

I. DEFINITIONS

Unless the context clearly indicates a different meaning, the words and phrases set forth in this Article I shall have the following meanings when used in this Agreement:

“Acceptance Date” means the date construction of the Facility is complete to the extent that the Cities have approved the final pay request to the contractor selected to construct the Facility and have authorized payment of the final payment and retainage.

“Business Day” means any day other than a Saturday, Sunday, or official city holiday in which Farmers Branch’s city hall offices are closed for business.

“Effective Date” means the date this Agreement has been approved by the governing bodies of all of the Cities and signed by the authorized representatives of each City.

“Event of Bankruptcy or Insolvency” means the dissolution or termination of a City’s existence as an on-going business, insolvency, appointment of receiver for any part of City’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against City and such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Facility” means, subject to agreement of the Cities on the final design, a fire training facility located on the Facility Property consisting of (1) a five story training building with masonry façade; (2) a Texas Commission on Fire Protection NFPA 1002-compliant driving course; (3) a vehicle stabilization and extrication area; (4) an outdoor meeting area/classroom; (5) multiple live fire simulators; (6) ventilation simulators; (7) ceiling and wall breaching simulators; (8) standpipe and sprinkler system simulators; (9) multiple vehicle rollover simulators, and (10) such other improvements and equipment as the Cities may agree to include in the Facility as part of the final design and equipping of the Facility or as may be modified during the Term of this Agreement.

“Facility Property” means a 1.53± acre portion of the property owned by Farmers Branch generally located at 13333 Hutton Drive, Farmers Branch, Texas, and being a portion of that real property conveyed to Farmers Branch pursuant to that certain Special Warranty Deed dated August 29, 2001, and recorded at Volume 2001174, Page 2511, Deed Records, Dallas County, Texas, and being more particularly depicted in Exhibit “A,” attached hereto and incorporated herein by reference.

“Fire Training Facility Funds” means one or more designated restricted funds established on the books of account of the City designated in this Agreement to manage the receipt of revenues and payment of expenses relating to the construction, repair, maintenance, and operation of the Facility, to hold the funds to be used for payment of Shared Operational Costs, to hold funds in reserve to be applied to future Shared Capital, or to hold funds for such other purposes that the Cities may from time to time agree.

“**Fiscal Year**” means the Cities’ official budget year beginning at 12:00:00 a.m. Central Time on October 1 of each calendar year and ending at 11:59:59 p.m. Central Time on September 30 of the immediately following calendar year.

“**Non-Shared Operational Costs**” means the costs for (1) consumable supplies and materials and (2) water, natural gas, and electricity used by a City during a training exercise at the Facility.

“**Paying City**” means the City which the Parties determine shall be contractually obligated for paying a Shared Capital Cost to a vendor or contractor pursuant to a contract entered for the benefit of the Parties relating to the construction, operation, repair, and/or maintenance of the Facility.

“**Shared Capital Costs**” means the costs relating to construction, reconstruction, remodeling, renovation, expansion and equipping of the Facility, including, but not limited to, engineering, architectural, and surveying costs, costs for demolition of existing improvements, costs for relocation and/or extension of existing utilities or construction of new utilities, costs relating to any work on adjacent property owned by Farmers Branch relating to providing access to, operation of, and parking for the Facility, costs relating to the purchase and installation of new and/or replacement equipment in the Facility or at any location on the Facility Property.

“**Shared Operational Costs**” means costs relating to the use, operation, management, repair, and maintenance of the Facility including, but not limited to, the costs for (i) wages and benefits of one or more employees of one of the Cities whose job duties include in whole or in part managing the operation of the Facility (provided if only a portion of the employee(s) time at work is spent managing the operation of the Facility, then only a portion of the cost of said employee’s wages and benefits based on the percentage of the employee’s work hours spent on managing the Facility shall constitute a Shared Operational Cost); (ii) repair and maintenance of the Facility and any equipment located within the Facility or on the Facility Property and available for use by any of the Cities; (iii) electricity, water, and sanitary sewer services, if any, used in operating the Facility; (iv) property and casualty insurance insuring against damage or destruction of improvements constituting a portion of the Facility; and (v) such other costs other than Shared Capital Costs identified in the Annual Facility Budget.

“**Structural Firefighter**” means a Texas Commission on Fire Protection Structural Fire Suppression certified employee assigned to a City’s fire operations division.

“**Term**” means, collectively, the Initial Term as defined in Section 2.01, together with each Renewal Term, as defined in Section 2.02.

II. TERM

2.01 Initial Term. This Agreement shall commence on the Effective Date and end at 11:59:59 p.m. Central Time on the last day of the Fiscal Year following the twentieth (20th) anniversary of the Acceptance Date (“the Initial Term”), unless extended or terminated earlier as provided in this Agreement.

2.02 Renewal Term. After the end of the Initial Term, this Agreement shall be extended automatically through each subsequent Fiscal Year (each being a “Renewal Term”) unless terminated as provided in this Agreement.

2.03 Early Termination During Initial Term.

A. Notwithstanding anything to the contrary herein, a City may terminate without cause its participation as a Party to this Agreement (said City called hereafter the “Terminating Party”) prior to the end of the Term subject to the following:

(1) The termination date must fall on the last day of a Fiscal Year;

(2) The Terminating Party must deliver notice to the other Parties not later than two (2) years prior to the date of termination;

(3) The Terminating Party shall not be entitled to reimbursement from the other Parties for payments made pursuant to this Agreement prior to the date of termination; and

(4) On or before the Terminating Party’s termination date, the terminating Party shall pay to the other Parties any Non-Shared Operational Costs incurred or accrued prior to the date of the termination of the Terminating Party’s participation in this Agreement.

B. Except as set forth in this Section 2.03, the Terminating Party shall have no obligation to pay any amounts which come due under this Agreement following the effective date of said City’s termination of its participation in this Agreement.

C. In the event of termination by Farmers Branch, all funds held under this Agreement or administrative fees paid in advance to Farmers Branch, shall be transferred to the remaining Cities to be used in carrying out the obligations set forth in this Agreement.

2.04 Effect of Early Termination. Upon termination of the Terminating Party as a Party to this Agreement:

A. The Terminating City forfeits, without right for reimbursement, all right, title, interest and ownership of the Facility and all property which the Terminating City contributed, conveyed, assigned or transferred to the other Cities for the operation of the Facility;

B. The Terminating City agrees and covenants to execute, and shall execute, without additional consideration, any licenses, easements, assignments, documents or agreements as may be necessary to sell, transfer, assign and convey the Terminating City’s right, title, interest and ownership of the Facility and all property which the Terminating City contributed, conveyed, assigned or transferred to or for the operation of the Facility;

C. The Terminating Party, except Farmers Branch, shall be required to pay the same rates and charges for use of the Facility charged to entities who are not parties to this Agreement;

D. In the event of early termination by Farmers Branch, it shall have the right to use of the Facility, upon proper reservation similar to other entities not parties to this Agreement, to use the Facility after payment of rates and charges which are fifty percent (50%) of the then-current applicable rates and charges, in consideration of the Facility's location on property owned by Farmers Branch; and

E. The Terminating Party shall not be entitled to any offset against its charges for use of the Facility from revenues generated by others who are not parties to this Agreement.

The obligations and covenants of a Terminating City herein shall survive such Terminating City's termination under this Agreement pursuant to this Section 2.04. The non-terminating Cities may continue the operation of the Facility, or to cease operation of the Facility, terminate this Agreement and liquidate the Facility as provided herein.

III. DESIGN AND CONSTRUCTION OF FACILITY

3.01 Design of Facility; Selection of Contractors. In accordance with applicable law, the Cities shall jointly (i) select one or more professionals to design and prepare the plans and specifications for the construction of the Facility; (ii) approve the design and specifications for the Facility, and (iii) select a contractor to construct the Facility. Farmers Branch shall for itself and the other Cities solicit bids and/or proposals, prepare and execute the necessary contractual agreements, and otherwise take such additional actions necessary to obtain the design and complete the construction of the Facility. Carrollton and Coppell understand, acknowledge, and agree that Farmers Branch will not be obligated to sign any contracts for the design and construction of the Facility until the City Manager of each Party signs a representation stating in substance the following:

(1) Representatives of the City have had a fair and equal opportunity to review the proposals or bids, as the case may be, received by Farmers Branch in response to any request for proposal ("RFP") or request for bid ("RFB");

(2) Representatives of the City agree that, following review of the proposals or bids received in response to the RFP/RFB, the selected contractor or professional provides the best and most advantageous proposal to the Cities in response to the RFP or RFB;

(3) If applicable, representatives of the City have participated, or been provided an opportunity to participate, in negotiating the best and final offer from the selected professional and/or contractor and the terms and conditions of the negotiated contract;

(4) To the best of their knowledge and belief, the Cities have complied with all applicable provisions of state law relating to the procurement of proposals and/or bids

for the design and construction of the Facility and the award of contracts for the design and construction of the Facility and related agreements;

(5) In the case of Carrollton and Coppell, acknowledges that Farmers Branch would not have signed the subject agreement but for the agreement of the Cities to this Agreement including but not limited to the Cities' agreement to pay their portions of the Shared Capital Costs; and

(6) Current funds are available to pay the City's respective share of the cost of the subject contract or purchase.

3.02 Advance Payment to Paying City. The Cities agree that prior to the Paying City becoming contractually obligated to pay a Shared Capital Cost, the Cities will pay their respective share of the Shared Capital Cost to the Paying City. The Paying City agrees to place such funds into a restricted project account and that such funds shall only be used for the restricted purpose. For purposes of Shared Capital Costs related to the initial design and construction of the Facility, the Cities agree Farmers Branch will be the Paying City. The Cities agree to use their best efforts to make payments in a timely manner so that the project which is the subject of the contract is not unreasonably delayed.

3.03 Ownership of Facility.

A. The Cities agree that title to the Facility, not including the Facility Property, shall be as follows:

- (1) Carrollton: 49.5% undivided interest.
- (2) Coppell: 26.8% undivided interest.
- (3) Farmers Branch: 23.7% undivided interest.

B. Except for the conveyance of the Easement, as set forth in Paragraph 4.04 below, to Carrollton and Coppell, nothing herein shall be construed as (i) granting Carrollton or Coppell any interest in the Facility Property merely because the Facility is located on or attached to the Facility Property or (ii) granting a City an ownership interest in personal property paid entirely for and owned by another City merely because said personal property constitutes a component of the Facility or the cost for operation, maintenance, or repair of the personal property constitutes a Shared Operational Cost.

3.04 Division of Shared Capital Costs. The Cities agree that the Shared Capital Costs for the initial design, construction, and equipping of the Facility shall be allocated as follows:

- A. Carrollton: 49.5% undivided interest.
- B. Coppell: 26.8% undivided interest.

- C. Farmers Branch: 23.7% undivided interest.

Shared Capital Costs other than those relating to the initial design, construction, and equipping of the Facility shall be in accordance with the allocation for Shared Operational Costs set forth in Section 4.02, below.

IV. FACILITY MAINTENANCE AND OPERATION

4.01 Governance Boards. The following boards shall be established for the purpose of administering and operating the Facility:

A. Facility Executive Board. There shall be established a Facility Executive Board whose permanent members shall be the Fire Chief of each City; provided, however, each Fire Chief may appoint another officer from the City's fire department who may sit as an alternate member who shall have the right to vote on matters considered by the Facility Executive Board when the Fire Chief is absent from a meeting of the board. The Facility Executive Board shall be authorized to:

(1) Adopt rules governing the meetings of the Facility Executive Board subject to the following:

(a) A quorum of the Facility Executive Board shall be all three (3) members (which may be a combination of permanent and/or alternate members) for the purpose of holding meetings and the transaction of business, including voting on any matters considered by the Facility Executive Board; and

(b) The approval of any matter considered by the Facility Executive Board shall require the affirmative vote of three (3) members (permanent and/or alternate) of the Facility Executive Board.

(2) Adopt procedures relating to the operation, maintenance, and use of the Facility;

(3) Recommend to the Cities' respective city managers and governing bodies approval of contracts and related amendments and change orders, if any, related to the design, construction, reconstruction, repair, remodeling, equipping, and operation of the Facility;

(4) Prepare and recommend an annual operations and maintenance and capital improvement/replacement budget relating to the operation, maintenance, equipment, supplying and repair of the Facility ("the Facility Budget");

(5) Prepare and recommend for approval by the Cities of a rate schedule for use of the Facility by third parties; and

(6) Perform such other tasks and duties as the Cities' may from time to time unanimously agree shall be performed by the Facility Executive Board.

B. Facility Operations Committee. There shall be established a Facility Operations Committee whose permanent members shall be an officer within the Fire Department of each City appointed by each Fire Chief to serve on the committee and whose job responsibilities should, but may not necessarily include, oversight and implementation of firefighter training for the Fire Department by whom the officer is employed. The Facility Operations Committee shall be authorized to:

(1) Adopt rules governing the meetings of the Facility Operations Committee subject to the following:

(a) A quorum of the Facility Operations Committee shall be all three (3) members; and

(b) The approval of any matter considered by the Facility Operations Committee shall require the affirmative vote of all three (3) members of the Facility Operations Committee.

(2) Make recommendations to the Facility Executive Board regarding the adoption and/or amendment of the operation, maintenance, and use policies relating to operation, maintenance, and use of the Facility;

(3) Develop and make recommendations to the Facility Executive Board regarding the purchase of equipment, materials, hardware, software and services relating to the use, operation, maintenance, and/or repair of the Facility;

(4) Oversee implementation of the Facility operation, maintenance, and use policies adopted by the Facility Executive Board;

(5) Prepare the master training schedule setting forth the time and dates on which the Facility will be used by the Cities;

(6) Approve the scheduling of use of the Facility by parties other than the Cities;

(7) Prepare for consideration of the Facility Executive Committee standard operating procedures and policies relating to use and operation of the Facility in conformance with NFPA 1403, as amended, or such other nationally recognized operational safety standards as may be adopted from time to time by the Facility Operations Committee; and

(8) Perform such other tasks as may from time to time be assigned by the Facility Executive Board.

4.02 Shared Operational Costs. For the period beginning on the Acceptance Date and ending on the last day of the second full Fiscal Year during the Term, the Cities agree to pay the Shared Operational Costs in accordance with the same allocation set forth in Section 3.04, above, established for the costs of the Shared Capital Costs. Beginning with the third full Fiscal Year during the Term and for each Fiscal Year thereafter, each City agrees to pay its share of the Shared Operational Costs based on a ratio determined as follows:

- (1) The number of Structural Firefighter positions contained in the City's approved annual budget for the Fiscal Year in which the Shared Operational Costs are to be paid; divided by
- (2) The total number of Structural Firefighter positions contained in the approved annual budget for all of the Cities for the Fiscal Year in which the Shared Operational Costs are to be paid.

4.03 Non-Shared Operational Costs. The Cities agree to pay in a timely manner their respective Non-Shared Operational Costs directly to the vendors with whom the Cities contract to provide services, equipment, supplies or facilities related to operation, repair, and/or maintenance of the Facility.

4.04 Easement Granting Right to Construct Facility on Facility Property. Notwithstanding anything herein to the contrary, Carrollton and Coppell shall not be required to deliver their respective shares of the Shared Capital Costs for the initial design, construction, and equipping of the Facility until Farmers Branch has conveyed to Carrollton and Coppell, respectively, a non-exclusive perpetual easement authorizing the construction, reconstruction, maintenance, repair, replacement, remodeling, use, and operation of the Facility on the Facility Property and, to the extent necessary, direct access across Farmer Branch's adjacent property for purpose of providing ingress and egress to the Facility Property.

4.05 Annual Budget.

A. No later than one hundred eighty (180) days prior to the beginning of each Fiscal Year, the Facility Executive Board shall prepare, or cause to be prepared, a budget setting forth the anticipated Shared Capital Costs, Shared Operational Costs, and Non-Shared Operational Costs (the "Annual Facility Budget") for said Fiscal Year. The Annual Facility Budget must be recommended for approval by a majority vote of the entire Facility Executive Board. After consideration by the Facility Executive Board, the Annual Facility Budget shall be submitted to the City Manager of each City for review, approval and inclusion of the amount of each City's respective share of the Annual Facility Budget into the Cities' respective annual general municipal budget.

B. The Annual Facility Budget shall clearly indicate the amounts, sources and purposes of revenues to be contributed by each City as its share of the Annual Facility Budget. The Annual Facility Budget shall not reflect revenues anticipated from any source other than the Cities for the Fiscal Year to which the Annual Facility Budget applies; however, it may reflect

credits against the Cities' shares of Shared Capital Costs and/or Shared Operational Costs to be paid in the Fiscal Year based on revenues received from third parties in the prior Fiscal Year.

C. If the Facility Executive Board fails to approve and recommend the Annual Facility Budget for a particular Fiscal Year, then the Annual Facility Budget for the then current Fiscal Year shall be deemed to be the Annual Facility Budget recommended for the next Fiscal Year.

D. Failure of a City to include in the City's annual budget funds to pay its share of Shared Operational Funds for any Fiscal Year shall constitute a notice of termination of that City's participation in this Agreement; in which case said City's right to use the Facility shall be immediately suspended until said City appropriates funds to pay its share of the Shared Operational Costs and, in fact, pays such funds as provided in Section 4.14, below. A City which fails for two consecutive Fiscal Years to include in its annual budget the funds necessary to pay its share of Shared Operational Costs shall be deemed to be a Terminating Party pursuant to Article II of this Agreement.

4.06 Provision of Administrative Services; Administrative Fee.

A. As of the Effective Date, Farmers Branch shall provide certain administrative services with respect to operation of the Facility including, but not limited to:

(1) The receipt, deposit, and investment of funds received from the Cities and other sources relating to the Facility including, but not limited to, funds to pay Shared Capital Costs and Shared Operational Costs;

(2) Payment by check or wire transfer of contractors, suppliers, and other vendors for expenses incurred for Shared Capital Costs and Shared Operational Costs from funds available in the Fire Training Facility Funds;

(3) Legal services relating to the preparation and/or review of agreements, policies, procedures, and other matters relating to the Facility through the Farmers Branch city attorney; and

(4) Purchasing and contracting services relating to operation, maintenance, and repair of the Facility.

B. The Annual Facility Budget shall set forth a not-to-exceed amount to be paid to Farmers Branch for the applicable Fiscal Year as reimbursement for the out-of-pocket costs incurred by Farmers Branch for providing the administrative services described in this Section 4.06 plus a reasonable overhead charge ("the Annual Administrative Fee"). The amount set forth in the Annual Facility Budget for the Annual Administrative Fee shall be the maximum amount paid to Farmers Branch for providing the described administrative services. In the event Farmers Branch defaults or terminates participation in this Agreement, Farmers Branch shall have no further responsibilities under Section 4.06 A and shall no longer be entitled to the Annual

Administrative Fee. The remaining Cities shall determine how to appropriately apportion Farmers Branch's previous responsibilities and rights under this Section 4.06.

C. The Cities may from time to time during the Term provide for a different City to provide the administrative services described herein, which change can be made without the necessity of amending this Agreement provided the change is acknowledged in writing signed by the City Managers of the Cities. In the event of such a change, the provisions in Section 4.06.B., above, relating to the establishment and payment of the Annual Administrative Fee shall apply to the City providing the services.

4.07 Scheduling Use of Facilities. After the Acceptance Date, the Coppell Fire Chief or designee, shall be primarily responsible for preparing the master schedule relating to the use of the Facility ("the Master Schedule"). In preparing the Master Schedule, the following factors shall be taken into consideration in determining who can use the Facility or any part thereof at any particular time:

A. Use by one or more of the Cities shall take precedence over use by another entity;

B. The amount of time the Cities may reserve the Facility for use during a Fiscal Year shall to the extent reasonably possible be allocated on a percentage basis in the same manner as the allocation of Shared Operational Costs is determined pursuant to Section 4.02 for that Fiscal Year; and

C. Scheduling shall be in accordance with policies and procedures approved by the Facility Executive Board.

The Master Schedule shall be reviewed on a regular basis by the Facility Operations Committee, which shall have the authority to amend the Master Schedule. The Cities may agree to reassign the duties of preparing and maintaining the Master Schedule to a different City without the necessity of amending this Agreement provided such reassignment is memorialized in writing and signed by the members of the Facility Executive Committee. Notwithstanding Paragraph B, above, if the actual amount of time the Facility is used by the Cities during a Fiscal Year differs from the allocation of time to which the Cities are entitled during that Fiscal Year because one or more of the Cities elected to use the Facility when the Facility was not scheduled for use by any of the other Cities, there shall be no adjustment of the Cities' shares of the Annual Facility Budget.

4.08 Maintenance of the Facility. Upon the Acceptance Date, the Carrollton Fire Chief, or designee, shall be responsible for coordinating and inspecting the repair and maintenance of the Facility on behalf of the Cities. Carrollton shall not be required to directly spend any funds with respect to the performance of any repairs or maintenance, which expenditures shall be paid from the Fire Training Facility Funds pursuant to agreements entered into between Farmers Branch and the appropriate contractor or vendor on behalf of the Cities.

4.09 Right to Access and Use Facility. Provided a City has complied with the provisions of this Agreement including, but not limited to, payment of the City's share of Shared Capital Costs and Shared Operational Costs, each City shall have the right to access and use the Facility in accordance with the policies and procedures established by the Facility Executive Board. At no time shall the Facility Executive Board be authorized to adopt any rule or procedure which excludes a City from accessing or using the Facility as long as the City is not in default (after notice of such default has been received by the City and the City has been provided a reasonable opportunity to cure the default) of this Agreement.

4.10 Revenues from Third Party Use. The Cities agree that revenues received from charges and fees assessed to third parties for the use of the Facility shall be applied in the following priority:

A. Payment for any consumables used by the third party during its use of the Facility;

B. After deducting the amount required by Paragraph A, fifty percent (50%) of the net amount shall be placed in a Shared Operational Costs reserve fund the purpose of which is to hold the funds until the next subsequent Fiscal Year, at which time those funds may be identified as revenues and applied to the payment of the Shared Operational Costs; and

C. The remaining fifty percent (50%) of the net amount shall be placed in a Shared Capital Cost reserve fund and held until appropriated for payment of a future Shared Capital Cost.

4.11 Property and Casualty Insurance.

A. Farmers Branch agrees to purchase property fire and casualty insurance to cover damage or destruction to the Facility resulting from windstorm, tornados, fire, theft, or other casualty in an amount which provides for the replacement value of the Facility, including its structures and equipment.

B. The amount of the premium to be paid for the insurance coverage purchased pursuant to Section 4.11.A. shall be a line item in the Annual Facility Budget. Farmers Branch shall be entitled to reimbursement to the extent of the funds allocated to the Annual Facility Budget for the amount paid by Farmers Branch for the foregoing fire and casualty insurance.

C. In the event of a casualty loss to any structure constructed as part of the Facility or equipment installed as part of the Facility, any proceeds paid from an insurance claim shall be first applied to the repair or replacement of the portion of the structure and/or equipment in the Facility which was damaged or destroyed. In the event the insurance claim proceeds received exceed the amount necessary to make the required repairs or replacement of improvements or equipment, such excess proceeds shall be placed in the Shared Capital Costs reserve fund for use on a subsequent Shared Capital Costs expenditure.

D. In the event that the damage or loss to the Facility is so extensive that the Cities elect to not reconstruct the Facility, insurance claim proceeds received by Farmers Branch in relation to the loss shall first be used to demolish the remaining improvements and restore the Facility Property to substantially the condition prior to the Effective Date, then to pay any accrued but not yet paid Shared Operational Costs, then distributed to the Cities based on the then current allocation for Shared Capital Costs.

4.12 Use of Existing Farmers Branch Office and Other Facilities.

A. Pursuant to this Agreement, Farmers Branch agrees to provide to the other Cities the non-exclusive right to use office space within Farmers Branch's Fire Station No. 3 for use by the training officers of the other Cities while the other Cities are conducting training at the Facility. The determination of which space shall be used shall be at the sole discretion of Farmers Branch. While Farmers Branch will use reasonable efforts to provide an unoccupied space, Carrollton and Coppell understand and agree that the office space selected by Farmers Branch for use by the other Cities during training may also be occupied by Farmers Branch personnel.

B. Farmers Branch may, at its sole option, make such office space available to third parties using the Facility.

C. Farmers Branch agrees to make available to the Cities the following:

(1) Use of the training room and audio visual equipment located in Farmers Branch's Fire Station No. 3, when available during the days in which the other Cities are using the Facility;

(2) Self-Contained Breathing Apparatus ("SCBA") compressor to recharge SCBA tanks; and

(3) Access to restrooms, coffee, and other public areas.

The Annual Facility Budget shall include funds provide the amount to be paid to Farmers Branch to reimburse Farmers Branch for the reasonable costs of consumables used by the other Cities while using the space within Fire Station No. 3.

4.13 Utilities. Electricity to provide electrical power for the Facility and its equipment shall be separately metered. Farmers Branch shall be responsible for the timely payment of the electrical bill as part of the administrative services to be provided. The Cities understand and acknowledge that water consumed as part of the operation of the Facility will not initially be metered; however, the Annual Facility Budget shall include funds to be used to reimburse Farmers Branch for the estimated cost incurred by Farmers Branch for the consumption and use of such water.

4.14 Payment of Budgeted Funds. Carrollton and Coppell shall pay to Farmers Branch the amount of their respective shares of the funds identified in the Annual Facility

Budget for each Fiscal Year on or before October 15th of each Fiscal Year during the Term. Such funds shall be credited to the appropriate Fire Training Facility Fund as indicated in the approved Facility Budget. Farmers Branch shall, upon the effective date of its Annual Budget, allocate its share of funds identified in the Facility Budget and credit such funds to the appropriate Fire Training Facility Fund as indicated in the approved Facility Budget.

V. DEFAULT

In the event any City shall fail in the performance of any of the terms and conditions of this Agreement; then such City shall be in default of this Agreement, if such failure is not cured within thirty (30) days after written notice of such failure from any one or more non-defaulting Cities. The rights and ownership interests of such defaulting City under this Agreement shall be terminated without further notice provided that such defaulting City shall have such additional time to cure as may be required in the event of "Force Majeure." As liquidated damages in the event of such default, the ownership interest of such defaulting City in the Facility shall be forfeited to the non-defaulting Cities according to their pro-rata ownership thereof, and the rights of the defaulting City under this Agreement shall be terminated. The Parties acknowledge that actual damages in the event of default termination would be speculative and difficult to determine.

VI. MISCELLANEOUS

6.01 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery or facsimile transmission and addressed to the respective City at the following address:

If intended for City of Carrollton:

Leonard Martin, City Manager
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

With copy(ies) to:

Meredith Ladd, City Attorney
City of Carrollton
1945 E. Jackson Road
Carrollton, Texas 75006

If intended for City of Coppell:

City of Coppell
Attn: City Manager
255 E. Parkway Boulevard
Coppell, Texas 75019

With copy(ies) to:

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for City of Farmers Branch:

With copy(ies) to:

City of Farmers Branch
Attn: City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

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

6.02 Governing Law. The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

6.03 Party Responsibility. To the extent allowed by law, and without waiving any governmental immunity available to the Cities under Texas law, or any other defenses the Cities are able to assert under Texas law, each City agrees to be responsible for its own negligent or otherwise tortious acts or omissions in the course of performance of this Agreement. The covenants, obligations and liabilities of the Cities shall be several and not joint or collective. Each of the Cities shall be individually responsible for its own covenants, obligations and liabilities herein. It is not the intention of the Cities to create, nor shall this Agreement be construed as creating a partnership, association, joint venture or trust, as imposing a trust or partnership covenant, obligation or liability on or with regard to any of the Cities.

6.04 Immunity. It is expressly understood and agreed that, in the performance of this Agreement, none of the Cities waive, nor shall be deemed hereby to have waived, any immunity or defense that would otherwise be available to them against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Cities do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in any persons or entities who are not parties to this Agreement. The Cities expressly acknowledge and agree that the construction, operation, and use of the Facility constitute a governmental function pursuant to the Texas Tort Claims Act, as amended.

6.05 Entire Agreement. This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.06 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

6.07 Recitals. The recitals to this Agreement are incorporated herein.

6.08 Amendment. This Agreement may be amended by the mutual written agreement of all Cities.

6.09 Place of Performance. Performance and all matters related thereto shall be in Dallas County, Texas.

6.10 Authority to Enter Agreement. Each City has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each City has been properly authorized and empowered to sign this Agreement. The persons signing this Agreement hereby represent that they have authorization to sign on behalf of their respective City.

6.11 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 the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

6.13 Assignment. No City may assign, transfer, or otherwise convey this Agreement without the prior written consent of the other Cities.

6.14 Consents. Unless expressly stated otherwise, whenever the consent or the approval of a City is required herein, such City shall not unreasonably withhold, delay or deny such consent or approval.

6.15 Good Faith Negotiation; Dispute Mediation. Whenever a dispute or disagreement arises under the provisions of this Agreement, the Cities agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Cities shall refer the matter to outside mediation, the costs of which shall be shared equally, prior to engaging in litigation (unless delaying the filing of a lawsuit might result in the lawsuit being barred, including but not limited to a bar by a statute of limitations). The provisions of this Section 6.15 shall survive termination.

6.17 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.18 Source of Payment. Each City paying for the performance of governmental functions or services pursuant to this Agreement must make those payments from current revenues available to the paying City or from funds otherwise lawfully available to the City for use in the payment of the City's obligations pursuant to this Agreement.

6.19 Force Majeure. No City shall be liable to any or all of the other Cities for any failure, delay, or interruption in the performance of any of the terms, covenants, or conditions of this Agreement due to causes beyond the City's respective control or because of applicable law, including, but not limited to, war, nuclear disaster, strikes, boycotts, labor disputes, embargoes,

acts of God, acts of the public enemy, acts of superior governmental authority, floods, riots, rebellion, sabotage, terrorism, or any other circumstance for which a party is not legally responsible or which is not reasonably within its power to control. The affected City's obligation shall be suspended during the continuance of the inability then claimed, but for no longer period. To the extent possible, the City shall endeavor to remove or overcome the inability claimed with all reasonable dispatch.

6.20 Liquidation of Center. Upon the termination of this Agreement, all equipment and property associated with the Facility (excluding the Facility Property and building) shall, to the extent allowed by law, be sold for the fair market cash value in a private sale, or pursuant to notice and competitive bidding or by auction and the sale proceeds distributed to the then remaining Cities according to their pro rata ownership thereof.

6.21 Additional Participating Parties. Additional cities or other governmental entities may become parties under the terms of this Agreement by an appropriate amendment to this Agreement approved by the governing body of each of the Cities.

(Signatures on Following Pages)

City of Carrollton Signature Page

SIGNED AND AGREED this _____ day of February, 2015.

CITY OF CARROLLTON

By: _____
Leonard Martin, City Manager

ATTEST:

Krystle F. Nelinson, City Secretary

APPROVED AS TO FORM:

Meredith A. Ladd, City Attorney

City of Coppell Signature Page

SIGNED AND AGREED this _____ day of February, 2015.

CITY OF COPPELL

By: _____
Clay Phillips, City Manager

ATTEST:

Christel Pettinos, City Secretary

APPROVED AS TO FORM:

City Attorney

City of Farmers Branch Signature Page

SIGNED AND AGREED this _____ day of February, 2015.

CITY OF FARMERS BRANCH

By: _____
Gary D. Greer, City Manager

ATTEST:

Angela Kelly, City Secretary

APPROVED AS TO FORM:

Peter G. Smith, City Attorney

Exhibit A
Depiction of Facility Property