

Memorandum of Understanding

This Memorandum of Understanding ("MOU" is made by and between **Collin County** ("COUNTY") and the **City of McKinney** ("CITY"), acting by and through their authorized representatives.

RECITALS

WHEREAS, the CITY owns property for the benefit of the public, including a quarry located off Redbud which is generally filled with water (hereinafter referred to as "Quarry"); and

WHEREAS, the Quarry may be used to train police officers from outside law enforcement entities in dive-recovery methods ("Training"); and

WHEREAS, the COUNTY desires to utilize the Quarry to train the COUNTY's officers; and

WHEREAS, both COUNTY and CITY (collectively the "Parties") desire to make certain agreements regarding the use of the Quarry.

NOW THEREFORE, COUNTY and CITY agree as follows:

1. The COUNTY shall only allow the Quarry to be utilized for Training by a person certified/licensed to participate in the Training or by a person who is involved in COUNTY approved program regarding the Training.
2. The Parties shall inspect the Quarry prior to the COUNTY beginning Training at the Quarry. The COUNTY shall notify the CITY of any issues that may exist with the Quarry and shall determine, in COUNTY's sole opinion, whether Training should be conducted. The COUNTY shall notify the CITY upon the cessation of the Training of any issues existing at the Quarry. Failure of the CITY to provide notice of any issue at the Quarry shall not act as a waiver of liability.
3. The COUNTY shall be responsible for any damage to the Quarry that occurs during Training. The COUNTY agrees to repair or pay for any necessary repairs, at the CITY's sole discretion, due to damage of the Quarry caused during the Training.
4. The COUNTY agrees to provide a list of all officers involved in Training at the Quarry to the CITY and signed releases from each officer, on forms provided by the CITY, prior to each Training.
5. The dates and times of use of the Quarry shall be set by the authorized representatives of the Parties.
6. Either Party may withdraw from the MOU at any time by giving thirty (30) days written notice to the authorized representative of the other Party.
7. The COUNTY agrees that any injury that occurs from the use of the Quarry arising out of the Training will be the responsibility of the COUNTY.
8. The CITY agrees to and accepts full responsibility for the acts, negligence and/or omissions of all CITY employees and agents. The COUNTY agrees to and accepts full responsibility for the acts, negligence and/or omissions of all COUNTY employees and agents.
9. Each Party does hereby agree to waive all claims against, release, and hold harmless the other party and its respective officials, officers, agents, employees, in both their

public and private capacities, from any and all liability, claims, suits, demands, losses, damages, attorneys fees, including all expenses of litigation or settlement, or causes of action which may arise by reason of injury to or death of any person or for loss of, damage to, or loss of use of any property arising out of or in connection with this contract.

In the event of joint or concurrent negligence of the parties, responsibility, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to either party individually under Texas law. The CITY shall be responsible for its sole negligence. The COUNTY shall be responsible for its sole negligence. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10. It is expressly understood and agreed that, in the execution of this MOU, neither party waives, nor shall be deemed hereby to have waived any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering in this MOU, the parties do not create any obligations, express or implied, other than set forth herein, and this MOU shall not create any rights in parties not signatories hereto.

11. This MOU represents the entire and integrated agreement between CITY and COUNTY and supersedes all prior negotiations, representations and/or agreements, either written or oral regarding the Training. This MOU may be amended only by written instrument signed by both parties.

12. This MOU shall be deemed to have been drafted equally by all parts of this MOU shall be constructed as a whole according to its fair and common meaning, and any presumptions or principal that the language herein is to be construed against any party shall not apply.

13. Notice as required by this MOU shall be in writing delivered to the parties via facsimile or certified mail at the addresses listed below.

MCKINNEY *Jason Gray*

Name *JASON GRAY*
Address *222 N Tennessee St.*
Address *McKinney TX 75070*
Phone *972-547-7520*
Fax *972-547-2607*

COUNTY

Name *Collin County Purchasing*
Address *2300 Bloomdale Suite #3160*
Address *McKinney, TX*
Phone *972-548-4165*
Fax *972-548-4694*

Each party shall notify the other in writing within ten (10) days of any change in the information listed in this paragraph.

14. No right or remedy granted herein or reserved to the parties is exclusive of any right or remedy granted by law or equity; but each shall be cumulative of every right or remedy given hereunder. No covenant or condition of this MOU may be waived without the express written consent of the parties. It is further agreed that one (1) or more instances of forbearance by either party in the exercise of its respective rights under this MOU shall in no way constitute a waiver thereof.

15. The provisions of this MOU are severable. In the event that any paragraph, section, subdivision, sentence, clause, or phrase of this MOU shall be found to be contrary to the law, or contrary to any rule or regulation having the force and effect of the law, such decisions shall not affect the remaining portions of this MOU. However, upon the occurrence of such event, either party may terminate this MOU by giving the other party thirty (30) days written notice of its intent to terminate.

16. The undersigned officer and/or agents of the parties hereto are the duly authorized officials and have the necessary authority to execute this MOU on behalf of the parties hereto. COUNTY has executed this MOU pursuant to duly authorized action of the Collin County Commissioners' Court on May 23, 2011. CITY has executed this MOU pursuant to duly authorized City Council Resolution No. _____ dated 6/21, 2011.
2011-06-065 (R)

17. The parties each bind themselves, their respective successors and assigns to the other party to this MOU. COUNTY hereby agrees that this MOU will not be assigned or sublet without prior written consent of CITY, and further agrees that none of COUNTY's rights, obligations or duties arising under this MOU will be sublet to anyone objectionable to CITY. COUNTY agrees that the subletting of any right, obligation or duty arising under this MOU shall not relieve COUNTY from its full obligations to CITY as provided by this MOU.

18. In case any one or more provisions of this MOU shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not effect the other provisions hereof and this MOU shall be construed as if such provision had never been contained herein.

19. The Parties agree and acknowledge that each Party is not an agent of the other Party and that each Party is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the Training covered under this MOU.

20. Venue for any action arising out of this MOU shall be in Collin County, Texas.

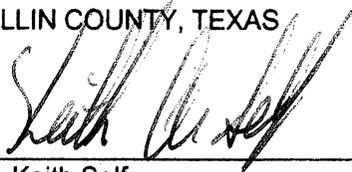
21. The initial term of this MOU shall be for the period beginning April 1, 2011, and ending March 31, 2012. Thereafter, upon mutual agreement of the parties hereto, this MOU may be renewed for five (5) successive one (1) year terms commencing on April 1 of each year, unless terminated earlier by either City of McKinney or Collin County as set forth herein.

22. All fees and costs incurred by either party as a result of its obligations hereunder shall be paid from current revenues legally available to each party respectively. In the event that either the Collin County Commissioners' Court or the McKinney City Council does not approve the appropriation of funds for this MOU, if necessary, the MOU shall terminate at the end of the fiscal year for which funds were appropriated and the Parties shall have no further obligations hereunder.

23. This MOU may be executed in duplicate originals.

EXECUTED on this 22nd day of May, 2011.

COLLIN COUNTY, TEXAS



By: Keith Self
County Judge

EXECUTED on this 28th day of June, 2011.

CITY OF MCKINNEY, TEXAS



By: Jason Gray
City Manager