

PERFORMANCE AGREEMENT

Developer: ***THE NORTH TEXAS FAMILY HEALTH FOUNDATION***
1600 Redbud Boulevard, Suite 400
McKinney, Texas 75070

MCDC: ***McKINNEY COMMUNITY DEVELOPMENT CORPORATION***
5900 S. Lake Forest Boulevard, Ste. 110
McKinney, Texas 75069

This **PERFORMANCE AGREEMENT** is by and between ***THE NORTH TEXAS FAMILY HEALTH FOUNDATION***, a Texas nonprofit corporation, including its successors and assigns (hereinafter referred to as the “Developer”), and the ***McKINNEY COMMUNITY DEVELOPMENT CORPORATION***, a Texas nonprofit corporation (hereinafter referred to as the “MCDC”), is made and executed on the following recitals, terms and conditions.

WHEREAS, Developer submitted Application No. 19-08 to the MCDC requesting financial assistance in an amount not to exceed **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)** from the MCDC, for horizontal infrastructure related to the construction of a Federally Qualified Health Center to include site work (\$200,000); utilities (\$150,000); paving (\$230,000); hardscape/landscape (\$150,000); other miscellaneous site work (\$60,000); and

WHEREAS, MCDC considered Developer’s Application No. 19-08 at its meeting held on **May 23, 2019**, at which time the MCDC agreed to approve funding in an amount not to exceed **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)** for horizontal infrastructure related to the construction of a Federally Qualified Health Center to include site work (\$200,000); utilities (\$150,000); paving (\$230,000); hardscape/landscape (\$150,000); other miscellaneous site work (\$60,000); and

WHEREAS, the Developer’s proposed approximate 25,000 square foot Federally Qualified Health Center facility (hereinafter referred to as the “Facility”) to be constructed at 1620 W. Virginia Parkway, McKinney, Texas 75069 (hereinafter referred to as the “Property”) for a verified cost of not less than \$6,500,000.00, and is projected to create 51 jobs in the three (3) years after construction, with a total payroll of \$4,880,000.00; and

WHEREAS, the Board of Directors of the MCDC have determined the financial assistance provided to Developer is consistent and meets the definition of “project” as that term is defined in Section 501.103 of the Texas Local Government Code; and the definition of “cost” as that term is defined by Section 501.152 of the Texas Local Government Code.

NOW, THEREFORE, for and in consideration of the agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the MCDC and the Developer agree as follows:

SECTION 1. FINDINGS INCORPORATED.

The foregoing recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration and promises that bind the parties.

SECTION 2. TERM.

This Agreement shall be effective as of **May 23, 2019**, and shall continue thereafter until **June 30, 2029**, unless terminated sooner under the provisions hereof.

SECTION 3. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- (a) **Act.** The word “Act” means Chapters 501 to 505 of the Texas Local Government Code, as amended.
- (b) **Agreement.** The word “Agreement” means this Performance Agreement, together with all exhibits and schedules attached to this Performance Agreement from time to time, if any.
- (c) **Developer.** The word “Developer” means ***THE NORTH TEXAS FAMILY HEALTH FOUNDATION***, a Texas nonprofit corporation, its successors and assigns, and whose address for the purposes of this Agreement is 1600 Redbud Boulevard, Suite 400, McKinney, Texas 75069.
- (d) **Event of Default.** The words “Event of Default” mean and include any of the Events of Default set forth below in the section entitled “Events of Default.”
- (e) **Facility.** The word “Facility” means the approximate 25,000 square foot Federally Qualified Health Center facility located on the Property and having a cost of \$6,500,000.00. Notwithstanding the foregoing, the Facility’s size and cost may be adjusted by up to 10% if cost savings can be achieved without a change in services offered to the public.
- (f) **Full-Time Equivalent Employment Position.** The words “Full-Time Equivalent Employment Position” or “Full-Time Equivalent Employment Positions” mean and include a job requiring a minimum of One Thousand Nine Hundred Twenty (1,920) hours of work averaged over a twelve (12) month period, with such hours also to include any vacation and sick leave, with full benefits.
- (g) **MCDC.** The term “MCDC” means the ***McKINNEY COMMUNITY DEVELOPMENT CORPORATION***, a Texas non-profit corporation, its successors and assigns, and whose address for the purposes of this Agreement is 5900 S. Lake Forest Boulevard, Suite 110, McKinney, Texas 75070.

- (h) **Property.** The word “Property” refers to The Family Health Center at Virginia Parkway, located at 1620 W. Virginia Parkway, McKinney, Texas 75069.
- (i) **Qualified Expenditures.** The words “Qualified Expenditures” mean the expenditures consistent with Section 501.103 of the Act: up to **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)** for horizontal infrastructure related to the construction of a Federally Qualified Health Center to include site work (\$200,000); utilities (\$150,000); paving (\$230,000); hardscape/landscape (\$150,000); other miscellaneous site work (\$60,000); made by the Developer.

SECTION 4. AFFIRMATIVE COVENANTS OF DEVELOPER.

Developer covenants and agrees with MCDC that, while this Agreement is in effect, Developer shall comply with the following terms and conditions:

- (a) **Qualified Expenditures.** Developer covenants and agrees to submit to the MCDC invoices, receipts, verified in-kind contributions, or other documentation in a form acceptable to the MCDC for the Qualified Expenditures made to the Facility in the aggregate, minimum amount of **Six Million Five Hundred Thousand and No/100 Dollars (\$6,500,000.00)** by **June 30, 2020**.
- (b) **Certificate of Occupancy.** Developer covenants and agrees to obtain or cause to be obtained a Certificate of Occupancy from the City of McKinney, Texas, for the Facility within 330 days of commencement of construction of the Facility. “Commencement of construction” shall mean the receipt of a building permit or land disturbance permit for the Facility or Property.
- (c) **Operate Facility.** Developer covenants and agrees during the Term of this Agreement to maintain and operate and keep open the Facility.
- (d) **Job Creation and Retention.** Developer covenants and agrees by **June 30, 2022**, and during the Term of this Agreement to employ and maintain a minimum of fifty-one (51) Full-Time Equivalent Employment Positions working at the Property. Developer covenants and agrees beginning on **July 1, 2022**, and during the Term of this Agreement, Developer shall deliver to MCDC an annual compliance verification signed by a duly authorized representative of Developer that shall certify the number of Full-Time Equivalent Employment Positions, and shall disclose and certify the average wage for all Full-Time Equivalent Employment Positions (the “Annual Compliance Verification”). The Developer covenants and agrees beginning on **July 1, 2022**, and annually thereafter during the Term of this Agreement, there will be a total of six (6) Annual Compliance Verifications due and submitted to the MCDC covering the Full-Time Equivalent Employment Positions created and maintained during the Term of this Agreement. All Annual Compliance Verifications shall include quarterly IRS 941 returns, or Texas Workforce Commission Employer Quarterly Reports.

- (e) **Matching Funds.** As a condition to its receipt of an advance hereunder, Developer agrees to verify to MCDC its receipt of matching funds for the Facility in the amount of \$2,500,000.00 from Independent Financial.
- (f) **Additional Assurances.** Developer agrees to make, execute and deliver to MCDC such other promissory notes, instruments, documents and other agreements as MCDC or its attorneys may reasonably request to evidence the Note.
- (g) **Performance.** Developer agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements between Developer and MCDC.

SECTION 5. AFFIRMATIVE COVENANTS OF MCDC.

MCDC covenants and agrees with Developer that, while this Agreement is in effect, MCDC shall comply with the following terms and conditions:

- (a) **Reimbursement for Qualified Expenditures.** MCDC covenants and agrees to submit reimbursement for Qualified Expenditures made by the Developer in the amount up to **Eight Hundred Thousand and No/100 Dollars (\$800,000.00)** within thirty (30) days of receipt of said documentation consistent with Section 4(a) of this Agreement.
- (b) **Performance.** MCDC agrees to perform and comply with all terms, conditions, and provisions set forth in this Agreement, and in all other instruments and agreements between Developer and MCDC.

SECTION 6. CESSATION OF ADVANCES.

If MCDC has made any commitment to provide any financial assistance to Developer under this Agreement, MCDC shall have no obligation to advance or disburse said financial assistance if: (i) Developer becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged bankrupt; or (ii) an Event of Default occurs.

SECTION 7. EVENTS OF DEFAULT.

Each of the following shall constitute an Event of Default under this Agreement:

- (a) **General Event of Default.** Failure of Developer or MCDC to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement, or failure of Developer or MCDC to comply with or to perform any other term, obligation, covenant or condition contained in any other agreement by and between Developer and MCDC, Developer and the City of McKinney, Texas or Developer and the McKinney Economic Development Corporation is an Event of Default.

- (b) **False Statements.** Any warranty, representation, or statement made or furnished to MCDC by or on behalf of Developer under this Agreement that is false or misleading in any material respect, either now or at the time made or furnished Agreement is an Event of Default.
- (c) **Insolvency.** Developer's insolvency, appointment of receiver for any part of Developer's property, any assignment for the benefit of creditors of Developer, any type of creditor workout for Developer, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Developer Agreement is an Event of Default.
- (d) **Ad Valorem Taxes.** Developer allows its ad valorem taxes owed to the City of McKinney, Texas, to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within thirty (30) days after written notice thereof from MCDC and/or Collin County Central Appraisal District is an Event of Default.

SECTION 8. EFFECT OF AN EVENT OF DEFAULT.

In the event of default under Section 7 of this Agreement, the non-defaulting party shall give written notice to the other party of any default, and the defaulting party shall have thirty (30) days to cure said default. Should said default remain uncured as of the last day of the applicable cure period, and the non-defaulting party is not otherwise in default, the non-defaulting party shall have the right to immediately terminate this Agreement, enforce specific performance as appropriate, or maintain a cause of action for damages caused by the event(s) of default. In the event, Developer defaults and is unable or unwilling to cure said default within the prescribed time period, the amounts provided by MCDC to Developer pursuant to Section 5(a) of this Agreement shall become immediately due and payable by Developer to MCDC.

SECTION 9. INDEMNIFICATION.

Developer shall indemnify, save, and hold harmless MCDC, its directors, officers, agents, attorneys, and employees (collectively, the "Indemnitees") from and against: (i) any and all claims, demands, actions or causes of action that are asserted against any Indemnitee if the claim, demand, action or cause of action directly or indirectly relates to tortious interference with contract or business interference, or wrongful or negligent use of MCDC's financial assistance by Developer or its agents and employees; (ii) any administrative or investigative proceeding by any governmental authority directly or indirectly related, to a claim, demand, action or cause of action in which MCDC is a disinterested party; (iii) any claim, demand, action or cause of action which directly or indirectly contests or challenges the legal authority of MCDC or Developer to enter into this Agreement; and (iv) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements) that any Indemnitee suffers or incurs as a result of any of the foregoing; provided, however, that Developer shall have no obligation under this Section to MCDC with respect to any of the foregoing arising out of the gross negligence or willful misconduct of MCDC or the breach by MCDC of this Agreement. If any claim, demand, action or cause of action is

asserted against any Indemnitee, such Indemnitee shall promptly notify Developer, but the failure to so promptly notify Developer shall not affect Developer's obligations under this Section unless such failure materially prejudices Developer's right to participate in the contest of such claim, demand, action or cause of action, as hereinafter provided. If requested by Developer in writing, as so long as no Default or Event of Default shall have occurred and be continuing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit Developer to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim, demand, action, cause of action or proceeding for which Developer may be liable for payment of indemnity hereunder shall give Developer written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain Developer's concurrence thereto.

SECTION 10. DEVELOPER'S REPRESENTATIONS.

By execution hereof, the signators warrant and represent that they have the requisite authority to execute this Agreement and that the representations made herein are true and accurate in all respects.

SECTION 11. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- (a) **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- (b) **Applicable Law and Venue.** This Agreement has been delivered to MCDC and accepted by MCDC in the State of Texas. Developer agrees to submit to the jurisdiction of the courts of Collin County, State of Texas, and that venue is proper in said County. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and applicable Federal laws.
- (c) **Caption Headings.** Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of the Agreement.
- (d) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- (e) **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during

such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

- (f) **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the address shown on Page 1 of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Developer agrees to keep MCDC informed at all times of Developer's current address.
- (g) **Severability.** If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.
- (h) **Successors and Assigns.** This Agreement is with the Developer, and shall not survive any sale, merger, change of control or similar transaction involving the Developer, without the written consent of the Developer. The Developer shall provide the MCDC written notice of any assignment, sale, merger, change of control or similar transaction pursuant to this Agreement as soon as possible, and in no event not later than thirty (30) days following such event.
- (i) **Survival.** All warranties, representations, and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to MCDC under this Agreement shall be considered to have been relied upon by MCDC and will survive this Agreement.
- (j) **Time is of the Essence.** Time is of the essence in the performance of this Agreement.
- (k) **Undocumented Workers.** The Developer certifies that Developer does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the Term of this Agreement, Developer is convicted of a violation under 8 U.S.C. § 1324a(f), Developer shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date the MCDC notifies Developer of the violation.


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DEVELOPER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS PERFORMANCE AGREEMENT, AND DEVELOPER AGREES TO ITS TERMS. THIS AGREEMENT IS EFFECTIVE AS OF MAY 23, 2019.

DEVELOPER:

THE NORTH TEXAS FAMILY HEALTH FOUNDATION,

a Texas nonprofit corporation,

By: 

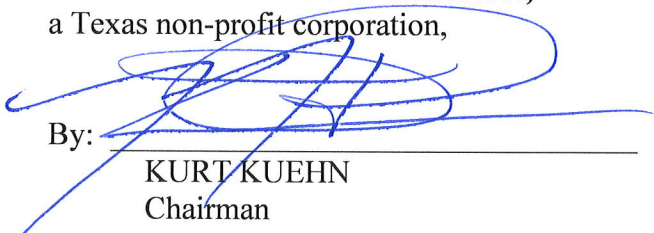
JAMES TIPPIT
President

Date Signed: 7/23/19

MCDC:

McKINNEY COMMUNITY DEVELOPMENT CORPORATION,

a Texas non-profit corporation,

By: 

KURT KUEHN
Chairman

Date Signed: 7/9/19