

INTERLOCAL AGREEMENT

**COLLIN COUNTY COMMUNITY COLLEGE DISTRICT
and
CITY OF ALLEN, TEXAS
for the
CONSTRUCTION AND USE
of an
INDOOR SHOOTING RANGE
in the
PUBLIC SAFETY TRAINING FACILITY**

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

R E C I T A L S

WHEREAS, College and the City of McKinney, Texas (“**McKinney**”) entered into that certain Interlocal Agreement for the Construction and Use of a Public Safety Training Facility dated June 17, 2015 (the “**Original Agreement**”); as amended and restated by that certain Amended and Restated Interlocal Agreement for the Construction and Use of a Public Safety Training Facility dated May 11, 2016 (the “**Amended and Restated Agreement**”); and as further amended by that certain First Amendment to the Amended and Restated Interlocal Agreement for the Construction and Use of a Public Safety Training Facility dated _____ (the “**First Amendment**” and together with the Original Agreement and Amended and Restated Agreement, the “**McKinney Agreement**”, all of which are incorporated herein by reference for all purposes), whereby College and McKinney agreed to construct and operate the Facility (as defined in the Amended and Restated Agreement); and

WHEREAS, Allen desires to participate with College in the construction and operation of an indoor shooting range consisting of a minimum of 12 lanes that are 50 yards in length to be located within the Facility (hereinafter defined as the “**12x50 Range**”), as generally depicted in **Exhibit A** attached hereto and incorporated herein by reference for all purposes, for their mutual benefit in the manner described below; and

WHEREAS, McKinney consents to Allen’s participation in the Facility under the terms and conditions of this Agreement; and

WHEREAS, the Parties agree to cooperate in the financing of the construction of the 12x50 Range; and

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

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

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; Definitions

1.1 **Original Term.** The “**Original Term**” of this Agreement shall commence on the Effective Date of this Agreement and terminate at midnight (McKinney, Texas time) on the date which is fifty (50) years following the Delivery Date.

1.2 **Renewal Terms.** This Agreement shall automatically renew for successive terms of five (5) years each upon the expiration of the Original Term, unless either Party provides written notice of termination to the other Party at least one hundred eighty (180) days prior the expiration of the then-current term (each a “**Renewal Term**”). Each Renewal Term shall be on the same terms and conditions as this Agreement, as may be amended

1.3 **Term.** The Original Term and any Renewal Term, if applicable, are referred to herein collectively as the “**Term**” or “**term**”.

1.4 **Definitions.** The following words and phrases shall have the meaning assigned below unless the context clearly indicates otherwise:

“12 x 50 Range Improvements” shall mean an indoor shooting range comprised of 12 lanes with a length of 50 yards with a target centered in each lane, including a tactical training area which is located from the target line to the 25-yard line, and the area designed for maximum protection in a 180-degree peripheral and full overhead protection which is designed to prevent any errant ballistic vertical misfires, designed and constructed to be completely independent of the other two (2) indoor shooting ranges in the Facility and providing its own controlled target system, bullet trap, ventilation/air conditioning system, lighting system and access control, and support

spaces including weapons cleaning area, control room, an access vestibule, unisex restroom and storage room.

“12 x 50 Range Premises” shall mean that portion of the Premises subleased by College to Allen on which the College will construct and operate the 12 x 50 Range.

“Additional Rent” shall have the meaning assigned by Section 4.3.

“Allen” shall mean the City of Allen, Collin County, Texas.

“Allen Contribution” shall mean the sum of \$4,600,000 paid to College as set forth herein to offset a portion of College’s costs of designing and constructing the Facility including the 12 x 50 Range Improvements.

“Base Rent” shall have the meaning assigned by Section 4.2.

“College” shall mean the Collin County Community College District.

“Construction Standards” shall have the meaning assigned by Section 6.3.

“Delivery Date” shall have the meaning assigned in the McKinney Agreement and means the date after the expiration of the Initial Due Diligence Term (the period of time commencing with the effective date of the McKinney Agreement 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 of the McKinney Agreement) on which McKinney delivers the Premises to College, including substantial completion of all utilities and roadwork described as the responsibility of McKinney in the McKinney Agreement, 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 (any act or omission of College or its agents, employees, vendors or contractors that delays the substantial completion of the McKinney work required by the McKinney Agreement, 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 McKinney).

“Effective Date” shall mean the last date of execution hereof.

“Facility” shall mean a Public Safety Training Facility to be constructed and operated by the College comprised of an indoor virtual firearms training center for optimized tactical training; law enforcement defensive tactics room; an indoor shooting range consisting of a minimum of 15 lanes that are 50 yards in length (the “15 x 50 Range”); an indoor shooting range consisting of a minimum of 10 lanes that are 100 yards in length (the “10 x 100 Range”); an indoor shooting range consisting of 12 lanes that are 50 yards in length (the “12 x 50 Range”); 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.

“First Amendment” shall have the meaning assigned in the recitals hereof.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party, 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 Party shall be delayed, hindered or prevented from performance of any of its obligations by reason of Force Majeure (and the Party 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 Party: (i) the Party shall give prompt written notice of such occurrence to the other Party and (ii) the Party 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.

“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.

“Improvements” shall mean any structures, signage or other improvements (including the 12 x 50 Range Improvements) that are installed or constructed by the College and/or McKinney on the Premises comprising the Facility.

“McKinney” shall mean the City of McKinney, Collin County, Texas.

“McKinney Agreement” shall have the meaning assigned in the recitals hereof.

“Plans” shall mean the plans and specifications for the design and construction of the 12 x 50 Range prepared by PBK, as approved by McKinney and the Parties.

“Premises” shall mean the real property leased by McKinney to College for the construction and operation of the Facility pursuant to the McKinney Agreement.

“Rent” shall collectively mean Base Rent and Additional Rent.

“Rent Commencement Date” shall mean the date the College acquires an interest in the Land.

“Sublease” or “sublease” shall mean the College sublease to Allen of the 12 x 50 Range Premises.

“Term” shall mean the Original Term and any Renewal Term.

ARTICLE 2

Sublease of 12 x 50 Range Premises

2.1 **Sublease of 12 x 50 Range Premises.** In consideration of the rents, covenants, agreements and conditions set out below, College subleases to Allen, and Allen rents and subleases from College, the 12 x 50 Range Premises, together with all of College's rights, interests, estates and appurtenances thereto and all improvements therein.

2.2 **Permitted Uses of the Sublease of the 12 x 50 Range Premises.** Allen may use the 12 x 50 Range Premises for public safety training subject to the terms and conditions of this Agreement.

2.3 **Habendum.** TO HAVE AND TO HOLD the 12 x 50 Range Premises, together with all and singular the rights, privileges and appurtenances thereunto attaching or in anywise belonging, exclusively unto Allen, its successors and assigns, for the Term, subject to termination as provided herein, upon the covenants, agreements, terms, provisions and limitations set out herein, and subject to the Lease rights of McKinney under the McKinney Agreement.

ARTICLE 3

Utilities

3.1 **College's Utilities Obligations.** The College is responsible for payment of all water, sewer service, electricity, telephone, Internet network access and other utilities charged against, or in connection with the Facility including 12 x 50 Range Improvements and Premises.

ARTICLE 4

Rent

4.1 **Rent Commencement Date.** Rent shall commence on and is due from and after the date the College opens the 12 x 50 Range Premises for training.

4.2 **Base Rent.** During the Term of this Agreement Allen shall pay rent of \$10.00 per year ("**Base Rent**") to the College. The Base Rent for the entire term of this Agreement or any portion thereof may be prepaid in full or in part at Allen's sole discretion.

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

ARTICLE 5

Allen's Warranties and Covenants

5.1 **Warranty of Authority.** Allen warrants and represents to College that, as of the Effective Date, Allen has full right, power and authority to enter into this Agreement pursuant to the McKinney Agreement and applicable law. College warrants and represents to Allen that, as of the Effective Date, College has full right, power and authority to enter into this Agreement pursuant to the McKinney Agreement and applicable law.

ARTICLE 6

Construction; Ownership; Allen's Contribution

6.1 **Construction of Improvements on the 12 x 50 Range Premises.** College shall cause the design and construction of the improvements necessary to operate the 12x50 Range on the 12 x 50 Range Premises in accordance with plans and specifications mutually agreed to by College, McKinney and Allen ("**Plans**"). "**12 x 50 Range Improvements**" shall mean any structures, signage or other improvements included within the 12x50 Range that are installed or constructed on the 12 x 50 Range Premises by College. If Allen requests changes to the Plans, Allen shall clearly specify its suggested changes in its notice. Provided that McKinney has provided its written consent to Allen's suggested changes to the Plans, College shall make reasonable efforts to implement any changes to the Plans reasonably requested by Allen; 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 or the 12 x 50 Range Improvements as shown in the 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 Allen, College shall resubmit the revised Plans within thirty (30) days following receipt of Allen's written requests for changes thereto. Thereafter, College shall prepare the revised plans and specifications ("**Revised Plans**") in accordance with the Construction Standards and, if necessary, make application to all applicable governmental authorities for all approvals and permits required to construct the 12 x 50 Range Improvements and the Improvements, as the case may be, in accordance with the Revised Plans. If College is unable to obtain any required approvals or permits or is unable to obtain any approvals or permits without changes which constitute a material variance to the design of the 12 x 50 Range Improvements and/or the Improvements from the Plans or the Revised Plans, as applicable, then either Party shall have the right to terminate this Agreement, in which event the Parties shall have no further rights, duties or obligations hereunder. Allen has reviewed and approved the Plans and agrees that Allen shall not request any change which would cause a material deviation from the Plans, unless Allen pays for the full construction cost of such change and unless such changes result in 12 x 50 Range Improvements and/or the Improvements that are related to emergency services training uses of the Premises and the College is willing to use and manage such additional 12 x 50 Range Improvements and/or Improvements and McKinney consents to such changes.

6.2 **Alterations.** At any time and from time to time during the Term, College may perform such alteration, renovation, repair, refurbishment, renovation and other work (collectively

referred to in this Section as “**Alterations**”) with regard to any Improvements including the 12 x 50 Range 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. College shall provide Allen at least thirty (30) days prior written notice of its intent to perform any Alterations affecting the 12 x 50 Range Improvements which shall include the time period necessary to complete such Alterations. Such Alterations shall not unreasonably interfere with Allen’s use of the Facility and the 12 x 50 Range Improvements. During any time periods that the 12 x 50 Range Improvements are unavailable for use by Allen due to Alterations, the College shall make available for Allen use other Facility indoor shooting ranges subject to any priority scheduled use by McKinney or College.

6.3 **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 McKinney.

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

(4) The Parties shall have obtained and shall maintain in force and effect the insurance coverage required in Article 8.

(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 12 x 50 Range Premises.

(b) **Allen's Signage.** Allen shall, at Allen's sole cost and expense, have the right to construct, install, maintain, repair and replace interior signs on the 12 x 50 Range Premises, in accordance with all applicable laws, regulations and restrictions, provided that College has granted Allen its prior written consent to the construction, installation, maintenance, repair and replacement of any such signs, which consent shall not be unreasonably delayed, denied or withheld.

(c) **Mechanic's and Materialmen's Liens.** Allen shall have no right, authority or power to bind College or any interest of College 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 College'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. Allen shall not be considered the agent of College 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, Allen shall fully discharge the lien in the manner prescribed by the applicable lien law.

6.4 **Allen's Equipment.** The term "**Allen'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 Allen in its operations, and, in certain circumstances, vaults) that are installed or placed by Allen on the 12 x 50 Range Premises with the prior written consent of College and that are for use in connection with the conduct of Allen's use of the 12 x 50 Range Premises regardless of the manner in which they are installed.

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

6.6 **Ownership of Improvements.** During the Term, the 12 x 50 Range Improvements shall be solely the property of Allen subject to the covenants, agreements, terms, provisions and limitations set out herein. College shall have a right of access to the Premises at all times. Upon expiration of the Term, the 12 x 50 Range Improvements (excluding Allen's Equipment) shall revert to and become the property of College, subject to McKinney's rights under the McKinney Agreement. If the Agreement is terminated by the Parties prior to the expiration of the Term, the 12 x 50 Range Improvements (excluding Allen's Equipment) shall become the property of the College, subject to the rights of McKinney under the McKinney Agreement; provided, however,

that in the event such termination is requested by College, College shall, within thirty (30) days after such termination, pay to Allen a prorated portion of the Allen Contribution based on the following calculation: the amount of the Allen Contribution multiplied by a fraction, the numerator of which is the number of years remaining under the Term at the time of termination and the denominator of which is fifty (50); further provided that in the event such termination is requested by Allen, College shall have no obligation regarding, and Allen shall have no claim for, reimbursement of any portion of the Allen Contribution.

6.7 **Construction of the Improvements by College.** College shall, subject to events of Force Majeure, substantially complete the Improvements including the 12 x 50 Range Improvements necessary to operate the 12 x 50 Range Premises within thirty (30) months following the Delivery Date (as that term is defined in the McKinney Agreement).

6.8 **Allen's Contribution to College's Construction Costs.** Notwithstanding anything to the contrary herein, Allen shall pay to College the sum of \$4,600,000 to offset a portion of College's costs of designing and constructing the Improvements including the 12 x 50 Range Improvements. 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 Facility, College shall submit a written copy of such determination to Allen, and Allen shall pay College the sum of \$2,300,000 within thirty (30) days of receipt. Upon receiving a certificate of occupancy for the Facility (including the 12 x 50 Range Improvements), College shall submit a written invoice to Allen for an additional sum of \$2,300,000, which shall be paid by Allen within thirty (30) days of receipt.

ARTICLE 7

Use, Maintenance and Repairs

7.1 **Use.** Subject to the terms and provisions hereof, Allen shall have the right to priority use and enjoyment of the 12 x 50 Range Premises as a firearm training and educational facility for its law enforcement personnel. Allen shall have the discretion, reasonably exercised, to use the 12 x 50 Range Premises for secondary purposes such as for firearm and educational training of its Citizens Police Academy. Allen 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 Allen hereunder, or (iii) violate any present or future laws, regulations, ordinances or requirements of any governmental authority. In particular, Allen acknowledges that College has adopted or will adopt certain rules and regulations covering the use of the Facility and/or the conduct of persons at or on such Facility, which rules may be amended from time to time at College's sole discretion, in order to ensure the continued and uninterrupted operation of the Facility and the safety of all users; provided, however, that with respect to the rules and regulations covering the use of the 12 x 50 Range Premises, such rules and regulations (and any amendments thereto) must be in form and substance reasonably satisfactory to Allen. During the Term of this Agreement and while the Bonds (the "Bonds") are outstanding (or bonds issued to refund the

Bonds are outstanding), the College will not contract with non-governmental entities for the use of the 12 x 50 Range Improvements that would result in a private business use of the 12 x 50 Range Improvements for federal income tax purposes. Allen shall notify its officers, employees, agents and invitees who use the Facility of the applicable rules and regulations promulgated by College relating to such Facility. Users who fail to comply with the rules shall be suspended from use of the Facility until College determines, in its sole discretion, that the suspension from use will be lifted.

7.2 **Maintenance and Repairs.** College shall, at its sole cost and expense, maintain all of the Improvements including the 12 x 50 Range Improvements and 12 x 50 Range Premises, and shall, at its sole cost and expense, make all renovations, repairs thereto, interior and exterior, structural and nonstructural, including lead remediation. Allen will not do, knowingly permit or suffer any waste, damages, disfigurement or injury to or upon the Premises or any part thereof or the Facility or any part thereof.

7.3 **Use of the Facility by Allen.** As part of the consideration provided to Allen in exchange for its obligations hereunder, and subject to the terms and provisions hereof, the College shall grant Allen non-exclusive priority access to the 12 x 50 Range and access to the remaining portion of 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 Allen. In addition to the foregoing, the Facility will include two (2) office spaces for the dedicated use of Allen's law enforcement administrators and a separate, lockable armory of steel cage construction with a minimum of 150 square feet exclusively for use of Allen's law enforcement training program. For purposes of this Section, "hours" shall mean actual time allocated to training Allen's employees at any component structure at the Facility, irrespective of how many Allen 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 police officers are in the emergency services training center classroom for 3 hours and 5 police officers are concurrently training on the 12x50 Range during the same 3-hour period, Allen's use shall be calculated at 6 hours. Allen may provide its own training to its personnel during its use of the Facility. However, should Allen desire the College to provide Allen any training services during Allen's use of the Facility, Allen shall reimburse the College for the College's cost to provide such services. The College shall regularly deliver to Allen 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 Allen. Allen shall pay College the amount indicated in each of such invoices within thirty (30) days after receipt thereof. The College shall provide to Allen's law enforcement personnel and employees access to the law enforcement portion of the training facility as follows:

- a. 1200 training hours for Allen's law enforcement personnel, such quantity of training hours used to be determined in the same manner as set forth in this Section 7.3 and the scheduling of which shall be governed by Section 7.4;

- b. Up to 1200 additional training hours for Allen'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 in accordance with Section 7.4.

Notwithstanding the foregoing, any change in Allen's use of the Facility (not including the 12 x 50 Range Improvements) as provided in this Section 7.3 shall require the consent of McKinney.

7.4 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, McKinney, College and Allen shall promptly work together to establish a schedule for McKinney's and Allen's use of the Facility so long as such schedule is not in conflict with the College's schedule. In establishing such schedule, the Parties agree that the following scheduling priority shall apply for the identified portions of the Facility ("**Priority Scheduling**"): (a) McKinney is entitled to priority scheduling for use of the 10x100 Range; (b) Allen is entitled to priority scheduling for use of the 12x50 Range; and (c) the College is entitled to priority scheduling for use of the 15x50 Range and all other portions of the Facility. Once the College's schedule is established, McKinney and Allen shall schedule their remaining training hours not previously scheduled as Priority Scheduling, up to their total allotment, in rotation with McKinney and Allen scheduling 40 hours at a time until such Party's allotted training hours are fully scheduled or until a Party chooses to schedule no further training hours. For scheduling of training hours to be used in even-numbered years, McKinney will go first in the scheduling rotation, and for scheduling of training hours to be used in odd-numbered years, Allen will go first in the scheduling rotation. Following the establishment of McKinney's and Allen's scheduled use of the Facility, or in the absence of McKinney's or Allen'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 McKinney or Allen on a first-come first-serve basis. All of McKinney's and Allen's time using the Facility on this first-come first-serve basis shall count toward each such Party's total training hour allotment under this Agreement or the McKinney Agreement, as applicable. Such schedules shall be determined by December 31 of each calendar year for the next calendar year of the Term. Notwithstanding the foregoing, any change in scheduling of Allen's use of the Facility (not including the 12 x 50 Range Improvements) as provided in this Section 7.4 shall require the consent of McKinney. Use of the Facility, whether by the College, McKinney, Allen, or the public, shall only be at times when the College's staff or an Approved Designee is present at the Facility. For purposes of this Agreement, an "Approved Designee" shall mean those employees of McKinney or Allen the names of whom Allen and McKinney shall submit in writing to the College for approval and to whom the College grants written approval, which approval shall not be unreasonably delayed, denied or withheld. No other party may be added as a party to the McKinney Agreement with rights to use the Facility for law enforcement training purposes without the express consent of Allen. 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 McKinney or Allen as scheduling permits or from the College and McKinney agreeing to add a party to the McKinney Agreement with rights to use the Facility for fire suppression training purposes. In a like manner, should a potential city, county or other governmental agency partner be located that

is able to bring substantial value to the Facility, such partner may be added to the McKinney Agreement upon written consent of the Parties and McKinney.

ARTICLE 8

Insurance; Bonds

8.1 **Allen's Insurance.** Allen shall maintain during the Term of 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 College as an additional insured, and all-risk property damage insurance at full replacement cost covering the 12 x 50 Range Improvements and any alterations at full replacement cost.

8.2 **College's Insurance.** College shall maintain during the Term of 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, insurance covering all buildings and other improvements located or being constructed on the 12 x 50 Range Premises against loss or damage from perils covered by an all risk or special form policy in amounts not less than eighty (80%) percent of the full insurable value of the buildings and other improvements included in the 12 x 50 Range Premises, and shall (or cause its contractors) maintain during the construction of the 12 x 50 Range Improvements and during any time periods of reconstruction, renovation, alteration or repair of the 12 x 50 Range Improvements construction liability insurance at all times when demolition, excavation, or construction work is in progress on the 12 x 50 Range Premises.

8.3 **Bonds.** College agrees to cause the contractors which construct the 12 x 50 Range Improvements to provide payment bonds and performance bonds for the construction of the 12 x 50 Range Improvements pursuant to Chapter 2253, Texas Government Code.

ARTICLE 9

Casualty Loss

9.1 **College's Rights.** Should any Improvements (including the 12 x 50 Range Improvements) be wholly or partially destroyed or damaged by fire or any other casualty, College shall have the right, but not the obligation, to restore and reconstruct the Improvements (including the 12 x 50 range Improvements) or terminate this Agreement, by giving written notice to Allen within one hundred eighty (180) days after the date of damage or casualty. If College elects to terminate this Agreement under this Section, the Parties shall have no further rights, duties or obligations under this Agreement, except that College shall be required to pay to Allen a prorated portion of the Allen Contribution based on the following calculation: the amount of the Allen Contribution multiplied by a fraction, the numerator of which is the number of years remaining under the Term at the time of termination and the denominator of which is fifty (50). If College elects not to terminate this Agreement under this Section, College shall at its sole cost and expense repair, replace, restore and reconstruct (collectively, the "Restoration") the Improvements (including the 12 x 50 range Improvements) to substantially the condition that existed prior to the occurrence of such casualty, all in compliance with the Construction

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Standards. College shall, subject to events of Force Majeure, cause such Restoration to commence within one hundred eighty (180) days after the date of damage or casualty and complete such Restoration within a reasonable period of time thereafter.

9.2 **Notice of Damage.** College shall promptly notify Allen of any destruction or damage to the 12 x 50 Range Premises.

ARTICLE 10

Condemnation

10.1 **Total Taking.** If all or substantially all of the 12 x 50 Range Premises is taken under power of eminent domain (which term as used in this Agreement shall include any conveyance in avoidance or settlement of condemnation or eminent domain proceedings) or other similar proceeding, then this Agreement shall terminate as of the date of taking of possession by the condemning authority. The Parties agree that neither Party will condemn the 12 x 50 Range Premises, in whole or in part, temporary or permanent.

10.2 **Award on Total Taking.** All sums awarded or agreed upon between Allen, McKinney and College and the condemning authority for the taking of the respective interest of Allen, College and McKinney, as the case may be, in the respective portions of the Premises, whether as damages or as compensation, will be the property of the respective party. College shall have no interest in any award or sums agreed upon as compensation to Allen for the taking of Allen's interest in the 12 x 50 Range Premises including the Sublease, the 12 x 50 Range Improvements, relocation expenses, loss of business or goodwill or for the taking of Allen's Equipment. Allen shall have no interest in any award or sums agreed upon as compensation to College for the taking of College's interest in the Premises including the lease between McKinney and College, the Improvements (excluding the 12 x 50 Range Improvements), relocation expenses, loss of business or goodwill or for the taking of College's Equipment.

10.2 **Partial Taking.** Should a portion of the 12 x 50 Range Premises be taken by any governmental authority, corporation or other entity under the right of eminent domain, condemnation or similar right, other than Allen, College or McKinney such that (i) the 12 x 50 Range Improvements shall be so taken as to make it commercially unreasonable for Allen to use the remainder for the use and purposes contemplated hereby, or (ii) any reasonably necessary access to the 12 x 50 Range Premises is taken, then Allen 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 12 x 50 Range Premises had thus been taken. Should any other partial taking of the 12 x 50 Range Premises occur, then this Agreement nevertheless shall continue in effect as to the 12 x 50 Range Premises, or the remainder thereof, as the case may be.

10.3 **Award on Partial Taking.** All sums awarded or agreed upon between Allen, McKinney and College and the condemning authority for the taking of the respective interest of Allen, College and McKinney, as the case may be, in the Premises, whether as damages or as compensation, will be the property of the respective party. College shall have no interest in any award or sums agreed upon as compensation to Allen for the taking of Allen's interest in the 12 x

50 Range Premises including the Sublease, the 12 x 50 Range Improvements, relocation expenses, loss of business or goodwill or for the taking of Allen's Equipment. Allen shall have no interest in any award or sums agreed upon as compensation to College for the taking of College's interest in the Premises including the lease between McKinney and College, the Improvements (excluding the 12 x 50 Range Improvements), relocation expenses, loss of business or goodwill or for the taking of College's Equipment.

10.4 **Notice of Taking, Cooperation.** Allen and College shall immediately notify the other of the commencement of any eminent domain, condemnation or other similar proceedings with regard to the Premises. Allen 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 10 shall not affect the rights of Allen and College to any such award.

ARTICLE 11

Assignment and Subletting

11.1 **Right to Assign.** Neither Party may assign this Agreement or its interests in this Agreement without the prior written consent of the other Party and McKinney.

ARTICLE 12

Environmental Provisions

12.1 **Hazardous Materials.** Allen 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 13

Warranty of Peaceful Possession

13.1 **Peaceful Possession.** College covenants that Allen, on paying the Rent and performing and observing the covenants and agreements herein contained and provided to be performed by Allen, shall and may peaceably and quietly have, hold, occupy, use and enjoy the 12 x 50 Range 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. College agrees to warrant and forever defend Allen's right to such occupancy, use and enjoyment and the title to the 12 x 50 Range 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 14

Default and Remedies

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

(a) If Allen 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 Allen is given a written notice from College specifying such failure.

(b) If Allen 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 Allen and other than with respect to payment of Rent or other liquidated sums of money and Allen fails to commence and take such steps as are necessary to remedy the same within ninety (90) days after Allen is given written notice from College 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 Allen under any bankruptcy or insolvency law or under the reorganization provisions of any law of like import or if a receiver of Allen, or of all or substantially all of the property of Allen, 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 Allen 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.

14.2 **College's Remedies.** If an Allen's Default occurs, College shall give Allen written notice that an Allen's Default has occurred and such notice shall specify the particular Allen's Default.

(a) If the default relates to Section 14.1(a) and Allen does not remedy the Default within thirty (30) days thereafter, College may seek specific performance as its sole remedy.

(b) If Allen defaults on either Sections 14.1(b)-(d) above after College has provided thirty (30) days written notice to Allen of such default, College may terminate this Agreement by giving Allen written notice thereof, in which event this Agreement and the leasehold estate hereby created and all interest of Allen and all parties claiming by, through or under Allen 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. College, its agent or representatives, shall have the right, without further demand or notice, to re-enter and take possession of the 12 x 50 Range 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 College upon termination.

14.2.1. Notwithstanding anything contained herein to the contrary, College shall never be entitled to dispossess Allen of the 12 x 50 Range Premises pursuant to any “lock out” or other nonjudicial remedy, College hereby waiving its right to forcibly dispossess Allen from the 12 x 50 Range Premises, whether peaceably or otherwise, without judicial process, such that College 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.

14.3 **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 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 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 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 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.

(c) 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.

14.4 **Allen’s Remedies.** If a College’s Default occurs, Allen shall give College written notice that a College’s Default has occurred and such notice shall specify the particular College’s Default, and if College does not remedy the College’s Default within thirty (30) days thereafter, Allen may seek specific performance as its sole remedy.

ARTICLE 15

Miscellaneous

15.1 **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:

Allen: City of Allen
305 Century Parkway
Allen, Texas 75013

Attn: City Manager

With a copy to: Peter G. Smith
Nichols, Jackson, Dillard, Hager &
Smith, LLP
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

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

Attn: Vice President/CFO

With a copy to: Abernathy, Roeder, Boyd & Hullett, P.C.
1700 Redbud, Ste. 300
McKinney, TX 75070-1210
Attn: Ryan D. Pittman

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.

15.2 Performance of Other Party's Obligations. If either Party hereto fails to perform or observe any of its covenants, agreements or obligations required after Rent Commencement Date hereunder 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.

15.3 **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.

15.4 **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.

15.5 **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.

15.6 **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.

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

15.8 **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.

15.9 **Surrender of 12 x 50 Range Premises.** Allen shall surrender the 12 x 50 Range Premises at the expiration or earlier termination of this Agreement. The 12 x 50 Range 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.

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

15.11 **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 Allen 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.

15.12 **Recordation.** Allen 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.

15.13 **Successors and Assigns.** This Agreement shall constitute a real right and covenant running with the 12 x 50 Range Premises, and 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.

15.14 **College's Joinder.** College agrees to join with Allen 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 12 x 50 Range Premises, and College shall not incur any cost or expense or become liable for any obligation as a result thereof.

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

15.16 **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.

15.17 **Landlord's Lien.** College hereby waives and releases any statutory, common law, or contractual Landlord's lien with respect to the property of Allen now or hereafter located in the 12 x 50 Range Premises.

15.18 **Transfer of College's Interest.** College may not transfer its interest in the 12 x 50 Range Premises or in this Agreement without the prior written consent of Allen.

15.19 **Termination of College's Interest.** In the event that the estate of College in the 12 x 50 Range Premises under the McKinney Agreement is terminated or expires prior to the termination or expiration of this Agreement, Allen's rights and obligations under this Agreement shall continue in effect on the same terms and conditions of this Agreement with McKinney

automatically acceding to the rights and obligations of College vis-à-vis Allen under this Agreement.

15.20 **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.

15.21 **Holding Over**. If Allen or any Party claiming by, through or under Allen fails to surrender the 12 x 50 Range Premises at the expiration or earlier termination of this Agreement, the continued occupancy of the 12 x 50 Range Premises shall be that of a tenancy from month to month, terminable by College in accordance with state law. Allen 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 12 x 50 Range Premises due for the period of the holdover.

15.22 **Authority**. Allen and College hereby represent to the other that: (i) Allen 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 Allen and College are authorized to do so, and (iv) the execution and delivery of this Agreement by Allen and College will not result in any breach of, or constitute a default under any agreement or other contract or instrument to which either Allen or College is a Party or by which either such Party may be bound.

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

15.24 **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.

15.25 **Conditions Precedent**. The obligations of the Parties are expressly subject to the following: (i) execution of the First Amendment attached as **Exhibit B**; (ii) McKinney's consent to Allen's use of the Facility pursuant to this Agreement; and (iii) the College's Sublease of the 12 x 50 Range Premises to Allen.

*[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

ALLEN:

CITY OF ALLEN, TEXAS
305 Century Parkway
Allen, Texas 75013

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

BY: _____
PETER VARGAS
City Manager
DATE: _____

ATTEST:

ATTEST:

NAME: _____
TITLE: _____
DATE: _____

NAME: _____
TITLE: _____
DATE: _____

CONSENTED TO BY:

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

BY: _____
PAUL GRIMES
City Manager
DATE: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DATE: _____

Exhibit B
First Amendment to the McKinney Agreement

[__ pages attached hereto]