

**INTERLOCAL AGREEMENT AMONG THE CITY OF LEWISVILLE, THE TOWN OF
FLOWER MOUND AND THE CITY OF HIGHLAND VILLAGE**

This Interlocal Agreement (the “**Agreement**”) is entered into by and among the City of Lewisville (“**Lewisville**”), the Town of Flower Mound (“**Flower Mound**”), and the City of Highland Village (“**Highland Village**”), all entities being located in Denton County, Texas and hereinafter referred to collectively as “**Cities**” or individually as a “**City**”. The Cities execute this Agreement as hereinafter provided pursuant to the Texas Government Code, Chapter 791, known as the Interlocal Cooperation Act:

RECITALS

WHEREAS, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental services for the benefit of their 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 Denton County and their proximity to each other, the Cities are regularly called upon to provide mutual aid assistance to each other on firefighting calls for service; and

WHEREAS, none of the Cities presently owns an all-inclusive firefighting 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; and

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 Lewisville; and

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

WHEREAS, this Agreement is meant to, and does in fact, fairly compensate the performing Cities 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.

"Annual Facility Budget" has the meaning set forth in Section 6.2.

"Business Day" means any day other than a Saturday, Sunday, or official city holiday in which Lewisville's city hall offices are closed for business.

"Effective Date" means the last date this Agreement is signed and marked by a 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 a multi-story structure to simulate different commercial building styles including multi-family, high-rise and warehouse. The design of the building is to facilitate many of the basic and advanced firefighter training elements and 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" legally described as Lewisville Service Center Addition Block A, Lot 3.

"Fire Training Facility Fund" means a designated restricted fund established on Lewisville's book of account used to hold funds received from the Cities to be used to pay the costs for the construction, repair, maintenance, and operation of the Facility and to hold revenues from third-party rentals of the Facility. Lewisville will hold funds in reserve to be applied to future Shared Capital Costs 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.

"Facility Cost Allocation" means a percentage calculated based on the number of Structural Firefighters in each City as a percentage of the total number of Structural Firefighters of the combined Cities.

"Non-Shared Operational Costs" means costs incurred by the Cities which are not Shared Operational Costs.

"Paying City" means Lewisville which shall be contractually obligated for paying the Shared Capital Costs to a vendor or contractor pursuant to a contract entered for the benefit of the Cities 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 Lewisville 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, water 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 2.1, together with each Renewal Term, as defined in Section 2.2.

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 a City gives written notice to the other Cities no later than thirty (30) days before the beginning of the Renewal Term of its desire to terminate this Agreement.
- 2.3 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 hereinafter the "Terminating Party") prior to the end of the Initial 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 written notice to the other Cities 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 Cities 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 Cities 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 2.3, 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.

2.4 Effect of Early Termination in Initial Term. Upon termination of the Terminating Party as a party to this Agreement:

- A. The Terminating Party forfeits, without right for reimbursement, all rights and interests in the Facility and all property which the Terminating Party contributed, conveyed, assigned or transferred to the other Cities for the operation of the Facility;
- B. The Terminating Party agrees and covenants to execute, and shall execute, without additional consideration, any documents or agreements as may be necessary to sell, transfer, assign and convey the Terminating Party's rights and interests of the Facility and all property which the Terminating Party 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.

The obligations and covenants of a Terminating Party herein shall survive such Terminating Party's termination under this Agreement pursuant to this Section 2.4. The non-terminating Cities may continue the operation of the Facility or 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. Lewisville 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. Highland Village and Flower Mound understand, acknowledge, and agree that Lewisville will not be obligated to sign any contracts for the design and construction of the Facility until their respective City Managers sign a representation stating in substance the following:

- A. 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;

- B. 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;
- C. 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;
- D. Highland Village and Flower Mound acknowledge that Lewisville would not have signed the subject contract 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
- E. 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 the Shared Capital Costs, 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 Lewisville 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.

- A. The Cities agree that the Shared Capital Costs for the initial design, construction, and equipping of the Facility shall not exceed FOUR MILLION NINE HUNDRED SIXTY-ONE THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$4,961,250.00).
- B. Flower Mound shall pay its share of the Shared Capital Costs for the initial design, construction, and equipping of the Facility in two (2) equal installments with the first payment of ONE MILLION SIX THOUSAND SEVEN HUNDRED FOURTY-SEVEN AND 00/100 DOLLARS (\$1,006,747.00) due no later than October 15, 2021 and the second payment of ONE MILLION SIX THOUSAND SEVEN HUNDRED FOURTY-SEVEN AND 00/100 DOLLARS (\$1,006,747.00) due no later than April 22, 2022.

IV. OWNERSHIP OF FACILITY

The Facility, the center site and the adjoining building shall be owned by Lewisville, subject to the respective Cities usage, access and such rights as set forth in this Agreement.

V. DIVISION OF COSTS

5.1 Shared Capital Costs for Initial Design, Construction, and Equipping of the Facility. The Cities agree that the Shared Capital Costs for the initial design, construction, and equipping of the Facility shall be allocated as follows:

- A. Lewisville shall pay a 51.6% undivided interest, not to exceed TWO MILLION FIVE HUNDRED SIXTY-ONE THOUSAND ONE HUNDRED SIXTY FIVE AND 00/100 DOLLARS (\$2,561,165.00).
- B. Flower Mound shall pay a 40.6% undivided interest, not to exceed TWO MILLION THIRTEEN THOUSAND FOUR HUNDRED NINETY-FOUR AND 00/100 DOLLARS (\$2,013,494.00).
- C. Highland Village shall pay a 7.8% undivided interest, not to exceed THREE HUNDRED EIGHTY-SIX THOUSAND FIVE HUNDRED NINETY-ONE AND 00/100 DOLLARS (\$386,591.00).

5.2 Shared Capital Costs for Costs Other Than Initial Design, Construction, and Equipping of the Facility. Shared Capital Costs other than those relating to the initial design, construction, and equipping of the Facility.

A. From the Effective Date of this Agreement until the establishment of the first Annual Facility Budget, as described in Section 6.2, the Cities agree that the Shared Capital Costs other than those relating to the initial design, Construction, and equipping of the Facility shall be allocated as follows:

- | | | |
|-----|------------------|-------|
| (1) | Lewisville | 51.6% |
| (2) | Flower Mound | 40.6% |
| (3) | Highland Village | 7.8% |

B. Upon the establishment of the first Annual Facility Budget, as described in Section 6.2, each City agrees to pay its Facility Cost Allocation of the Shared Capital Costs other than those relating to the initial design, construction, and equipping of the Facility.

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

5.4 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.

VI. FACILITY MAINTENANCE AND OPERATION

6.1 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 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 six (6) members (which may be a combination of permanent and/or alternate members);
 - (b) For the purpose of holding meetings and transacting business on matters concerning the Facility, only one (1) member from each City is required; and
 - (b) The approval of any matter concerning the Facility shall require the authorization from a representative from each City 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;
- (5) Prepare and recommend for approval by the Cities of a rate schedule for use of the Facility by third parties; and

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 two (2) members; and
 - (b) The approval of any matter considered by the Facility Operations Committee shall require the affirmative vote of all three 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 taking the following factors into consideration in determining who can use the Facility or any part thereof at any time:
 - (a) The amount of time the Cities may reserve the Facility for use during a Fiscal Year shall be allocated on same percentage basis as the Facility Cost Allocation; and
 - (b) Scheduling shall be in accordance with policies and procedures approved by the Facility Executive Board.

The master training schedule shall be reviewed on a regular basis by the Facility Operations Committee, which shall have the authority to amend it. 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.

- (6) Approve the scheduling of use of the Facility by entities 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.

6.2 Annual Budget.

- A. On April 1, three years after the Acceptance Date and on every third April 1, the Facility Cost Allocation will be recalculated to determine each City's share of the annual budget costs.
- B. Not 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, which vote must include approval of at least one member from each City as required by Section 6.1.A(1)(c). 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 Facility Budget shall constitute "current funds" to pay the obligations under this Agreement.
- C. 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.
- D. If the Facility Executive Board fails to approve and recommend the Annual Facility Budget for a 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.
- E. 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 6.5, 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.

6.3 Provision of Administrative Services; Administrative Expenses. As of the Effective Date, Lewisville shall provide certain administrative services with respect to operation of the Facility including, but not limited to:

- A. 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;

- B. 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;
- C. Purchasing and contracting services relating to operation, maintenance, and repair of the Facility.

The costs of these administrative expenses are in the nature of a Shared Operational Cost, which may be included in the Annual Facility Budget based on the Facility Cost Allocation.

6.4 Maintenance of the Facility. Upon the Acceptance Date, the Fire Chiefs or their designees, shall be responsible for coordinating and inspecting the repair and maintenance of the Facility on behalf of all Cities. Lewisville 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 Fund pursuant to agreements entered into between Lewisville and the appropriate contractor or vendor on behalf of the Cities.

6.5 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.

6.6 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 balance shall be placed in the Fire Training Facility Fund and held until appropriated for payment of a future Shared Capital Cost.

6.7 Property and Casualty Insurance.

- A. Upon substantial completion and acceptance of the Facility, Lewisville agrees to purchase property fire and casualty insurance to cover damage or destruction to the Facility resulting from windstorm, tornadoes, 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 shall be a line item in the Annual Facility Budget. Lewisville shall be entitled to reimbursement to the extent of the funds allocated to the Annual Facility Budget for the amount paid by Lewisville for the foregoing property 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 Fire Training Facility 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 Lewisville 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 all the Cities based on the then current allocation for Shared Capital Costs.

6.8 Utilities. Electricity, water and sewer for the Facility and its equipment shall be separately metered. Lewisville shall be responsible for the timely payment of the electrical bill as part of the administrative services to be provided.

VII. 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 the non-defaulting Cities. The rights and interests of such defaulting City under this Agreement shall be suspended until the terms and conditions are corrected. Notwithstanding the previous, such defaulting City shall have such additional time to cure as may be required in the event of "Force Majeure."

VIII. MISCELLANEOUS

- 8.1 Venue.** 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 lie in the Courts of Denton County, Texas, and its terms or provisions, as well as the rights and duties of the Cities hereunder, shall be governed by the laws of the State of Texas, exclusive of its choice of law rules.
- 8.2 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.

- 8.3 Governmental Immunity and Responsibility.** The Cities acceptance of certain responsibilities relating to the rendering of public safety services under this Agreement as a part of their responsibility for providing protection for the public health makes it imperative that the performance of these vital services be recognized as a governmental function and that the doctrine of governmental immunity shall be, and is hereby, invoked to the extent possible under the law. None of the Cities waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims arising from the exercise of governmental powers and functions. Each Party shall be responsible for the acts and negligence of its own officers, employees, agents and volunteers engaged in the performance of this Agreement. Each Party shall also be responsible for any property damage or bodily injury caused by their equipment located at the Fire Training Facility and for any property damage or bodily injury caused by any act or omission by their officers, employees, agents and volunteers. Each Party further agrees to waive all rights of subrogation against every other Party for losses arising from work performed by any Party at the Fire Training Facility.
- 8.4 Contractor/Third Party Insurance Requirements.** Any contractor or third party hired or utilized by a Party shall comply with the insurance requirements set forth in **Exhibit "A"**.
- 8.5 Notices.** Except as may be otherwise specifically provided, all notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the Cities at the respective addresses set forth in **Exhibit "B"** or at other addresses as may have been previously specified by written notice delivered in accordance with this Agreement.
- 8.6 Severability.** In case any one or more of the terms, sentences, paragraphs or 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 terms, sentences, paragraphs or provisions thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained here.
- 8.7 Amendments.** This Agreement may be amended or modified only by the mutual agreement of the Cities. Such amendment or modification must be in writing and executed by an authorized representative of each Party.
- 8.8 Counterparts.** This Agreement may be executed in multiple counterparts and shall be binding on and inure to the benefit of each Party, and each counterpart shall be deemed an original for all purposes when duly authorized by the governing body of each Party and signed by such Party's duly authorized representative.
- 8.9 Prior Agreements Superseded.** This Agreement supersedes any prior understandings or written or oral agreements among the Cities respecting this subject matter.
- 8.10 Binding Nature.** This Agreement shall be binding on and inure to the benefit of the Cities and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.

8.11 Other Instruments. The Cities agree that they will execute any other instruments and documents that may become necessary or convenient to effectuate and carry out the purposes contemplated by this Agreement.

8.12 No Oral Commitments. This Agreement contains all commitments, agreements, warranties and representations of the Cities. Any oral or written commitments, agreements, warranties or representations not contained herein shall have no force or effect to alter any term or condition of this Agreement.

8.13 Gender. Whenever the context shall require, all words in this Agreement in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

IN WITNESS WHEREOF, the Cities hereto have executed this Agreement to be effective upon execution and dating by each City. The Agreement shall be effective from the last date signed and marked on this Agreement by a participating City.

APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS

BY:

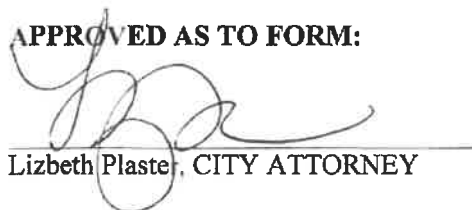

Donna Barron, CITY MANAGER

DATE: 9/14/2021

ATTEST:


Julie Worster, CITY SECRETARY

APPROVED AS TO FORM:


Lizbeth Plaste, CITY ATTORNEY

APPROVED BY THE CITY COUNCIL OF THE CITY OF THE HIGHLAND VILLAGE, TEXAS

BY:

Paul Stevens
Paul Stevens, CITY MANAGER

DATE: 10/12/2021

ATTEST:
Angela Miller
Angela Miller, CITY SECRETARY



APPROVED AS TO FORM AND LEGALITY:

Kevin B. Laughlin
Kevin B. Laughlin, CITY ATTORNEY

APPROVED BY THE TOWN COUNCIL OF THE TOWN OF FLOWER MOUND, TEXAS

BY:

Derek France
Derek France, MAYOR

DATE: 10/21/2021

ATTEST:

Theresa Scott
Theresa Scot, TOWN SECRETARY



APPROVED AS TO FORM:

Legal review completed- Benjamin Gibb/TOASE

Exhibit "A"
Contractor/Third Party Insurance Requirements

EXHIBIT A

INSURANCE REQUIREMENTS **PROJECTS INVOLVING CONSTRUCTION**

Vendor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the vendor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Vendor's bid.

A. MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 (10 01). **"Claims Made" form is unacceptable.**
2. Workers' Compensation insurance as required by the Labor Code of the State of Texas, including Employers' Liability Insurance.
3. Automobile Liability – as required by the State of Texas, covering all owned, hired, or non-owned vehicles. Automobile Liability is only required if vehicle(s) will be used under this contract. Coverage not required for delivery services.

B. MINIMUM LIMITS OF INSURANCE

Vendor shall maintain throughout contract limits not less than:

1. Commercial General Liability: \$500,000 per occurrence/\$1,000,000 aggregate for bodily injury, personal injury and property damage. Policy will include coverage for:
 - a. Premises – Operations
 - b. Broad Form Contractual Liability
 - c. Products and Completed Operations
 - d. Use of Contractors and Subcontractors
 - e. Personal Injury
 - f. Broad Form Property Damage
 - g. If applicable, Explosion Collapse and Underground (XCU) Coverage, Fire Damage, and Medical Expenses.

NOTE: The aggregate loss limit applies to each project.

2. Workers' Compensation and Employer's Liability: Workers' Compensation Statutory limits as required by the Labor Code of the State of Texas and Employer's Liability minimum limits of \$500,000 per injury, \$500,000 per occurrence, and \$500,000 per occupational disease.
3. Automobile Liability - \$500,000 Combined Single Limit. Limits can only be reduced if approved by the HR Director or designee.
4. Builders' Risk Insurance (as applicable) – Completed value form, insurance carried must equal the completed value of the structure.

C. DEDUCTIBLES AND SELF-INSURED RETENTIONS

Any deductible or self-insured retentions must be declared to and approved by the City.

D. OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain the following provisions:

1. General Liability and Automobile Liability Coverages
 - a. The City, its officers, officials, employees, boards/commissions and volunteers are to be added as "Additional Insured" as respects liability arising out of activities performed by or on behalf of the vendor, products and completed operations of the vendor, premises owned, occupied or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. It is understood that the business auto policy under "Who is an Insured" automatically provides liability coverage in favor of the City. The coverage shall include defense of claims against the City as additional insured.
 - b. The vendor's insurance coverage shall be primary and non-contributory insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the vendor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, officials, and employees, Boards and Commissions or volunteers.
 - d. The vendor's insurance shall apply separately to each insured against whose claim is made or suit is brought, except to the limits of the insured's liability.
2. Waiver of Subrogation – All coverages
Each insurance policy required by this exhibit shall waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses arising from work performed by the vendor for the City.
3. Notice of Cancellation - All Coverages
Each insurance policy required by this exhibit shall be endorsed to state that coverage shall not be suspended, voided, canceled or non-renewed by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given the City, or ten (10) days prior written notice for non-payment of premium.

E. ACCEPTABILITY OF INSURERS

The City prefers that Insurance be placed with insurers with an A.M. Best's rating of no less than **A-:VI, or, A or better** by Standard and Poors.

F. VERIFICATION OF COVERAGE

Contractor shall furnish the City with certificates of insurance affecting coverage required. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates of Insurance must be provided on forms approved by the Texas Department of Insurance. City will not accept Memorandums of Insurance or Binders as proof of insurance. The City reserves the right to require complete, certified copies of all required insurance policies at any time.

G. HOLD HARMLESS AND INDEMNIFICATION

THE CONSULTANT/CONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY CONSULTANT'S/CONTRACTOR'S BREACH OF ANY OF THESE TERMS AND CONDITIONS OR BY ANY NEGLIGENT OR STRICTLY LIABLE ACT OR OMISSION OR INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY, CONSULTANT/CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF THE CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING NEGLIGENCE OR FAULT OF THE CONSULTANT/CONTRACTOR AND THE CITY, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW AND THE CITY'S REASONABLE ATTORNEY'S FEES SHALL BE REIMBURSED IN PROPORTION TO THE CONSULTANT'S LIABILITY. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

Exhibit "B"
Notices

If to Flower Mound:

Town of Flower Mound
Attn: City Manager
2121 Cross Timbers Road
Flower Mound, Texas 75028

With copies to:

Town of Flower Mound
Attn: Fire Chief
3911 S. Broadway Avenue
Flower Mound, Texas 75028

Town Attorney
Taylor Olson Adkins Sralla Elam, LLP
6000 Western Place, Ste 200
Fort Worth, Texas 76107

If to Highland Village:

City of Highland Village
Attn: City Manager
1000 Highland Village Road
Highland Village, Texas 75077

With copies to:

City of Highland Village
Attn: Fire Chief
1000 Highland Village Road
Highland Village, Texas 75077

Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

If to Lewisville:

City of Lewisville
Attn: City Manager
P. O. Box 299002
Lewisville, TX 75029-9002

With copies to:

City of Lewisville
Attn: Fire Chief
P. O. Box 299002
Lewisville, TX 75029-9002

City Attorney
City of Lewisville
P. O. Box 299002
Lewisville, TX 75029-9002