

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**”).

RECITALS

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 (180th) 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 (60th) 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 unreasonable 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 untenable 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

CITY:

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

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

BY: _____
TOM MUEHLENBECK
Interim City Manager
DATE: _____

ATTEST:

NAME: _____
TITLE: _____
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