

STATE OF TEXAS § Joint Fire Training Center Interlocal Cooperation
 § Agreement Between the Cities of
COUNTY OF DALLAS § Grand Prairie and Irving

This Joint Fire Training Center Interlocal Cooperation Agreement Between the Cities of Grand Prairie and Irving ("Agreement") is entered into as of the Effective Date by and between the CITY OF GRAND PRAIRIE, TEXAS ("Grand Prairie"), and the CITY OF IRVING, TEXAS, ("Irving"), both of whom are Texas home rule municipalities operating under the authority of their respective governing bodies (Grand Prairie and Irving are hereinafter sometimes referred to collectively as "the Cities" or the "Parties" or individually as a "City" or a "Party").

RECITALS

WHEREAS, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of its citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act") provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, because of their location within the DFW Metroplex and their proximity to each other, the Cities are regularly called upon to provide mutual aid assistance to each other on fire fighting calls for service; and

WHEREAS, neither of the Cities presently owns an all-inclusive fire fighting training facility for use by their respective fire departments; and

WHEREAS, being required to use fire-fighting training facilities owned by others requires travel time that results in lost in-service hours, requires the Cities' fire departments to schedule training at times subject to the schedules of others which may not be the most convenient for the Cities, and inhibits the ability of the Cities to conduct joint training to facilitate their ability to provide mutual aid assistance;

WHEREAS, the Cities desire to enter this Agreement for the purpose of establishing the terms by which the Cities will jointly design, construct, maintain, operate, manage, and use a fire training facility on property owned by Irving;

WHEREAS, the Cities recognize that this Agreement states the purpose, terms, rights and duties of the parties in relation to the design, construction and use of the proposed Joint Fire Training Center;

WHEREAS, this Agreement is meant to, and does in fact, fairly compensate the performing parties for the services and any goods provided to design, construct and use the proposed Joint Fire Training Center.

NOW, THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Agreement, the Cities agree as follows:

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 Irving's city hall offices are closed for business.

"Effective Date" means the date this Agreement has been approved by the governing bodies of both 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 vehicle stabilization and extrication area; (3) offices and meeting area/classroom; (4) multiple live fire simulators; (5) ventilation simulators; (6) ceiling and wall breaching simulators; (7) standpipe and sprinkler system simulators; and (8) 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 6.94 acre portion, being more particularly depicted in Exhibit "A", attached hereto and incorporated herein by reference, of the 38.24 acre property owned by Irving generally located at the intersection of east ROW line of Belt Line Road and the southeast ROW line of State Highway 161, Irving, Texas, and being a portion of a 51.26 acre tract of land conveyed to Myrtle Kathryn Harrington as described in Volume 78242, Page 895, Deed Records, Dallas County, Texas situated in the William P. King Survey, Abstract No. 745 and the B.B.B. & C.R.R. Survey, Abstract No. 214, Dallas County, Texas.

"Fire Training Facility Funds" means one or more designated restricted funds established on the books of account in each City. Irving is 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. Irving will 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) propane gas, 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 Irving 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, (i) 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; (ii) utilities such as electricity, natural gas, and sanitary sewer services, if any, used in operating the Facility; (iii) property and casualty insurance insuring against damage or destruction of improvements constituting a portion of the Facility; and (iv) 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

2.1 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.

2.2 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.

2.3 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.

2.4 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 Party 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.

2.5 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 City 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 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; and

D. 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.

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.

F. In the event that Irving is the Terminating Party, Irving shall retain use of the driveway up to the Facility, and will use at least a portion of the driveway for access to the balance of Irving's real estate adjoining the Facility. The cost of maintenance of the driveway shall be apportioned on a pro-rata basis if Irving ever becomes a Terminating Party.

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 City 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

3.1 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. Irving 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. Grand Prairie understands, acknowledges, and agrees that Irving 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 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;

(2) 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;

(3) 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;

(4) In the case of Grand Prairie, acknowledges that Irving 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

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

3.2 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 Irving 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.

3.3 Ownership of Facility.

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

- (1) Grand Prairie: 50% undivided interest.
- (2) Irving: 50% undivided interest.

B. Except for the conveyance of the Easement to Grand Prairie, nothing herein shall be construed as (i) granting Grand Prairie 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.

3.4 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. Grand Prairie: 50% undivided interest.
- B. Irving: 50% 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

4.1 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 an Assistant Fire Chief and 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 deliberate and agree on all matters considered by the Facility Executive 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) The Facility Executive Board shall be four (4) members (which may be a combination of permanent and/or alternate members) for the purpose of holding meetings and the transaction of business on matters concerning the Facility; and

Comment [CA1]: Please note that with only two cities and a quorum of 2, one city could make decisions relative to this facility.

(b) The approval on any matter, concerning the Facility, shall require the joint authorization from both cities representatives on 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' fire chiefs may from time to time 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 two members; and

(b) The approval of any matter considered by the Facility Operations Committee shall require the affirmative vote of both 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.

4.2 Shared Operational Costs. Beginning with the Acceptance Date and for each Fiscal Year thereafter, each City agrees to pay its share of the Shared Operational Cost.

4.3 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.

4.4 Easement Granting Right to Construct Facility on Facility Property. Notwithstanding anything herein to the contrary, Grand Prairie 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 Irving has conveyed to Grand Prairie, 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, access across Irving's adjacent property for purpose of providing ingress and egress to the Facility Property. Such easement shall be non-assignable without Irving City Council express authorization. Should Grand Prairie abandon use of the facility, or if Grand Prairie shall refuse or be unable to pay its share of facility costs for a period of six (6) months or more, then such easement shall terminate.

4.5 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 Fire Chief 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. All Shared Capital Costs, Shared Operational Costs and Non-shared Operational Costs approved in each year's annual budget shall constitute "current funds" to pay the obligations under this Agreement.

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.

4.6 Provision of Administrative Services; Administrative Fee.

A. As of the Effective Date, Irving 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 (including this Agreement), policies, procedures, and other matters relating to the Facility through the Irving city attorney's office;

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

B. The cost of these Administrative Expenses are in the nature of a Shared Operational Cost, which are paid by the parties on a 50-50 basis.

4.7 Scheduling Use of Facilities. After the Acceptance Date, the Irving Fire Chief and Grand Prairie Fire Chief or their designees, 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. The amount of time the Cities may reserve the Facility for use during a Fiscal Year shall be allocated on a percentage basis of 50/50; and

B. 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. 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 of the Cities elected to use the Facility when the Facility was not scheduled for use by any City, there shall be no adjustment of the Cities' shares of the Annual Facility Budget.

4.8 Maintenance of the Facility. Upon the Acceptance Date, the Irving Fire Chief and Grand Prairie Fire Chief or their designees, shall be responsible for coordinating and inspecting the repair and maintenance of the Facility on behalf of the Cities. Irving 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 Irving and the appropriate contractor or vendor on behalf of the Cities.

4.9 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. The remaining percent 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. Upon substantial completion and acceptance of the Facilities, Irving 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. Irving shall be entitled to reimbursement to the extent of the funds allocated to the Annual Facility Budget for the amount paid by Irving 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 Irving 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 both Cities based on the then current allocation for Shared Capital Costs.

4.12 Use of Existing Irving Office and Other Facilities.

A. Pursuant to this Agreement, Irving agrees to provide to Grand Prairie Fire Department the non-exclusive right to use office space within the Facility for use by their training officers while Irving is conducting training at the Facility. The determination of which space shall be used shall be at the sole discretion of Irving.

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

C. Irving agrees to make available to Grand Prairie Fire Department the following:

(1) Use of the training room and audio visual equipment located at the Facility when available during the days in which Grand Prairie Fire Department is using the Facility; and

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

The Annual Facility Budget shall include funds provide the amount to be paid to Irving to reimburse Irving for the reasonable costs of consumables used by Grand Prairie Fire Department while using the space.

4.13 Utilities. Electricity to provide electrical power for the Facility and its equipment shall be separately metered. Irving shall be responsible for the timely payment of the electrical bill as part of the administrative services to be provided.

4.14 Payment of Budgeted Funds. Grand Prairie shall pay to Irving the amount of their respective shares of the funds identified in the Annual Facility Budget for their share of the identified expenses.

V. DEFAULT

In the event either 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 the non-defaulting City. The rights and ownership interests of such defaulting City under this Agreement shall be suspended until the terms and conditions are corrected without further notice being provided that such defaulting City shall have such additional time to cure as may be required in the event of "Force Majeure."

VI. MISCELLANEOUS

6.1 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 Grand Prairie:

Tom Hart, City Manager
City of Grand Prairie
317 W. College Street
Grand Prairie, Texas 75006

With copy(ies) to:

City Attorney's Office
City of Grand Prairie
317 W. College Street Grand
Prairie, Texas 75006

If intended for City of Irving:

Chris Hillman, City Manager
City of Irving
825 W. Irving Blvd.
Irving, Texas 75060

With copy(ies) to:

City Attorney's Office
825 W. Irving Blvd.
Irving, Texas 75060

6.2 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.

6.3 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.

6.4 Immunity. It is expressly understood and agreed that, in the performance of this Agreement, neither City waives, 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.

6.5 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.

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

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

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

6.9 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 City.

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 if both parties agree, 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.

6.16 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.

6.17 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.

6.18 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.

6.19 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.

6.20 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 Grand Prairie Signature Page

SIGNED AND AGREED this _____ day of _____, 2015.

CITY OF GRAND PRAIRIE

By: _____
Tom Hart, City Manager

ATTEST:

Cathy DiMaggio, City Secretary

APPROVED AS TO FORM:

Donald Postell, City Attorney

City of Irving Signature Page

SIGNED AND AGREED this _____ day of _____, 2015

CITY OF IRVING

By: _____
Chris Hillman, City Manager

ATTEST:

Shanae Jennings, City Secretary

APPROVED AS TO FORM:

Charles Anderson, City Attorney

**Exhibit A
Depiction of Facility Property**

