



# CITY OF PLANO COUNCIL AGENDA ITEM

<b>CITY SECRETARY'S USE ONLY</b>				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		01/27/2014		
Department:		Police Department		
Department Head		Gregory W. Rushin		
Agenda Coordinator (include phone #): <b>Pam Haines, ext 2538</b>				
<b>CAPTION</b>				
A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Fourth Amended and Restated Police Training Center Operating Agreement by and between the City of Richardson and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.				
<b>FINANCIAL SUMMARY</b>				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR: <b>2013-14</b>	<b>Prior Year (CIP Only)</b>	<b>Current Year</b>	<b>Future Years</b>	<b>TOTALS</b>
Budget	0	0	0	<b>0</b>
Encumbered/Expended Amount	0	0	0	<b>0</b>
This Item	0	0	0	<b>0</b>
<b>BALANCE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FUND(s): N/A</b>				
<b>COMMENTS:</b> This item has no fiscal impact.				
STRATEGIC PLAN GOAL: Amending and restating the agreement with the City of Richardson for the Police Training Center relates to the City's goal of Partnering for Community Benefit and Financially Strong City with Service Excellence.				
<b>SUMMARY OF ITEM</b>				
The purpose of this Police Academy Operating Agreement is to identify the responsibilities and financial obligations of the cities.				
List of Supporting Documents: Resolution, Memo and Exhibit "A"			Other Departments, Boards, Commissions or Agencies	



# Memorandum

**Date:** January 16, 2014  
**To:** LaShon Ross, Deputy City Manager  
**From:** Gregory W. Rushin, Chief of Police *GR*  
**Subject:** Amended Police Training Center Operating Agreement

Due to the Police Department's desire to construct an enclosed roof at the Plano/Richardson Police Training Center Gun Range, it is necessary to amend the Operating Agreement between the Plano Police Department and the Richardson Police Department.

This amendment is necessary because the current operating agreement requires that the cost of any capital improvement at the Police Training Center be shared equally by both cities. Since the City of Richardson is not sharing the cost of this project, it is necessary to amend the Operating Agreement to reflect that the City of Plano is solely paying for the roof over the Gun Range with Police Department seizure funds.

In conjunction, it is also necessary to amend the Operating Agreement to reflect that if the Richardson Police Department ever withdraws from the Police Training Center, their compensation would be proportionately decreased in lieu of not sharing in the cost of the roof construction. Currently, the agreement states that if Richardson Police Department were to withdraw from the Police Training Center they would receive 50% of the appraised fair market value of all capital improvements. As agreed upon by the finance directors of each City, the amended agreement states that Richardson will only receive 43.4% of the appraised fair market value of all capital improvements to the Training Center.

The Police Department recommends the Council approve this amended Police Training Center Operating Agreement.

**A Resolution of the City Council of the City of Plano, Texas, approving the terms and conditions of a Fourth Amended and Restated Police Training Center Operating Agreement by and between the City of Richardson and the City of Plano; authorizing its execution by the City Manager or his authorized designee; and providing an effective date.**

**WHEREAS**, on May 31, 1990, the parties entered into an agreement for the joint operation and maintenance of the Plano/Richardson Police Training Center located at 4912 14<sup>th</sup> Street in the City of Plano which expired on May 31, 2000; the parties entered into a like agreement on October 1, 2001; which was revised by a Second Amended and Restated Agreement on November 27, 2007, and replaced by a Third Amended and Restated Agreement on August 22, 2011; and

**WHEREAS**, the Parties desire to enter into a Fourth Amended and Restated Agreement to authorize the City of Plano to solely construct and pay for a roof improvement project at the Training Center and to provide for an adjustment to the percentage of fair market value paid by the City of Plano to the City of Richardson upon termination of the Agreement to offset the cost of the roof investment by the City of Plano; and

**WHEREAS**, the City Council has been presented a proposed Fourth Amended and Restated Police Training Operating Agreement, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference (hereinafter called "Agreement"); and

**WHEREAS**, upon full review and consideration of the Agreement, and all matters attendant and related thereto, the City Council is of the opinion that the terms and conditions thereof should be approved, and that the City Manager or his authorized designee shall be authorized to execute it on behalf of the City of Plano.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:**

**Section I.** The terms and conditions of the Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

**Section II.** The City Manager or his authorized designee is hereby authorized to execute the Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the Agreement.

**Section III.** This Resolution shall become effective immediately upon its passage.

**DULY PASSED AND APPROVED** this the 27<sup>th</sup> day of January, 2014.

\_\_\_\_\_  
Harry LaRosiliere, MAYOR

ATTEST:

\_\_\_\_\_  
Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
Paige Mims, CITY ATTORNEY

**EXHIBIT "A"**

**STATE OF TEXAS** §  
§  
§  
**COUNTIES OF COLLIN** §  
**AND DALLAS** §  
**FOURTH AMENDED AND RESTATED POLICE TRAINING CENTER OPERATING AGREEMENT**

This Operating Agreement (the "Agreement") is by and between the City of Plano ("Plano") a Texas home-rule municipal corporation, and the City of Richardson ("Richardson"), a Texas home-rule municipal corporation (collectively referred to as the "Parties"), acting by and through their authorized representatives.

**RECITALS**

**WHEREAS**, on May 31, 1990, the parties entered into an agreement for the joint operation and maintenance of the Plano/Richardson Police Training Center located at 4912 14<sup>th</sup> Street in the City of Plano (the "Training Center") which expired on May 31, 2000; The parties entered into a like agreement on October 1, 2001; which was revised by a Second Amended and Restated Agreement on November 27, 2007, and replaced by a Third Amended and Restated Agreement on August 22, 2011.

**WHEREAS**, the Parties desire to enter into this Fourth Amended and Restated Agreement (the "Agreement") as set forth herein to authorize the City of Plano to solely construct and pay for a roof improvement project at the Training Center and to provide for an adjustment to the percentage of fair market value paid by the City of Plano to the City of Richardson upon termination of the Agreement to offset the cost of the roof investment by the City of Plano; and

**NOW, THEREFORE**, for and in consideration of performance of the mutual covenants, obligations and undertakings by each of the respective parties to this Agreement the Parties agree as follows:

**Article I  
Purpose**

The purpose of this Agreement is to provide for the methods by which the Parties will use, operate, maintain and manage the Training Center and for the reimbursement of certain costs upon termination of this Agreement.

**Article II  
Term of this Agreement**

2.1 The term of this Agreement shall be for a period of ten (10) years beginning October 1, 2011, unless sooner terminated as provided herein. Either Party may withdraw from this Agreement upon the giving of notice in writing to the other Party twelve (12) calendar

months prior to the date of withdrawal. Except as otherwise provided herein, a withdrawing Party shall no longer be bound by any of the provisions herein after the date of withdrawal.

2.2 Upon the withdrawal from or non-renewal of this Agreement, the Parties agree that Plano shall continue to own the real property (land) upon which the Training Center is located. All improvements, either capital or otherwise, made to the Training Center during the term of the Operating Agreement or this Agreement shall become the property of Plano. All capital improvements constructed as a result of the Operating Agreement or during this Agreement shall be appraised to determine their fair market value. Plano shall, within 30 days after the Richardson withdrawal date, pay to Richardson a sum equal to 43.4% of the fair market value of all capital improvements made to or in the Training Center. If the Parties cannot agree upon an appraiser within thirty (30) days after the Richardson notice of withdrawal, then each Party shall appoint an appraiser holding the MAI designation or successor, within fifteen (15) days after the expiration of such thirty (30) day period. Each of the two appraisers shall then independently determine the fair market value. If the two appraisers cannot agree upon the fair market value within thirty (30) days after they have been appointed, the fair market value shall be the average of the fair market value determined by each of the two appraisers.

### **Article III**

#### **Training Center Operations**

3.1 Board of Managers. The Police Chiefs of Plano and Richardson shall comprise the Board of Managers of the Training Center. The Board of Managers shall have the duty to develop, plan, maintain, operate and generally manage the Training Center, as well as to develop, implement, and enforce a set of procedures and policies governing operations of the Training Center. The Board of Managers may appoint committees as necessary to perform these duties.

3.2 Training Committee. The Police Chiefs of Plano and Richardson shall each appoint a representative from their respective departments to the Training Committee of the Training Center. The Training Committee shall consist of four members, two members appointed by the Plano Police Chief and two members appointed by the Richardson Police Chief. The chairperson of the Training Committee shall rotate between the two cities annually. The Chairperson of the Training Committee, or the designated representative, shall be responsible for the day-to-day supervision and operation of the Training Center training program.

3.3 Facility Management. The buildings comprising the Training Center shall be managed by a facility manager appointed by the Plano Police Chief, or designee.

3.4 Usage of Facilities. The use of the Training Center shall be restricted to the Parties except with the prior written unanimous consent of the Board of Managers. Any use by an additional party shall be on a temporary basis only. Additional parties utilizing the facility shall pay all costs associated with such use as determined by the Board of Managers, and shall in writing indemnify and hold Plano and Richardson harmless from any claim, death or property damage resulting in any manner from the sole negligence of its agents, employees, or officers which caused bodily injury, death or property damage occurring at the Training Center or while traveling to or from the Training Center.

3.5 Maintenance and Operating Fund. For each fiscal year that this Agreement is in effect there shall be established by the Board of Managers a maintenance and operating fund (the "Fund") for the purpose of meeting all financial obligations relating to operation of the Training Center for such fiscal year. The Fund shall be maintained and administered by Plano using generally accepted accounting and financial standards and practices. Consistent with Chapter 791 of the Texas Government Code, as amended, each party paying for the performance of governmental functions or services must make those payments from current revenues available to the paying party.

3.6 Operating Budget. (a) Prior to February 15 of each calendar year that this Agreement is in effect, Plano shall cause to be prepared and submitted to Richardson for its approval a proposed Operating Budget for the ensuing fiscal year. This Operating Budget shall include all estimated expenses to be incurred in operating the Training Center for such year. Personnel costs, if any, included in said budget, shall include only costs directly attributable to supervision, operation, and maintenance of the facility.

(b) Plano and Richardson shall proportionally share the Operating Budget. The individual share of each Party shall be determined on a percentage basis by the use of a fraction, the numerator of which shall be the total number of budgeted, full-time authorized personnel (both civil and non-civil service) in the City's police department and the denominator of which is the total number of budgeted, full-time authorized personnel in the two participating police departments. For purposes of this Agreement, these numbers shall be the number of budgeted full-time authorized personnel as of January 1 of each calendar year.

(c) On or before October 5 of each calendar year, Plano and Richardson shall each render one-half (1/2) of their respective share of the Operating Budget to the Fund. Plano shall account, manage, invest, and otherwise treat the Fund as if it were a fund of Plano, but shall segregate all transactions in order to provide for an auditable trail of all transactions. Plano shall prepare an analysis of the performance of the Fund for the prior fiscal year and provide a copy to Richardson. Within five (5) working days after April 1 of each calendar year, Plano and Richardson shall each render the remaining one-half (1/2) of their respective share of the Operating Budget, adjusted by any surplus or deficit which may have accrued from the prior six calendar months of such fiscal year.

3.7 Capital Improvement Budget. Plano shall prepare and submit to Richardson a Capital Improvement Budget for the Training Center prior to February 15 of each calendar year that this Agreement is in effect. A Capital Improvements Budget shall be prepared and submitted only if capital improvements are anticipated to be made to the Training Center during the ensuing fiscal year. Capital Improvements to be constructed on the Training Center site shall be constructed only in accordance with the Capital Improvements Budget. Any and all projects planned shall be approved by the City Councils of Plano and Richardson before construction may commence or before a contract may be let. All capital improvement costs shall be borne equally by Plano and Richardson with the exception of the roof improvement project agreed to by the Parties in 2013 which cost shall be borne solely by Plano and is authorized by approval of the Fourth Amended and Restated Agreement by the City Councils of Plano and Richardson.

The debt service on the 2002, 2003, and 2005 series bonds for construction and expansion of the Training Center shall be borne equally by Plano and Richardson.

3.8 Annual Audits. Plano agrees to make all accounting records, transactions, and reports related to the Fund available for inspection by an authorized representative of Richardson during normal business hours. Plano further agrees to include all transactions relating to the Fund and other matters regarding the Fund in all financial disclosures, statements, and reports prepared for, or by, Plano and its internal or external auditors. Copies of these reports will be available to Richardson upon request.

3.9 Overtime. Overtime costs at the Training Center which are the direct result of unilateral action by the Parties shall be borne wholly by the City causing the overtime.

3.10 Real Property and Improvements. The Parties agree that Plano shall continue to own the real property (land) upon which the Training Center is located. All improvements, either capital or otherwise, made to the Training Center during the term of the Operating Agreement or this Agreement shall become the property of Plano.

#### **Article IV Miscellaneous**

4.1 Hold Harmless and Indemnification. Each Party shall accept responsibility for, and shall hold the other Party harmless from any claim, cause of action or responsibility, and bodily injury, death or property damage resulting in any manner from the sole negligence of its agents, employees, or officers, which cause bodily injury, death, or property damage occurring at the Training Center or while traveling to or from the Training Center.

4.2 Amendment and Assignment. This Agreement may not be amended except in writing by the Parties hereto and may not be assigned. The Parties hereby bind themselves, their successors, designees, and legal representatives with respect to the terms, conditions, and obligations of this Agreement.

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

Plano:	Chief of Police 909 14 <sup>th</sup> Street P.O. Box 860358 Plano, Texas 75086-0358 Facsimile No.: 972.941.2177
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With a copy to: Paige Mims  
1520 Avenue K  
P.O. Box 860358  
Plano, Texas 75086-0358  
Facsimile No.: 972.424.0099

Richardson: Chief of Police  
140 N. Greenville Avenue  
P.O. Box 831078  
Richardson, Texas 75083-1078  
Facsimile No.: 972.744.5996

With a copy to: Peter G. Smith  
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.  
1800 Lincoln Plaza  
500 N. Akard Street  
Dallas, Texas 75201  
Facsimile No.: 214.965.0010

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

4.5 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall exclusively be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

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

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

4.8 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

4.9 Effective Date. The effective date of this Agreement shall be the latest date of execution hereof.

*(signature page to follow)*

**EXECUTED** on this 27th day of January, 2014.

**CITY OF PLANO, TEXAS**

By: \_\_\_\_\_  
Bruce D. Glasscock, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Paige Mims, City Attorney

**EXECUTED** on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF RICHARDSON, TEXAS**

By: \_\_\_\_\_  
Dan Johnson, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney  
(10-17-13/63049)