

I.
RECITALS

The recitals hereinabove set forth are incorporated herein for all purposes and are found by the Parties to be true and correct. Exhibit A is attached and incorporated herein for all purposes.

II.
TERM

The term of this contract shall begin upon the execution by both parties and shall end on December 31, 2024 (or on the date upon which the City has fulfilled its \$1,000,000.00 commitment to MCC as described in Section VI (“Financial Agreement”) below, whichever occurs earlier), except for Sections III, IV, VI, and VII, which shall survive termination of the Contract. This contract shall remain in effect for this term unless the City and/or MCC decide to terminate said Contract. Neither the City nor MCC needs to provide a reason for the termination. The termination will be effective thirty (30) days from the date of receipt of written notice of intent to terminate by either party.

III.
MCC’s BACKGROUND; SCOPE OF SERVICES

McLennan Community College is a public, two-year institution, serving a diverse student population and known for its strong health professions programs, including nursing and respiratory therapy. MCC’s health professions program faculty and leadership recognized and responded to the need to press forward and provide the Central Texas healthcare community with well-prepared health care workers. During the COVID-19 pandemic, the College has been committed to supporting the community by loaning equipment and supplies to local hospitals, providing health professions students to help with vaccination clinics, making a location available for a COVID testing site, and offering vaccination clinics on our campus.

During the pandemic, MCC has lost revenue due to the decrease in student enrollment, which affects not only tuition and fees, but also affects future State Appropriations. (The State of Texas funds McLennan Community College on a 2-year basis using a funding mechanism that factors in the institutions enrollment to determine future funding levels.) MCC is currently experiencing lost revenue from its own student enrollment, and MCC expects future lost revenue as it receives decreased future State appropriations for the upcoming Summer 2022 and Fall 2022 Terms. The City is agreeing to reimburse MCC an amount not to exceed \$1,000,000.00 (One Million Dollars and Zero Cents) to assist MCC is in recovering its lost revenue due to the public emergency COVID-19 pandemic.

Details and estimated amounts of lost revenue are attached in Exhibit B, which is incorporated herein for all purposes.

MCC agrees to continue to provide education and job training services in the City of Waco that are consistent with the goals of the Waco City Council and are detailed in MCC's Services Plan/Scope of Work ("Plan") and the proposal submitted to the City, attached hereto as **Exhibit B**.

MCC will not alter, amend or change the services identified in **Exhibit B** without first making a request in writing to the City and receiving written permission from the City to do so. In the event that MCC fails to provide job training services identified in **Exhibit B**, or MCC alters, amends, or changes the services provided without prior written approval from the City, the City reserves the right to deny funding or payment of a request for reimbursement of funds from MCC.

IV. **REPORTS**

MCC agrees to submit to the City Manager or City Manager's designee the following documentation and reports: at the end of each term, MCC will provide the City with a comparison of revenue for the current terms compared with the corresponding 2019 Term.

The Parties acknowledge that MCC is political subdivision of the State of Texas. If this status changes during the life of this agreement, MCC will immediately notify the City.

V. **AUDIT**

As an entity receiving more than \$20,000.00 from the City of Waco, MCC shall have a financial audit performed by an independent certified public accountant in accordance with U.S. generally accepted auditing standards. If the entity receives federal assistance in excess of \$750,000.00, MCC will have a financial audit performed in accordance with the Single Audit Act and Uniform Guidance. Any communications on internal control deficiencies, including a management letter, required by professional standards must be provided to the City. Also, any communications required by professional standards related to fraud or illegal acts must be provided to the City.

MCC hereby gives the City the right to share MCC's audit and all related documents from MCC's auditor with third parties, including but not limited to, the Mayor, the City Council, the Budget and Audit Committee, other employees of the City of Waco and any other person to whom release of information is required under the Texas Public Information Act.

VI. **FINANCIAL AGREEMENT**

The City agrees to pay an amount not to exceed \$1,000,000.00 for the term of this Contract. The City reserves the right, in its sole discretion to reduce the total amount paid to MCC under the terms of this contract.

- A. MCC will be paid at the end of each of the following Terms according to MCC's calculated revenue loss:
 - 1. State Appropriations (May 2022 through August 2023)
 - 2. 2022 Summer Enrollment (May 2022 through August 2022)
 - 3. 2022 Fall Enrollment (August 2022 through December 2022)
- B. MCC will be paid within fifteen (15) business days after the City's receipt of MCC's calculated revenue loss and request for payment.
- C. MCC agrees that no City of Waco funds shall be used to pay any settlement for debt arising from any criminal/civil claims pursuant to litigation expenses or awards on behalf of MCC or agents thereof. The City reserves the right to deny funding or request for reimbursement of funds in order to enforce this provision.
- D. MCC may not use or expend funds provided by the City to MCC for any item or expenditure that is not identified in **Exhibit B** without first making a request in writing to the City and receiving written permission from the City to do so. In the event that MCC uses or expends funds provided by the City for any item or expenditure that is not identified in **Exhibit B** without obtaining prior written approval from the City, the City reserves the right to deny funding or payment of a request for reimbursement of funds from MCC.

VII. **COMPLIANCE**

The City Manager or designee will review the detailed progress reports submitted by MCC and the cumulative detailed progress report submitted by MCC and shall decide if satisfactory progress is being made toward accomplishing the items set forth in **Exhibit B**. If the City Manager or designee determines that satisfactory progress is not being made toward accomplishing the items set forth in **Exhibit B**, or if a certified audit is not submitted by the deadlines set out in Section IV, then payment under this contract will be withheld until it is determined that satisfactory progress is being made toward accomplishing the items set forth in **Exhibit B** and all reporting requirements, including the certified audit have been met. MCC can appeal the decision of the City Manager to the City Council.

VIII. **EXAMINATION OF RECORDS**

MCC agrees that the City shall have the right to examine any information including MCC's books, documents, papers, records, and/or accounts (including but not limited to, notices and minutes for board and membership meetings and any other records documenting the actions of the board and/or membership) that are directly pertinent to this Contract to the extent that they relate to transactions affecting MCC's compensation as set forth in this Contract. MCC shall make said information available within 24 hours of any verbal or written request made by the City. MCC agrees to maintain all books, records, and reports required under this Contract for a period of not less

than four (4) years. It is the responsibility of MCC to ensure that City funds are applied towards MCC projects.

If MCC has any significant deficiencies in internal control in their certified audit regarding funds provided by the City, the City will withhold funding until the corrections are made. If the finding(s) is/are not corrected, the City has the right to terminate this contract as described in Section I of this Contract.

If MCC had any significant deficiencies in internal control in their certified audit of the year prior to this Contract year regarding any MCC funds (not allocated by the City), and those findings are not corrected in the following year's certified audit, the City has the right to withhold funding until the corrections are made. If the finding(s) is/are not corrected the City has the right to terminate this Contract as described in Section I of this contract.

IX.
INDEPENDENT CONTRACTOR

MCC shall carry out the terms of this Contract as an Independent Contractor and not as an agent, servant, or employee of City. MCC shall not receive any employee benefits. Likewise, the employees of MCC are not the agents, servants, or employees of the City. For all purposes hereunder, MCC is and shall be deemed to be an Independent Contractor, and it is mutually agreed that nothing contained herein shall be deemed or construed to constitute a partnership or joint venture between MCC and City. MCC has no binding authority to act on behalf of the City.

X.
DRUG-FREE WORKPLACE

MCC will be subject to the drug-free workplace requirements as set forth in the "Drug Free Workplace Act Certification", attached hereto and incorporated herein as **Exhibit "C"**.

XI.
INDEMNIFICATION

IF MCC FAILS TO PROVIDE COMPREHENSIVE GENERAL LIABILITY INSURANCE NAMING CITY AS ADDITIONAL INSURED, THEN MCC AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED UNDER THIS CONTRACT, AND HEREBY AGREES TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY OR IN CONNECTION WITH THE SERVICES TO BE RENDERED HEREUNDER, WHETHER

OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY THE SOLE NEGLIGENCE OF THE CITY, ITS EMPLOYEES, AGENTS, OR SERVANTS, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS CONTRACT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY. IF MCC PROVIDES COMPREHENSIVE GENERAL INSURANCE NAMING CITY AS AN ADDITIONAL INSURED, THEN THIS SECTION SHALL NOT APPLY.

XII.
TAX CERTIFICATION AND OFFSET OF OTHER DEBTS AGAINST CITY

This Contract is subject to Article VIII Section 8 of the City of Waco, Texas Charter, as amended, which states:

The City shall be entitled to counterclaim and offset against any debt, claim, demand or account owed by the City to any person, firm or corporation who is in arrears to the City of Waco for taxes, in the amount of taxes so in arrears, and no assignment or transfer of such debt, claim, demand or account after the said taxes are due, shall affect the right of the City to so offset the said taxes against the same.

MCC agrees that the City is entitled to counterclaim and offset against any debt, claim, demand, or account owed by the City to MCC pursuant to this Contract, for any debt owed to the City, other than for arrearage of taxes which are governed by the above paragraph. The City may withhold from payment under this Contract an amount equal to the total amount of debts owed to the City by MCC. The City may apply the amount withheld to the debts owed to the City by MCC until said debts are paid in full.

XIII.
STANDING OF MCC

MCC shall comply with the terms of this Contract and all applicable state laws and City ordinances. MCC must be:

- a. Incorporated and maintain good standing as a tax-exempt organization with the United States Internal Revenue Service;
- b. In good standing with each Federal, State or local agency that has a contractual relationship with the applicant project;
- c. In good standing with each Federal, State, or local agency that has a financial, tax, or proprietary relationship with it; and
- d. Conducting business in accordance with MCC's adopted bylaws.

XIV.
DISCLOSURE OF RELATIONS AND CONFLICT OF INTEREST

Prior to or at the time of execution of this Agreement, MCC will furnish the City with the following fully completed documents, attached hereto as:

1. **Exhibit "D"** - Disclosure of Relations With City Council Member, Officer or Employee of City of Waco; and
2. **Exhibit "E"** - Conflict of Interest Questionnaire.

XV.
EQUAL EMPLOYMENT OPPORTUNITY

MCC agrees that during the performance of this Contract it will:

- (a) Treat all members, vendors, and employees without discrimination as to race, color, religion, sex, gender identity or expression, sexual orientation, national origin, marital status, age, disability, genetic information, pregnancy, veteran status, or any other legal protected status under applicable federal, state, and local laws.
- (b) Identify itself as an "Equal Opportunity Employer" in all help wanted advertising or requests. MCC shall be advised of any complaints filed with the City, alleging that MCC is not an Equal Opportunity Employer. The City reserves the right to consider its reports from its human relations administrator in response to such complaints in determining whether or not to terminate any portion of this Contract for which purchase orders or authorities to deliver have not been included, however, MCC is specifically advised that no Equal Opportunity Employment complaint will be the basis for cancellation of this Contract for which a purchase order has been issued or authority to deliver granted.

XVI.
MISCELLANEOUS REQUIREMENTS

- (a) **Venue:** Venue for any lawsuit involving this Contract shall be in McLennan County, Texas.
- (b) **Choice of Law:** This Contract is governed by the laws of the State of Texas.
- (c) **Entire Contract:** This Contract constitutes the entire Contract between City and MCC for services to be provided to City by MCC, and all negotiations and all understandings between the Parties are merged herein. The terms and conditions of this Contract specifically replace and supersede any prior discussions, terms, documents, correspondence, conversations, or other written or oral understanding not contained herein or specifically adopted by reference.
- (d) **Partial Invalidity:** If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

- (e) **Survival:** Any provisions which by their terms survive the termination of this Contract shall bind its legal representatives, heirs, and assigns as set forth herein. In particular, the requirements related to an audit shall survive the termination of this Contract.
- (f) **Assignment:** MCC shall not assign, transfer, or encumber any right or interest in this Contract, in whole or in part, without prior written approval of City.
- (g) **Notices:** Each notice to City shall be sent to the City Manager, City of Waco, P.O. Box 2570, Waco, Texas 76702, and each notice to MCC shall be sent to MCC President, 1400 College Drive, Waco, Texas 76708. Each formal notice required by the terms of this Contract shall be in writing and sent by facsimile, telex, courier or by registered or certified mail.
- (h) **Benefits:** This Contract shall bind, and the benefits thereof shall inure to the respective parties hereto, their heirs, legal representative, executors, administrators, successors, and assigns. This Contract confers no rights or remedies upon any third parties; there are no intended third-party beneficiaries to this Contract.
- (i) **Amendments:** This Contract can be supplemented and/or amended only by a dated written document executed by both parties.
- (j) **Multiple Copies:** This Contract may be executed in multiple counterparts each of which constitutes an original.
- (k) **Article and Section Headings:** The Article and Section headings contained herein are for convenience and reference and are not intended to define or limit the scope of any provision of this Contract.
- (l) **Misspelled Words:** Misspelling of one or more words in this Contract shall not void this Contract. Such misspelled words shall be read so as to have the meaning apparently intended by the parties.
- (m) **Authority to Execute.** The City and MCC affirmatively state and represent that their respective governing bodies have authorized the execution of this Contract and that once executed this Contract is enforceable in accordance with its terms.
- (n) **Exhibits.** All exhibits described in this Contract are attached hereto and incorporated herein by reference for all purposes.

This Contract is to be executed in multiple counterparts each of which constitutes an original.

EXECUTED this _____ day of _____, 2022.

McLENNAN COMMUNITY COLLEGE

By: _____

Printed Name: _____

Title: _____

ATTEST:

CITY OF WACO, TEXAS

By: _____

Bradley Ford
City Manager

APPROVED AS TO FORM AND LEGALITY:

Kathleen Perdon, Sr. Assistant City Attorney