

**THIRD PARTY ADMINISTRATOR SERVICES AGREEMENT BETWEEN
THE CITY OF MCKINNEY AND NATIONAL COUNCIL FOR COMMUNITY
DEVELOPMENT, INC.**

The **City of McKinney, Texas**, a home-rule municipality (“McKinney”), and **National Council for Community Development, Inc.**, a New York corporation (“Contractor”), hereby enter into this Agreement (“Agreement”) for Third Party Administrator Services related to the McKinney/Collin County Small Business Grant/CARES Act Federal Grant Program (“Program”). McKinney and Contractor are sometimes referred to collectively as the “parties” or individually as a “party.”

WHEREAS, McKinney/Collin County is launching a small business grant program to provide grants to Collin County businesses located in McKinney, Texas which were negatively affected and suffered economic hardship due to business closure during the COVID-19 pandemic; and

WHEREAS, Frisco, working in partnership with McKinney and the City of Allen, Texas (“Allen”) issued a Request for Qualifications, attached hereto as Exhibit A and incorporated herein for all purposes (“RFQ”), seeking a Third Party Administrator for the Program; and

WHEREAS, Contractor timely submitted a response to the RFQ, attached hereto as Exhibit B and incorporated herein for all purposes (“Submittal”), seeking to provide Third Party Administrator Services for Frisco, McKinney and Allen; and

WHEREAS, based on Contractor’s representations in response to the RFQ, including those representations set forth in the Submittal, McKinney has selected Contractor to provide the services sought by McKinney under the terms and conditions of this Agreement.

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

1. Scope of Services.

Contractor shall provide the services and deliverables that are set forth and described in the Agreement Documents (as defined in Section 4 of this Agreement), upon the terms and conditions set forth in the Agreement Documents, and shall furnish all personnel, labor, equipment, supplies and all other items necessary to provide the services and deliverables as specified by the terms and conditions of the Agreement Documents (collectively, “Services”).

2. Term.

Performance of the Services shall commence on the Effective Date (hereinafter defined) of this Agreement and shall continue in effect until terminated by either party pursuant to Section 11 of this Agreement or until Services are no longer necessary, as determined by McKinney in its sole discretion.

3. Compensation.

In exchange for the Services described in the Agreement Documents, and subject to this Section 3, McKinney agrees to pay Contractor an administrative fee in an amount equal to seven percent (7%) of the amount of CARES Act funding distributed to McKinney/Collin County businesses under the Program and administered by Contractor under this Agreement (the “Percentage Fee”). In addition to the Percentage Fee, a technical assistance fee in the fixed amount of Twenty-Six Thousand Dollars (\$26,000.00) will be paid to the Contractor in two equal installments, with the first installment of Thirteen Thousand (\$13,000.00) being due upon the launch of the application described in the Submittal and acceptance thereof by McKinney and the second installment of Thirteen Thousand Dollars (\$13,000) being due after Contractor submits its final post-funding report to McKinney (the “Assistance Fee” and together with the Percentage Fee, the “Contractor’s Fee”). The Contractor’s Fee shall cover all of Contractor’s time, travel expenses, supplies, postage, telephone and other expenses in connection with the Services and this Agreement.

Contractor acknowledges and agrees that this Agreement shall commence on the Effective Date and continue in full force and effect until termination in accordance with its provisions. Contractor and McKinney acknowledge and agree that the continuation of this Agreement after the close of any given fiscal year of McKinney, which fiscal year ends on September 30th of each year, shall be subject to McKinney City Council approval. In the event that the McKinney City Council does not approve the appropriation of funds for this Agreement, the Agreement shall terminate at the end of the fiscal year for which funds were appropriated, and the parties shall have no further obligations hereunder, but McKinney shall be obligated to pay all charges incurred by Contractor through the end of that fiscal year provided that Contractor is not in breach of this Agreement. Notwithstanding the foregoing, should termination occur for lack of appropriation, Contractor agrees to take reasonable steps to mitigate any charges incurred as a result of such termination.

McKinney shall pay Contractor within thirty (30) days of receipt of each invoice, unless supporting receipts or other supporting documentation have been requested by McKinney, in which case McKinney shall pay the invoice as soon after receiving the supporting receipts or documentation as is reasonable; or unless a dispute arises as to any charge(s) contained in the invoice, in which case McKinney shall pay the undisputed amount of the invoice within thirty (30) days of receipt and shall pay the remaining amount, if any, of the invoice after resolution of the dispute as soon after resolution as is reasonable. Notwithstanding anything to the contrary herein, McKinney shall not be required to pay any invoice submitted by Contractor if Contractor is in breach of this Agreement.

Contractor shall cooperate with McKinney in McKinney’s efforts to seek funding or reimbursement for all or a portion of the Contractor’s Fee from external funding sources, including but not limited to local, state or federal governments. Contractor acknowledges and agrees that final decisions on the award and expenditure of Program funding will be made by McKinney in its sole discretion, subject to Program requirements.

Contractor shall provide two (2) scholarships to a McKinney employee to obtain up to

twenty (20) days of classroom training in Contractor's Certified Economic Development Finance and/or Housing Development Finance Professional Training Program at no additional cost.

4. Agreement Documents.

The "Agreement Documents," as that term is used herein, shall mean and include the following documents, and this Agreement expressly incorporates the same herein by reference for all purposes:

- a. This Agreement;
- b. RFQ, attached hereto as Exhibit A;
- c. Submittal, attached hereto as Exhibit B;
- d. McKinney's Insurance Requirements, attached hereto as Exhibit C;
- e. Affidavit of No Prohibited Interested, attached hereto as Exhibit D;
- f. Conflict of Interest Questionnaire, attached hereto as Exhibit E; and
- g. Contract Provisions for Non-Federal Entity Contracts under Federal Awards, attached hereto as Exhibit F.

This Agreement shall incorporate the terms of the Agreement Documents in their entirety. To the extent that Exhibit A, Exhibit B, Exhibit C, Exhibit D, Exhibit E or Exhibit F are in conflict with provisions of this Agreement or each other, the provisions of this Agreement, then the provisions of Exhibit F, Exhibit E, Exhibit A, Exhibit C, Exhibit D and Exhibit B shall prevail in that order. Should disputes arise as to responsibilities and obligations set forth in the Agreement Documents, McKinney's interpretation and/or decision shall be final and binding on the Parties.

5. Entire Agreement.

The Agreement Documents contain all representations, understandings, contracts and agreements between the parties regarding the subject matter of this Agreement. The Agreement Documents supersede all oral or written previous and contemporaneous agreements, writings, understandings, representations or contracts between the parties regarding the subject matter of this Agreement. This Agreement in no way modifies or supersedes any document executed by the parties prior to the Effective Date of this Agreement which does not concern the subject matter of this Agreement. No amendment to the Agreement Documents shall be made except on the written agreement of the parties, which shall not be construed to release either party from any obligation of the Agreement Documents except as specifically provided for in such amendment.

6. Required Insurance.

Contractor shall not start work under this Agreement until Contractor has obtained, at

Contractor's expense, all of the insurance specified in, and required by, the Agreement Documents. Contractor shall procure and keep in full force and effect the types and amounts of insurance specified in McKinney's Insurance Requirements, attached hereto as Exhibit C and incorporated herein for all purposes, for and during all aspects and phases of Contractor's work throughout the term of this Agreement at no expense to McKinney. Contractor also shall comply with all other requirements set forth in Exhibit C.

7. No Prohibited Interest; Vendor Disclosure.

Contractor acknowledges and agrees that it is aware of, and will abide by, the no prohibited interest requirement of the McKinney City Charter. Contractor shall execute and deliver to McKinney the Affidavit of No Prohibited Interest, attached hereto as Exhibit D and incorporated herein for all purposes, no later than the Effective Date of this Agreement (hereinafter defined). Contractor acknowledges and agrees that the existence of a prohibited interest during the term of this Agreement will render this Agreement voidable. Contractor further acknowledges and agrees that it also is aware of, and will abide by, the vendor disclosure requirements set forth in Chapter 176 of the Texas Local Government Code, as amended. In this connection, Contractor shall execute and deliver to McKinney the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit E and incorporated herein for all purposes, no later than the Effective Date of this Agreement.

8. Indemnity.

CONTRACTOR HEREBY RELEASES AND SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS MCKINNEY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY REFERRED TO AS "MCKINNEY") FOR PURPOSES OF THIS SECTION) FROM AND AGAINST ALL DAMAGES, INJURIES (WHETHER IN CONTRACT OR IN TORT, INCLUDING PERSONAL INJURY AND DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, ACTIONS, JUDGMENTS, LIENS, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS SECTION), THAT IN WHOLE OR IN PART ARISE OUT OF OR ARE CONNECTED WITH GOODS AND/OR SERVICES PROVIDED BY CONTRACTOR, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM CONTRACTOR IS LEGALLY RESPONSIBLE (COLLECTIVELY REFERRED TO AS "CONTRACTOR" FOR PURPOSES OF THIS SECTION) PURSUANT TO THIS AGREEMENT AND/OR THE NEGLIGENT, GROSSLY NEGLIGENT AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONTRACTOR IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OF MCKINNEY (COLLECTIVELY, "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT IS NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST MCKINNEY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONTRACTOR AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR

EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH CONTRACTOR, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE.

IN ITS SOLE DISCRETION, MCKINNEY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONTRACTOR IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY MCKINNEY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY MCKINNEY IN WRITING. MCKINNEY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, MCKINNEY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY MCKINNEY IS NOT TO BE CONSTRUED AS A WAIVER OF CONTRACTOR'S OBLIGATION TO DEFEND MCKINNEY OR AS A WAIVER OF CONTRACTOR'S OBLIGATION TO INDEMNIFY MCKINNEY PURSUANT TO THIS AGREEMENT. CONTRACTOR SHALL RETAIN MCKINNEY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF MCKINNEY'S WRITTEN NOTICE THAT MCKINNEY IS INVOKING ITS RIGHT TO DEFENSE OR INDEMNIFICATION UNDER THIS AGREEMENT. IF CONTRACTOR FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, MCKINNEY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONTRACTOR SHALL BE LIABLE FOR ALL COSTS INCURRED BY MCKINNEY.

THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

9. Liability.

To the fullest extent permitted by law, Contractor shall be fully and solely responsible and liable for its own acts and omissions, including those of its officers, agents, representatives, employees, subcontractors, licensees, invitees and all other parties providing goods or performing services for or on behalf of Contractor under this Agreement, and for any and all damage to Contractor's equipment and other property. McKinney assumes no such responsibility or liability. McKinney shall have no such responsibility or liability to either Contractor or its officers, agents, representatives, employees, subcontractors, licensees, invitees or other persons.

10. Compliance with Laws; Standard of Care.

Contractor shall comply with all federal, state and local laws, statutes, ordinances, regulations and policies, as they exist, may be amended or in the future arising, applicable to Contractor and its work. Contractor shall ensure that its officers, agents, representatives, employees, subcontractors, licensees, invitees and other parties performing services for or on behalf of Contractor under this Agreement comply with all applicable laws, statutes, ordinances, regulations and policies. If Contractor observes or is notified that the work under this Agreement is at variance with applicable laws, statutes, ordinances, regulations and policies, Contractor shall immediately notify McKinney in writing. Contractor shall

perform the Services in accordance with the prevailing standard of care by exercising the skill and care ordinarily utilized by professionals performing the same or similar services under the same or similar circumstances in the State of Texas. Contractor also shall comply with all other requirements set forth in Exhibit F.

11. Termination.

McKinney is entitled to terminate this Agreement for any reason or for no reason by providing Contractor written notice of termination at least ten (10) days prior to the anticipated date of termination.

McKinney is entitled to terminate this Agreement immediately on breach of any term or provision of the Agreement Documents by Contractor. If at any time during the term of this Agreement, Contractor shall fail to commence the work in accordance with the provisions of the Agreement Documents or fail to diligently perform the Services in an efficient, timely and careful manner and in strict accordance with the provisions of the Agreement Documents, as determined by McKinney in its sole discretion, then McKinney shall have the right to terminate this Agreement and complete the work in any manner it deems desirable, including engaging the services of other parties, if Contractor does not cure any such default after five (5) days written notice thereof. Any such act by McKinney shall not be deemed a waiver of any other right or remedy of McKinney.

If after exercising any remedy provided herein, the cost to McKinney of the performance of the balance of the work on the Program is in excess of that part of the Contractor's fee which has not yet been paid to Contractor hereunder, Contractor shall be liable for and shall reimburse McKinney for such excess, without waiver of any other right or remedy of McKinney.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

12. Authority to Execute.

Each party represents and warrants to the other that it has the full power and authority to enter into and fulfill the obligations of this Agreement. The respective signatories to this Agreement, by affixing their signatures hereto, warrant and represent that they have the authority to bind their respective parties as duly authorized representatives thereof.

13. Assignment.

Contractor agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of McKinney. Contractor further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve Contractor of its full obligations to McKinney as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Contractor, and there shall be no third party billing.

14. No Waiver of Immunity.
The parties acknowledge and agree that, in executing and performing this Agreement, McKinney has not waived, nor shall be deemed to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein.
15. Savings/Severability.
In the event that a term, condition or provision of this Agreement is determined to be invalid, illegal, void, unenforceable or unlawful by a court of competent jurisdiction, then that term, condition or provision shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been included in this Agreement.
16. Consideration.
This Agreement is executed by the parties without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.
17. Attorneys' Fees.
If either party files any action or brings any proceeding against the other arising from this Agreement, then as between McKinney and Contractor, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable and necessary attorneys' fees and litigation expenses both at trial and on appeal, subject to the limitations set forth in TEX. LOC. GOV'T CODE § 271.153, as it exists or may be amended, if applicable.
18. Governing Law; Venue.
The laws of the State of Texas shall govern the interpretation, validity, performance and enforcement of this Agreement, without regard to conflict of law principles. This Agreement is performable in Collin County, Texas, and the exclusive venue for any action arising out of this Agreement shall be a court of appropriate jurisdiction in Collin County, Texas.
19. Binding Effect.
This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns when permitted by this Agreement.
20. No Waiver.
Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
21. Headings.

The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.

22. Indemnity.

The parties agree that the indemnity provision set forth in Section 10 herein is conspicuous and the parties have read and understood the same.

23. Notice.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by depositing the same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested; by facsimile; by electronic mail, with documentation evidencing the addressee's receipt thereof; or by delivering the same in person to such party a via hand-delivery service, or to any courier service that provides a return receipt showing the date of actual delivery of the same to the addressee thereof. Notice given in accordance herewith shall be effective on receipt at the address of the addressee. For purposes of notification, the addresses of the parties shall be as follows:

If to Contractor, to: National Council for Community Development, Inc.
1 Battery Park Plz, Suite 710
New York, NY 10004
Attn: _____
Phone: _____
Email: _____

If to McKinney, to: McKinney Economic Development Corporation
Attn: Paul Tokar, III MBA, , EDC President
5900 S. Lake Forest Drive5
McKinney, Texas 75070
Telephone: (972) 547-7651
Email: ptokar@@mckinneyedc.com

With a copy to:

City Attorney
Attn: Mark S. Houser
McKinney City Hall
222 N. Tennessee Street
McKinney, Texas 75069
Telephone: (972) 562-6080
Email: mhouser@mckinneytexas.org

24. Representations.

Each party states that they have carefully read this Agreement, know the contents hereof, have consulted with an attorney of their choice regarding the meaning and effect hereof and is signing the same solely of their own judgment.

25. Independent Contractor.
Contractor covenants and agrees that Contractor is an independent contractor and not an officer, agent, servant or employee of McKinney for any purpose; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing the same; that the doctrine of respondent superior shall not apply as between McKinney and Contractor, its officers, agents, employees, contractors, subcontractors and consultants; and that nothing herein shall be construed as creating a partnership or joint enterprise between McKinney and Contractor.
26. Incorporation of Recitals.
The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into the body of this Agreement and adopted as findings of McKinney and the authorized representative of Contractor.
27. Reference to Contractor.
When referring to “Contractor” herein, this Agreement shall refer to and be binding upon Contractor, and its officers, directors, partners, employees, representatives, contractors, subcontractors, licensees, invitees, agents, successors, assignees (as authorized herein), vendors, grantees, trustees, legal representatives and/or any other third parties for whom Contractor is legally responsible.
28. Reference to McKinney.
When referring to “McKinney” herein, this Agreement shall refer to and be binding upon McKinney, its Council Members, officers, agents, representatives, employees and/or any other authorized third parties for whom McKinney is legally responsible.
29. Miscellaneous Drafting Provisions.
This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.
30. Multiple Counterparts.
This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. An electronic mail and/or facsimile signature will also be deemed to constitute an original if properly executed and delivered to the other party.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective when all the parties have signed it. The date this Agreement is signed by the last party to sign it (as indicated by the date associated with that party's signature below) will be deemed the effective date of this Agreement ("Effective Date").

CITY OF MCKINNEY, TEXAS,
a home-rule municipality

By: _____
Paul Grimes, City Manager
Date: _____

ATTEST:

APPROVED AS TO FORM:

Empress Drane, City Secretary

Mark S. Houser, City Attorney

**NATIONAL COUNCIL FOR COMMUNITY
DEVELOPMENT, INC.**
a New York corporation

By: _____
Print Name: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

BEFORE ME, the undersigned authority, on this day personally appeared **Paul Grimes**, known to me to be one of the persons whose names are subscribed to the foregoing instrument; he acknowledged to me that he is the City Manager and duly authorized representative for the **City of McKinney, Texas** and that he executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2020.

Notary Public in and for the State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, known to me to be one of the persons whose names are subscribed to the foregoing instrument; that he/she acknowledged to me he/she is the _____ (title) and duly authorized representative of **National Council for Community Development, Inc.**, and that he/she executed said instrument for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2020.

Notary Public in and for the State of _____
My Commission Expires: _____

Exhibit A
RFQ

Exhibit B
Submittal

Exhibit C
Insurance Requirements

I. GENERAL INSURANCE REQUIREMENTS –

- A. All policies shall name the City of McKinney, its officers, agents, representatives and employees as additional insureds as to all applicable coverages with the exception of workers compensation insurance.
- B. Such policies shall require the provision of written notice to McKinney at least thirty (30) days prior to cancellation, non-renewal or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- C. Such policies shall provide for a waiver of subrogation against McKinney for injuries, including death, property damage or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of “A” by A.M. Best’s Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance and all applicable endorsement(s) evidencing the required insurance shall be submitted prior to commencing work on the Program. If the Agreement is renewed or extended by McKinney, a Certificate of Insurance and all applicable endorsement(s) shall also be provided to McKinney prior to the date the Agreement is renewed or extended.

IV. INSURANCE CHECKLIST – “X” means that the following coverage is required for this Agreement.

	Coverage Required	Limits
<u> X </u>	1. Worker’s Compensation & Employer’s Liability	▪ Statutory Limits of the State of Texas
<u> X </u>	2. General Liability	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.
<u> </u>	3. XCU Coverage	▪ Minimum \$1,000,000.00 each occurrence; ▪ Minimum \$2,000,000.00 in the aggregate.

<u> X </u>	4. Professional Liability	<ul style="list-style-type: none"> ▪ Minimum \$ 1,000,000.00 each claim; ▪ Minimum \$ 2,000,000.00 in the aggregate.
<u> </u>	5. Umbrella Coverage or Excess Liability Coverage	<ul style="list-style-type: none"> ▪ An amount of \$ 2,000,000.00.
<u> X </u>	6. McKinney and its officers, agents, representatives and employees named as additional insured on General Liability Policy, as provided above. This coverage is primary to all other coverage City may possess.	
<u> X </u>	7. General Liability Insurance provides for a Waiver of Subrogation against McKinney for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. All insurance policies that are required to name McKinney as an additional insured must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.	
<u> X </u>	8. Thirty (30) days' notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.	
<u> X </u>	9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).	
<u> X </u>	10. The Certificate of Insurance must state the project title.	
<u> </u>	11. Other Insurance Requirements (State Below):	

STATE OF _____ §
COUNTY OF _____ §

I, _____, a member of Contractor team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Program (Check all that apply):

- _____ Ownership of ten percent (10%) or more of the voting shares of the business entity.
- _____ Ownership of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.
- _____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.
- _____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty-Five Thousand and 00/100 Dollars (\$25,000.00).
- _____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.
- _____ Other: _____.
- _____ None of the Above.

Upon filing this affidavit with the City of McKinney, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the TEX. GOV'T CODE, is a member of a public body which took action on the agreement.

Signed this _____ day of _____, 2020.

Signature of Official/Title

BEFORE ME, the undersigned authority, this day personally appeared _____ and on oath stated that the facts hereinabove stated are true to the best of his/her knowledge or belief.

Sworn to and subscribed before me on this ____ day of _____, 2020.

Notary Public in and for the State of _____
My commission expires: _____

Exhibit E
Conflict of Interest Questionnaire, Form CIQ

CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity		FORM CIQ
<p>This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.</p> <p>This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).</p> <p>By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.</p> <p>A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.</p>	OFFICE USE ONLY	
<p>1 Name of vendor who has a business relationship with local governmental entity.</p>	<p>Date Received</p>	
<p>2 <input type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)</p>		
<p>3 Name of local government officer about whom the information is being disclosed.</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Name of Officer</p>		
<p>4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.</p> <p style="margin-top: 20px;">A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?</p> <p style="margin-left: 100px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p> <p style="margin-top: 10px;">B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?</p> <p style="margin-left: 100px;"> <input type="checkbox"/> Yes <input type="checkbox"/> No </p>		
<p>5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.</p>		
<p>6 <input type="checkbox"/> Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).</p>		
<p>7</p> <p style="margin-top: 20px;"> _____ Signature of vendor doing business with the governmental entity _____ Date </p>		

Exhibit F
Agreement Provisions for Non-Federal Entity Agreements under Federal Awards
(In accordance with 2 C.F.R. Part 200, Appendix II)

1. Termination for Convenience

McKinney may terminate performance of work under this contract in whole or, from time to time, in part if McKinney purchasing officer determines that a termination is in McKinney's best interest. McKinney may terminate any resulting contract for convenience by providing (1) a statement that the contract is being terminated for the convenience of McKinney, (2) the effective date of termination, (3) the extent of termination, (4) any special instructions, and (5) the steps the Contractor is to take to minimize the impact on personnel. Upon any notification of termination for convenience, the Contractor is to (1) stop work immediately on the terminated portion of the contract, (2) terminate all subcontracts related to the terminated portion of the prime contract, (3) advise McKinney of any special circumstances precluding stoppage of work, (4) perform the continued portion of the contract if the termination is partial, (5) take any action necessary to protect property in the Contractor's possession in which McKinney has an interest, (6) notify McKinney of any legal proceedings growing out of any subcontract, (7) settle any subcontractor claims arising out of the termination, and (8) dispose of termination inventory as directed by McKinney

2. Partially Completed Work

No later than the first calendar day after the termination of this Agreement, or at McKinney's request, Contractor shall deliver to McKinney all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of this contract. Contractor shall not make or retain any copies of the work or any and all documentation or other products and results of the services without the prior written consent of McKinney.

3. Default

If Contractor is found to be in default under any provision of this contract, McKinney may cancel the contract with written notice to Contractor and either re-solicit or award the contract to the next best responsive and responsible respondent. In the event of abandonment or default, Contractor will be responsible for paying damages to McKinney including, but not limited to, procurement costs, and any consequential damages to McKinney resulting from contractor's non-performance. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed.

4. Right to Audit

The federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

5. Small Business, Minority-Owned Firms and Women's Business Enterprises Efforts

Consistent with federally funded projects, McKinney shall make efforts to ensure that small and minority-owned businesses, women's business enterprises, are used to the fullest extent practicable. This is basically accomplished through the use of the Texas Certified Historically Underutilized Business (HUB) list. Additional efforts shall include, but shall not be limited to:

- a. Including such firms, when qualified, on solicitation mailing lists;
- b. Encouraging their participation through direct solicitation of bids or proposals whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by such firms;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by such firms;
- e. to Encourage contracting with consortiums of small businesses, minority-owned businesses, women's business enterprises when a contract is too large for one of these firms to handle individually;
- f. Supplementing the HUB list by using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

6. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148)

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5). In accordance with the statute, Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3). The act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

7. Agreement Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the

standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

8. Rights to Inventions Made Under a Contract or Agreement.

If the Federal award meets the definition of “funding agreement” under 37 CFR Sec. 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements for 37 CFR Part 401, “Right to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

9. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

10. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

11. Debarment and Suspension (Executive Orders 12549 and 12689)

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1086 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension,” SAM Exclusions contains the names of parties debarred, suspended or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12. Equal Employment Opportunity

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of

“federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.”