**AGREEMENT BETWEEN THE CITY OF NEW BRAUNFELS AND THE MCKENNA FOUNDATION TO PROVIDE A FINANCIAL CONTRIBUTION FOR THE PURPOSE OF PROVIDING UTILITY BILL ASSISTANCE**

**STATE OF TEXAS §**
**§**
**COUTY OF COMAL §**

This Agreement is made this the 9th day of October 2023 by and between the City of New Braunfels, a Municipal Corporation of the State of Texas, hereinafter called "City", acting herein by and through its City Manager, and the McKenna Foundation, a private nonprofit corporation, hereinafter called "Recipient", acting by and through its duly elected officers.

## SECTION 1.
## LEGAL AUTHORITY

1.1 The American Rescue Plan Act of 2021 (ARPA) was signed into law on March 11, 2021, to provide relief to state, local, and Tribal governments, enabling them to continue to support the public health response to the Coronavirus Disease 2019 (COVID-19) and lay the foundation for a strong and equitable economic recovery. Included within the ARPA, the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program delivers $350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. In general, the SLFRF-ARPA program was created to ensure that governments have the financial resources needed to 1) fight the pandemic and support families and businesses struggling with its public health and economic impacts, 2) maintain vital public services, even amid declines in revenue, and 3) build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity. SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, and ends on December 31, 2026.

The City of New Braunfels has received an allocation from the U.S. Department of the Treasury's (Treasury) SLFRF. In addition to other eligible uses, recipients may use funds "to respond to the public health emergency with respect to COVID-19 or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality" e.g., responses to the negative economic impacts that were experienced by those impacted as a result of the pandemic.

Guidance issued by the Treasury allows recipients to serve impacted communities by providing food assistance; rent, mortgage, or utility assistance; and counselling and legal aid to prevent eviction or homelessness.

## SECTION 2.
## TERM OF AGREEMENT

2.1 This Agreement shall become effective on October 9, 2023, and terminate on September 30, 2026, or when funding is exhausted, whichever occurs first.

## SECTION 3.
## SERVICES TO BE PROVIDED

3.1 The City's funds will be placed into a fund maintained by the Recipient and be utilized exclusively to increase funding and expand eligibility to utility assistance programs being administered in partnership with local nonprofit agencies. The City's contribution will be limited to individuals and families that reside within the city limits of New Braunfels. The City's financial contribution for the utility assistance program will be an amount not to exceed $500,000, including funds disbursed in the previous Agreement between the Parties which is attached hereto as Exhibit B. Additional funding may be contributed to the utility assistance program under this Agreement upon approval by City Council.

Funds will be issued by City upon Recipient's request based on program need. Recipient will disburse funds to its nonprofit subrecipients in accordance with its standard disbursement process. All nonprofit subrecipients will issue payments directly to the utility company on behalf of the beneficiaries of the utility assistance program; no payments are to be issued directly to customers of the utility company. If applicable, all undispersed funds will subsequently be returned to City at end of contract period.

When the full amount of the City's financial contribution has been exhausted, all electronic and/or hardcopy documentation associated with the funds disbursed by Recipient will be provided to the City for proper document retention. It may be necessary for the City to request additional supporting documentation such as cancelled checks after the Term of Agreement therefore, Recipient is required to retain records and supporting documentation for a minimum of five (5) years after the Agreement's termination date in accordance with SLFRF requirements.

3.2 Recipient and its nonprofit subrecipients understand and agree that time is of the essence in the administration and disbursement of the funds. Failure by the Recipient to perform or comply with the contract period is considered a material breach of contract and may result in termination of the Agreement.

3.3 There is no fee owed to Recipient by City for this Agreement as it supports a financial contribution by the City to a fund maintained by Recipient.

## SECTION 4.
## INDEPENDENT CONTRACTOR

4.1 It is expressly understood and agreed by and between the parties that the Recipient is hired and engaged as an independent contractor and is not an officer, agent, or employee of the City.

## SECTION 5.
## MANAGEMENT OF FUNDS

5.1 The City designates the Recipient as the party to receive and disburse funds from the City to its nonprofit subrecipients in the amount not to exceed $500,000, including funds disbursed

in the previous Agreement. As all expenditures under this Agreement are susceptible to Federal audit, the Recipient assures that all funds will be utilized in accordance with ARPA guidelines.

5.2 Recipient agrees to safeguard all funds received from the City within Recipient's financial account(s). It is understood and agreed by and between the parties that, approval by the City, a fiduciary duty is created with respect to expenditure of the funds provided. Funds received by Recipient from the City must be accounted in the Recipient's financial system in such a manner that all revenues, expenses, and balances in the account(s) are discernible from Recipient's other monies.

5.3 The Recipient will perform an audit of the expenditures supported by the City's financial contribution upon completion of the utility assistance provided by its nonprofit subrecipients or exhaustion of City-provided funds, whichever occurs first. If applicable, any undispersed funds will be paid back to the City by the Recipient on or before October 31, 2026.

5.4 Recipient agrees to maintain complete and accurate financial records of each receipt and expenditure of the funds from the City. Financial records must be submitted with all hardcopy and electronic files, containing information such as eligible financial assistance applications, including proof of financial hardship or inability to cover utility expenses. Complete records, electronic and/or hardcopy versions, must be submitted to City on or before October 31, 2026.

## SECTION 6.
## TRANSFER OF FUNDS

6.1 The City will be responsible for all transfer of funds to the Recipient as set forth in this agreement. If applicable, all undispersed funds will subsequently be returned to City.

## SECTION 7.
## INDEMNIFICATION

7.1 Recipient agrees to indemnify the City, its officers, agents, and employees, from any and all claims, losses, causes of action and damages, suits, and liability of every kind including all expenses of litigation, courts costs, and attorney fees, for injury to or death to any person, or for damage to any property arising from or in connection with the operations of the Recipient, its officers, agents and employees carried out in furtherance of the Agreement.

## SECTION 8.
## INSURANCE

8.1 The Recipient must maintain a comprehensive general liability insurance policy, with an insurance company or companies authorized to do business in the state of Texas, which shall include bodily injury, property damage, contractual and automobile liability coverage with a minimum of not less than $500,000. In addition, workers' compensation insurance coverage must be provided by the Recipient in accordance with State law.

## SECTION 9.
## TERMINATION

9.1 Termination of this Agreement will be in accordance with Exhibit A. If either party materially breaches this Agreement, the other party may terminate the Agreement by providing written notice to the defaulting party. Should a dispute arise regarding the existence of a material breach, either party may request that the issue be presented to a licensed mediator.

## SECTION 10.
## NOTICE

10.1 Communication and details concerning this contract shall be directed to the following Recipient and City representatives.

**If to the Recipient:**
Alice Jewell, Chief Executive Officer
McKenna Foundation
801 West San Antonio St.
New Braunfels, TX 78130
830-606-9500; ajewell@mckenna.org

**If to the City:**
Sandy Paulos, Director of Finance
City of New Braunfels
550 Landa St.
New Braunfels, TX 78130
830-221-4387; spaulos@newbraunfels.gov

## SECTION 11.
## COMPLIANCE WITH LAWS

11.1 In performing its duties under this Agreement, the Recipient must, at all times, comply with the ordinances of the City of New Braunfels and all applicable laws of the State of Texas. In performing its duties under this Agreement, the Recipient must, at all times, comply with the requirements of the SLFRF funding, and with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this contract. The Recipient further agrees that funding distributed under this agreement will be utilized to supplement rather than supplant funds otherwise available. Required Federal provisions are provided in Exhibit A of this Agreement.

U.S. Treasury's SLFRF Guidance:
https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf

U.S. Treasury's SLFRF Final Rule:
https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf

Should the Recipient have any questions regarding the requirements or use of SLFRF funding, they must contact the City for guidance and/or clarification.

## SECTION 12.
## PROHIBITION AGAINST DISCRIMINATION

12.1 In the performance of the Agreement, the Recipient shall not discriminate against any employee or applicant for employment because of an individual's race, color, religion, national origin, sex, or mental or physical disability. Proven breach of this provision may be regarded as a material breach of this Agreement allowing for termination.

## SECTION 13.
## CONTROLLING LAW

13.1 It is understood and agreed that in the event any provision of this Agreement is inconsistent with the requirements of the SLFRF funding, or any other applicable Federal, state, or local law, the requirements of the federal law will control.

## SECTION 14.
## ENTIRE AGREEMENT

14.1 This Agreement and supporting Exhibit(s) hereto constitute the entire agreement between the parties, relative to the SLFRF funds made the basis hereof. It is understood and agreed that the City Charter of the City of New Braunfels requires that all contracts with the City be in writing and approved by the City Council which has occurred on or about October 9, 2023. The prior Agreement between the Parties dated September 12, 2022, that expired on September 30, 2023, is herein included as Exhibit B.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate originals, in the City of New Braunfels, Comal County, Texas on this ____ day of October 2023.

*[Signatures on Next Page]*

CITY OF NEW BRAUNFELS

BY:

_____

Robert Camareno
City Manager

MCKENNA FOUNDATION

BY:

_____

Alice Jewell
Chief Executive Officer

ATTEST:

_____

Gayle Wilkinson, City Secretary

Exhibit(s):

Exhibit A: Federal Provisions
Exhibit B: Agreement dated September 12, 2022

EXHIBIT A – FEDERAL PROVISIONS

**REQUIRED PROVISIONS FOR CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS (SLFRF):** 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity, including grantee and subgrantee, under the Federal award must contain provisions covering the following, as applicable.

Thereby, this Exhibit is hereby expressly incorporated into the agreement between the City and the Recipient. To the extent that the terms of the Agreement and this Exhibit conflict, the terms of this Exhibit shall control.

**(A)** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**(B)** All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

As such, the City may, at its sole discretion, terminate this Agreement, without recourse, liability or penalty against the City, upon written notice to Contractor. In the event Contractor fails to perform or comply with an obligation or a term, condition or provision of this Agreement, City may, upon written notice to Contractor, terminate this agreement for cause, without further notice or opportunity to cure. Such notification of Termination for Cause will state the effective date of such termination, and if no effective date is specified, the effective date will be the date of the notification. City reserves the right to enforce the performance of this contract in any manner prescribed by law and in the event of breach or default of this contract, may contract with another party with or without solicitation of proposals or further negotiations. As a minimum, Contractor may be required to pay any difference in the cost of securing the services covered by this contract or compensate for any loss to City should it become necessary to contract with another source because of default, plus reasonable administrative costs and attorney's fees. City and Contractor may mutually agree to terminate this Agreement. City in its sole discretion will determine if, as part of the agreed termination, Contractor is required to return any or all of the disbursed grant funds. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement, such as requiring payments as reimbursements rather than advance payments, requiring additional project monitoring, and the partial or entire suspension or termination of the Agreement. Following termination by the City, Contractor shall continue to be obligated to the City for the return of grant funds in accordance with applicable provisions of this Agreement. In the event of termination under this Section, City's obligation to provide advance payments and/or reimburse costs for Contractor is limited to allowable costs incurred and paid by the Contractor prior to the effective date of termination, and any allowable

costs determined by City, and as per Federal requirements, to be reasonable and necessary to cost-effectively close out the Agreement. Termination of this Agreement for any reason or expiration of this Agreement shall not release the Parties from any liability or obligation set forth in this Agreement that is expressly stated to survive any such termination or expiration.

**(C)** 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 Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**(D)** 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, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). 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, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). 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.

**NOTE FOR SLFRF FUNDS:** Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

**(E)** Contract 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.

**(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 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 of 37 CFR Part 401, "Rights 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.

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

Therefore, for contracts exceeding $150,000, the Contractor agrees to the following:

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. Contractor agrees to report each violation to the City and understands and agrees that City will, in turn, report each violation as required to the appropriate granting agency.

C. The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by the City.

**(H)** 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 governmentwide 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 1986 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.

**(I)** 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.

**(J)** Procurement of recovered materials. Per § 200.323, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**(K)** Prohibition on certain telecommunications and video surveillance services or equipment. Per § 200.216:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to

ensure that communications service to users and customers is sustained.
(c) See Public Law 115-232, section 889 for additional information.
(d) See also § 200.471.

**(L)** Domestic preferences for procurements. Per § 200.322:
(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
(b) For purposes of this section:
(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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**STATE OF TEXAS** §
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This Agreement is made this the 12th day of September 2022 by and between the City of New Braunfels, a Municipal Corporation of the State of Texas, hereinafter called "City", acting herein by and through its City Manager, and the McKenna Foundation, a private nonprofit corporation, hereinafter called "Recipient", acting by and through its duly elected officers.

**SECTION 1.**
**LEGAL AUTHORITY**

1.1 The American Rescue Plan Act of 2021 (ARPA) was signed into law on March 11, 2021, to provide relief to state, local, and Tribal governments, enabling them to continue to support the public health response to the Coronavirus Disease 2019 (COVID-19) and lay the foundation for a strong and equitable economic recovery. Included within the ARPA, the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) program delivers $350 billion to state, local, and Tribal governments across the country to support their response to and recovery from the COVID-19 public health emergency. In general, the SLFRF-ARPA program was created to ensure that governments have the financial resources needed to 1) fight the pandemic and support families and businesses struggling with its public health and economic impacts, 2) maintain vital public services, even amid declines in revenue, and 3) build a strong, resilient, and equitable recovery by making investments that support long-term growth and opportunity. SLFRF funds may only be used for costs incurred within a specific time period, beginning March 3, 2021, and ends on December 31, 2026.

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**SECTION 2.**
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## SECTION 3.
## SERVICES TO BE PROVIDED

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Upon receipt of City Council approval, City will issue $100,000 to the Recipient; additional funds will be issued by City upon Recipient's request based on program need. Recipient will disburse funds to its nonprofit subrecipients in accordance with the current disbursement process. All nonprofit subrecipients will issue payments directly to the utility company on behalf of the beneficiaries of the utility assistance program; no payments are to be issued directly to customers of the utility company. If applicable, all undispersed funds will subsequently be returned to City at end of contract period.

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3.2 Recipient and its nonprofit subrecipients understand and agree that time is of the essence in the administration and disbursement of the funds. Failure by the Recipient to perform or comply with the contract period is considered a material breach of contract and may result in termination of the Agreement.

3.3 There is no fee owed to Recipient by City for this Agreement as it supports a financial contribution by the City to a fund maintained by Recipient.

## SECTION 4.
## INDEPENDENT CONTRACTOR

4.1 It is expressly understood and agreed by and between the parties that the Recipient is hired and engaged as an independent contractor and is not an officer, agent, or employee of the City.

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7.1 Recipient agrees to indemnify the City, its officers, agents, and employees, from any and all claims, losses, causes of action and damages, suits, and liability of every kind including all expenses of litigation, courts costs, and attorney fees, for injury to or death to any person, or for damage to any property arising from or in connection with the operations of the Recipient, its officers, agents and employees carried out in furtherance of the Agreement.

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11.1 In performing its duties under this Agreement, the Recipient must, at all times, comply with the ordinances of the City of New Braunfels and all applicable laws of the State of Texas. In performing its duties under this Agreement, the Recipient must, at all times, comply with the requirements of the SLFRF funding, and with all other applicable Federal, state, and local laws, regulations, and policies governing the funds provided under this contract. The Recipient further agrees that funding distributed under this agreement will be utilized to supplement rather than supplant funds otherwise available. Required Federal provisions are provided in Exhibit A of this Agreement.

U.S. Treasury's SLFRF Guidance:
https://home.treasury.gov/system/files/136/SLFRF-Compliance-and-Reporting-Guidance.pdf

U.S. Treasury's SLFRF Final Rule:
https://home.treasury.gov/system/files/136/SLFRF-Final-Rule.pdf

Should the Recipient have any questions regarding the requirements or use of SLFRF funding, they must contact the City for guidance and/or clarification.

**SECTION 12.**

**PROHIBITION AGAINST DISCRIMINATION**

12.1 In the performance of the Agreement, the Recipient shall not discriminate against any employee or applicant for employment because of an individual's race, color, religion, national origin, sex, or mental or physical disability. Proven breach of this provision may be regarded as a material breach of this Agreement allowing for termination.

**SECTION 13.**
**CONTROLLING LAW**

13.1 It is understood and agreed that in the event any provision of this Agreement is inconsistent with the requirements of the SLFRF funding, or any other applicable Federal, state, or local law, the requirements of the federal law will control.

**SECTION 14.**
**ENTIRE AGREEMENT**

14.1 This Agreement and supporting Exhibit(s) hereto constitute the entire agreement between the parties, relative to the SLFRF funds made the basis hereof. It is understood and agreed that the City Charter of the City of New Braunfels requires that all contracts with the City be in writing and approved by the City Council which has occurred on or about September 8, 2022.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate originals, in the City of New Braunfels, Comal County, Texas on this 30th day of September 2022.

*[Signatures on Next Page]*

CITY OF NEW BRAUNFELS

BY:

Robert Camareno
City Manager

MCKENNA FOUNDATION

BY:

Alice Jewell
Chief Executive Officer

ATTEST:

Gayle Wilkinson, City Secretary

Exhibit(s):

Exhibit A: Federal Provisions

EXHIBIT A – FEDERAL PROVISIONS

**REQUIRED PROVISIONS FOR CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS (SLFRF):** 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity, including grantee and subgrantee, under the Federal award must contain provisions covering the following, as applicable.

Thereby, this Exhibit is hereby expressly incorporated into the agreement between the City and the Recipient. To the extent that the terms of the Agreement and this Exhibit conflict, the terms of this Exhibit shall control.

**(A)** Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**(B)** All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

As such, the City may, at its sole discretion, terminate this Agreement, without recourse, liability or penalty against the City, upon written notice to Contractor. In the event Contractor fails to perform or comply with an obligation or a term, condition or provision of this Agreement, City may, upon written notice to Contractor, terminate this agreement for cause, without further notice or opportunity to cure. Such notification of Termination for Cause will state the effective date of such termination, and if no effective date is specified, the effective date will be the date of the notification. City reserves the right to enforce the performance of this contract in any manner prescribed by law and in the event of breach or default of this contract, may contract with another party with or without solicitation of proposals or further negotiations. As a minimum, Contractor may be required to pay any difference in the cost of securing the services covered by this contract or compensate for any loss to City should it become necessary to contract with another source because of default, plus reasonable administrative costs and attorney's fees. City and Contractor may mutually agree to terminate this Agreement. City in its sole discretion will determine if, as part of the agreed termination, Contractor is required to return any or all of the disbursed grant funds. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this Agreement, such as requiring payments as reimbursements rather than advance payments, requiring additional project monitoring, and the partial or entire suspension or termination of the Agreement. Following termination by the City, Contractor shall continue to be obligated to the City for the return of grant funds in accordance with applicable provisions of this Agreement. In the event of termination under this Section, City's obligation to provide advance payments and/or reimburse costs for Contractor is limited to allowable costs incurred and paid by the Contractor prior to the effective date of termination, and any allowable

costs determined by City, and as per Federal requirements, to be reasonable and necessary to cost-effectively close out the Agreement. Termination of this Agreement for any reason or expiration of this Agreement shall not release the Parties from any liability or obligation set forth in this Agreement that is expressly stated to survive any such termination or expiration.

**(C)** 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 Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**(D)** 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, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). 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, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). 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.

**NOTE FOR SLFRF FUNDS:** Furthermore, among other requirements contained in 2 CFR 200, Appendix II, all contracts made by a recipient or subrecipient in excess of $100,000 with respect to a capital expenditure that involve employment of mechanics or laborers must include a provision for compliance with certain provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

**(E)** Contract 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.

**(F)** Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 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 of 37 CFR Part 401, "Rights 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.

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

Therefore, for contracts exceeding $150,000, the Contractor agrees to the following:

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

B. Contractor agrees to report each violation to the City and understands and agrees that City will, in turn, report each violation as required to the appropriate granting agency.

C. The Contractor agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by the City.

**(H)** 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 governmentwide 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 1986 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.

**(I)** 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.

**(J)** Procurement of recovered materials. Per § 200.323, a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**(K)** Prohibition on certain telecommunications and video surveillance services or equipment. Per § 200.216:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to

ensure that communications service to users and customers is sustained.
(c) See Public Law 115-232, section 889 for additional information.
(d) See also § 200.471.

**(L)** Domestic preferences for procurements. Per § 200.322:
(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
(b) For purposes of this section:
(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.