

**RESOLUTION NO. 2015-09-\_\_\_ (R)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING THE SEVENTH AMENDED BYLAWS OF THE MCKINNEY COMMUNITY DEVELOPMENT CORPORATION; AND PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, the City Council, by this resolution, desires to amend the Bylaws of the McKinney Community Development Corporation.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

Section 1. The City Council of the City of McKinney, Texas hereby approves the Seventh Amendment to the Bylaws of the McKinney Community Development Corporation attached hereto as Exhibit A; and

Section 2. This Resolution shall be in full force and effect from and after its passage and adoption.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 1<sup>st</sup> DAY OF SEPTEMBER, 2015.**

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
BRIAN LOUGHMILLER  
Mayor

ATTEST:

\_\_\_\_\_  
SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
MARK S. HOUSER  
City Attorney

EXHIBIT A

**SEVENTH AMENDED BYLAWS**

**OF THE**

**MCKINNEY COMMUNITY DEVELOPMENT CORPORATION**

**WHEREAS**, the McKinney Community Development Corporation ( "Corporation") duly adopted its Sixth Amended Bylaws at a meeting of the Board of Directors in October 2013; and

**WHEREAS**, the Board has determined that the Sixth Amended Bylaws should be amended in order to clarify the procedures related to corporate governance.

NOW, THEREFORE, these Seventh Amended Bylaws for the Corporation shall be substituted for and replace the Sixth Amended Bylaws in their entirety.

**ARTICLE I**

**PURPOSE AND POWERS**

Section 1. Purpose.

The Corporation is incorporated for the purposes set forth in Article Four of its Articles of Incorporation, the same to be accomplished on behalf of the City of McKinney, Texas, a Texas municipal corporation (the "City") and as its duly constituted authority and instrumentality in accordance with the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Art. 5190.6, as amended, Tex. Loc. Gov't. Code Ann. Chapter 501 ("Act"), as amended, and other applicable laws.

Section 2. Powers.

In the fulfillment of its corporate purpose, the Corporation shall be governed by Tex. Loc. Gov't. Code Ann. Chapters 501 and 505 of the Act, and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed therein and herein and to the provisions thereof and hereof.

**ARTICLE II**

**OFFICES**

Section 1. Principal Office.

The principal office of the Corporation in the State of Texas shall be located in the City of McKinney, Collin County, Texas, at 5900 S. Lake Forest Drive, Suite 110, McKinney, TX 75070.

Section 2. Registered Office and Registered Agent.

The Corporation shall have and continuously maintain in the State of Texas a registered office and a registered agent, whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be identical with the principal office of the corporation in the State of Texas and the address of the registered office may be changed from time to time by the Board.

**ARTICLE III**

**MEMBERSHIP**

The Corporation shall have no members or stockholders.

## ARTICLE IV

### BOARD OF DIRECTORS

#### Section 1. Powers, Number and Term of Office.

- (a) The property and affairs of the Corporation shall be solely managed and controlled by a Board of Directors ("Board"), save and except those operational functions managed by the City Manager under Article IV, Section 9 below. Subject to the restrictions imposed by law, by the Articles of Incorporation, and by these Bylaws, the Board shall solely exercise all of the powers of the Corporation, including but not limited to those powers vested in the Board under Tex. Loc. Gov't. Code Ann. Chapter 501, and specifically pursuant to §501.054 and §501.062 thereof. For purposes of this section, "property and affairs" shall include, among other things, promulgating community and economic development policies, establishing community and company recruitment practices, asset management, applicant and application review, project negotiation, and project consummation.
- (b) The Board shall consist of seven (7) Directors each of whom shall be appointed by City Council of the City of McKinney ("City Council").
- (c) Each Director shall serve terms consistent with the City Council Policy on Board and Commission Appointment and Eligibility or until his or her successor is appointed by the Council; provided, however, upon the death, resignation or removal of a Director, the Council shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director. Any restriction as to term is governed by the Council.
- (d) Unless otherwise provided, terms shall expire on September 30.
- (e) Any Director, including Board officers, may be removed from office by the City Council at any time without cause.

#### Section 2. Regular and Special Meetings.

The Directors shall hold their regular meetings at such place or places within the City limits as the Board may from time to time determine; provided, however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the Corporation as specified in Article II of these Bylaws. Special meetings of the Board shall be held whenever called by the Chairman, by a majority of the Directors, by the City Manager, by the Mayor of the City, or by the City Council. Special meetings of the Board shall likewise be held within the City limits. In addition to posting a meeting, notice in accordance with these Bylaws, a copy of each such meeting notice shall be delivered by United States mail or email to each Director not less than seventy-two (72) hours before the time of the meeting. Such additional notice may be waived in writing by a Director at any time either before or after the time of the meeting and such additional notice shall be deemed waived by attendance.

#### Section 3. Notice and Texas Open Meetings Act.

As stated in the Act, Section 11(b), the Corporation shall be considered a "governmental body" within the meaning of The Texas Open Meetings Act, Texas Government Code, Sec. 551.001, and notice of each meeting and deliberation shall be given to the public in accordance with the provisions of the Texas Open Meetings Act, as it may be amended.

Section 4. Quorum and Voting.

A majority of the Directors shall constitute a quorum for the conduct of the official business of the Corporation. A majority shall be four (4) Directors. The affirmative act of four (4) Directors shall constitute the act of the Board and of the Corporation unless the act of a greater number is required by law. Directors must be present in order to vote at any meeting, and no Director may vote or attend by proxy.

Section 5. Attendance.

Regular attendance is required at all posted meetings called by the Chairman, a majority of the board, or the City Council. Attendance at the Board meetings is required in accordance with the City Council Policy on Board and Commission Member Appointment and Eligibility.

Section 6. Conduct of Business.

- (a) At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with the rules of procedure as from time to time prescribed by the Board, subject to the specific requirements of Section 9(b) below for agenda items concerning the performance of the President.
- (b) At all meetings of the Board, the Chairman shall preside, and in the absence of the Chairman, the Vice Chairman shall exercise the powers of the Chairman.
- (c) The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as Secretary of the meeting.

Section 7. Sub-Committees of the Board.

The Board may designate no more than three (3) Directors to constitute an official sub-committee of the Board to exercise such authority of the Board as may be specified in any resolution. It is provided, however, that any subcommittee shall function as a recommending body only. Final official action of the Corporation may be exercised only by the Board. The sub-committees may include external representation if deemed necessary by the Board. Each sub-committee shall keep regular minutes of the transactions of its meetings. Sub-committee minutes shall be handled in the same manner as Board minutes and voted and approved by the Board and the City Council.

Section 8. Compensation.

Officers of the Board shall not receive any salary or compensation for their services, except that they may be reimbursed for their actual and reasonable expenses incurred in the performance of their duties hereafter.

Section 9. Personnel.

The Corporation shall establish full-time and/or part-time personnel positions in accordance with this Section 9. Personnel positions so established shall be reflected in the Annual Corporation Budget and approved accordingly, as referenced in Article VI, Section 2 of these Bylaws. Corporation personnel shall be City employees performing work for the MCDC, under the supervision and direction of the City Manager or the President, as described below, while retaining their status as City employees.

- (a) The City, through its City Manager, **shall**:
  - 1. Provide employees ("Loaned Employees") for use by the MCDC. "Loaned Employees" shall include the President and all other employees of MCDC.

2. Provide all City employee benefits, including but not limited to, vacation, sick leave, health insurance, family medical leave, and TMRS, for all Loaned Employees.
3. Provide direct supervision, discipline and compensation decision-making for the President. Any compensation decision-making for other Loaned Employees and bonus compensation for all Loaned Employees shall be determined solely by the City Manager.
4. Provide indirect supervision and discipline for the other Loaned Employees through the President's direct supervisory authority over such other subordinate Loaned Employees as prescribed by Article IV, Section 10 below.
5. Provide for the hiring, management, training, and termination functions for all Loaned Employees, subject to the limitations of Article IV, Section 9(a)(4) above and Article IV, Section 10 below.
6. Provide supervisory and management support assistance to MCDC, in the event MCDC has a vacancy in the position of President.

(b) The MCDC, through its Board of Directors or through any Board-authorized subcommittee, **may**:

1. Provide periodic input to the City Manager regarding the supervision (including any performance evaluations performed by the City Manager), compensation, management and discipline of Loaned Employees, including participation in the preparation of the job description and candidate profile for the President.
2. Provide input into the interview process for the President.
3. Notwithstanding the foregoing, any two (2) Board members shall have the right to place an agenda item on any regular or special Board meeting to discuss the performance of the President. The agenda item shall first be placed on a closed session agenda; however the Board may take action resulting therefrom. Any subsequent meeting may include an agenda item on an open session agenda item regarding the performance of the President.

(c) The MCDC, through its Board of Directors, or through any Board-authorized subcommittee, **shall**:

1. Pay the actual costs incurred by City for administering TMRS, health insurance, and all other benefits for all Loaned Employees.
2. Adhere to all City personnel policies and procedures, including disciplinary appeals, for all Loaned Employees.
3. Provide office space, supplies and a safe working environment for all Loaned Employees.
4. Adhere to City policies and state and federal laws regarding workplace safety, accessibility, family leave and employment

discrimination.

5. Conduct an annual performance review of the President in conjunction with the City Manager.

Section 10. President.

The President shall be a compensated employee of the City. Subject to the City Manager' supervision and management of the President under Article VI, Section 9, the President shall be responsible for all daily operations and management of the Corporation and the implementation of Board polices and resolutions, including the management and supervision of subordinate Loaned Employees, as such are defined hereinabove. In the event a conflict arises between the Board and the City Manager regarding management of the operational functions of the Corporation, the decision of the City Manager shall be final. The President shall attend all Board meetings and perform those duties and functions as the City Manager and the Board shall prescribe. The President of the Corporation shall be hired by the City Manager; however such hiring shall be subject to the prior notice and consultation with the Board under these Bylaws and with the City Council under the Home Rule Charter. The City Manager shall have the authority to terminate the President; however, such termination shall be subject to the prior notice and consultation with the Board under these Bylaws and with the City Council under the Home Rule Charter. The City Manager and the Board, or any Board-authorized subcommittee of the Board, shall conduct an annual performance review of the President and provide a copy of the annual review to the full Board and the City Council upon is completion.

## **ARTICLE V**

### **OFFICERS**

Section 1. Titles and Terms of Office.

- (a) The officers of the Corporation shall be a Chairman; a Vice Chairman, a President, a Secretary, a Treasurer and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the Chairman shall not hold the office of Secretary. Terms of officers shall be one (1) year, ending September 30, with the right of the officer to be re-elected.
- (b) All officers, save and except the President, shall be elected by and subject to removal from office at any time by a vote of a majority of the entire Board, however, the Board may not remove the officer from the Board.

Section 2. Chairman.

The Chairman shall be a member of the Board and shall:

- (a) Preside over all meetings of the Board.
- (b) Vote on all matters coming before the Board.
- (c) Upon notice to the members of the Board, call a Special Meeting of the Board when in his or her judgment such a meeting is required.
- (d) Appoint, with Board approval, sub-committees to aid and assist the Board in its business undertakings or other matters incident to the operation and functions of the Board.

- (e) Sign and execute all contracts and other legal documents, jointly with the City Manager, in the name of the Corporation as approved by the Board.

Section 3. Vice Chairman.

The Vice Chairman shall be a member of the Board and shall exercise the powers of the Chairman during the Chairman's absence, refusal, or inability to act. Any action taken by the Vice Chairman in the performance of the duties of the Chairman shall be conclusive evidence of the Chairman's absence or inability or refusal to act at the time such action was taken.

Section 4. Treasurer.

The City's Finance Department shall have the responsibility to the disbursement, custody and security of all funds and securities of the Corporation in accordance with these Bylaws and statutes governing the Corporation formed under the Act. The Treasurer shall maintain the financial reports provided by the City's Finance Department.

Section 5. Secretary.

The Secretary may sign with the President upon the express approval of the Board in the name of the Corporation, and/or attest to the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation, shall have charge of the corporate books, records, documents and instruments, except the papers as the Board may direct, all of which shall at all reasonable time be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of Secretary subject to the control of the Board.

Section 6. Election of officers.

The Chairman, Vice Chairman, Secretary, and Treasurer shall be elected from among the members of the Board.

## ARTICLE VI

### FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

Section 1. Annual Report.

The Corporation shall prepare an annual report on or before the first day of April of each year for the City Council, outlining the accomplishments of the Corporation's activities of the previous fiscal year as they relate to the development of community facilities and the mission and the goals of the Board.

Section 2. Annual Corporate Budget.

On or before the twenty-fifth (25<sup>th</sup>) day of July of each year, the Board shall adopt a proposed budget, prepared by the City Manager and submitted to the Board for its consideration, including any Board-directed amendments thereto, of expected revenues and proposed expenditures of the next ensuing fiscal year. Upon the Board's adoption of its proposed budget, the Chairman shall forward same to the City Council for its consideration. The proposed budget shall not be effective nor shall expenditures occur until the same has been approved by the City Council.

Section 3. Books, Records, Audits.

- (a) The Corporation shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts and financial statements pertaining to its corporate funds, activities, and affairs. Notwithstanding Article V Section 4, the Corporation may maintain any financial records solely at the City

offices.

- (b) The books, records, accounts, and financial statements of the Corporation shall be audited at least once each fiscal year by an outside, independent auditing and accounting firm approved by the Board. The audit may be prepared in conjunction with the annual financial audit of the City of McKinney.

Section 4. Deposit and Investment of Corporate Funds.

- (a) All proceeds from the issuance of bonds, notes, or other debt instruments ("Obligations") issued by the Corporation shall be deposited and invested as provided in any resolution, order, indenture, or the other documents authorizing or relating to any such issuance.
- (b) All other monies of the Corporation shall be deposited, secured and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City and in compliance with the Public Funds Investment Act. The Board shall designate authorized signatures on all payment authorization and/or check requests. The accounts reconciliation and investment of such funds and accounts may be reviewed by the Finance Department of the City, at the City's expense.

Section 5. Expenditures of Corporate Money.

The monies of the Corporation, including, but not limited to, sales and use taxes collected pursuant to Chapter 505 of the Act, monies derived from the repayment of loans, rents received from the lease or use of property, proceeds from the investment of funds of the Corporation, proceeds from the sale of property, and proceeds derived from the sale of Obligations, may be expended by the Corporation for any purposes authorized by the Act, subject to the following:

- (a) Expenditures from the proceeds of Obligations shall be identified and described in the orders, resolutions, indentures, or other agreements submitted to and approved by the City Council prior to the sale and delivery of the Obligations to the purchasers thereof required by Section 6 of this Article.
- (b) Expenditures that may be made from a fund created with the proceeds of Obligations and expenditures of monies derived from sources, other than the proceeds of Obligations, may be used for the purposes of financing or otherwise providing one or more "Projects," as defined in the Act. The specific projects shall not be merely components or subparts of the same overall project. The specific expenditures shall be described in a resolution or order of the Board and shall be made after the approval thereof by the City Council, if required.
- (c) All proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required in Section 2 of this Article.
- (d) The Board shall publish notice of and hold a public hearing on each Project as required by Chapters 501 and 505 of the Act.
- (e) For any specific project utilizing discretionary funds, as such funds are identified in the corporation's City Council approved annual budget, the Board has sole approval authority and may begin making expenditures sixty (60) days subsequent to the date that the



public hearing notice is published as required by Sec. 5 (d), unless the Project is protested as provided in the Act. Any non-discretionary project's approval shall require the affirmative vote of four (4) City Council members. The Board shall not expend any funds for a non-discretionary Project that fails to receive required approval from the City Council.

Section 6. Issuance of Obligations.

No Obligations, including refunding Obligations, shall be sold and delivered by the Corporation unless and until the City Council shall approve such Obligations by action taken no more than one hundred and twenty (120) days prior to the date of sale of the Obligations.

Section 7. Conflict of Interest.

The members of the Board are local public officials within the meaning of the Texas Local Government Code, Chapter 171. If a Director has a substantial interest in a business entity or real property which is the subject of deliberation by the Board, the Director shall file an affidavit with the Secretary of the Corporation as to the nature and extent of the interest. Such affidavit shall be filed prior to any vote or decision upon the matter of the Board, and the interested Director shall abstain from any vote, decision or discussion upon the matter. No Council member, officer or employee of the City of McKinney shall have a financial interest, direct or indirect, in any contract with the McKinney Community Development Corporation. All members of the Board shall comply with any conflict of interest rules passed by resolution of the City Council and to the extent this section conflicts with any rules passed by resolution of the City Council, the rules promulgated by City Council shall control.

Section 8. Gifts.

The Board may accept on behalf of the Corporation, any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the Corporation.

Section 9. Contracts for Service.

The Corporation may contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge any designated task which will aid or assist the Board in the performance of its duties. Such designated tasks may include but are not limited to project conceptualization/feasibility studies and project analysis. These contracts (i) shall not be considered "Projects" under the Act; (ii) shall not require the public hearings provided by Section 5 (d) and (e), and (iii) except as otherwise provided herein, shall not be subject to City Council approval. City Council approval of such contract is required if the proposed contract is not already included in the current annual budget as a specific expenditure and if such contract exceeds Seventy-Five Thousand and No /100 Dollars (\$75,000.00). Furthermore, no such contract shall ever be approved or entered into which seeks or attempts to divest the City Manager of his or her authority or of the Board of its discretion and policy-making functions in discharging the duties herein set forth.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year.

The fiscal year of the Corporation shall be the same as the fiscal year of the City.

Section 2. Seal.

The seal of the Corporation shall be determined by the board.

Section 3. Resignations.

Any Director or officer may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein; or, if no time be specified, at the time of its receipt by the City Council. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 4. Approval or Advice and Consent by the Council.

To the extent that these Bylaws refer to any approval by the Council or refer to advice and consent by the City Council, such advice and consent shall be evidenced by a certified copy of a resolution, order or motion duly adopted by City Council.

Section 5. Services of City Staff and Officers.

Subject to the approval of the City Manager, the Corporation shall have the right to utilize the services of the City personnel for usual and routine matters, provided that the performance of such service does not materially interfere with the other duties of such personnel of the City and may further utilize the services of City personnel for unusual and non-routine matters. The Corporation shall pay reasonable compensation to the City for such services or use of any City personnel.

Section 6. Indemnification of Directors, Officers and Employees.

- (a) As provided in the Act and in the Articles of Incorporation, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.
- (b) The Corporation shall indemnify each and every member of the Board, its officers, its employees, its attorneys, each member of City Council and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the Corporation.
- (c) The Corporation may purchase and maintain insurance on behalf of any Board member, officer, employee or agent of the Corporation, or on behalf of any person serving at the request of the Corporation as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against that person and incurred by that person in any such capacity or arising out of any such status with regard to the Corporation, whether or not the Corporation has the power to indemnify that person against liability for any of those acts.
- (d) Any indemnification or liability insurance provided under this Section may be obtained through the City's general insurance coverage.

Section 7. Legal Construction.

These Bylaws shall be construed in accordance with the laws of the State of Texas. All references in these Bylaws to statutes, regulations, or **other** sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time. It is expressly provided that the provisions of the Act applicable to corporations governed under Chapter 501 and 505 of the Act are incorporated within these Bylaws by reference. In the event of any conflict between the applicable

provisions of such Act and these Bylaws, then the applicable provisions of the Act shall control.

Section 8. Severability.

If any provision or section of these Bylaws is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision, and the Bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the Bylaws.

Section 9. Parties Bound.

The Bylaws shall be binding upon and inure to the benefit of the Directors, officers and agents of the Corporation and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise provided herein.

Section 10. Applicability of City Charter, Policies and Procedures.

The City Charter and all duly approved City policies and procedures shall apply directly to the Corporation and the Board unless such charters, policies or procedures are superseded by state law or are not related to the functions of the Board. The Board has the discretion, subject to the approval of the City Council, to adopt other policies and procedures in addition to or in place of these policies and procedures of the City.

## ARTICLE VIII

### EFFECTIVE DATE, AMENDMENTS

Section 1. Effective Date.

These Bylaws shall become effective upon the occurrence of all of the following events:

- (a) the adoption of these Bylaws by the Board; and
- (b) the approval and adoption of these Bylaws by the City Council.

Section 2. Amendments to Articles of Incorporation and Bylaws.

The Articles of Incorporation of the Corporation and these Bylaws may be amended or repealed and amended Articles of Incorporation and Bylaws may be adopted by an affirmative vote of at least four (4) Board members present at any regular meeting or any special meeting, if at least three (3) days written or electronic notice is given of an intention to amend or repeal the articles of incorporation and bylaws or to adopt new articles of incorporation and bylaws at such meeting. Any amendment of the articles of incorporation and bylaws will be effective upon approval by the City Council.

Adopted this, the 27th day of August, 2015.

\_\_\_\_\_  
Chairman of the Board of Directors

Attest:

\_\_\_\_\_  
Corporate Secretary