

## LICENSE AGREEMENT

This License Agreement ("Agreement") is entered into as of August 29, 2008 (the "Effective Date") by and between NORTH TEXAS TOLLWAY AUTHORITY, a regional tollway authority and a political subdivision of the State of Texas (the "Authority") and the CITY OF GARLAND, a Texas home-rule municipality (the "City").

The following definitions shall have the following meaning:

**Licensed Area:** The Woodcreek Apartment Complex located at 1113, 1117 and 1133 E IH-30, Garland, Texas 75043 ("Licensed Area").

**Licensee Parties:** "Licensee Parties" means the City and employees of the City of Garland Police Department who are authorized by the City of Garland Police Department to participate in the Purposes.

**Purposes:** City of Garland Police Department training exercises, expressly excluding, however, any activity that involves the use of live ammunition or that could cause a fire hazard ("Purposes")

**Term:** The term commencing on the Effective Date and terminating on September 30, 2008 (the "Term"), subject to the provisions of Section 6, Section 13 and Section 14 below.

1. **License.** In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Authority and The City, the Authority grants to the City for the Term a revocable license (the "License") for the Licensee Parties to enter upon and use the Licensed Area for the Purposes only and for no other purpose whatsoever, subject to the limitations hereinafter set forth. The City agrees not to operate in any way in the Licensed Area other than for the Purposes. In making use of the Licensed Area, the City shall, at its sole expense, fully and faithfully comply with any and all applicable laws, rules, regulations and ordinances.
2. **Compensation.** The Authority and the City agree that there shall be no fee owed by the City for the Authority's grant of the License, provided, however, such agreement shall not relieve the City from liability for any other monetary obligations hereunder, including, but not limited to, those arising under Section 9 below.
3. **Insurance.** During the Term, the City shall obtain and keep in full force and effect, at its sole expense, workers' compensation insurance in the amount of \$500,000 (with a waiver of subrogation endorsement) and commercial general liability insurance (with contractual liability endorsement), including personal injury and property damage in the amount of \$2,000,000 per occurrence combined single limit for personal injuries and death of persons and property damage occurring in or about the Premises, plus umbrella coverage of at least \$3,000,000 per occurrence. Such policies shall (a) name the Authority as an additional insured, (b) the certificate of insurance shall be provided on an ACORD Form and issued by an insurance company licensed to do business in the State of Texas with a Best's Guide Insurance Rating of A VII, or better, and otherwise acceptable to the

Authority in its reasonable discretion, (c) provide that such insurance may not be canceled unless thirty (30) days' prior written notice is first given to the Authority, (d) be delivered to the Authority by the City before the commencement of the Term, and (e) provide primary coverage to the Authority and the additional insureds required hereunder regardless of whether there is any policy issued to the Authority or such additional insureds in which case the Authority's policy or the policies of the additional insureds shall be excess over the City's policies.

4. Licensed Area Covenants. The City shall not construct or make any improvements to the Licensed Area without the Authority's prior written consent, which may be withheld in the Authority's sole discretion. The City shall (i) keep the Licensed Area free of debris resulting from the City's use of the Licensed Area during the Term; (ii) secure the Licensed Area from trespassers at all times, including, without limitation, by posting "No Trespassers" or similar signage and for periods of time during which Licensee Parties are not present at the Licensed Area; (iii) promptly repair any damage to the Licensed Area; and (iv) secure all property used by the Licensee Parties on the Licensed Area or brought to the Licensed Area by the Licensee Parties in a safe manner. Licensee Parties shall not undertake any activities on the Licensed Area that could cause damage or injury to or disturb persons not participating in the Purposes or to such persons' property, such persons or property to include without limitation, the general public and adjacent owners and the property of either. Upon termination of this Agreement, by revocation or otherwise, the City agrees to clear all debris and improvements resulting from the City's use of the Licensed Area and to surrender the Licensed Area to the Authority in the condition in which it was delivered, ordinary wear and tear excepted. If the City fails to maintain the Licensed Area or remove its property from the Licensed Area as required pursuant to this Section 4, The Authority may, but is not required to, undertake such requirements on behalf of the City, and the City shall immediately reimburse the Authority for any costs related thereto. In no event shall the Authority be responsible for any property of Licensee Parties located at or removed from the Licensed Area.
5. Notice to the Authority. During the Term, the City shall immediately notify David W. Clarke, the Authority's representative, at 214-213-7990 in the event that Licensee Parties become aware of any harm to persons or property or any unsafe condition on or about the Licensed Area.
6. Revocation of License. The Agreement is revocable by the Authority or the City immediately upon written notice to the other given in accordance with the provisions of this Agreement. Upon any such revocation and at the expiration of Term, the Authority may retake possession of the Licensed Area, including, but not limited to changing the locks to the Licensed Area.
7. License Provided "As Is". **IT IS UNDERSTOOD AND AGREED THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT, THE AUTHORITY IS NOT MAKING AND SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED AREA, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE, ZONING, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS,**

GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE LICENSED AREA, INCLUDING, WITHOUT LIMITATION, THE CONDITION, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE LICENSED AREA. THE CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DANGEROUS OR HAZARDOUS PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY EXIST ON OR IN THE LICENSED AREA AND THE CITY ACKNOWLEDGES AND AGREES THAT THE AUTHORITY IS LICENSING THE LICENSED AREA "AS IS" "WHERE IS", WITH ALL FAULTS. THE TERMS AND CONDITIONS OF THIS SECTION 7 SHALL EXPRESSLY SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE LICENSE. THE AUTHORITY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE LICENSED AREA.

8. Expiration of Term of License. The License granted hereby shall expire upon the earlier of (i) revocation by either party pursuant to Section 6, or (ii) 11:59:59 p.m. on November 30, 2008. Notwithstanding the revocation or termination of the License, the City shall continue to remain liable for any obligations imposed on the City by this Agreement and for the breach by the City or its agents, contractors, employees, licensees or invitees of any term or provision of this Agreement.
  
9. INDEMNITY PROVISIONS. WITHOUT HEREBY WAIVING ANY CLAIM OF SOVEREIGN IMMUNITY WITH RESPECT TO PERSONS OTHER THAN THE AUTHORITY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, THE CITY SHALL DEFEND, WITH COUNSEL APPROVED BY THE AUTHORITY, AND SHALL INDEMNIFY AND HOLD HARMLESS THE AUTHORITY AND THE AUTHORITY'S OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, AND CONSULTANTS (COLLECTIVELY, THE "AUTHORITY PARTIES") FROM AND AGAINST ANY DAMAGES, LOSSES, CLAIMS, LIENS, ASSESSMENTS, TAXES, FINES, FEES, EXPENSES, LIABILITIES, INJURIES, AND OTHER EXPENSES OF ANY NATURE WHATSOEVER, INCLUDING REASONABLE ATTORNEY'S FEES AND COSTS ("INDEMNITY COSTS"), RELATING TO OR ARISING FROM THE LICENSED PARTIES' USE, OPERATION OR MAINTENANCE OF THE LICENSED AREA, OR FROM ANY ACTIVITY, WORK OR THING DONE, PERMITTED OR SUFFERED BY THE CITY OR ANY OF THE LICENSED PARTIES IN OR ABOUT THE LICENSED AREA, OR ARISING OR RESULTING FROM ANY BREACH OR DEFAULT BY THE CITY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN THOUGH CAUSED OR ALLEGED TO BE CAUSED BY THE CONCURRENT NEGLIGENCE OR OTHER FAULT OR LIABILITY OF THE AUTHORITY PARTIES, BUT NOT IF CAUSED BY THE SOLE NEGLIGENCE, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE AUTHORITY (THE "EXCLUDED MATTERS"). THE CITY, AS A MATERIAL PART OF THE CONSIDERATION GIVEN TO THE AUTHORITY, ASSUMES ALL RISK OF DAMAGE TO PROPERTY OR INJURY TO PERSONS IN, UPON OR ABOUT THE LICENSED AREA FROM ANY CAUSE WHATSOEVER (OTHER THAN THE EXCLUDED MATTERS) AND THE CITY WAIVES ALL CLAIMS IN

RESPECT THEREOF AGAINST THE AUTHORITY AND RELEASES THE AUTHORITY FROM ALL SUCH CLAIMS (OTHER THAN THE EXCLUDED MATTERS). IN MAKING THIS INDEMNITY, THE CITY ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT THAT IS SUBJECT TO SUBCHAPTER I OF CHAPTER 271 OF THE TEXAS LOCAL GOVERNMENT CODE. THE COVENANTS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

10. Not Assignable. The rights granted herein to the City shall not be assigned by the City.
11. Media Access. The City shall not contact media or grant media access regarding its use of the Licensed Area or this Agreement without the express prior written approval of the Authority, which approval may be withheld in the Authority's sole discretion. Any request for media access shall be accompanied by a written explanation of the nature and scope of the media coverage likely to result from such contact.
12. Mechanic's Liens. The City shall not cause any lien to be placed upon or arise or accrue against any part of the Licensed Area, or any portion thereof, in favor of any party furnishing labor or materials to or at the request of the City, its agents, employees or contractors. Should any such mechanic's or materialmen's liens be filed against the Licensed Area, the City shall within twenty (20) days of becoming aware of the filing of such liens remove or cause the same to be released or removed at its sole cost and expense so that such liens no longer attach to the Licensed Area. Failure to do so shall result in a breach and default under this Agreement and the City shall be liable to the Authority for any and all actual damages incurred by the Authority as a result of the failure to remove any such lien.
13. Notices. Any notice, request, demand, or other communication to be given by either party shall be in writing, and shall be hand delivered, sent by United States certified mail, postage prepaid, or sent by Federal Express or other national courier service, fees prepaid, and shall be addressed as follows:

If to the Authority:

If delivered by hand or air courier

North Texas Tollway Authority  
Attn: Deputy Executive Director  
5900 West Plano Parkway, Suite 100  
Plano, Texas 75093

If mailed:

North Texas Tollway Authority  
Attn: Deputy Executive Director  
P.O. Box 260729  
Plano, Texas 75026

If to the City:

City of Garland  
200 North Fifth Street  
Garland, Texas 75040  
Attention: \_\_\_\_\_

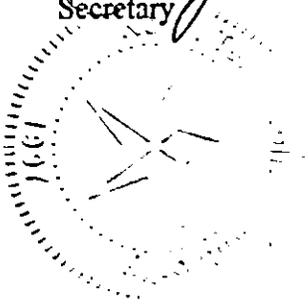
14. No Partnership or Joint Enterprise Nothing in this Agreement is intended to create, nor shall be deemed or construed by the parties or by any third party as creating, (a) the relationship of principal and agent, partnership or joint venture between the City and/or the Authority or (b) a joint enterprise between the City, the Authority and/or any other party. Without limiting the foregoing, the purposes for which the City and the Authority have entered into this Agreement are separate and distinct, and there are no pecuniary interests, common purposes and/or equal rights of control among the parties hereto.
15. No Personal Liability. All covenants and obligations of the City and the Authority under this Agreement shall be deemed valid covenants and obligations of said entities, and no officer, director, or employee of the City or the Authority shall have any personal obligations or liability hereunder.
16. Authorization. Each party to this Agreement represents to the other that it is fully authorized to enter into this Agreement and to perform its obligations hereunder, and that no waiver, consent, approval, or authorization from any third party is required to be obtained or made in connection with the execution, delivery or performance of this Agreement. Each signatory on behalf of the City and the Authority, as applicable, represents that he or she is fully authorized to bind that entity to the terms of this Agreement.
17. Miscellaneous Provisions. This Agreement supersedes any other previous or contemporaneous agreement or understanding between the parties with respect to the subject matter herein and contains the entire understanding between the parties with respect to the subject matters herein. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. Should any action or other proceeding or arbitration arise regarding the enforcement or interpretation of this Agreement, it shall take place in the County of Collin, subject to the laws of the State of Texas. This Agreement may be executed in any number of original counterparts, all of which shall constitute one and the same instrument.

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SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Authority and the City each has executed this Agreement to be effective as of the Effective Date.

ATTEST:

  
Secretary



ATTEST:

\_\_\_\_\_  
City Secretary

**AUTHORITY:**

**NORTH TEXAS TOLLWAY  
AUTHORITY,**  
a regional tollway authority and a political  
subdivision of the State of Texas

By:   
Name: Rick Herrington  
Its: DEPUTY EXECUTIVE DIRECTOR

**THE CITY:**

**CITY OF GARLAND,**  
a Texas home-rule municipality

By:   
Name: M.L. Bate  
Its: Chief of Police