

FIRST AMENDMENT TO 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 First Amendment to the Amended and Restated Interlocal Agreement for the Construction and Use of a Public Safety Training Facility (the “**First Amendment**”) 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 First Amendment shall be effective on the date it is executed by all Parties hereto (“**Effective Date**”).

RECITALS

WHEREAS, the Parties entered into that certain Interlocal Agreement for the Construction and Use of a Public Safety Training Facility (the “**Original Agreement**”) dated June 17, 2015; and

WHEREAS, the Parties entered into that certain Amended and Restated Interlocal Agreement for the Construction and Use of a Public Safety Training Facility (the “**Amended and Restated Agreement**”) dated May 11, 2016, which by its terms superseded and replaced the Original Agreement (the Original Agreement and the Amended and Restated Agreement are collectively referred to herein as the “**Agreement**” and incorporated herein by reference for all purposes); and

WHEREAS, pursuant to the Agreement, the Parties hereby agree and consent to the use of certain portions of the Facility by the City of Allen (“**Allen**”) subject to the terms and conditions of that certain Interlocal Agreement between Allen and the College dated _____, a copy of which is attached hereto as **Exhibit A** and incorporated herein by reference for all purposes (the “**Allen Agreement**”); and

WHEREAS, the Parties desire to amend the Agreement as set forth 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:

1. **Incorporation of Recitals.** The representations, covenants and recitations set forth in the foregoing recitals of this First Amendment are true and correct and are hereby incorporated into the body of this First Amendment as if set forth verbatim and adopted as findings of the Parties.

2. **Amendment to Amended and Restated Agreement, First Recital, Page 1.** The first recital on Page 1 of the Amended and Restated Agreement is hereby amended as follows:

“WHEREAS, the Parties agree to construct and operate a Public Safety Training Facility 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 (“**15x50 Range**”); an indoor shooting range consisting of a minimum of 10 lanes that are 100 yards in length (“**10x100 Range**”); an indoor shooting range consisting of a minimum of 12 lanes that are 50 yards in length (“**12x50 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 for their mutual benefit in the manner described below (collectively, the “**Facility**”); and”

3. **Amendment to Amended and Restated Agreement, Section 1.3 (Original Term).** Section 1.3 (Original Term) of the Amended and Restated Agreement is hereby amended as follows:

“1.3 **Original Term.** The “**Original Term**” shall mean the period of time commencing on the Effective Date of the First Amendment to the Agreement and ending at midnight (McKinney, Texas time) on the date which is fifty (50) years following the Rent Commencement Date.”

4. **Amendment to Amended and Restated Agreement, Section 8.3 (Use of the Facility by the City).** Section 8.3 (Use of the Facility by the City) of the Amended and Restated Agreement is hereby amended as follows:

“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. 1200 training hours for City's law enforcement personnel, such quantity of training hours used to be determined in the same manner as the City's fire training hours under this Section 8.3 and the scheduling of which law enforcement training hours shall be governed by Section 8.4;
- 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 in accordance with Section 8.4."

5. **Amendment to Amended and Restated Agreement, Section 8.4 (Scheduling of the Facility)**. Section 8.4 (Scheduling of the Facility) of the Amended and Restated Agreement is hereby amended as follows:

"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, College and Allen shall promptly work together to establish a schedule for the City'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) the City 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, the City and Allen shall schedule their remaining training hours not previously scheduled as Priority Scheduling, up to their total allotment, in rotation with the City 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, the City 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 the City's and Allen's scheduled use of the Facility, or in the absence of the City'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 the City or Allen on a first-come first-serve basis. All time using the Facility by the City or Allen on this first-come first-serve basis shall count toward each such party's total training hour allotment under this Agreement or the Allen Agreement, as applicable. Such schedules shall be determined by December 31 of each calendar year for the following calendar year of the Term. Use of the Facility, whether by the College, the City, 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 the City or Allen the names of whom the City and Allen 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 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 or Allen as scheduling permits. 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 this Agreement upon written consent of the College and City."

6. **Defined Terms.** Any term not defined herein shall be deemed to have the same meaning ascribed to it under the Agreement.
7. **Ratification.** The Parties hereby ratify and confirm all of the terms, provisions, covenants and conditions of the Agreement and acknowledge and agree that the Agreement remains in full force and effect except as specifically amended hereby.
8. **Controlling Agreement.** To the extent that any provision contained herein conflicts with the Agreement, the provision contained herein shall supersede such conflicting provisions contained in the Agreement.
9. **Entire Agreement/First Amendment.** This First Amendment and the Agreement contain the entire agreement of the parties with respect to the matters contained herein. This First Amendment may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

10. **Authority to Execute.** The individuals executing this First Amendment on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this First Amendment to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this First Amendment in order for the same to be an authorized and binding agreement on the party for whom the individual is signing this First Amendment and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the Effective Date.
11. **Counterparts.** This First Amendment may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one First Amendment. An electronic mail or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

*[the remainder of this page is intentionally left blank;
signature page 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: _____
PAUL GRIMES
City Manager
DATE: _____

ATTEST:

NAME: _____
TITLE: _____
DATE: _____

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DATE: _____

Exhibit A
Allen Agreement

[__ pages attached hereto]