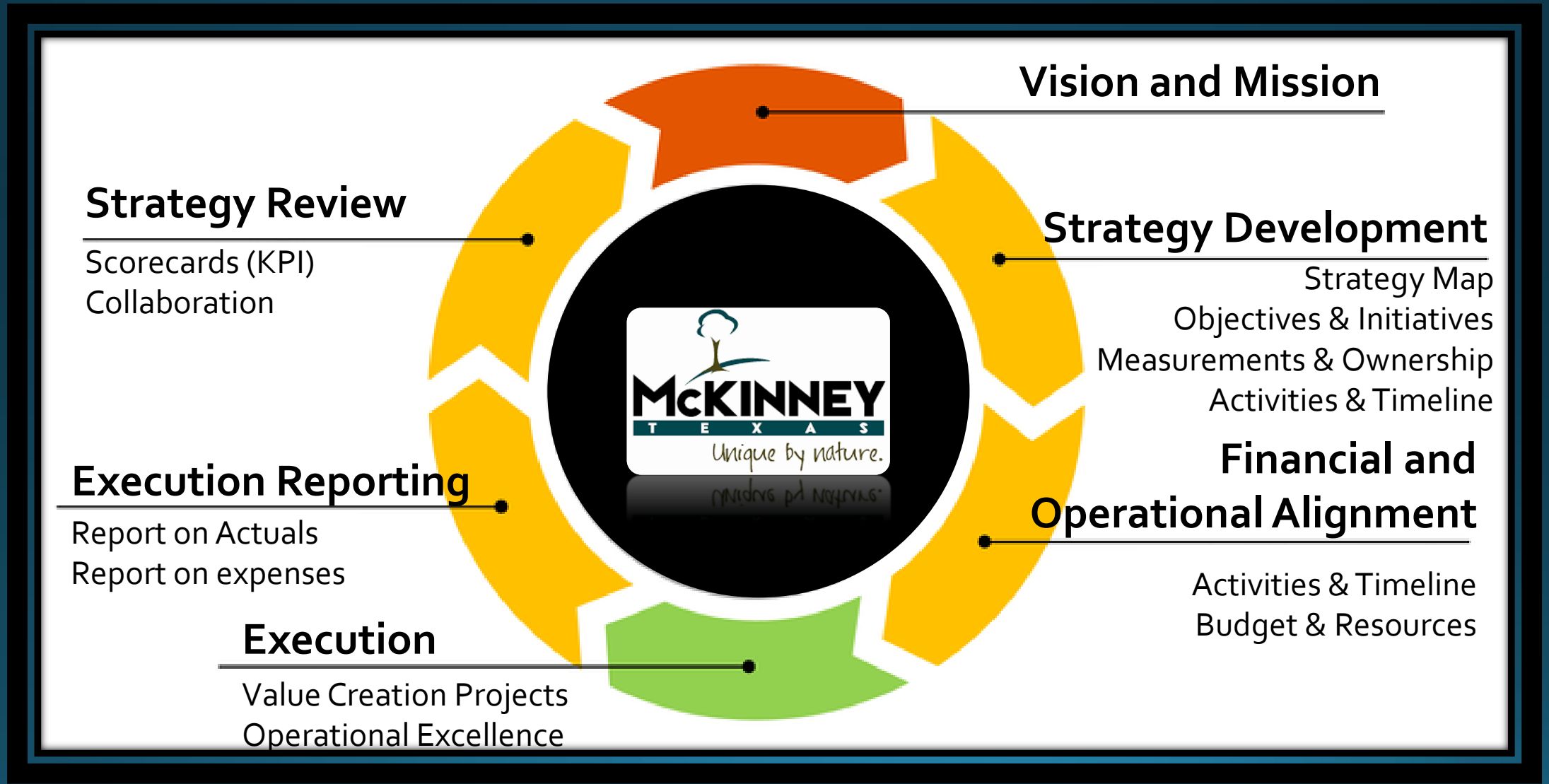


Foster Greater Collaboration with Access to Role-Appropriate Information

- Make performance relevant data available in a contextually appropriate way.
- Secure, role based access to data from across the organization.
- Staff can better understand how their work affects (and is affected by) other stakeholders and departments.

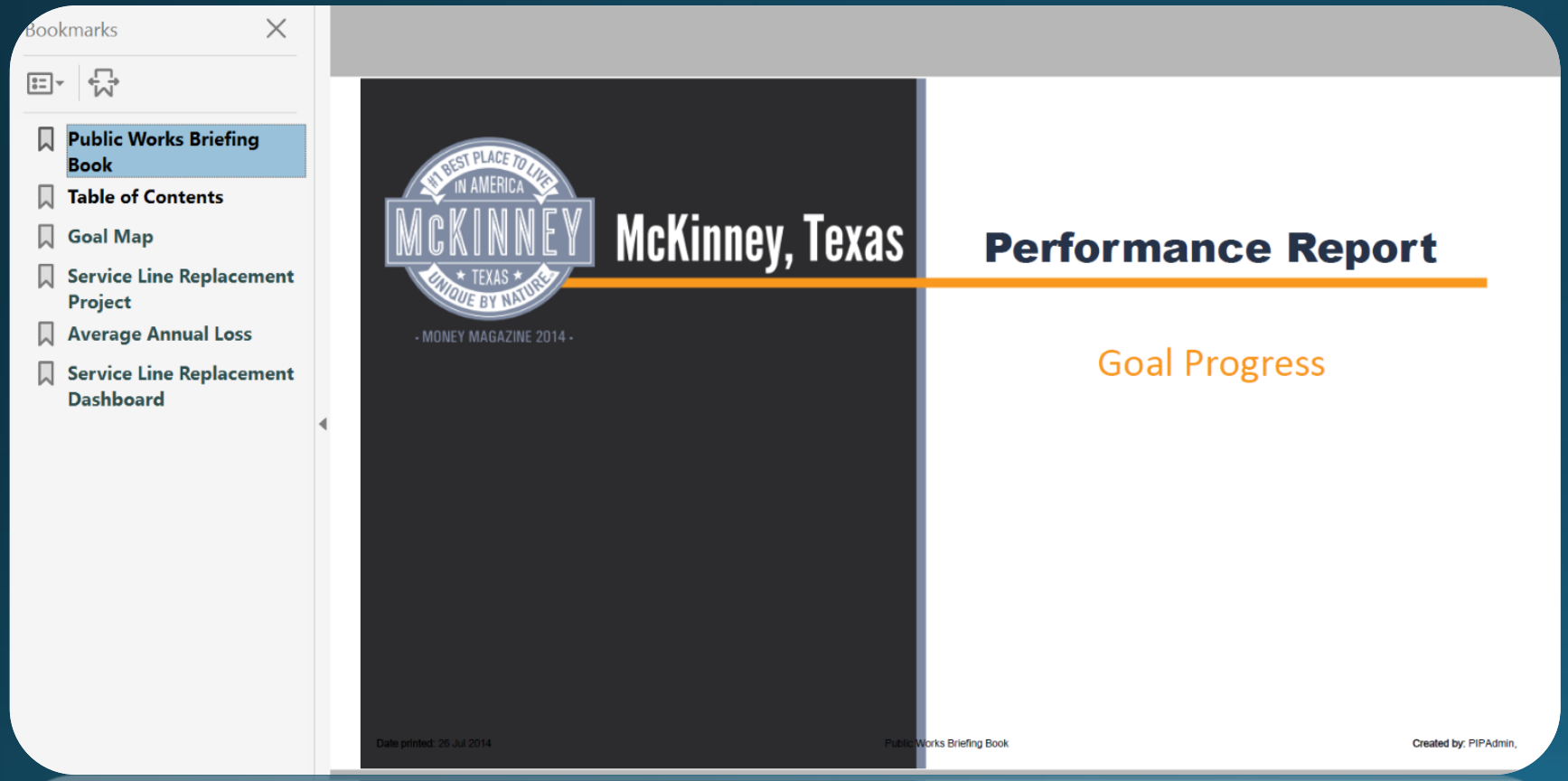
Strategy to Execution

Typical Strategy to Execution Lifecycle



Reporting

Progress Report and Operational Performance

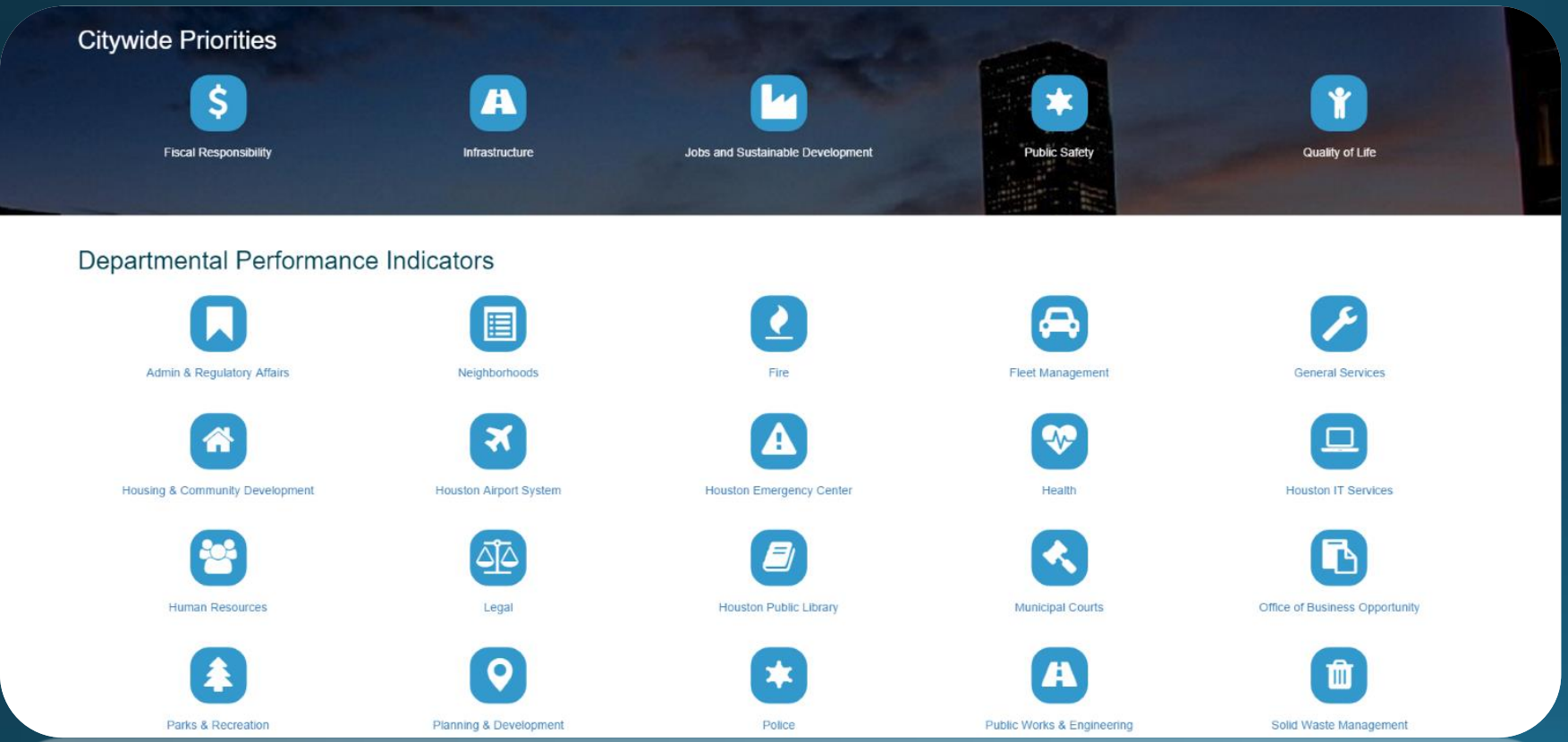


Deliver on Organizational Strategy with City-Wide Alignment

- With data in one "system of record," staff can consolidate and present relevant information and KPIs for council and the citizenry with great efficiency and effectiveness.



City of McKinney – Performance Report Card



Public Facing Results

- Enables city to publish performance results to the citizens of McKinney.
- Citizens will have direct visibility into key performance indicators and initiatives being delivered by the city.
- “Key messages” enable organizations to include textual explanations of goals and results.

Thank You.

Questions?

2016 McKinney City Council Goals & Strategies



Direction for Strategic & Economic Growth

Operational Excellence





Maximize the Development Potential of the McKinney National Airport

Financially Sound Government





Enhance the Quality of Life in McKinney

Safe & Secure Community

