

RESOLUTION NO. 2012-0 - ____

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

WHEREAS, Chapters 501 and 505 of the Texas Local Government Code, as amended, (the "Act"), authorizes cities to create a non-profit corporation to act on their behalf in the promotion and financing of certain eligible projects, as defined thereunder; and

WHEREAS, the City of McKinney (the "City") has held the required election and authorized the creation of a corporation under the Act that is governed by Chapter 505; and

WHEREAS, the City authorized and approved the levy of the sales and use tax authorized by the Act and approved by the voters of the City at the aforesaid election; and,

WHEREAS, on the first day of May, 1996, the McKinney Community Facilities Development Corporation (d/b/a McKinney Community Development Corporation) (the "Board") was incorporated and organized; and,

WHEREAS, the City Council approved the original Bylaws on June 4, 1997; approved the First Amended Bylaws on September 16, 1997; approved the Second Amended Bylaws on January 4, 2000; approved the Third Amended Bylaws on June 20, 2000; and approved the Fourth Amended Bylaws on March 18, 2003;

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

Section 1. The City Council approves the Fifth Amended Bylaws of the McKinney Community Development Corporation, which bylaws are attached hereto as Exhibit A.

Section 2. This resolution becomes effective immediately upon its passage by the City Council of the City of McKinney, Texas.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 6th DAY OF MARCH, 2012.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
BLANCA I. GARCIA
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

FIFTH AMENDED BYLAWS
OF THE
MCKINNEY COMMUNITY DEVELOPMENT CORPORATION

WHEREAS, the McKinney Community Development Corporation (“Corporation”) duly adopted its Fourth Amended Bylaws at a meeting of the Board of Directors in 2003; and

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

NOW, THEREFORE, these Fifth Amended Bylaws for the Corporation shall be substituted for and replace the Fourth 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 Lake Forest Drive, Suite 110, McKinney, Texas, 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 managed and controlled by a Board of Directors ("Board"). Subject to the restrictions imposed by law, by the Articles of Incorporation, and by these Bylaws, the Board shall exercise all of the powers of the Corporation.
- (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 member of the Board of Directors shall serve a two (2) year term, or until his/her successor is appointed, unless sooner removed or resigned. Each Director shall be eligible for reappointment; however, no Director shall serve more than three (3) consecutive terms. Any vacancy occurring on the Board shall be filled by appointment of the City Council, to hold office for the unexpired term. Unless otherwise provided, terms shall expire on September 30.
- (d) The Directors constituting the first Board shall be those Directors named in the Articles of Incorporation. The respective initial terms of the Board are set forth in the Articles of Incorporation. Thereafter, each successor member of the Board shall be appointed and serve for two (2) years or until his or her successor is appointed as hereafter provided.
- (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 chair, by a majority of the Directors, by the Mayor of the City or by a majority of 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 to each Director not less than seventy-two (72) hours before the time of the meeting. A meeting notice shall be deemed delivered to any Director when deposited in the United States mail addressed to the Director at his or her address as it appears on the records of the Corporation. 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 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 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 act of a quorum of 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 meetings. Three (3) consecutive unexcused absences from scheduled regular meetings of the Board shall cause the basis for replacement of a Director. An unexcused absence is one for which the President/Chief Executive Officer did not have prior notice of such Director's non-attendance. Any Director who has four (4) or more absences in a given fiscal year shall be considered to have forfeited the seat and it shall be considered vacant and subject to appointment by the City Council.

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.
- (b) At all meetings of the Board, the chair shall preside, and in the absence of the chair, the vice chair shall exercise the powers of the chair.
- (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 sub-committee 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.

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. Other officers who are not members of the Board may be compensated as directed by the Board.

Section 9. Personnel.

The Corporation may establish full-time and part-time personnel positions. Personnel positions so established shall be reflected in the Annual Corporate Budget and approved accordingly, as referenced in Article VI Section 2 of these Bylaws. Personnel shall be employees of the City of McKinney and subject to all provisions of the City Employment Handbook, other personnel policies and the City Charter. The Board has supervision of and authority regarding such personnel for all purposes unless expressly delegated by the Board.

ARTICLE V OFFICERS

Section 1. Titles and Terms of Office.

- (a) The officers of the Corporation shall be a chair; a vice chair, 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 chair 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 shall be elected by and subject to removal from office at any time by a vote of a majority of the entire Board.

Section 2. Chair.

The chair 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 judgement 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 in the name of the Corporation as approved by the Board.

Section 3. Vice Chair.

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

Section 4. Treasurer.

The treasurer may be an employee of the City's Finance Department and shall have the responsibility to monitor 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 see to the entry of the books of the Corporation the full and accurate accounts of all monies received and paid out on account of the Corporation. The treasurer shall, at the direction and expense of the Corporation, give a bond for the faithful discharge of his/her duties in such form as the Board may require.

Section 5. Secretary.

The secretary or his/her designee shall keep the minutes of all meetings of the Board in books provided for that purpose, shall give and serve all notices, may sign with the president upon the 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. President/Chief Executive Officer.

The president/chief executive officer shall be a compensated employee of the Board. The president/chief executive officer shall be responsible for all daily operations and management of the Corporation and the implementation of Board policies and resolutions. The president/chief executive officer shall attend all Board meetings and perform those duties and functions as the Board shall prescribe. The Board shall not be required to retain a president/chief executive officer, but any person so named shall be an employee of the City of McKinney and subject to all provisions of the City Employment Handbook, other personnel policies and the City Charter.

Section 7. Election of officers.

The chair, vice chair and secretary shall be elected from among the members of the Board. The treasurer may be a Board member or may be an employee of the City, appointed by the Finance Director of the City of McKinney to oversee the finances of the Corporation.

**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 first day of July of each year, the Board shall adopt a proposed budget of expected revenues and proposed expenditures of the next ensuing fiscal year. The budget shall not be effective nor shall expenditures occur until the same has been approved by the City Council. Any budget amendment, including but not limited to the amendment of the amount or percentage of identified discretionary funds under Article VI, Sec. 5(e) below, shall also require the approval of 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 501 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. If provided for in Section 5(e) of this Article, the City Council shall also conduct a public hearing for a Project.
- (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 the 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.

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 (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 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 chair or secretary. 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.

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. Subject to approval of the City Manager or the City Council, the Corporation may 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 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 _____ day of _____, 2012.

Chair of the Board of Directors

Attest:

Board Secretary