



**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
JANUARY 10, 2017 - 7:00 PM
ALLEN PUBLIC LIBRARY
LIBRARY AUDITORIUM
300 NORTH ALLEN DRIVE
ALLEN, TEXAS 75013**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizen's Comments.

[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]

2. Presentation by Jane Bennett, Regarding the 2017 ALLEN Reads Program.

Consent Agenda.

[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]

3. Approve the Minutes of the December 13, 2016, City Council Regular Meeting.
4. Appoint Cynthia Porter Gore as the Municipal Court Judge and Authorize the City Manager to Execute an Agreement Relating to her Appointment.
5. Adopt a Resolution Authorizing the Director of Parks and Recreation to Apply for, Accept, Reject, Alter or Terminate a Grant Through Texas Parks and Wildlife's Recreational Trails Program for Construction of the Bethany Lakes Loop Trail.
6. Authorize the City Manager to Continue the Professional Services Agreement with Bureau Veritas North America, Inc., for Building Inspection Services in an Amount not to Exceed \$75,000.
7. Authorize the City Manager to Execute an Interlocal Agreement with the Collin

County Community College District for the Construction and Use of a Public Safety Training Facility.

8. Authorize the City Manager to Negotiate and Execute a Third Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP to Amend the Timing of Infrastructure Grant Payments and the Date to Commence Construction.
9. Receive the Summary of Property Tax Collections as of November 2016.

Other Business.

10. Calendar.
 - January 28, 2017 - City Council Strategic Planning Session
11. Items of Interest. [*Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.*]

Executive Session. (As needed)

Legal, Section 551.071.

As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

(Closed to Public as Provided in the Texas Government Code.)

12. Personnel Pursuant to Section 551.074 of the Texas Government Code — Annual Performance Review of the City Manager
13. Reconvene and Consider Action on Items Discussed During Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, January 6, 2017, at 5:00 p.m.

Shelley B. George, City Secretary

Allen Public Library is wheelchair accessible. Access to the building and special parking are available at the east side of the building. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:

January 10, 2017

SUBJECT:

Approve the Minutes of the December 13, 2016, City Council Regular Meeting.

STAFF RESOURCE:

Shelley B. George, City Secretary

ATTACHMENTS:

Minutes

ALLEN CITY COUNCIL

REGULAR MEETING

DECEMBER 13, 2016

Present:

Stephen Terrell, Mayor

Councilmembers:

Gary L. Caplinger, Mayor Pro Tem

Kurt Kizer

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Baine Brooks

City Staff:

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Eric Ellwanger, Assistant City Manager

Shelley B. George, City Secretary

Teresa Warren, Director, Public and Media Relations Office

Rebecca Vice, Assistant to the City Manager

Pete Smith, City Attorney

Workshop Session

With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:31 p.m. on Tuesday, December 13, 2016, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas.

- 1. Discussion Regarding Potential Interlocal Agreement with Collin College for Public Safety Training Facility.**
- 2. Committee Updates from City Council Liaisons.**
- 3. Questions on Current Agenda.**

The Workshop Session recessed to the Regular Meeting at 7:02 p.m.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:05 p.m. on Tuesday, December 13, 2016, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizen's Comments.

Hongdi Grace Chen, 1710 Clear Springs Drive, Allen, Texas, requested additional Chinese language books and Chinese story times be added at the Allen Public Library.

2. Recognition of the Texas Amateur Athletic Federation (TAAF) Male and Female Athletes of the Year.

- Texas Amateur Athletic Federation Female Athlete of the Year – Sarah Ahmadi
- Texas Amateur Athletic Federation Male Athlete of the Year – Cameron Corhen

3. Presentation of a Proclamation by the Office of the Mayor.

- Presentation of a Proclamation to Ken Geest, Executive Director of the Allen Sports Association Proclaiming December 2016 as "*Allen Sports Association Month*."

4. Recognition of the Purchasing Division for Receipt of the 2016 Achievement of Excellence in Procurement Award.

Consent Agenda

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adopt all items on the Consent Agenda as follows:

5. Approve Minutes of the November 22, 2016, Regular City Council Meeting.

6. Adopt a Resolution Authorizing the City Manager to Enter into an Interlocal Agreement Between the City of Allen and Town of Fairview Concerning the Improvements to the Intersection of Greenville Avenue and Stacy Road.

RESOLUTION NO. 3443-12-16(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE TERMS AND CONDITIONS OF AN INTERLOCAL AGREEMENT BY AND BETWEEN THE CITY OF ALLEN, TEXAS, AND THE TOWN OF FAIRVIEW, TEXAS, RELATING TO ENGINEERING AND CONSTRUCTION OF GREENVILLE AVENUE AND STACY ROAD INTERSECTION IMPROVEMENTS; AUTHORIZING ITS EXECUTION BY THE CITY MANAGER OR DESIGNEE; AND PROVIDING AN EFFECTIVE DATE.

7. Adopt a Resolution Authorizing the City Manager Enter into an Interlocal Agreement Between the City of Allen and the Town of Fairview for the Purpose of Fairview Fire Department to Observe, Participate and Gain Experience in Allen's Fire Prevention Operations.

RESOLUTION NO. 3444-12-16(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AUTHORIZING AN INTERLOCAL COOPERATION AGREEMENT BETWEEN THE CITY OF ALLEN AND TOWN OF FAIRVIEW FOR OBSERVATION OF FIRE PRESENTION ACTIVITIES; AND PROVIDING FOR AN EFFECTIVE DATE.

8. **Authorize the City Manager to Amend a Professional Services Agreement with Scott, Douglass and McConnico, LLP for Legal Representation in Matters Involving a Transmission Line and Substation Project Proposed by Brazos Electric Cooperative, Inc. in Public Utility Commission of Texas Docket Number 46429.**
9. **Authorize the City Manager to Negotiate and Execute the Purchase of a Hosted Recreation Software System and Conversion Hardware for the Parks and Recreation Department with Active Network, LLC, for an Amount of \$71,165, with Five (5) Optional One-Year Renewals.**
10. **Authorize the City Manager to Purchase Ten (10) New Servers from CDW-G through the State of Texas Department of Information Resources (DIR) Purchasing Program for an Amount of \$83,024.71.**
11. **Authorize the City Manager to Execute a Contract with Trane U.S., Inc., for HVAC Preventative Maintenance and Service for the Allen Event Center Through the Texas Buyboard Local Government Purchasing Cooperative for an Amount of \$83,275 with Three (3) Optional One-Year Renewals.**
12. **Authorize the City Manager to Execute a One-Year Contract with AC Printing, LLC, Logan Graphics, and Marfield, Inc. for Printing Services for a Total Annual Amount of \$105,000 with Two (2) Optional One-Year Renewals.**
13. **Authorize the City Manager to Purchase Three (3) HD Cameras from Daktronics Through the Texas Buyboard Local Government Purchasing Cooperative for the Allen Event Center for an Amount of \$112,264.81.**
14. **Authorize the City Manager to Amend the Purchase of Law Enforcement Uniforms and Equipment with Red the Uniform Tailor to an Amount of \$110,000, and Award the Purchase of Fire Department Uniforms with Red the Uniform Tailor in the Amount of \$30,000 for a Total Amount of \$140,000.**
15. **Authorize the City Manager to Execute a Professional Services Agreement with Lee Engineering, Inc., for Design of the 2017 Median Improvement Project in the Amount of \$150,060.**
16. **Award Bid and Authorize the City Manager to Execute a One-Year Contract with Lattimore Materials Corporation for Concrete Mix in the Amount of \$200,000 with Two (2) Optional One-Year Renewals.**
17. **Award Bid and Authorize the City Manager to Execute a One-Year Contract with LawnStar Landscape and Blade Turners Maintenance for Mowing Services for Various City Properties for a Total Annual Amount of \$570,272 with Three (3) Optional One-Year Renewals.**
18. **Motion to Set Saturday, January 28, 2017, as the Date for the Strategic Planning Session with City Council.**

The motion carried.

Regular Agenda

19. **Conduct a Public Hearing and Adopt an Ordinance to Amend the Development Regulations and Adopt a Concept Plan and Building Elevations for Lot 1, Block A, Allen Station Business Park #3; Generally Located North of Exchange Parkway and East of Andrews Parkway. [WatchGuard Video - Light Industrial]**

Mayor Terrell opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

With no one speaking, Mayor Terrell closed the public hearing.

ORDINANCE NO. 3445-12-16: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING THE DEVELOPMENT REGULATIONS, ADOPTING A CONCEPT PLAN, AND ADOPTING BUILDING ELEVATIONS FOR LOT 1, BLOCK A, ALLEN STATION BUSINESS PARK #3 (COMMONLY KNOWN AS 420 E. EXCHANGE PARKWAY), WHICH PROPERTY IS LOCATED IN AND SUBJECT TO THE REGULATIONS OF PLANNED DEVELOPMENT NO. 58 FOR LIGHT INDUSTRIAL "LI"; PROVIDING FOR A CONFLICTS RESOLUTION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Sedlacek and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed, to adopt Ordinance No. 3445-12-16, as previously captioned, amending the development regulations and adopt a concept plan and building elevations for WatchGuard Video. The motion carried.

20. **Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Refunding Bonds, Series 2017A", Including the Adoption of a Resolution Approving the Resolution of the Corporation Authorizing the Issuance of Such Bonds.**

RESOLUTION NO. 3446-12-16(R): A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF ALLEN, TEXAS, RELATING TO THE "ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE REFUNDING BONDS, SERIES 2017A", INCLUDING THE APPROVAL OF THE RESOLUTION OF THE BOARD OF DIRECTORS OF THE CORPORATION AUTHORIZING THE ISSUANCE OF SUCH BONDS; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE OF SUCH BONDS; AND APPROVING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Herald and a second by Mayor Pro Tem Caplinger, the Council voted seven (7) for and none (0) opposed, to adopt Resolution No. 3446-12-16(R), as previously captioned, approving the resolution of the Board of Directors of the corporation authorizing the issuance of sales tax revenue refunding bonds, Series 2017A. The motion carried.

21. **Consider all Matters Incident and Related to the Issuance and Sale of "Allen Economic Development Corporation Sales Tax Revenue Bonds, Taxable Series 2017B", Including the Adoption of a Resolution Approving the Resolution of the Board of Directors of the Corporation Authorizing the Issuance of Such Bonds.**

RESOLUTION NO. 3447-12-16(R): A RESOLUTION RELATING TO THE “ALLEN ECONOMIC DEVELOPMENT CORPORATION SALES TAX REVENUE BONDS, TAXABLE SERIES 2017B” APPROVING THE RESOLUTION OF THE ALLEN ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE ISSUANCE OF SUCH BONDS; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE OF SUCH BONDS; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Councilmember Sedlacek and a second by Councilmember Obermeyer, the Council voted seven (7) for and none (0) opposed, to adopt Resolution No. 3447-12-16(R), as previously captioned, approving the resolution of the Allen Economic Development Corporation providing for the issuance of its Sales Tax Revenue Bonds, Taxable Series 2017B, and resolving other matters incident and related to the issuance of the bonds. The motion carried.

Other Business

22. Calendar.

- December 23 and 26 – City Hall Closed for Christmas Eve and Christmas Day Holidays
- December 27 – Council Meeting Canceled
- January 2, 2017 – City Hall Closed for New Year’s Day Holiday
- January 10, 2017 – Next Regular Council Meeting

23. Items of Interest.

- Council congratulated Councilmember Herald on his daughter Katie’s engagement.
- Council recognized Boy Scouts from Troop No. 1334 in attendance as requirement for earning merit badges.
- Council congratulated the Allen Eagles on an outstanding football season.

Executive Session

The Executive Session was not held.

Adjournment

MOTION: Upon a motion made by Councilmember Herald and a second by Councilmember Brooks, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 7:50 p.m. on Tuesday, December 13, 2016. The motion carried.

Workshop Session Continued

Mayor Terrell reconvened the Workshop Session at 8:02 p.m. on Tuesday, December 13, 2016, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas. The Allen City Council continued discussion on the following agenda item:

1. Discussion Regarding Potential Interlocal Agreement with Collin College for Public Safety Training Facility.

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 9:45 p.m. on Tuesday, December 13, 2016.

These minutes approved on the 10th day of January 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	January 10, 2017
SUBJECT:	Appoint Cynthia Porter Gore as the Municipal Court Judge and Authorize the City Manager to Execute an Agreement Relating to her Appointment.
STAFF RESOURCE:	Peter H. Vargas, City Manager
PREVIOUS COUNCIL ACTION:	Section 3.08 of the City Charter requires the City Council appointment of a Municipal Court Judge. The current Municipal Court Judge, Linda Hopper, has communicated her intent to retire at the end of her current contract slated for December 31, 2016.
ACTION PROPOSED:	Appoint Cynthia Porter Gore as the Municipal Court Judge and Authorize the City Manager to Execute an Agreement Relating to her Appointment.

BACKGROUND

The City of Allen currently has a Municipal Court Judge, Linda Hopper. Judge Hopper's current two year contract will expire at the end of December 2016. She has communicated her intent to retire as Municipal Court Judge for the city at the end of her current contract, thereby, creating a vacancy in the position.

After conducting an extensive recruitment process for the next Municipal Court Judge the applicant pool was reduced to three finalists for face-to-face interviews. The finalist for Municipal Court Judge, Cynthia Porter Gore is currently serving as the City's Alternate Municipal Court Judge. As Alternate Court Judge, Ms. Gore has been performing judicial services on scheduled weekends for the City and also presiding over Teen Court since 2010.

Ms. Gore is an Allen resident and attorney who has previously served as Associate Municipal Judge in The Colony. She is Board Certified in Juvenile Law and Criminal Law. She has prosecuted misdemeanor, felony, and juvenile crimes. She is a founding member of the Juvenile Law Section of the Collin County Bar Association. Her law practice focuses on juvenile law, criminal defense, and CPS litigation.

The proposed contract stipulates an annual performance review and includes an adjustment to the compensation to be effective for each year. Attached is a two-year professional services agreement relating to the appointment of Cynthia Porter Gore performing duties as the Municipal Court Judge with an initial contract expiration on December 31, 2018. Subsequent renewals to this agreement will be for two-year terms with the dates coinciding with the calendar year.

BUDGETARY IMPACT

The Municipal Court budget will cover the costs associated with the Municipal Court Judge contract.

STAFF RECOMMENDATION

Staff recommends the City Council appoint Cynthia Porter Gore as the Municipal Court Judge and authorize the City Manager to execute a professional services agreement relating to her appointment. The agreement is effective on January 11, 2017 and expires on December 31, 2018.

MOTION

I make a motion to appoint Cynthia Porter Gore as the Municipal Court Judge and authorize the City Manager to execute an agreement relating to her appointment.

ATTACHMENTS:

Employment Agreement Cynthia Porter Gore

THE STATE OF TEXAS §
COUNTY OF COLLIN § EMPLOYMENT AGREEMENT
§

This agreement ("Agreement") is made and entered into by and between the City of Allen, Texas (the "City"), and Cynthia Porter Gore ("Gore") (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, City desires to employ the services of said Gore as Judge of the Municipal Court of the City of Allen, Texas, as provided by City Charter and State law; and

WHEREAS, it is the desire of the City Council to provide certain benefits, establish certain conditions of employment and to set working conditions of said Gore; and

WHEREAS, Gore desires to accept employment as Judge of the Municipal Court of the City of Allen, Texas; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

Section 1. Duties

City hereby agrees to employ Gore as Judge of the Municipal Court to perform the functions and duties specified in the City Charter, City Code, State law and to perform such other duties and functions as the City Manager shall from time to time assign. The Judge of the Municipal Court shall be under the direction and control of the City Manager. The primary duties shall include, but are not limited to, the following:

- (1) Preside over all municipal court proceedings;
- (2) Arraign all adult prisoners daily;
- (3) Arraign all juveniles prior to interviews by State;
- (4) Execute all arrest warrants;
- (5) Execute all court warrants;

- (6) Perform such other duties as assigned by the City Council and/or the City Manager that may be commensurate with the position of Municipal Court Judge; and
- (7) Perform all other administrative duties of a Municipal Court Judge as may be provided by ordinance, resolution of the City Council, or applicable State laws.

Section 2. Terms

- A. Gore shall serve as Judge of the Municipal Court commencing on January 11, 2017 and expiring on December 31, 2018, but may be removed for cause at any time in accordance with the provisions of this Agreement, the City Charter and State law. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of Gore as an employee or to remove Gore from the position of Judge of the Municipal Court in accordance with the City Charter and State law.
- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Gore to resign at any time from the position of Judge of the Municipal Court.
- C. Gore agrees to remain in the exclusive employ of City, and neither to accept other employment nor to become employed by any other employer. The term employed shall not be construed to include occasional teaching, writing, consulting, mediation, military reserve service or part time work performed on Gore's time off which does not conflict with, or is incompatible with, the duties as Municipal Court Judge.
- D. The City Manager of the City of Allen shall be the designated supervisor of the day to day administrative duties of the position; however, nothing contained herein shall be construed so as to be interpreted as to interfere with the judicial functions of the position.

Section 3. Salary; Benefits

- A. City agrees to pay Gore for services rendered pursuant hereto, an annual base salary of \$120,000.00 payable in installments at the same time as other full-time employees of the City are paid and subject to the same applicable deductions for Gore benefit contributions.

- B. Upon determination by the City Manager that Gore is performing the duties of Judge of the Municipal Court in an acceptable manner, the City Manager may increase the annual base salary in such amount and to the extent as the City Manager may determine is appropriate based on an annual performance evaluation by the City Manager. Said increase will be reflected in the first pay period following the anniversary of the date of employment.
- C. City agrees to provide Gore the same benefits relating to health care, vacation, sick leave, retirement system contributions, holidays and other fringe benefits and working conditions as they now exist or maybe amended, that apply to other full-time employees.

Section 4. Performance Evaluation

The City Manager shall conduct an annual performance review of Gore prior to January 1st of each calendar year.

Section 5. Hours of Work

Gore shall devote her primary working time, energy, skill, and best efforts to the performance of her duties hereunder in a manner that will faithfully and diligently conform to the appropriate standard of care, and further the legitimate professional and business interests of the City. Gore shall be required to maintain regular office hours as may be required to maintain full time employment status with the City. In addition, Gore shall be on call at all times to perform arraignments and sign warrants, or otherwise discharge the duties required herein. Gore freely acknowledges that the hours during which she shall perform the job duties set forth herein may vary from time to time, both in terms of total hours per week or time of day.

Section 6. Notices

Any notice required or permitted to be delivered hereunder shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to City or Gore as the case may be at the address set forth opposite the signature of the Party.

Section 7. Entire Agreement

This Agreement constitutes the sole and only agreement of the Parties and supersedes any prior understandings or written or oral agreements between the Parties respecting this subject matter.

Section 8. Successor and Assigns

This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and assigns.

Section 9. Governing Law

This Agreement is governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Collin County, Texas.

Section 10. Amendment

This Agreement may be amended by the mutual written agreement of the Parties.

Section 11. Legal Construction

In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

EXECUTED this 11 day of January, 2017.

CYNTHIA PORTER GORE

CITY OF ALLEN, TEXAS

By: _____

By: _____

Cynthia Porter Gore
Municipal Court Judge

Peter H. Vargas
City Manager

Address: 301 Century Parkway
Allen, Texas 75013

305 Century Parkway
Allen, Texas 75013

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:

January 10, 2017

SUBJECT:

Adopt a Resolution Authorizing the Director of Parks and Recreation to Apply for, Accept, Reject, Alter or Terminate a Grant Through Texas Parks and Wildlife's Recreational Trails Program for Construction of the Bethany Lakes Loop Trail

STAFF RESOURCE:

Tim Dentler, Director of Parks and Recreation
Matt McComb, Landscape Architect
Randy Thompson, Park Planner
Kelly McGinnis, Grant / Project Coordinator

ACTION PROPOSED:

Adopt a Resolution authorizing the Director of Parks and Recreation to apply for, accept, reject, alter or terminate a grant through Texas Parks and Wildlife's Recreational Trails Program for construction of the Bethany Lakes Loop Trail

BACKGROUND

The Bethany Lakes Loop Trail was designed in-house and publicly bid as an alternate in 2015 with the Trail ADA Improvements recently completed at the Bethany Lakes Park. The Bethany Lakes Loop Trail was not constructed due to funding constraints at the time. The proposed loop trail is a desirable amenity at the park by providing a continuous one-mile hike and bike circulation path around the entire park. Staff anticipates that this project will be an instant success, based on the popularity and usefulness of the loop trail at Celebration Park.

BUDGETARY IMPACT

Texas Parks and Wildlife's Recreational Trail Program will reimburse up to 80% of projects selected, up to a maximum of \$200,000 per project. The program funds are reimbursable, requiring the City to first expend the construction costs and request reimbursement of funds granted. Bethany Lakes Loop Trail expenses are anticipated to be \$298,530. The City's required match is available from the Allen Community Development Corporation funds allocated for trail construction.

STAFF RECOMMENDATION

Staff recommends adoption of a Resolution authorizing the Director of Parks and Recreation to apply for, accept, reject, alter, or terminate a grant through Texas Parks and Wildlife's Recreational Trail program for the construction of the Bethany Lakes Loop Trail.

MOTION

I make a motion to adopt Resolution No. _____ authorizing the Director of Parks and Recreation to apply for, accept, reject, alter, or terminate a grant through Texas Parks and Wildlife's Recreational Trail program for construction of the Bethany Lakes Loop Trail.

ATTACHMENTS:

Resolution

Map of Proposed Bethany Lakes Loop Trail Project Location

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, HEREINAFTER REFERRED TO AS “APPLICANT,” DESIGNATING CERTAIN OFFICIALS AS BEING RESPONSIBLE FOR, ACTING FOR, AND ON BEHALF OF THE “APPLICANT” IN DEALING WITH TEXAS PARKS AND WILDLIFE, HERINAFTER REFERRED TO AS “GRANTOR,” FOR THE PURPOSE OF PARTICIPATING IN THE RECREATIONAL TRAIL FUNDING ASSISTANCE PROGRAM, HEREINAFTER REFERRED TO AS THE “PROGRAM”; CERTIFYING THAT THE “APPLICANT” IS ELIGIBLE TO RECEIVE PROGRAM ASSISTANCE; CERTIFYING THAT THE “APPLICANT” MATCHING SHARE IS READILY AVAILABLE; AND DEDICATING THE PROPOSED FACILITY FOR PERMANENT PUBLIC RECREATION PURPOSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the “Applicant” is fully eligible to receive assistance under the “Program”; and,

WHEREAS, the “Applicant” is desirous of authorizing an official to represent and act for the “Applicant” in dealing with the “Grantor” concerning the “Program”; and,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The “Applicant” hereby certifies that it is eligible to receive assistance under the “Program.”

SECTION 2. The “Applicant” hereby certifies that the matching share for this application is readily available at this time.

SECTION 3. The “Applicant” hereby authorizes and directs its Director of Parks and Recreation to act for the “Applicant” in dealing with the “Grantor” for the purpose of the “Program,” and Tim Dentler is hereby officially designated as the representative in this regard.

SECTION 4. The “Applicant” hereby specifically authorizes the official to make application to the “Grantor” concerning the project known as the Bethany Lakes Loop Trail in the City of Allen. That the Bethany Lakes Loop Trail will be dedicated upon completion of construction for public recreation purposes in perpetuity.

SECTION 5. This Resolution shall become effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 10TH DAY OF JANUARY 2017.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, TRMC, CITY SECRETARY



BETHANY LAKES LOOP TRAIL

SCALE: NTS



12/22/16

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	January 10, 2017
SUBJECT:	Authorize the City Manager to Continue the Professional Services Agreement with Bureau Veritas North America, Inc., for Building Inspection Services in an Amount not to Exceed \$75,000.
STAFF RESOURCE:	Ogden "Bo" Bass, Director of Community Development Kurt Kasson, Building Official
ACTION PROPOSED:	Authorize the City Manager to Continue the Professional Services Agreement with Bureau Veritas North America, Inc., for Building Inspection Services in an Amount not to Exceed \$75,000.

BACKGROUND

In August 2016, the City of Allen entered into an agreement with Bureau Veritas to provide Building Inspection Services as an independent contractor. Bureau Veritas augments the City's current staff with building inspection services in order to keep up with the increasing demand in inspections due to the high level of construction activity within the City of Allen. Additionally, the job market is very competitive we, along with other cities in North Texas, have had a difficult time recruiting qualified individuals for building inspections.

To date, the Community Development Department is pleased with the work our Bureau Veritas Building Inspector has completed for the City. We are very fortunate to have an experienced, recently retired City of Plano, Building Inspector working as our contract employee. It is important for the City to have the same individual to maintain consistency and ensure inspections are completed in the same manner the Allen staff completes inspections.

On average, the Bureau Veritas employee works approximately 22 hours per week and has provided much needed responsiveness to our building customers. This contractual service has allowed the Building Inspections Division to focus on the more difficult inspections and rely on Bureau Veritas to conduct the more routine inspections, such as: residential water heaters, HVAC replacements, residential fence construction, roof replacements, swimming pools, retaining walls, etc.

The goal is to use Bureau Veritas until the division is fully staffed and caught up with the workload. Currently, there are two vacant building inspector positions and we have recently reclassified one to Senior Building Inspector with the goal to hire an individual with a Plumbing Certification.

BUDGETARY IMPACT

Since August 2016, the City has spent approximately \$38,500 for professional building inspection services with

Bureau Veritas. The funding for this contract is expended in the General Fund, Community Development Department budget and is partially offset through salary savings. The contract calls for a fee of \$125 per hour. Staff will continue to monitor the expenditure to ensure it doesn't exceed the amount of \$75,000.

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to Continue the Professional Services Agreement with Bureau Veritas North America, Inc., for Building Inspection Services in an Amount not to Exceed \$75,000.

MOTION

I make a motion to authorize the City Manager to Continue the Professional Services Agreement with Bureau Veritas North America, Inc., for Building Inspection Services in an amount not to exceed \$75,000.

ATTACHMENTS:

Agreement

STATE OF TEXAS §
 § **AGREEMENT FOR PROFESSIONAL SERVICES**
COUNTY OF COLLIN §

This Agreement for Professional Services ("Agreement") is made by and between the City of Allen, Texas ("City") and Bureau Veritas North America, Inc., a Delaware corporation ("Professional") (each a "Party" and collectively the "Parties"), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the building inspection services described in Exhibit "A" (the "Scope of Services") on the terms and conditions set forth in this Agreement; and

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 The term of this Agreement shall be for a period of two (2) years commencing on the last date of execution hereof ("Effective Date"), unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all finished and unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items prepared by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination.

Article II

Scope of Service

2.1 The Professional shall provide the services set forth in the Scope of Services, including the necessary personnel to conduct building inspection services as set forth in the Scope of Services. All such personnel shall possess and hold and maintain in current standing during the term of this Agreement such licenses and permits required to provide the building inspection services.

2.2 The City shall provide the Professional with: (i) adequate space where the services are to be performed to accommodate the Professional's reasonable needs; (ii) suitable access to such space for Professional's personnel, equipment and materials; and (iii) shall appoint an individual hereafter referred to as the project manager who shall be authorized to act on behalf of City and with whom Professional may consult at reasonable times.

2.3 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable by law to the services performed hereunder.

2.4 The City acknowledges that all intellectual property rights related to the names, service marks, trademarks, inventions, logos and copyrights of the Professional and its affiliates (collectively, the "Rights"), are and shall remain the sole property of the Professional or its affiliates and shall not be used by the City, except solely to the extent that the City obtains the prior written approval of the Professional and then only in the manner prescribed by the Professional.

2.5 All materials and reports prepared by the Professional in connection with this Agreement are "works for hire" and shall be the property of the City. The City shall have the right to publish, disclose, distribute and otherwise use such materials and reports in accordance with applicable laws of the State of Texas. Professional shall, upon completion of the services, or earlier terminated, provide the City with reproductions of all materials and reports, and in electronic format if requested by the City.

Article III

Schedule of Work

The Professional agrees to provide the required services when requested by the City Chief Building Official and complete such services as set forth in the request for inspection services.

Article IV

Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the fee schedule and amounts set forth in the Scope of Services. Unless otherwise provided herein, payment to the Professional

shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, and the rates charged for such service, in a form reasonably acceptable to the City. The City shall pay such monthly statements within thirty (30) days after receipt and City verification of the services unless otherwise provided herein. If a monthly invoice is not paid within such period, City shall be liable to Professional for a late charge accruing from the date of such invoice to the date of payment at the lower of eighteen percent (18%) per annum or the maximum rate allowed by law. If City fails to pay any monthly invoice fully within thirty (30) days after invoice date, Professional may, at any time, and without waiving any other rights or claims against City, elect to terminate performance of services immediately following written notice from Professional to City. City shall pay Professional for such services completed to the reasonable satisfaction of the City in accordance with this Agreement as of the date of termination.

4.2 The Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement, including, but not limited to, travel, copying and facsimile charges, telephone, internet and email charges.

Article V

Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The Professional shall furnish the facilities, equipment and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend progress meetings as may be required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on

the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Peter H. Vargas
City Manager
City of Allen, Texas
3rd Floor, Allen City Hall
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager & Smith, LLP
1800 Ross Tower
500 N. Akard Street
Dallas, Texas 75201

If intended for Professional:

Bureau Veritas North America, Inc.
Attn: Contract Processing
1000 Jupiter Road, Suite 800
Plano, Texas 75074

With a copy to:

Bureau Veritas North America, Inc.
Attention: Legal Department
1601 Sawgrass Corporate Parkway, Suite 400
Fort Lauderdale, FL 33323

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate.
- (b) All policies of insurance shall be endorsed and contain the following provisions: (1) name the City, its officers, and employees as additional insureds as to all applicable coverage, with the exception of Workers Compensation Insurance and Professional Liability; and (2) provide for at least thirty (30) days prior written notice to the City for cancellation of the insurance or material change of, or to the policies of insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance, except for Professional Liability Insurance. In the event the companies providing the required policies of insurance are

prohibited by law to provide written notice of cancellation or material change of, or to any policy required herein the Professional shall provide thirty (30) days prior written notice thereof to the City.

- (c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.
- (d) A certificate of insurance and copies of the policy endorsements evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

6.10 Indemnification. CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY TO THE EXTENT ARISING FROM THE SERVICES OF THE PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY OR BREACH OF CITY'S OBLIGATIONS HEREUNDER. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS OF ANY KIND BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE PROFESSIONAL'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY NEGLIGENT ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO NEGLIGENCE OF THE CITY, IN WHOLE OR IN PART, IN WHICH CASE PROFESSIONAL SHALL INDEMNIFY CITY ONLY TO THE EXTENT OR PROPORTION OF NEGLIGENCE ATTRIBUTED TO PROFESSIONAL. THE PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

6.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.13 Consequential and Punitive Damages. Neither Professional nor City shall be liable under any circumstances for loss of profits, loss of product, consequential damages of any kind, indirect damages of any kind or special damages of any kind to the other Party, or to any third party. No punitive or exemplary damages of any kind shall be recoverable against either Party under any circumstances.

6.14 Audit. City shall have the right during the term of this Agreement and continuing until one (1) year after termination of this Agreement to audit Professional's books and records relating to the services provided and the fees paid to the Professional.

6.15 Prevailing Party. In all disputes arising under this Agreement, the Parties agree that the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs from the other party.

6.16 Standard of Care. The services provided by Professional pursuant to this Agreement, if performed by a licensed engineer or registered architect such person shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be. If the services provided by the Professional pursuant to this Agreement, is not performed by a licensed engineer or registered architect, such person shall perform the services: (i) with the skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent consultants.

[Signature Page to Follow]

EXECUTED this 11th day of August, 2016.

CITY OF ALLEN, TEXAS

By: 

Peter H. Vargas, City Manager

ATTEST:

By: 

Shelley B. George, City Secretary

EXECUTED this _____ day of _____, 2016.

BUREAU VERITAS NORTH AMERICA, INC.

By: 

Name: VAN TRAN

Title: Vice President

DTQR Daniel Stanford 8/9/2016

EXHIBIT "A"

Scope of Services

Professional and the representatives of Professional are charged with the enforcement of the provisions of the City's Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fuel Gas Code and Energy Code, acting in good faith and without malice in the discharge of the duties required by these codes or other pertinent law or ordinance shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties. The City has final interpretive authority over all plans, specifications and inspections. Permits and Certificates of Occupancy are issued by the City.

Staffing Support

Professional will provide inspection staffing support. Professional inspection personnel shall be available eight (8) hours per day, Monday through Friday during the normal working hours of Client, except on holidays observed by Client.

Backup Inspection Services

Inspection services shall be conducted on an as-needed basis as required by the City. Special inspections as specified in chapter 17 and non-prescriptive structural inspections of the adopted International Building Code are not included and may be required as specified in the International Building Code. Any violations of the City's codes, or concealment of any work prior to approval by Professional will be reported to the Building Official of the City.

Project Plan Review

Non-Structural Plan Review services shall be conducted as required by the City's Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fuel Gas Code and Energy Code, and other provided code related documents, as approved by the City. Applicants will be notified of Plan Review Comments and are responsible for addressing comments to the satisfaction of the City.

Project Inspections

Inspection services shall be conducted as required by the City's Building Code, Residential Code, Mechanical Code, Electrical Code, Plumbing Code, Fuel Gas Code and Energy Code. Special inspections as specified in chapter 17 and non-prescriptive structural inspections of the adopted International Building Code are not included and may be required as specified in the International Building Code. Any violations of the City's codes or concealment of any work prior to approval by Professional will be reported to the Building Official of the City.

Staffing Support

Inspection personnel, eight (8) hours per day, Monday through Friday during normal working hours of Client, except on holidays observed by Client.

\$125.00 per hour

Back-up inspections

EXHIBIT "A"

Scope of Services

Backup inspections will be performed during normal working hours of Client, except on holidays observed by Client.

Single Family Residential
Commercial and non-Single Family Residential

\$76.92 per address/building
\$125.00 per address/building/unit

Project Commercial and Multi-Family construction plan review

Valuation	Fee
\$1. ⁰⁰ to \$10,000. ⁰⁰	\$50. ⁰⁰
\$10,001. ⁰⁰ to \$25,000. ⁰⁰	\$70.69 for the first \$10,000. ⁰⁰ plus \$5.46 for each additional \$1000. ⁰⁰
\$25,001. ⁰⁰ to \$50,000. ⁰⁰	\$152.59 for the first \$25,000. ⁰⁰ plus \$3.94 for each additional \$1000. ⁰⁰
\$50,001. ⁰⁰ to \$100,000. ⁰⁰	\$251.09 for the first \$50,000. ⁰⁰ plus \$2.73 for each additional \$1000. ⁰⁰
\$100,001. ⁰⁰ to \$500,000. ⁰⁰	\$387.59 for the first \$100,000. ⁰⁰ plus \$2.19 for each additional \$1000. ⁰⁰
\$500,001. ⁰⁰ to \$1,000,000. ⁰⁰	\$1,263.59 for the first \$500,000. ⁰⁰ plus \$1.85 for each additional \$1000. ⁰⁰
\$1,000,001. ⁰⁰ and up	\$2,188.59 for the first \$1,000,000. ⁰⁰ plus \$1.23 for each additional \$1000. ⁰⁰

Project Single Family Residential construction plan review and inspection

Project Commercial and Multi-Family construction inspection

Valuation	Fee
\$1. ⁰⁰ to \$10,000. ⁰⁰	\$76. ⁹²
\$10,001. ⁰⁰ to \$25,000. ⁰⁰	\$108.75 for the first \$10,000. ⁰⁰ plus \$8.40 for each additional \$1000. ⁰⁰
\$25,001. ⁰⁰ to \$50,000. ⁰⁰	\$234.75 for the first \$25,000. ⁰⁰ plus \$6.06 for each additional \$1000. ⁰⁰
\$50,001. ⁰⁰ to \$100,000. ⁰⁰	\$386.25 for the first \$50,000. ⁰⁰ plus \$4.20 for each additional \$1000. ⁰⁰
\$100,001. ⁰⁰ to \$500,000. ⁰⁰	\$596.25 for the first \$100,000. ⁰⁰ plus \$3.36 for each additional \$1000. ⁰⁰
\$500,001. ⁰⁰ to \$1,000,000. ⁰⁰	\$1,940.25 for the first \$500,000. ⁰⁰ plus \$2.85 for each additional \$1000. ⁰⁰
\$1,000,001. ⁰⁰ and up	\$3,365.25 for the first \$1,000,000. ⁰⁰ plus \$1.89 for each additional \$1000. ⁰⁰

* For projects using the valuation tables above, fees are billed upon issuance of the permit by the City

The construction valuation is determined by the greater of the declared valuation of the project or the valuation calculated using the International Code Council Building Valuation Data table, first update of each calendar year.

Example:

Square Foot Construction Costs

Group (2012 International Building Code)	IA	IB	IIA	IIB	IIIA	IIIB	IV	VA	VB
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EXHIBIT "A"
Scope of Services

B Business	179.29	172.71	166.96	158.70	144.63	139.20	152.43	126.93	121.32
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The Square Foot Construction Cost does not include the price of the land on which the building is built. The Square Foot Construction Cost takes into account everything from foundation work to the roof structure and coverings but does not include the price of the land. The cost of the land does not affect the cost of related code enforcement activities and is not included in the Square Foot Construction Cost.

New Building

Group B occupancy

Type VB construction

10,000 square feet total building area

Declared construction valuation \$1,100,000.

Calculated construction valuation - 10,000 square feet X \$121.32 per square foot = \$1,213,200.

The calculated construction valuation is greater than the declared construction valuation so \$1,213,200 is used to calculate the Bureau Veritas fee for the project.

* Note: Professional fees do not include any taxes, licensing or other fees imposed by governmental or outside agencies

CITY COUNCIL AGENDA COMMUNICATION
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AGENDA DATE:	January 10, 2017
SUBJECT:	Authorize the City Manager to Execute an Interlocal Agreement with the Collin County Community College District for the Construction and Use of a Public Safety Training Facility.
STAFF RESOURCE:	Peter H. Vargas, City Manager
ACTION PROPOSED:	Authorize the City Manager to Execute an Interlocal Agreement with the Collin County Community College District for the Construction and Use of a Public Safety Training Facility.

BACKGROUND

In May of 2016, the citizens of Allen approved a Bond Election for capital improvements. Among the projects approved was a firearms training facility for the Allen Police Department.

In June of 2016, we learned that the Collin County Community College District was planning to construct a new facility to provide firefighting and police training. This new facility would include a firearms training facility for their Police Academy Program.

At the June 14, 2016, City Council Workshop, City Council was presented with information on the proposed construction of a Police Firearms Training Facility. At that time, the following options were presented for City Council consideration:

1. Interlocal agreement with Collin County Community College District ("College") to be included in a facility that they were planning.
2. City construction of our own facility.
3. A public/private partnership with a private business.

City Council asked that staff continue to pursue all three options.

At the City Council Workshop on December 13, 2016, staff reported that, in discussions with the College and the private sector, the use of bond funds was central to any further discussions. We consulted with our bond attorneys about the appropriateness of using bond funds with third parties and they raised the issue with the Attorney General's Office, which must approve all municipal bond issuances.

The Attorney General's Office indicated that the use of bonds for the project would require City ownership.

This requirement would make a public/private partnership difficult and could provide exposure to liability in the future. In addition, a joint project would not guarantee a long-term solution as the business side of the project might fail.

City Council directed staff to proceed with the development of an interlocal agreement with the College for the firearms training facility.

The major conditions for agreement were defined as follows:

- City of Allen would own twelve 50-yard lanes, two offices and an armory within the facility.
- City of Allen would lease/rent the land on which the improvement (lanes) would be built at a cost of \$10 per year.
- Original terms of the agreement would be 50 years with renewable options every five years under the same terms. (The College has a 50-year lease on the total property for the police and fire facility they are building.)
- Utilities including water, sewer, electricity, phone and other such utilities would be paid by the College.
- Construction of the facility would be the responsibility of the College.
- City of Allen would contribute \$4.6 million for the construction of the twelve lanes. (\$2.3 million at 50% completion and the final \$2.3 million upon the issuance of the Certificate of Occupancy.)
- The College would be responsible for the maintenance of the facility.
- City of Allen would have 1,200 hours of priority use for its twelve lanes with an additional 1,200 hours on off-peak hours.

Attached is a Draft copy of the Interlocal Agreement. There may be a few changes from the date the agenda is posted to the City Council meeting date.

BUDGETARY IMPACT

The bond funds approved will cover the cost of the partnership agreement with Collin County Community College District.

STAFF RECOMMENDATION

Staff recommends the City Council authorize the City Manager to Execute an Interlocal Agreement with the Collin County Community College District for the Construction and Use of a Public Safety Training Facility.

MOTION

I make a motion to authorize the City Manager to Execute an Interlocal Agreement with the Collin County Community College District for the Construction and Use of a Public Safety Training Facility.

ATTACHMENTS:

Draft - Interlocal Agreement

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 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 12 lanes that are 100 yards in length (the “12 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 an obligor hereunder, 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.

“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 12 x 50 Range 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

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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 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 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 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

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.** In the event of a partial taking where this Agreement is not terminated, and as a result thereof Allen will need to restore, repair or refurbish the remainder of the 12 x 50 Range Premises in order to put them in a usable condition, then (i) the award shall first be paid to Allen 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

as follows: (1) first, to the payment of all reasonable fees and expenses incurred in collecting the award, (2) second, the balance of the award shall be equitably apportioned between Allen and College based on the then respective fair market values of College's interest in the Premises (appraised by reference to all relevant factors including the income stream derivable by College under this Agreement and the then present value of College's reversionary interest in the entire Premises after expiration of the Original Term) and Allen's interest in the Premises (appraised by reference to all relevant factors, including Allen's moving expenses and the income stream derivable by Allen from the Premises for the remainder of the Original Term). If a portion of the 12 x 50 Range Premises is taken and no repair or restoration work is required because thereof, the award therefor shall be apportioned and paid as provided in (ii)(1) and (2) of this Section, considering the respective interests of Allen and College in the portion of the 12 x 50 Range Premises taken.

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; (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: _____

Depiction of 12x50 Range



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

January 10, 2017

SUBJECT:

Authorize the City Manager to Negotiate and Execute a Third Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP to Amend the Timing of Infrastructure Grant Payments and the Date to Commence Construction.

STAFF RESOURCE:

Peter H. Vargas, City Manager
Dan Bowman, Executive Director of Economic Development

PREVIOUS COUNCIL ACTION:

On April 14, 2015, City Council authorized the execution of an Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP.

On November 10, 2015, City Council authorized the execution of the First Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP.

On April 26, 2016 City Council authorized the execution of the Second Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP and approved additional funding for the Hotel and Convention Center Project.

ACTION PROPOSED:

Authorize the City Manager to Negotiate and Execute a Third Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP to Amend the Timing of Infrastructure Grant Payments and the Date to Commence Construction.

BACKGROUND

This Third Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP incorporates a change in the timing of the payments for the Infrastructure Grant and the Date to Commence Construction.

The current agreement calls for the City's portion of the grant, \$5.1 million, to be paid at the time the Certificate

of Occupancy is issued. This amendment changes the timing of that payment to be consistent with the timing of the payment for the AEDC and CDC portion of the grant to be paid upon submitted construction invoices for the associated infrastructure. This amendment also reflects a change of the construction start date to March 1, 2017.

BUDGETARY IMPACT

The funds are already allocated for this project, so changing the timing of the Infrastructure Grant payments does not impact the budget.

STAFF RECOMMENDATION

Authorize the City Manager to Negotiate and Execute a Third Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP to Amend the Timing of Infrastructure Grant Payments and the Date to Commence Construction.

MOTION

I made a motion to authorize the City Manager to negotiate and execute a Third Amendment to the Economic Development Incentive Agreement and Civic Center Agreement with TCH Altera AHCC, LP to Amend the Timing of Infrastructure Grant Payments and the Date to Commence Construction.

ATTACHMENTS:

Agreement

STATE OF TEXAS §
 §
 §
COUNTY OF COLLIN §

**THIRD AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

This Third Amendment to Economic Development Incentive Agreement (“Third Amendment”) is made by and between the City of Allen, Texas (“City”), and TCH Altera AHCC LP, a Texas limited partnership (“Company”) (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the Parties entered into that certain Economic Development Incentive Agreement dated May 6, 2015 (the “Original Agreement”), as amended by that certain First Amendment to Economic Development Incentive dated November 11, 2015 (the “First Amendment”), and as further amended by that certain Second Amendment to Economic Development Agreement dated June 16, 2016 (collectively, the Original Agreement, as amended by the First and Second Amendments, are referred to hereafter as the “Incentive Agreement”); and

WHEREAS, the Parties desire to amend the Incentive Agreement in regard for the dates for Commencement and Completion of Construction of the Hotel and Conference Center and to amend the schedule for the payment of the Infrastructure Grant as set forth herein;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Section 4.4 of the Incentive Agreement is hereby amended to read as follows:

“4.4 Construction of Hotel and Conference Center. Subject to the terms and conditions of this Agreement, Company agrees to design and construct, or cause to be designed and constructed, the Hotel and Conference Center in accordance with the Zoning and the approved Construction Plans. Company shall, subject to events of Force Majeure, cause Commencement of Construction of the Hotel and Conference Center to occur on or before March 1, 2017; and, subject to events of Force Majeure, cause Completion of Construction of Hotel and Conference Center to occur within twenty-four (24) months after the date of Commencement of Construction.”

2. Section 6.1 of the Incentive Agreement is hereby amended to read as follows:

“6.1 Infrastructure Grant Payment. Subject to the continued satisfaction of all of the terms and conditions of this Agreement by Company, and the obligation of Company to repay the Infrastructure Grant and Rent pursuant to Article VII hereof, the City agrees to provide the Infrastructure Grant to Company as

construction of the Hotel and Conference Center progresses to be paid in monthly installments within ten (10) days after receipt of a Payment Request following the fifth (5th) day of each calendar month beginning with the first full month following the date of Commencement of Construction of the Hotel and Conference Center. Each Payment Request shall include the copies of invoices, bills and receipts reflecting the actual costs incurred and paid by the Company for that portion of the Infrastructure substantially completed during the previous ending calendar month, not to exceed \$5.1 Million.”

3. This Third Amendment shall become effective on the last date of execution hereof.
4. The Incentive Agreement, except as amended herein, shall remain in full force and effect.
5. This Third Amendment may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
6. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Third Amendment to the Incentive Agreement.

[Signature Page to Follow]

EXECUTED on this the _____ day of _____, 2017.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

EXECUTED on this the _____ day of _____, 2017.

TCH ALTERA AHCC LP,
a Texas limited partnership

By: TCH Altera AHCC GP, LLC, a Texas
limited liability company, its general partner

By: _____
Name: Terry D. Quinn
Title: Managing Member

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:	January 10, 2017
SUBJECT:	Receive the Summary of Property Tax Collections as of November 2016.
STAFF RESOURCE:	Eric Cannon, Chief Financial Officer

ATTACHMENTS:

Summary of Property Tax Collections as of November 2016

**Kenneth L. Maun
Tax Assessor Collector
Collin County
2300 Bloomdale Rd
P.O. Box 8046
McKinney, Texas 75070
972- 547-5020
Metro 424-1460 Ext.5020
Fax 972-547-5040**

December 12, 2016

**Mayor Stephen Terrell
City of Allen
305 Century Parkway
Allen, Texas 75013**

Dear Mayor Terrell,

**Enclosed is the Monthly Collection Report for:
The City of Allen tax collections for the month were:
The Rollback Collections for the month were:**

**November 2016
\$3,143,265.53
\$119,193.19**

Sincerely,



**Kenneth L. Maun
Tax Assessor Collector**

Attachment

**cc: Peter Vargas, City Manager
Eric Cannon, Chief Financial Officer
Joanne Stoehr, Assistant Finance Director**

KM:ds

Kenneth L Maun
 Tax Assessor/Collector
 Collin County
 P O Box 8046
 McKinney Tx 75070

Monthly Collection Status Report
 November 2016

City of Allen #06

	Collections Month of November	Cumulative Total 10/1/16 thru 11/30/16	% of Collections
Current Tax Year Collections			
Base M&O	\$2,289,225.11	\$2,783,535.49	6.38%
Base I&S	714,757.12	\$869,093.83	
Late Rendition Penalty	1,477.53	\$1,569.52	
P&I M&O	0.00	\$0.00	
P&I I&S	0.00	\$0.00	
P&I I&S Bond			
Attorney Fee	0.00	\$0.00	
Other>	682.54	682.54	
Subtotal	\$3,006,142.30	\$3,654,881.38	6.38%
Delinquent TaxYears Collections			
Base M&O	\$85,001.30	\$87,153.15	
Base I&S	29,838.17	\$30,513.03	
Late Rendition Penalty	51.25	\$92.76	
P&I M&O	16,448.48	\$18,849.17	
P&I I&S	5,784.03	\$6,557.71	
P&I I&S Bond			
Attorney Fee	2,975.25	\$2,975.25	
Other>	0.00	2,440.83	
Subtotal	\$140,098.48	\$148,581.90	0.26%
Combined Current & Delinquent:			
Base M&O	\$2,374,226.41	\$2,870,688.64	
Base I&S	744,595.29	899,606.86	
Late Rendition Penalty	1,528.78	1,662.28	
P&I M&O	16,448.48	18,849.17	
P&I I&S	5,784.03	6,557.71	
P&I I&S Bond			
Attorney Fee	2,975.25	2,975.25	
Other>	682.54	3,123.37	
Total Collections	\$3,146,240.78	\$3,803,463.28	6.64%
			100.00%
Original 2016 Tax Levy		\$57,241,851.90	

Kenneth L Maun
Tax Assessor/Collector
Collin County
P O Box 8046
McKinney Tx 75070

Cumulative Comparative Collection Status Report
November 2016

City of Allen #06

	Collections thru November 2016	% Collections	Collections thru November 2015	% Collections
Current Tax Year Collections				
Base M&O + I&S	\$3,652,629.32	6.38%	\$2,805,676.60	5.20%
Late Rendition Penalty	1,569.52		1,371.14	
P&I M&O + I&S	0.00		37.10	
Attorney Fee	0.00		0.00	
Other>	682.54		0.00	
Subtotal	<u>\$3,654,881.38</u>	6.38%	<u>\$2,807,084.84</u>	5.21%
Delinquent Tax Years Collections				
Base M&O + I&S	\$117,666.18		\$10,606.39	
Late Rendition Penalty	92.76		94.56	
P&I M&O + I&S	25,406.88		7,526.96	
Attorney Fee	2,975.25		4,149.04	
Other>	2,440.83		0.00	
Subtotal	<u>\$148,581.90</u>	0.26%	<u>\$22,376.95</u>	0.04%
Combined Current & Delinquent:				
Base M&O + I&S	\$3,770,295.50		\$2,816,282.99	
P&I M&O + I&S	25,406.88		7,564.06	
Late Rendition Penalty	1,662.28		1,465.70	
Attorney Fee	2,975.25		4,149.04	
Other	3,123.37		0.00	
Total Collections	<u>\$3,803,463.28</u>	6.64%	<u>\$2,829,461.79</u>	5.25%
Adjusted 2015 Tax Levy			<u>\$53,919,688.10</u>	100.00%
Original 2016 Tax Levy	<u>\$57,241,851.90</u>	100.00%		

Kenneth L Maun
Tax Assessor/Collector
Collin County
P O Box 8046
McKinney Tx 75070

Page 3

Levy Outstanding Status Report
November 2016

City of Allen #06

	Current Tax Year	Delinquent Tax Years
Current Month:		
Tax Levy Remaining as of 10/31/16	\$57,250,824.77	\$445,499.32
Base M&O Collections	3,003,982.23	114,839.47
Supplement/Adjustments	521,525.89	-2,505.77
Write-off	0.00	0.00
Remaining Levy as of 11/30/16	<u>\$54,768,368.43</u>	<u>\$328,154.08</u>
Cumulative (From 10/01/16 thru 11/30/16)		
Original 2016 Tax Levy (as of 10/01/16)	\$57,241,851.90	\$452,274.53
Base M&O + I&S Collections	3,652,629.32	117,666.18
Supplement/Adjustments	1,179,145.85	-6,454.27
Write-off	0.00	0.00
Remaining Levy as of 11/30/16	<u>\$54,768,368.43</u>	<u>\$328,154.08</u>

Kenneth L Maun
 Tax Assessor/Collector
 Collin County
 P O Box 8046
 McKinney Tx 75070

Monthly Distribution Report
 November 2016

City of Allen #06

	Distribution Month of November	Distribution 10/1/16 thru 11/30/16
Weekly Remittances:		
Week Ending 11/4/16	\$805,499.96	\$805,649.06
Week Ending 11/11/16	\$762,195.42	\$764,466.49
Week Ending 11/18/16	\$724,031.56	\$887,341.89
Week Ending 11/23/16	\$361,085.18	\$828,130.28
Week Ending 11/30/16	\$490,376.94	\$512,376.34
Total Weekly Remittances	<u>\$3,143,189.06</u>	<u>\$3,797,964.06</u>
Overpayment from Prior Month	\$0.00	\$0.00
Manual Adjustment Refund	\$0.00	\$0.00
Commission Paid Delinquent Attorney	\$2,975.25	\$5,416.08
Entity Collection Fee	\$0.00	\$0.00
Judgement Interest	\$0.00	\$0.00
5% CAD Rendition Penalty	\$76.47	\$83.14
Total Disbursements	<u><u>\$3,146,240.78</u></u>	<u><u>\$3,803,463.28</u></u>
Carryover to Next Month	\$0.00	\$0.00