

471-01849-2026

CAUSE NO. _____

NORTH TEXAS CONSERVATION §
ASSOCIATION, §
PAUL CHABOT, §
BEN BROWN, §
TOM MICHERO, and §
JACK DESIMONE, §
Plaintiffs, §

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

v. §

_____ JUDICIAL DISTRICT

MCKINNEY COMMUNITY §
DEVELOPMENT CORPORATION, §
GEORGE FULLER, in his official capacity §
as MCDC Board Chair, §
DAVID RICHE, in his official capacity as §
MCDC Board Vice Chair, §
CINDY SCHNEIBLE, in her official capacity §
as MCDC President, §
BILL COX, in his official capacity as Mayor §
of the City of McKinney, §
GERE FELTUS, in her official capacity as §
Mayor Pro Tem of the City of McKinney, §
PAUL GRIMES, in his official capacity as §
City Manager of the City of McKinney, §
Defendants. §

**Plaintiffs' Original Verified Petition and
Application for Temporary Restraining Order,
Temporary Injunction, and Permanent Injunction**

Plaintiffs file this Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction against Defendants to enjoin their *ultra vires* issuance of \$30 million worth of proposed sales tax revenue bonds by the McKinney Community Development Corporation ("MCDC"), with the McKinney City Council's approval and assistance, in violation of Section 501.208(a) of the Texas Local Government Code, the City

Charter of the City of McKinney, and the Bylaws of the MCDC. As of the filing of the present Petition, the bonds have not been approved by the Texas Attorney General's office.

In an irregularly scheduled joint meeting held at 3:00 p.m. on March 3, 2026, the McKinney City Council and the MCDC each unanimously passed resolutions authorizing the MCDC to issue the bonds, titled as "McKinney Community Development Corporation Sales Tax Revenue Refunding Bonds, Taxable Series 2026 (TIFIA)" (hereinafter, the "MCDC 2026 Bonds"). The Texas Local Government Code requires the McKinney City Council to approve the issuance of bonds by the MCDC. The MCDC 2026 Bonds are part of the City of McKinney's plan to finance the highly controversial expansion of McKinney National Airport to accommodate commercial airline passenger service. This comes after voters in the city twice rejected the issuance of general obligation bonds to fund the airport expansion, first in a 2015 election and again in a 2023 election. Following each of these elections, the McKinney City Council ignored the clearly expressed will of the voters and stubbornly pressed forward with airport expansion plans.

The MCDC 2026 Bonds are not traditional revenue bonds which are secured by revenue generated from the project for which they were issued. This is because the McKinney National Airport generates very little revenue – certainly not enough to support issuance of the MCDC 2026 Bonds – and whatever revenue the airport generates does not go to the MCDC. Instead, the MCDC 2026 Bonds are to be secured by the MCDC's share of sales tax revenues generated from taxes imposed by the City of McKinney on sales within its geographic limits. This financial structure, however, is not legally authorized and violates the Texas Local Government Code, which provides:

The principal of and interest on any bonds issued by a [development] corporation *shall* be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project financed by the bonds or from the loan made by the corporation with respect to the project financed or refinanced by the bonds.

TEX. LOCAL GOVT. CODE § 501.208(a) (emphasis added). Use of the word “shall” makes this a mandatory legal requirement; the Defendants have no discretion to ignore the requirement. The Defendants are not authorized to issue bonds that violate this mandatory legal requirement.

The MCDC 2026 Bonds also violate Section 111 of the Charter of the City of McKinney, which pertains to the issuance of revenue bonds. Section 111 provides, in part: “The holders of the revenue bonds *shall never* have the right to demand payment thereof out of monies raised or to be raised by taxation.” Charter of the City of McKinney § 111 (emphasis added). Yet the MCDC 2026 Bonds at issue here do exactly that. They give their holders the right to demand payment from funds raised by sales taxes.

The requirements of the city’s charter apply equally to the MCDC pursuant to the MCDC’s bylaws: “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.” MCDC Bylaws § 10. Section 111 of the Charter of the City of McKinney is consistent with Section 501.208(a) of the Texas Local Government Code and is not superseded by any other state law.

The Defendants have no discretion to ignore these clear legal requirements. Their attempts to issue the proposed Bonds are without legal authorization and should be enjoined by the Court.

Discovery Control Plan

1. Discovery is intended to be conducted under Level 3 of Rule 190.4 of the Texas Rules of Civil Procedure.

Summary of Relief Sought

2. Plaintiffs seek a declaratory judgment that Defendants’ actions in approving and attempting to issue the MCDC 2026 Bonds are *ultra vires* actions.

3. Plaintiffs seek temporary and permanent injunctive relief prohibiting ongoing and future *ultra vires* acts by Defendants.

4. Plaintiffs do not seek monetary relief.

5. This suit is not governed by the expedited actions process of Rule 169 of the Texas Rules of Civil Procedure.

Parties

6. Plaintiff North Texas Conservation Association (“NTCA”) is a nonprofit corporation organized and existing pursuant to the laws of the State of Texas and having a mailing address in McKinney, Texas.

7. Plaintiff Paul Chabot resides in McKinney, Texas, does business with merchants in McKinney, Texas, and pays sales taxes imposed by the City of McKinney. Plaintiff Chabot is a Director and President of NTCA.

8. Plaintiff Ben Brown resides in Fairview, Texas, does business with merchants in McKinney, Texas, and pays sales taxes imposed by the City of McKinney. Plaintiff Brown is a Director of NTCA.

9. Plaintiff Tom Michero resides in McKinney, Texas, does business with merchants in McKinney, Texas, and pays sales taxes imposed by the City of McKinney. Plaintiff Michero is a Member of NTCA.

10. Plaintiff Jack DeSimone resides in Fairview, Texas, does business with merchants in McKinney, Texas, and pays sales taxes imposed by the City of McKinney. Plaintiff DeSimone is a Director of NTCA.

11. Defendant McKinney Community Development Corporation (“MCDC”) is a nonprofit economic development corporation organized and existing under the laws of the State

of Texas, including Chapters 501 and 505 of the Texas Local Government Code, and having its principal office in McKinney, Texas. Defendant MCDC is not a governmental entity and is not entitled to governmental immunity. *Rosenberg Dev. Corp. v. Imperil Performing Arts, Inc.*, 571 S.W.3d 738, 741 (Tex. 2019) (“[W]e hold that economic development corporations are not governmental entities in their own right and therefore are not entitled to governmental immunity.”). Defendant MCDC may be served with process by serving its President, Cindy Schneible, at its principal office located at 7300 State Highway 121, Suite 200, McKinney, Texas 75070.

12. Defendant George Fuller is sued in his official capacity as Chair of Defendant MCDC’s Board of Directors and may be served with process at 7300 State Highway 121, Suite 200, McKinney, Texas 75070.

13. Defendant David Richie is sued in his official capacity as Vice Chair of Defendant MCDC’s Board of Directors and may be served with process at 7300 State Highway 121, Suite 200, McKinney, Texas 75070.

14. Defendant Cindy Schneible is sued in her official capacity as President of Defendant MCDC and may be served with process at 7300 State Highway 121, Suite 200, McKinney, Texas 75070.

15. Defendant Bill Cox is sued in his official capacity as Mayor of the City of McKinney and may be served with process at McKinney City Hall, 401 East Virginia Street, McKinney, Texas 75069.

16. Defendant Geré Feltus is sued in her official capacity as Mayor Pro Tem of the City of McKinney and may be served with process at McKinney City Hall, 401 East Virginia Street, McKinney, Texas 75069.

17. Defendant Paul Grimes is sued in his official capacity as City Manager of the City of McKinney and may be served with process at McKinney City Hall, 401 East Virginia Street, McKinney, Texas 75069.

Jurisdiction and Venue

18. The Court has subject matter jurisdiction pursuant to Article V, § 8 of the Texas Constitution, as the amount in controversy exceeds the minimum jurisdictional limits of the Court, exclusive of interest.

19. The Court has jurisdiction over the Plaintiffs' request for declaratory and injunctive relief against Defendants MCDC, Fuller, Riche, and Schneible (collectively, the "MCDC Defendants") pursuant to TEX. CIV. PRAC. & REM CODE § 37.003 because they are acting *ultra vires* by approving and attempting to issue the Bonds in violation of Section 501.208(a) of the Texas Local Government Code, the City Charter of the City of McKinney, and the Bylaws of the MCDC. The MCDC Defendants have no discretion to violate TEX. LOCAL GOVT. CODE § 501.208(a), the City Charter of the City of McKinney, and the Bylaws of the MCDC. A real, substantial, and justiciable controversy exists between Plaintiffs and the MDCD Defendants as to their authority to issue the Bonds and the validity of the Bonds, if they are issued. As alleged above, Defendant MCDC is not a governmental entity and is not entitled to governmental immunity. *Rosenberg Dev. Corp.*, 571 S.W.3d at 741.

20. The Court has jurisdiction over the Plaintiffs' request for declaratory and injunctive relief against Defendants Cox, Feltus, and Grimes (collectively, the "City Defendants") because they are acting *ultra vires* by approving, facilitating, and assisting the MCDC Defendants' attempted issuance of the Bonds in violation of Section 501.208(a) of the Texas Local Government Code, the City Charter of the City of McKinney, and the Bylaws of the MCDC. The City

Defendants have no discretion to violate TEX. LOCAL GOVT. CODE § 501.208(a), the City Charter of the City of McKinney, and the Bylaws of the MCDC. A real, substantial, and justiciable controversy exists between Plaintiffs and the City Defendants as to their authority to approve, facilitate, and assist the MCDC Defendants' issuance of the Bonds and the validity of the Bonds, if they are issued. The City Defendants are sued in their official capacities, and they do not have any sovereign or governmental immunity. *Houston Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 n.1 (Tex. 2016) (“[W]hen a governmental officer is sued for allegedly *ultra vires* acts, governmental immunity does not apply from the outset.”); *see also City of El Paso v. Heinrich*, 284 S.S.3d 366, 372 (Tex. 2009).

21. The Court has personal jurisdiction over each of the Defendants, as they all reside in Collin County, Texas.

22. For all claims asserted by all Plaintiffs, venue is proper in this Court because a substantial portion of the events giving rise to the claims for relief occurred in Collin County, Texas. *See* TEX. CIV. PRAC. & REM. CODE §§ 15.002, 15.003, and 15.005.

Standing

23. Plaintiff NTCA has associational standing to seek declaratory and injunctive relief against the Defendants on behalf of its members. Plaintiff NTCA is a Section 501(c)(3) nonprofit corporation dedicated to protecting the environment, wildlife, and rural character of McKinney, Texas and surrounding areas. Its mission includes monitoring development proposals that could impact land use, public welfare, air and water quality, wildlife natural resources and the environment in and around McKinney. Plaintiff NTCA is opposed to the expansion of McKinney National Airport to provide commercial passenger service because, among other things, it will lead to increased noise and air pollution and will harm McKinney's rural character. MCDC is issuing

the Bonds in connection with financing the airport expansion. Plaintiff NTCA has over 150 members who reside in Collin County, including in McKinney, and many of its members shop and pay sales taxes in McKinney. Thus, the relief sought herein is germane to NTCA's purpose, NTCA's members would otherwise have standing to sue in their own right, and the declaratory and injunctive relief sought herein does not require the participation of its individual members in this lawsuit. *Texas Ass'n of Business v. Texas Air Control Bd.*, 852 S.W.2d 440, 447 (Tex. 1993).

24. Plaintiffs Chabot, Brown, Michero, and DeSimone have taxpayer standing to seek the declaratory and injunctive relief sought herein. *Williams v. Lara*, 52 S.W.3d 171, 179 (Tex. 2001) ("Taxpayers in Texas have standing to enjoin illegal expenditure of public funds, and need not demonstrate particularized injury."). Public funds will be used by the MCDC Defendants to pay for the debt service on the Bonds.

Conditions Precedent

25. All conditions precedent to Plaintiff's claims for relief have been met, performed, or occurred.

Factual Background

Two Failed Bond Referendums

26. Voters in the City of McKinney have twice rejected the issuance of general obligation bonds to fund development and/or expansion of the McKinney National Airport. In a bond election held on November 3, 2015, the ballot included seven propositions for the issuance of various general obligation bonds, including the following:

Proposition No. 2: The issuance of \$50,000,000 general obligation bonds for constructing and improving the McKinney National Airport and the levy of a tax in payment thereof.

The voters rejected Proposition No. 2 by slight margin, with 51.90 percent of the votes being against the proposition.¹ Proposition No. 2 was one of two propositions rejected by the voters; the other five propositions were approved.

27. The City of McKinney asked the voters to approve the issuance of general obligation bonds for the airport again on May 6, 2023. The ballot proposition read:

PROPOSITION A: THE ISSUANCE OF \$200,000,000 GENERAL OBLIGATION BONDS FOR A COMMERCIAL AIR SERVICE TERMINAL AND RELATED IMPROVEMENTS AT THE CITY'S AIRPORT AND THE IMPOSITION OF A TAX SUFFICIENT TO PAY THE PRINCIPAL AND INTEREST ON THE BONDS.

McKinney voters decisively rejected the bond proposal, with 58.70 percent of the votes being against the proposition.²

28. During a special meeting of the McKinney City Council held on May 23, 2023, shortly after the voters rejected the \$200 million bond referendum for the airport, one of the city's strategic planning consultants for the airport, Edward Shelswell-White of Sky Synergy, advised the city council to take time to evaluate the implications of the failed referendum: "Take time to figure out what the referendum was really saying and what the implications really were."³

29. The McKinney City Council soon decided to move forward with the airport development project despite the two failed bond referendums. During a December 5, 2023, city council work session, then-Mayor George Fuller was quoted as saying:

¹ <https://www.collincountytx.gov/Elections/ResultsArchive/November%203,%202015%20Combined%20Election%20Day%20and%20Early%20Ballots%20-%20Accumulated%20Totals%20Final.pdf>

² <https://www.collincountytx.gov/Elections/ResultsArchive/May%206,%202023%20Combined%20Accumulated%20Totals%20-%20Official%20Final.pdf>

³ <https://mckinneytx.new.swagit.com/videos/230888> (at 1:17:03).

We make decisions based on dollars and [financial] sense period. . . . Every time someone comes up and makes a statement that voters told us no they don't want the airport – I'll be very clear, I'll just speak for myself – that's not at all what the voters said. . . . The voters said very specifically that they do not authorize the issuance of \$200 million worth of debt. . . . ***I am committed to exploring what it might mean for commercial passenger service at McKinney Airport in ways that make sense and does not indebt the city or the taxpayer – that's off the table obviously.***⁴

30. Thus, as of December 2023, then-Mayor Fuller interpreted the results of the failed May 2023 bond referendum to mean the voters did not want the city to incur debt to finance the expansion of McKinney National Airport.

The City's Scheme to Finance the Airport Expansion

31. In early 2025, however, the City of McKinney revealed an elaborate scheme to finance the airport expansion that involved using its two economic development corporations to issue bonds (*i.e.*, debt) on behalf of the city.

32. On March 18, 2025, a special joint meeting was held between the McKinney City Council, the McKinney Economic Development Corporation (MEDC), and the McKinney Community Development Corporation (MCDC).⁵ In that meeting, the MCDC's board voted to authorize the issuance of approximately \$30 million worth of sales tax revenue bonds. Similarly, in the meeting, the MEDC's board voted to authorize the issuance of approximately \$68 million worth of sales tax revenue bonds. The proceeds of the bonds were earmarked for the airport expansion. The McKinney City Council immediately voted to approve the issuance of all the bonds in the very same meeting.

⁴ <https://www.dallasnews.com/news/2023/12/11/airport-spending-continues-at-mckinney-airport-after-failed-bond-heres-why/> (emphasis added).

⁵ https://legistar1.granicus.com/McKinney/meetings/2025/3/5565_A_Joint_Meeting_25-03-18_Agenda-hc.pdf

33. The bonds the MCDC issued are titled “McKinney Community Development Corporation Sales Tax Revenue Bond, Taxable Series 2025” and are in the principal amount of \$30,170,000 (the “MCDC 2025 Bonds”). The MCDC 2025 Bonds are secured by the MCDC’s share of sales tax revenue, not by revenue derived from any project.

34. The MEDC’s bonds were issued in two series, one titled “McKinney Economic Development Corporation Sales Tax Revenue Bond, Taxable Series 2025A” in the principal amount of \$52,315,000, and another titled “McKinney Economic Development Corporation Sales Tax Revenue Bond, Series 2025B in the principal amount of \$10,745,000 (collectively, the “MEDC 2025 Bonds”). The MEDC 2025 Bonds are secured by the MEDC’s share of sales tax revenue, not by revenue derived from any project.

35. Upon information and belief, after the MCDC 2025 Bonds and the MEDC 2025 Bonds were issued, the two economic development corporations turned the bond proceeds over to the City of McKinney. The city is purportedly using the proceeds to fund current construction at the McKinney National Airport. Upon further information and belief, the MCDC and the MEDC provided the bond proceeds to the city on an interest-free basis without any contractual obligation for the city to repay the proceeds.

36. The McKinney City Council has complete control over the MCDC and the MEDC. The city council has the power to appoint members of the MCDC’s board and the MEDC’s board, and it has the power to remove those board members. TEX. LOCAL GOVT. CODE § 501.062. The city council also has the power to approve all programs and expenditures of the MCDC and the MEDC. TEX. LOCAL GOVT. CODE § 501.073.

37. The McKinney City Council intended to use the proceeds from the MCDC 2025 Bonds as a “bridge loan” until it could secure a loan at a reduced interest rate from the Build

America Bureau of the United States Department of Transportation under the Transportation Infrastructure Finance and Innovation Act of 1998 (“TIFIA Loan”). Under the city’s plan, the proceeds from the TIFIA Loan would be used to refund or retire the MCDC 2025 Bonds, and the MCDC would be obligated to repay the principal and interest on the TIFIA Loan.

The MCDC 2026 Bonds

38. In an irregularly scheduled joint meeting held at 3:00 p.m. on March 3, 2026, which also was primary election day, the McKinney City Council and the MCDC board each unanimously passed resolutions authorizing the MCDC to issue bonds, titled as “McKinney Community Development Corporation Sales Tax Revenue Refunding Bonds, Taxable Series 2026 (TIFIA)” (the “MCDC 2026 Bonds”). The MCDC board also voted unanimously to authorize the MCDC’s Chair to accept the \$30 million TIFIA Loan from the Build America Bureau of the United States Department of Transportation.⁶

39. The agenda for the March 3, 2026, joint meeting included a copy of the MCDC’s resolution authorizing the issuance of the MCDC 2026 Bonds, a copy of which is attached to this Petition as **Exhibit A**. The agenda also included a copy of the agreement between the United States Department of Transportation, the MCDC, and the City of McKinney for the TIFIA Loan (the “TIFIA Agreement”), a copy of which is attached to this Petition as **Exhibit B**.

40. The MCDC 2026 Bonds are not typical revenue bonds secured by revenues derived from a project. Instead, the MCDC 2026 Bonds are secured by the MCDC’s share of sales taxes levied by the City of McKinney.

41. The MCDC 2026 Bonds state the following:

⁶ https://legistar1.granicus.com/McKinney/meetings/2026/3/5825_A_Joint_Meeting_26-03-03_Agenda-hc.pdf

The Bonds are payable solely from and equally and ratably *secured by* a pledge of the **“Pledged Revenues”** (as defined in the Resolution) received by the Corporation, *including the receipts from a Sales Tax levied for the benefit of the Corporation* pursuant to the Act and an election held in the City of McKinney, Texas (the “City”). The Bonds do not constitute a legal or equitable, pledge, charge, lien or encumbrance upon any property of the Corporation or the City *except with respect to the “Pledged Revenues”*. This Bond may not be paid in whole or in part from any property taxes raised or to be raised by the City and is not a debt of and does not give rise to a claim for payment against the City, *except as to the sales and use tax revenues held by the City and required under the Act to be paid over to the Corporation*. Neither the State of Texas, the City or any political corporation, subdivision or agency of the State of Texas shall be obligated to pay this Bond or the interest hereon and neither the faith and credit nor the taxing power of the State, the City or any other political corporation, subdivision or agency thereof is pledged to the payment of the principal of and interest on this Bond *except as noted above*.

Exhibit A, p. 11 (emphasis added).

42. The MCDC Resolution authorizing the bonds defines “Pledged Revenues” as:

“Pledged Revenues” - Collectively (i) **Gross Sales Tax Revenues** from time to time deposited or owing to the Pledged Revenue Fund, (ii) the Funds that may from time to time be established by the Corporation, and (iii) such other money, income, revenue, receipts or other property as may be specifically dedicated, pledged or otherwise encumbered in a Supplemental Resolution for the payment and security of Parity Obligations.

Exhibit A, p. 17 (emphasis added).

43. The MCDC Resolution further defines “Gross Sales Tax Revenues” as:

“Gross Sales Tax Revenues” - All of the revenues or receipts due or owing to, or collected or received by or on behalf of the Corporation by the City or otherwise, from or by reason of **the levy of the Sales Tax pursuant to the Act and the election held January 20, 1996**, less any amounts due and owed to the Comptroller of Public Accounts of the State of Texas as charges for the collection of the Sales Tax or retention by said Comptroller for refunds and to redeem dishonored checks and drafts, to the extent such charges and retention are authorized or required by law.

Exhibit A, p. 16 (emphasis added).

44. The MCDC 2026 Bonds are to be issued and delivered to the TIFIA Lender, Exhibit A, Pp. 2-3, which is the United States Department of Transportation, Exhibit A, p. 19.

45. Since the MCDC 2026 Bonds are secured by the MCDC’s share of sales taxes, the bond resolution obligates the MCDC to ensure the sales taxes are levied and collected at the same or a higher tax rate as long as the bonds remain outstanding:

While any Bonds are Outstanding, the Corporation covenants, agrees and warrants to take and pursue all action permissible *to cause the Sales Tax, at said rate or at a higher rate if legally permitted, to be levied and collected continuously*, in the manner and to the maximum extent permitted by law, and to cause no reduction, abatement or exemption in the Sales Tax or rate of tax below the rate stated, confirmed and ordered in subsection (a) of this Section to be ordered or permitted while any Bonds shall remain Outstanding.

Exhibit A, p. 25 (emphasis added).

46. The Texas Local Government Code provides that voters in the City of McKinney may petition the city to hold an election to reduce the tax rate of the sales taxes allocated to the MCDC. TEX. LOCAL GOVT. CODE § 505.2566. By attempting to use the sales tax revenue as security for the MCDC 2026 Bonds, the MCDC is threatening to foreclose the statutory right of McKinney voters to reduce their sales taxes for as long as the bonds remain outstanding – which would be for the next thirty years.

47. If the rate of the sales tax were to be reduced while the bonds were outstanding it would raise significant constitutional issues about whether the action would impair contractual rights. *See* U.S. Const. art. 1, § 10 (“No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . .”). This is likely why the Texas Legislature requires bonds issued by economic development corporations to be secured by project revenue, not sales tax revenue.

The TIFIA Agreement

48. The TIFIA Agreement is a complex, three-party agreement between the United States Department of Transportation (defined in the agreement at the “TIFIA Lender”), the MCDC (defined in the agreement as “Borrower”), and the City of McKinney (defined in the agreement as

“Sponsor”). Exhibit B, p. 5. It provides that the TIFIA Lender will loan up to \$30 million to the MCDC to retire the MCDC 2025 Bonds.

49. The TIFIA Loan is to be secured by the “Collateral,” which includes the “Pledged Revenues” from the MCDC 2026 Bonds. The agreement further provides: “As evidence of the Borrower’s obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender . . . the TIFIA Bond.” Exhibit B, p. 25.

50. The TIFIA Agreement further provides that it shall not become effective until multiple conditions precedent have been satisfied, including the following: “The Sponsor shall have (A) provided evidence satisfactory to the TIFIA Lender of compliance with NEPA,” the National Environmental Policy Act. Exhibit B, p. 29. The agreement indicates that the City of McKinney intends to rely on an April 2025 Environmental Assessment (the “April 2025 EA”) issued by the Texas Department of Transportation on behalf of the FAA Division Office as evidence of compliance with NEPA. Exhibit B, p. 15.

51. The FAA, however, has disavowed involvement with the April 2025 EA. Further, on information and belief, the FAA actually refused to sign off on the April 2025 EA because it used methodology that failed to comply with FAA orders and/or regulations. It is unknown whether the City of McKinney has advised the TIFIA Lender of all the facts and circumstances surrounding the April 2025 EA.

52. Finally, the TIFIA Agreement provides that the loan amount shall be due and payable on the Final Maturity Date, which is defined as February 15, 2056. Exhibit B, p. 13.

Claim 1: Declaratory Judgment of *Ultra Vires* Actions by all Defendants

53. Plaintiffs incorporate by reference all of the foregoing paragraphs of this Petition as though fully stated herein.

54. By approving and facilitating the issuance of the MCDC 2026 Bonds, all Defendants are acting without legal authority and in violation of Section 501.208(a) of the Texas Local Government Code, the City Charter of the City of McKinney, and the Bylaws of the MCDC.

55. The MCDC 2026 Bonds are to be secured by the MCDC's share of tax revenues generated by sales taxes levied by the City of McKinney, not by any revenue derived by the MCDC from any project.

56. The MCDC 2026 Bonds therefore violate Section 501.208(a) of the Texas Local Government Code, which provides:

The principal of and interest on any bonds issued by a corporation **shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project financed by the bonds** or from the loan made by the corporation with respect to the project financed or refinanced by the bonds.

TEX. LOCAL GOVT. CODE § 501.208(a) (emphasis added). Use of the word “shall” makes this a mandatory, statutory requirement; the Defendants have no discretion to ignore the requirement. The Defendants have no authorization to issue bonds that violate TEX. LOCAL GOVT. CODE § 501.208(a).

57. In addition, bonds secured by sales tax revenues are not legally authorized and violate the Charter of the City of McKinney, which provides:

Section 111. – Revenue bonds. The City shall have the power to borrow money for the purpose of constructing, purchasing, improving, extending or repairing of public utilities, recreational facilities or any other self-liquidating municipal function not prohibited by the Constitution and laws of the State of Texas, and to issue revenue bonds to evidence the obligation created thereby. Such bonds shall be a charge upon and payable from the properties, or interest therein pledged, or the income therefrom, or both. ***The holders of the revenue bonds shall never have the right to demand payment thereof out of monies raised or to be raised by taxation.*** All such bonds shall be issued in conformity with the laws of the state of Texas.

City of McKinney Charter § 111 (emphasis added).⁷ Use of the phrase “shall never” makes the emphasized sentence mandatory. Section 111 provides that the holders of bonds “shall never have the right to demand payment out of monies raised or to be raised by taxation.” Thus, it applies to all types of taxation, including sales taxes. The City Defendants had no authorization to ignore the city’s charter when they approved and facilitated the issuance of the MCDC 2026 Bonds. Yet the proposed bonds, if issued, would clearly give their holders a right to demand payment from monies raised by taxation in violation of Section 111 of the City of McKinney’ charter.

58. To the extent the City Defendants attempt to argue that the city charter binds the city council but not the MCDC, the law prohibits the City Defendants from using the MCDC, which the City Defendants control, to issue bonds that are clearly prohibited by the plain language of the McKinney City Charter. The McKinney National Airport is owned and operated by the City of McKinney. The MCDC 2026 Bonds are being issued to help fund the city’s expansion of the airport. The MCDC has no right to control the city’s airport expansion activities. The City Defendants have clearly used the MCDC to improperly evade the prohibitions in the city charter.

59. Moreover, the requirements of the McKinney City Charter apply equally to the MCDC pursuant to the MCDC’s bylaws:

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.

MCDC Bylaws § 10.⁸ Section 111 of the Charter of the City of McKinney is consistent with Section 501.208(a) of the Texas Local Government Code and is not superseded by any other state

⁷ https://library.municode.com/tx/mckinney/codes/code_of_ordinances?nodeId=PTICH_CHXVI_SSABO_S111REBO

⁸ The MCDC’s Bylaws are attached to this Petition as **Exhibit C**. The quoted provision is located at Exhibit C, page 13.

law. The prohibition on tax-secured bonds in Section 111 of the McKinney City Charter therefore applies to the MCDC Defendants. The Defendants have no discretion to ignore the MCDC's Bylaws.

60. The Plaintiffs are therefore entitled to a declaratory judgment pursuant to TEX. CIV. PRAC. & REM. CODE § 37.003 that all Defendants are acting ultra vires by approving and facilitating the issuance of the MCDC 2026 Bonds.

**Application for Temporary Restraining Order and
Temporary and Permanent Injunctive Relief**

61. Plaintiffs incorporate by reference all of the foregoing paragraphs of this Petition as though fully stated herein.

62. Plaintiffs respectfully move this Court grant injunctive relief against Defendants, including but not limited to a temporary injunction and a permanent injunction restraining Defendants from engaging in any further activities to issue or facilitate the issuance of the MCDC 2026 Bonds.

63. A temporary restraining order serves to provide emergency relief and to preserve the status quo until a hearing may be held of a temporary injunction.⁹ "A temporary injunction's purpose is to preserve the status quo of the litigation's subject matter pending a trial on the merits."¹⁰ The applicant must prove three elements to obtain a temporary injunction: (1) a cause of action against the adverse party; (2) a probably right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.¹¹ These requirements are readily met in this case.

⁹ *Texas Aeronautics Comm'n v. Betts*, 469 S.W.2d 394, 398(Tex. 1971).

¹⁰ *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002).

¹¹ *Id.*

Plaintiffs are Likely to Succeed on the Merits

64. “An *ultra vires* action requires a plaintiff to ‘allege, and ultimately prove, that the officer acted without legal authority or failed to perform a purely ministerial act.’”¹² “[A] government officer with some discretion to interpret and apply a law may nonetheless act ‘without legal authority,’ and thus *ultra vires*, if he exceeds the bounds of his granted authority ***or if his acts conflict with the law itself.***”¹³

65. Plaintiffs have a probable right to the relief they seek because the Defendants have acted without legal authority in approving and facilitating the issuance of the MCDC 2026 Bonds in violation of Section 501.208(a) of the Texas Local Government Code, the City Charter of the City of McKinney, and the Bylaws of the MCDC. The Defendants’ actions do not involve the exercise of any discretion. Rather, the Defendants’ actions clearly conflict with the law itself.¹⁴

Plaintiffs Will Be Imminently and Irreparably Injured Absent an Injunction

66. If Defendants are not enjoined, Plaintiffs will suffer an injury for which there is no adequate remedy at law.

67. All municipal bonds in Texas must be submitted to the Texas Attorney General for review and approval. TEX. GOVT CODE § 1202.003 (“Before the issuance of a public security, the issuer shall submit the public security and the record of proceedings to the attorney general.”).

68. Once the bonds are approved by the Texas Attorney General, the bonds become “valid and incontestable in a court or other forum and are binding for all purposes according to their terms.” TEX. GOVT CODE § 1202.006.

¹² *Hall v. McRaven*, 508 S.W.3d 232, 238 (Tex. 2017) (quoting *City of El Paso*, 284 S.W.3d at 372).

¹³ *Id.* (emphasis added)(quoting *Houston Belt & Terminal*, 487 S.W.3d at 158).

¹⁴ *Id.*

69. Plaintiffs believe the MCDC 2026 Bonds will be submitted to the Texas Attorney General on or about March 23, 2026, if they have not already been submitted.

70. If the Texas Attorney General approves the MCDC 2026 Bonds, they will become “valid and incontestable” as a matter of law, and Plaintiffs will lose their right to the declaratory and injunctive relief sought in this Petition. Moreover, this Court will likely lose the ability to analyze and rule upon the serious issues of the validity of the bonds raised herein.

71. Finally, if the MCDC 2026 Bonds are approved by the Texas Attorney General, Plaintiffs will be deprived of their statutory rights to Petition the City of McKinney to hold an election to reduce the rate of the local sales tax, *see* TEX. LOCAL GOVT. CODE § 505.2566, as such actions would impair the security obligations of the TIFIA Agreement and would likely be unconstitutional, *see* U.S. Const. art. 1, § 10 (“No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . .”).

72. The law offers Plaintiffs this brief window in time before the bonds are approved by the Texas Attorney General in which to seek judicial review of the bonds’ validity. Plaintiffs will be imminently and irreparably injured if the Defendants are not temporarily and permanently enjoined.

Defendants Will Not be Injured by an Injunction

73. By comparison, the Defendants will not be injured, irreparably or otherwise, by an injunction.

74. The MCDC 2026 Bonds (and the related TIFIA Loan) are to be used to refund or retire the already-issued MCDC 2025 Bonds. The City of McKinney is already in possession of the proceeds from the MCDC 2025 Bonds. Upon information and belief, those proceeds are

currently being used to pay for construction expenses for the McKinney National Airport expansion. Those funds would not be impacted by an injunction.

75. An injunction should be issued to preserve the status quo.

Attorney's Fees

76. Plaintiffs incorporate by reference all of the foregoing paragraphs of this Petition as though fully stated herein.

77. TEX. CIV. PRAC. & REM. CODE § 37.009 authorizes a court to award costs and reasonable and necessary attorney's fees as the court determines are equitable and just.

78. Accordingly, Plaintiffs seek the full amount of their reasonable and necessary attorney's fees incurred in prosecuting this suit and on any appeal of this suit.

Prayer for Relief

79. For all the reasons stated herein, Plaintiffs respectfully pray that this Court:

- A. Grant temporary and permanent injunctions prohibiting the Defendants from engaging in any further activities to issue or facilitate the issuance of the MCDC 2026 Bonds;
- B. Declare that the Defendants have acted unlawfully in approving the issuance of the MCDC 2026 Bonds in violation of Section 501.208(a) of the Texas Local Government Code, the City Charter of the City of McKinney, and the Bylaws of the MCDC;
- C. Declare that Defendants' actions in approving and facilitating the issuance of the MCDC 2026 Bonds constitute *ultra vires* action;
- D. Award attorneys' fees and costs; and
- E. Award such further relief that the Court deems just and proper.

Dated: March 19, 2026.

Respectfully submitted,

/s/ Steven E. Ross

Steven E. Ross
sross@maxuslegal.com
Texas Bar No. 17305500
MAXUS Legal PLLC
5050 Quorum Drive, Suite 700
Dallas, Texas 75254
Phone: 972-661-9400
Facsimile: 972-661-9401

Tony K. McDonald
tony@tonymcdonald.com
State Bar No. 24083477
Connor Ellington
connor@tonymcdonald.com
State Bar No. 24128592
The Law Offices of Tony McDonald
1308 Ranchers Legacy Trail
Fort Worth, TX 76126
(512) 200-3608
(815) 550-1292 (fax)

ATTORNEYS FOR PLAINTIFFS

CAUSE NO. _____

NORTH TEXAS CONSERVATION §
ASSOCIATION, §
PAUL CHABOT, §
BEN BROWN, §
TOM MICHERO, and §
JACK DESIMONE, §
Plaintiffs, §

IN THE DISTRICT COURT OF

COLLIN COUNTY, TEXAS

v. §


_____ JUDICIAL DISTRICT

MCKINNEY COMMUNITY §
DEVELOPMENT CORPORATION, §
GEORGE FULLER, in his official capacity §
as MCDC Board Chair, §
DAVID RICHE, in his official capacity as §
MCDC Board Vice Chair, §
CINDY SCHNEIBLE, in her official capacity §
as MCDC President, §
BILL COX, in his official capacity as Mayor §
of the City of McKinney, §
GERE FELTUS, in her official capacity as §
Mayor Pro Tem of the City of McKinney, §
PAUL GRIMES, in his official capacity as §
City Manager of the City of McKinney, §
Defendants. §

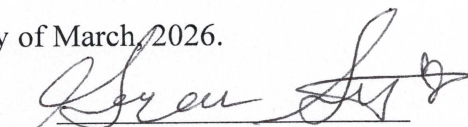
Declaration of Paul Chabot

My name is Paul Chabot. I am over eighteen years of age, am of sound mind, and I am capable of making this declaration. I am President of North Texas Conservation Association.

I have read the above Original Verified Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction. I verify that the facts stated therein are within my personal knowledge and are true and correct.


Paul Chabot

Sworn and subscribed before me on the 19th day of March, 2026.


Notary Public

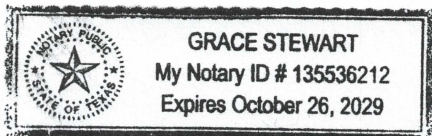


Exhibit A

RESOLUTION NO. 2026-__-__(R) MCDC

A RESOLUTION AUTHORIZING THE ISSUANCE OF “MCKINNEY COMMUNITY DEVELOPMENT CORPORATION SALES TAX REVENUE REFUNDING BONDS, TAXABLE SERIES 2026 (TIFIA)”; PLEDGING CERTAIN “PLEGGED REVENUES” OF THE CORPORATION, INCLUDING “GROSS SALES TAX REVENUES”, TO THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID BONDS; ENACTING OTHER PROVISIONS INCIDENT AND RELATED TO THE ISSUANCE, PAYMENT, SECURITY AND DELIVERY OF SAID BONDS, INCLUDING THE APPROVAL OF A PAYING AGENT/REGISTRAR AGREEMENT; AND A TIFIA LOAN AGREEMENT; RESOLVING OTHER MATTERS INCIDENT AND RELATED TO THE ISSUANCE AND SALE OF THE BONDS; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, McKinney Community Development Corporation (the “Corporation”) has been duly created and organized pursuant to the provisions of the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6) specifically Texas Local Government Code, Chapters 501 and 505, as amended (the “Act”); and

WHEREAS, the Corporation has heretofore issued, sold, and delivered, and there is currently outstanding, the “McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2025,” dated April 1, 2025 (the “Refunded Bonds”); and

WHEREAS, the Board of Directors of the Corporation (the “Board”) hereby finds and determines that this Resolution shall delegate to a Pricing Officer (hereinafter designated) the authority to approve and execute the final terms of the Bonds within the parameters established herein, including the final principal amount, maturity schedule, interest rate, sale terms, redemption provisions, selection of paying agent/registrar and escrow agent, and other matters as hereinafter provided; and

WHEREAS, the Board hereby finds and determines that it is a public purpose and in the best interests of the Corporation to refund the Refunded Bonds in accordance with the provisions of the Act to achieve debt service savings [or other refunding objectives as determined by the Pricing Officer], with such savings and other terms to be included in a pricing certificate (the "Pricing Certificate") to be executed by the Pricing Officer (hereinafter designated); and

WHEREAS, the Board of Directors hereby finds and determines that it is in the best interests of the Corporation that the Bonds, hereinafter defined, be issued

and delivered to the TIFIA Lender, hereinafter defined, pursuant to the TIFIA Agreement, hereinafter defined; and

WHEREAS, the Board of Directors hereby further finds and determines that the Bonds shall be payable from certain “Pledged Revenues” (hereinafter defined) of the Corporation, including sales tax receipts of the Corporation in the manner and to the extent hereinafter provided; now, therefore,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE MCKINNEY COMMUNITY DEVELOPMENT CORPORATION:

Section 1. Approval of TIFIA Agreement.

- (a) The Corporation hereby approves the terms and provisions of the TIFIA Agreement, substantially in the form set forth in **Exhibit B** hereto, with such modifications thereto as the Pricing Officer, in his or her sole discretion, shall approve, such execution to be conclusive evidence of the Pricing Officer's approval of any such modifications on behalf of the Corporation.
- (b) The terms and provisions of the TIFIA Agreement are hereby incorporated by reference and shall be fully binding on the Corporation with respect to the Bonds and the loan made by the TIFIA Lender pursuant to the TIFIA Agreement.
- (c) In accordance with the delegation set forth in Section 3, the Pricing Officer has the authority to make any and all changes to the TIFIA Agreement necessary to effectuate its execution, including conformance with requirements of the Office of the Attorney General of the State of Texas and the TIFIA Lender. The final form of the TIFIA Agreement shall be attached to the Pricing Certificate.

Section 2. Authorization - Designation - Principal Amount - Purpose. Bonds of the Corporation shall be and are hereby authorized to be issued in the aggregate principal amount of \$30,000,000 to be designated and bear the title “MCKINNEY COMMUNITY DEVELOPMENT CORPORATION SALES TAX REVENUE REFUNDING BONDS, TAXABLE SERIES 2026 (TIFIA)”, hereinafter referred to as the “Bonds”, for the purpose of refunding all of the outstanding Refunded Bonds which financed improvements to the McKinney National Airport (the “Airport”) including passenger terminal facilities and other airport facilities, streets and roads, taxiways, aprons, and other infrastructure related to the Airport and the acquisition of any land related thereto in conformity with the Constitution and laws of the State of Texas, including the Act.

Section 3. Pricing Officer Designation and Delegated Authority. Each Pricing Officer, hereinafter defined, is hereby authorized to act on behalf of the Corporation in selling and delivering the Bonds, and carrying out the other procedures

specified in this Resolution, including determining (i) the aggregate original principal amount of the Bonds within the maximum amount specified in Section 2 above; (ii) the date of the Bonds; (iii) any additional or different designation or title by which the Bonds shall be known; (iv) the price at which the Bonds will be sold to the TIFIA Lender; the years in which the Bonds will mature and the principal amount to mature in each of such years; (v) the rate of interest to be borne by each such maturity or the method of determining such rate; (vi) the price and terms upon and at which the Bonds may be subject to redemption prior to maturity at the option of the Corporation, as well as any mandatory redemption provisions; (vii) the designation of a paying agent/registrar for the Bonds; (viii) all matters relating to the escrow deposit and defeasance of the Refunded Bonds; (ix) the terms of any surety or credit enhancement applicable to the Bonds; and (x) all other matters relating to the issuance, sale, and delivery of the Bonds; all of which shall be specified in the Pricing Certificate; provided that the true interest cost rate for the Bonds shall not exceed 5%; and the final maturity date for the Bonds shall not exceed February 15, 2056.

The delegation made hereby shall expire if not exercised by the Pricing Officer within 180 days of the date hereof. The execution of the Pricing Certificate by a Pricing Officer shall evidence the approval of the final terms of the Bonds and the sale date of the Bonds by the Corporation to the TIFIA Lender.

Section 4. Fully Registered Obligations Authorized Denominations Stated Maturity – Bond Date. The Bonds shall be issued as fully registered obligations, without coupons, shall be dated as of the date set forth in the Pricing Certificate (the “Bond Date”), shall be in denominations of \$5,000 or any integral multiple thereof, and shall become due and payable on dates certain and in principal amounts (the “Stated Maturities”) and bear interest at the per annum rate, each in accordance with the details of the Bonds as provided in the Pricing Certificate.

Section 5. Terms of Payment - Paying Agent/Registrar. The principal of, premium, if any, and the interest on the Bonds, due and payable by reason of maturity, redemption or otherwise, shall be payable only to the registered owners or holders of the Bonds (hereinafter called the “Holders”) appearing on the registration and transfer books maintained by the Paying Agent/Registrar and the payment thereof shall be in any coin or currency of the United States of America, which at the time of payment is legal tender for the payment of public and private debts, and shall be without exchange or collection charges to the Holders.

The selection and appointment of the Paying Agent/Registrar for the Bonds shall be as provided in the Pricing Certificate. Books and records relating to the registration, payment, exchange and transfer of the Bonds (the “Security Register”) shall at all times be kept and maintained on behalf of

the Corporation by the Paying Agent/Registrar, all as provided herein and in the Pricing Certificate, in accordance with the terms and provisions of a "Paying Agent/Registrar Agreement", substantially in the form attached hereto as **Exhibit A** and such reasonable rules and regulations as the Paying Agent/Registrar and the Corporation may prescribe. The Pricing Officer is hereby authorized to execute and deliver such Agreement in connection with the delivery of the Bonds. The Corporation covenants to maintain and provide a Paying Agent/Registrar at all times until the Bonds are paid in full and discharged. Any successor Paying Agent/Registrar shall be a bank, trust company, financial institution or other entity qualified and authorized to serve in such capacity and perform the duties and services of Paying Agent/Registrar, and shall be satisfactory to the TIFIA Lender. Upon any change in the Paying Agent/Registrar for the Bonds, the Corporation agrees to promptly cause a written notice to be sent to the Holder affected by United States mail, first class postage prepaid, which notice shall identify and give the address of the new Paying Agent/Registrar.

Principal of and premium, if any, on the Bonds shall be payable at the Stated Maturity or upon their earlier redemption, only upon presentation and surrender of the Bonds to the Paying Agent/Registrar at its designated offices, or with respect to a successor Paying Agent/Registrar, at the designated offices of such successor (the "Designated Payment/Transfer Office"), provided; however, with respect to principal payments on each Stated Maturity date and so long as the TIFIA Lender owns 100% of the outstanding Bonds, the Bonds need not be surrendered to the Paying Agent/Registrar, who will merely document such payment on an internal ledger maintained by the Paying Agent/Registrar. Interest on the Bonds shall be paid to the Holders whose names appear in the Security Register at the close of business on the Record Date (the last business day of the month next preceding each interest payment date) and shall be paid by the Paying Agent/Registrar by electronic transfer in accordance with the instructions included in or otherwise provided pursuant to the TIFIA Agreement and the Bonds. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday, Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due.

In the event of a non-payment of interest on a scheduled payment date, and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Corporation. Notice of the Special Record Date and of the scheduled

payment date of the past due interest (which shall be fifteen (15) days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of the Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

Section 6. Registration - Transfer - Exchange of Bonds - Predecessor Bonds. The Paying Agent/Registrar shall obtain, record, and maintain in the Security Register the name and address of each registered owner of the Bonds issued under and pursuant to the provisions of this Resolution. Any Bond may, in accordance with its terms and the terms hereof, be transferred or exchanged for Bonds of other authorized denominations upon the Security Register by the Holder, in person or by his duly authorized agent, upon surrender of such Bond to the Designated Payment/Transfer Office of the Paying Agent/Registrar for cancellation, accompanied by a written instrument of transfer or request for exchange duly executed by the Holder or by his duly authorized agent, in form satisfactory to the Paying Agent/Registrar.

Upon surrender for transfer of a Bond (other than the Initial Bond referenced in Section 8 hereof) at the Designated Payment/Transfer Office of the Paying Agent/Registrar, one or more new certificates evidencing the Bonds, in authorized denominations, of like Stated Maturity and of a like aggregate principal amount as the Bond or Bonds surrender for transfer shall be registered and issued to the assignee or transferee of the previous Holders.

At the option of the Holder, Bonds (other than the Initial Bond referenced in Section 8 hereof) may be exchanged for other Bonds of authorized denominations and having the same Stated Maturity, bearing the same rate of interest and of like aggregate principal amount as the Bonds surrendered for exchange, upon surrender of the Bonds to be exchanged at the Designated Payment/Transfer Office of the Paying Agent/Registrar. Whenever any Bonds are surrendered for exchange, the Paying Agent/Registrar shall register and deliver new printed certificates evidencing the Bonds, executed on behalf of, and furnished by, the Corporation, to the Holder requesting the exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be delivered at the Designated Payment/Transfer Office of the Paying Agent/Registrar, or sent by United States mail, first class postage prepaid, to the Holder and, upon the delivery thereof, the same shall be valid obligations of the Corporation, evidencing the same obligation to pay, and entitled to the same benefits under this Resolution, as the Bonds surrendered in such transfer or exchange.

All transfers or exchanges of Bonds pursuant to this Section shall be made without expense or service charge to the Holder, except as otherwise herein provided, and except that the Paying Agent/Registrar shall require payment by the Holder requesting such transfer or exchange of any tax or other governmental charges required to be paid with respect to such transfer or exchange. The signature of the Holder need not, and the Paying Agent/Registrar may not, request that such signature be guaranteed in connection with any transfer, exchange or any other request or action of the Holder with respect to the Bonds or otherwise.

Bonds canceled by reason of an exchange or transfer pursuant to the provisions hereof are hereby defined to be "Predecessor Bonds," evidencing all or a portion, as the case may be, of the same obligation to pay evidenced by the Bond or Bonds registered and delivered in the exchange or transfer therefor. Additionally, the term "Predecessor Bonds" shall include any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof pursuant to Section 26 hereof and such new replacement Bond shall be deemed to evidence the same obligation as the mutilated, lost, destroyed, or stolen Bond.

Section 7. Execution - Registration. The Bonds shall be executed on behalf of the Corporation by its Chair of the Board of Directors of the Corporation and attested by the Secretary of the Board of Directors of the Corporation. The signature of said officers on the Bonds may be manual or facsimile. Bonds bearing the manual or facsimile signatures of individuals who are or were the proper officers of the Corporation on the date of adoption of this Resolution shall be deemed to be duly executed on behalf of the Corporation, notwithstanding that such individuals or either of them shall cease to hold such offices at the time of delivery of the Bonds to the initial purchasers and with respect to Bonds delivered in subsequent exchanges and transfers.

No Bond shall be entitled to any right or benefit under this Resolution, or be valid or obligatory for any purpose, unless there appears on such Bond either a certificate of registration substantially in the form provided in Section 9(c), executed manually or by facsimile by the Comptroller of Public Accounts of the State of Texas or his or her duly authorized agent, or a certificate of registration substantially in the form provided in Section 9(d), manually executed by an authorized officer, employee or representative of the Paying Agent/Registrar, and either such certificate upon any Bond duly signed shall be conclusive evidence, and the only evidence, that such Bond has been duly certified, registered and delivered.

Section 8. Initial Bond. The Bonds herein authorized shall be initially issued as a single fully registered bond in the total principal amount noted in Section 1 hereof and numbered T-1 (hereinafter called the "Initial Bond") and the Initial Bond

shall be registered in the name of the TIFIA Lender or the designee thereof. The Initial Bond shall be the Bond submitted to the Office of the Attorney General of the State of Texas for approval, certified and registered by the Office of the Comptroller of Public Accounts of the State of Texas and delivered to the initial purchaser(s). Any time after the delivery of the Initial Bond, the Paying Agent/Registrar, pursuant to written instructions from the initial purchaser(s), or the designee thereof, shall cancel the Initial Bond delivered hereunder and exchange therefor definitive Bonds of authorized denominations and principal amounts set forth in the Pricing Certificate for transfer and delivery to the Holders named at the addresses identified therefor; all pursuant to and in accordance with such written instructions from the initial purchaser(s), or the designee thereof, and such other information and documentation as the Paying Agent/Registrar may reasonably require.

Section 9. Forms.

(a) Forms Generally. The Bonds, the Registration Certificate of the Comptroller of Public Accounts of the State of Texas (to be printed on the Initial Bond only), the Certificate of Registration, and the form of Assignment to be printed on each of the Bonds, shall be substantially in the forms set forth in this Section with such appropriate insertions, omissions, substitutions, and other variations as are permitted or required by the Pricing Certificate and may have such letters, numbers, or other marks of identification (including identifying numbers and letters of the Committee on Uniform Securities Identification Procedures of the American Bankers Association) and such legends and endorsements (including insurance legends on insured Bonds and any reproduction of an opinion of counsel) thereon as may, consistently herewith, be established by the Board of Directors of the Corporation or determined by the officers executing such Bonds as evidenced by the execution thereof. Any portion of the text of any Bonds may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Bond.

The Bonds, including the Initial Bond, shall be typewritten, printed, lithographed, or engraved or produced in any other similar manner, all as determined by the officers executing such Bonds as evidenced by their execution thereof.

(b) Form of Bond.

REGISTERED
NO. [T-1][R-1]

REGISTERED
\$ _____

UNITED STATES OF AMERICA
STATE OF TEXAS

MCKINNEY COMMUNITY DEVELOPMENT CORPORATION
SALES TAX REVENUE REFUNDING BOND
TAXABLE SERIES 2026 (TIFIA)

Bond Date: _____, 2026 Interest Rate: _____ % Stated Maturity: _____, _____

Registered Owner: _____

Principal Amount: _____ DOLLARS

The McKinney Community Development Corporation (hereinafter referred to as the "Corporation"), a non-profit corporation organized and existing under the laws of the State of Texas, including the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 505 of the Local Government Code, with its principal office located in the City of McKinney, Texas, for value received, acknowledges itself indebted to and hereby promises to pay to the Registered Owner named above, or the registered assigns thereof, solely from the revenues and sources pledged under the Resolution identified below, the Principal Amount stated above (or so much thereof as shall not have been paid upon prior redemption) on the Stated Maturity date specified above, and to pay interest on the unpaid principal amount hereof from the interest payment date next preceding the "Registration Date" of this Bond appearing below (unless this Bond bears a "Registration Date" as of an interest payment date, in which case it shall bear interest from such date, or unless the "Registration Date" of this Bond is prior to the initial interest payment date in which case it shall bear interest from the initial date of delivery of the Bonds) at the per annum rate of interest specified above; such interest being payable on February 15 and August 15 of each year, commencing August 15, 2026, until maturity or prior redemption. Principal of this Bond is payable at its Stated Maturity or redemption to the registered owner hereof by _____, _____, Texas, or its successor (the "Paying Agent/Registrar"), upon presentation and surrender at its designated office in _____, _____ (the "Designated Payment/Transfer Office"); provided; however, with respect to principal payments on each mandatory redemption date and so long as the TIFIA Lender (as defined in the Resolution) or its designee owns 100% of the Outstanding Bonds, the Bonds need not be surrendered to the Paying Agent/Registrar, who will merely document such payment on an internal ledger maintained by the Paying Agent/Registrar. Interest is payable to the registered owner of this Bond (or one or more Predecessor Bonds, as defined in the resolution hereinafter referenced) whose name appears on the "Security Register" maintained by the Paying Agent/Registrar at the close of business on the "Record Date", which is the last business day of the month next preceding each interest payment date and interest shall be paid by the Paying Agent/Registrar by check sent United States mail, first class postage prepaid, to the address of the registered owner recorded in the Security Register or by such other method, acceptable to the Paying Agent/Registrar, requested by, and at the risk and expense of, the registered owner. If the date for the payment of the principal of or interest on the Bonds shall be a Saturday,

Sunday, a legal holiday, or a day when banking institutions in the city where the Designated Payment/Transfer Office of the Paying Agent/Registrar is located is authorized by law or executive order to close, then the date for such payment shall be the next succeeding day which is not such a Saturday, Sunday, legal holiday, or day when banking institutions are authorized to close; and payment on such date shall have the same force and effect as if made on the original date payment was due. All payments of principal of, premium, if any, and interest on this Bond shall be without exchange or collection charges to the owner hereof and in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of the series specified in its title issued in the aggregate principal amount of \$30,000,000 (herein referred to as the "Bonds") for the purpose of refunding the McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2025 which financed costs of improvements to the McKinney National Airport (the "Airport") including passenger terminal facilities and other airport facilities, streets and roads, taxiways, aprons, and other infrastructure related to the Airport and the acquisition of any land related thereto and to pay costs of issuance, in conformity with the Constitution and laws of the State of Texas, including the Act and pursuant to a Resolution adopted by the governing body of the Corporation (herein referred to as the "Resolution").

The Bonds may be redeemed prior to their Stated Maturity, at the option of the Corporation, in whole or in part at any time; provided, however, that such redemption payments shall be in a minimum of \$1,000,000 and then in principal amounts of \$1,000 or any integral multiple thereof in excess of the minimum amount (and if within the Stated Maturity by lot by the Paying Agent/Registrar) at the price of par plus accrued interest to the date of redemption.

At least thirty (30) days prior to the date fixed for any redemption of Bonds, the Corporation shall cause a written notice of such redemption to be sent by United States mail, first class postage prepaid, to the registered owners of each Bond to be redeemed at the address shown on the Security Register and subject to the terms and provisions relating thereto contained in the Resolution. If a Bond (or any portion of its principal sum) shall have been duly called for redemption and notice of such redemption duly given, then upon such redemption date such Bond (or the portion of its principal sum to be redeemed) shall become due and payable, and, if moneys for the payment of the redemption price and the interest accrued on the principal amount to be redeemed to the date of redemption are held for the purpose of such payment by the Paying Agent/Registrar, interest shall cease to accrue and be payable from and after the redemption date on the principal amount hereof redeemed.

If a Bond is called for redemption, in whole or in part, the Corporation and the Paying Agent/Registrar shall not be required to transfer such Bond to an assignee of the Holder within forty-five (45) days of the redemption date therefor; provided, however, such limitation on transferability shall not be applicable to an exchange by the Holder of the unredeemed balance of a Bond redeemed in part.

With respect to any optional redemption of the Bonds, unless certain prerequisites to such redemption required by the Resolution have been met and moneys sufficient to pay the redemption price of the Bonds to be redeemed shall have been received by the Paying Agent/Registrar prior to the giving of such notice of redemption, such notice may state that said redemption is conditional upon the satisfaction of such prerequisites and receipt of such moneys by the Paying Agent/Registrar on or prior to the date fixed for such redemption. If a conditional notice of redemption is given and such prerequisites to the redemption are not satisfied or sufficient moneys are not received, such notice shall be of no force and effect, the Corporation shall not redeem such Bonds and the Paying Agent/Registrar shall give notice, in the manner in which the notice of redemption was given, to the effect that the Bonds have not been redeemed.

The Bonds are payable solely from and equally and ratably secured by a pledge of the "Pledged Revenues" (as defined in the Resolution) received by the Corporation, including the receipts from a Sales Tax levied for the benefit of the Corporation pursuant to the Act and an election held in the City of McKinney, Texas (the "City"). The Bonds do not constitute a legal or equitable, pledge, charge, lien or encumbrance upon any property of the Corporation or the City except with respect to the "Pledged Revenues". This Bond may not be paid in whole or in part from any property taxes raised or to be raised by the City and is not a debt of and does not give rise to a claim for payment against the City, except as to the sales and use tax revenues held by the City and required under the Act to be paid over to the Corporation. Neither the State of Texas, the City or any political corporation, subdivision or agency of the State of Texas shall be obligated to pay this Bond or the interest hereon and neither the faith and credit nor the taxing power of the State, the City or any other political corporation, subdivision or agency thereof is pledged to the payment of the principal of and interest on this Bond except as noted above.

Subject to satisfying the terms and conditions prescribed therefor, the Corporation has reserved the right to issue additional revenue obligations payable, in whole or in part, from the "Pledged Revenues" and equally and ratably secured in like manner and effect as the Bonds.

Reference is hereby made to the Resolution, a copy of which is on file in the Designated Payment/Transfer Office of the Paying Agent/Registrar, and to all of the provisions of which the Holder by the acceptance hereof hereby assents, for definitions of terms; the description of and the nature and extent of the security for the payment of the Bonds; the rights of Holders of the Bonds the terms and conditions for the issuance of additional obligations; the terms and conditions relating to the payment, transfer or exchange of this Bond; the conditions upon which the Resolution may be amended or supplemented with or without the consent of the Holders; the rights, duties, and obligations of the Corporation and the Paying Agent/Registrar; the terms and provisions upon which the encumbrances, pledges, charges and covenants made therein may be discharged; and for the other terms and provisions contained therein. Capitalized terms used herein have the same meanings assigned in the Resolution.

This Bond, subject to certain limitations contained in the Resolution, may be transferred on the Security Register only upon its presentation and surrender at the

Designated Payment/Transfer Office of the Paying Agent/Registrar, with the Assignment hereon duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Paying Agent/Registrar duly executed by, the registered owner hereof, or his duly authorized agent. When a transfer on the Security Register occurs, one or more new fully registered Bonds of the same Stated Maturity, of authorized denominations, bearing the same rate of interest, and of the same aggregate principal amount will be issued by the Paying Agent/Registrar to the designated transferee or transferees.

The Corporation and the Paying Agent/Registrar, and any agent of either, may treat the registered owner hereof whose name appears on the Security Register (i) on the Record Date as the owner entitled to payment of interest hereon, (ii) on the date of surrender of this Bond as the owner entitled to payment of principal hereof at its Stated Maturity or its redemption, in whole or in part, and (iii) on any other date as the owner for all other purposes, and neither the Corporation nor the Paying Agent/Registrar, or any agent of either, shall be affected by notice to the contrary. In the event of non-payment of interest on a scheduled payment date and for thirty (30) days thereafter, a new record date for such interest payment (a "Special Record Date") will be established by the Paying Agent/Registrar, if and when funds for the payment of such interest have been received from the Corporation. Notice of the Special Record Date and of the scheduled payment date of the past due interest (which shall be 15 days after the Special Record Date) shall be sent at least five (5) business days prior to the Special Record Date by United States mail, first class postage prepaid, to the address of each Holder appearing on the Security Register at the close of business on the last business day next preceding the date of mailing of such notice.

It is hereby certified, recited, represented and covenanted that the Corporation is a non-profit corporation duly organized and legally existing under and by virtue of the Constitution and laws of the State of Texas, including the Act; that all acts, conditions and things required to exist and be done precedent to and in the issuance of the Bonds to render the same lawful and valid special obligations of the Corporation have been properly done, have happened and have been performed in regular and due time, form and manner as required by law; and that due provision has been made for the payment of the principal of and interest on the Bonds from the sources and in the manner provided in the Resolution. In case any provision in this Bond or any application thereof shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions and applications shall not in any way be affected or impaired thereby. The terms and provisions of this Bond and the Resolution shall be construed in accordance with and shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Board of Directors of the Corporation has caused this Bond to be duly executed.

MCKINNEY COMMUNITY DEVELOPMENT CORPORATION

Chair, Board of Directors

ATTEST:

Secretary, Board of Directors

(c) Form of Registration Certificate of Comptroller of Public Accounts to Appear on the Initial Bond only.

REGISTRATION CERTIFICATE OF
COMPTROLLER OF PUBLIC ACCOUNTS

OFFICE OF THE COMPTROLLER)
)
OF PUBLIC ACCOUNTS) REGISTER NO. _____
)
THE STATE OF TEXAS)

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Comptroller of Public Accounts of the State of Texas.

WITNESS my signature and seal of office this _____ .

Acting Comptroller of Public Accounts
of the State of Texas

(SEAL)

(d) Form of Certificate of Paying Agent/Registrar to Appear on definitive Bonds.

REGISTRATION CERTIFICATE OF PAYING AGENT/REGISTRAR

This Bond has been duly issued and registered in the name of the Registered Owner shown above under the provisions of the within-mentioned Resolution and duly approved, or a Predecessor Bond hereof duly approved, by the Attorney General of the

State of Texas and registered by the Comptroller of Public Accounts, as shown by the records of the Paying Agent/Registrar.

The designated office of the Paying Agent/Registrar located in [_____, _____], is the "Designated Payment/Transfer Office" for this Bond.

_____, [_____,] Texas,
as Paying Agent/Registrar

Registration date:

By _____
Authorized Signature

(e) Form of Assignment.

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns, and transfers unto (Print or typewrite name, address, and zip code of transferee:)

(Social Security or other identifying number _____) the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

DATED:

Signature guaranteed:

NOTICE: The signature on this assignment must correspond with the name of the registered owner as it appears on the face of the within Bond in every particular.

Section 10. Definitions. For all purposes of this Resolution and in particular for clarity with respect to the issuance of the Bonds herein authorized and the pledge and appropriation of revenues to the payment of the Bonds, the following definitions are provided:

"Act" - The Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (the "Act") (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 505 of the Local Government Code.

"Additional Obligations" - Bonds, notes or other evidences of indebtedness which the Corporation reserves the right to issue or enter into, as the case may be, in the future in accordance with the terms and conditions provided in Section 18 hereof and which, together with the Bonds, are equally and ratably secured by a parity pledge of and claim on the Pledged Revenues under the terms of this Resolution and a Supplemental Resolution.

"Average Annual Debt Service" - That amount which, at the time of computation, is derived by dividing the total amount of Debt Service to be paid over a period of years as the same is scheduled to become due and payable by the number of years taken into account in determining the total Debt Service. Capitalized interest payments provided from proceeds of borrowings of the Corporation shall be excluded in making the aforementioned computation.

"Board" The Board of Directors of the Corporation.

"Bond Date" - The date of initial issuance of the Bonds as set forth in the Pricing Certificate.

"Bond Fund" - The "McKinney Community Development Corporation Debt Service Fund" established and maintained pursuant to Section 13 hereof for the payment of the Parity Obligations.

"Bonds" - The "McKinney Community Development Corporation Sales Tax Revenue Refunding Bonds, Taxable Series 2026 (TIFIA)" authorized by this Resolution.

"City" - The City of McKinney, Texas.

"Corporation" - The McKinney Community Development Corporation, a non-profit industrial development corporation organized and existing under and pursuant to the laws of the State of Texas, including the Act and on behalf of the City of McKinney, Texas.

"Debt Service" – means, with respect to Parity Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of such Parity Obligations accruing and payable in respect of such period. In determining the principal and interest amounts of Parity Obligations due in such period, payment shall be assumed to be made in accordance with any debt service schedule established for the applicable Parity Obligations, including any balloon or bullet maturities (which shall be treated as being paid in full on their respective due dates).

"Depository" - A commercial bank or other qualified financial institution eligible and qualified to serve as the custodian of the Corporation's monetary accounts and funds.

"Designated Payment/Transfer Office" - The office of the Paying Agent/Registrar located in Dallas, Texas, or such other location designated by the Paying Agent/Registrar.

"Fiscal Year" - The twelve (12)-month financial accounting period used by the Corporation ending September 30 in each year, or such other twelve consecutive month period established by the Corporation.

"Funds" – The Pledged Revenue Fund, the Bond Fund, the Reserve Fund, the TIFIA Reserve Fund and any other funds or accounts established by the Corporation to be used or available for use in connection with the payment of the Parity Obligations.

"Government Obligations" – has the meaning assigned thereto in the TIFIA Agreement.

"Gross Sales Tax Revenues" - All of the revenues or receipts due or owing to, or collected or received by or on behalf of the Corporation by the City or otherwise, from or by reason of the levy of the Sales Tax pursuant to the Act and the election held January 20, 1996, less any amounts due and owed to the Comptroller of Public Accounts of the State of Texas as charges for the collection of the Sales Tax or retention by said Comptroller for refunds and to redeem dishonored checks and drafts, to the extent such charges and retention are authorized or required by law.

"Holders" - The registered owners or holders of the Bonds appearing on the Security Register maintained by the Paying Agent/Registrar.

Initial Bond - The single fully registered bond in the total principal amount of the Bonds, numbered T-1, initially issued and delivered to the initial purchaser(s) as provided in Section 8 hereof and the Pricing Certificate.

"Outstanding-" - When used in this Resolution with respect to Bonds or Parity Obligations, as the case may be, means, as of the date of determination, all Bonds and Parity Obligations theretofore sold, issued and delivered by the Corporation, except: those Bonds or Parity Obligations canceled or delivered to the transfer agent or registrar for cancellation in connection with the exchange or transfer of such obligations; those Bonds or Parity Obligations paid or deemed to be paid in accordance with the provisions of Section 24

hereof or similar provisions of any Supplemental Resolution authorizing the issuance of Additional Obligations; or those Bonds or Parity Obligations that have been mutilated, destroyed, lost, or stolen and replacement obligations have been registered and delivered in lieu thereof.

"Parity Obligations" - Collectively, (a) without duplication, the Bonds, the TIFIA Loan and all other obligations of the Corporation payable under the TIFIA Agreement, (b) the Previously Issued Bonds (other than the Refunded Bonds) and (c) Additional Obligations.

"Paying Agent/Registrar" - The entity selected and appointed pursuant to the Pricing Certificate to serve as paying agent and registrar for the Bonds, or any successor thereto.

"Pledged Revenue Fund" - The fund or account maintained by the Corporation at a Depository for the deposit of the Pledged Revenues as provided in Section 12 hereof.

"Pledged Revenues" - Collectively (i) Gross Sales Tax Revenues from time to time deposited or owing to the Pledged Revenue Fund, (ii) the Funds that may from time to time be established by the Corporation, and (iii) such other money, income, revenue, receipts or other property as may be specifically dedicated, pledged or otherwise encumbered in a Supplemental Resolution for the payment and security of Parity Obligations.

"Predecessor Bonds" - Bonds canceled by reason of an exchange or transfer, or any mutilated, lost, destroyed, or stolen Bond for which a replacement Bond has been issued, registered and delivered in lieu thereof, as more fully described in Section 6 hereof.

"Previously Issued Bonds" - The "McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2015" dated January 15, 2015 and the Refunded Bonds being refunded by the Bonds.

"Pricing Certificate" - The certificate executed by a Pricing Officer setting forth the final terms of the Bonds as authorized by Section 3 hereof.

"Pricing Officer" - Each of the Chair of the Board, Vice Chair of the Board, and President of the Corporation designated in Section 3 hereof and authorized to act on behalf of the Corporation in selling and delivering the Bonds and carrying out the other procedures specified in this Resolution.

"Record Date" - The last business day of the month next preceding each interest payment date.

"Refunded Bonds" - The McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2025, dated April 1, 2025, being refunded by the Bonds.

"Required Reserve" - The amount required to be accumulated and maintained in the Reserve Fund under the provisions of Section 14 hereof.

"Reserve Fund" - The "McKinney Community Development Corporation Reserve Fund" established and maintained pursuant to Section 14 hereof.

"Sales Tax" - The local sales and use tax authorized under Section 4B of the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6 (now codified as the Development Corporation Act as described above), approved at an election held on January 20, 1996, and the effective date for the imposition and application of such Sales Tax within the corporate limits of the City by the Comptroller of Public Accounts of the State of Texas being July 1, 1996, together with any increases in the rate of such Sales Tax authorized and provided by law.

"Security Register" - The books and records relating to the registration, payment, exchange and transfer of the Bonds maintained by the Paying Agent/Registrar.

"Series 2015 Bonds" - The "McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2015" dated January 15, 2015.

"Special Record Date" - A new record date established by the Paying Agent/Registrar in the event of non-payment of interest on a scheduled payment date, as provided in Section 5 hereof.

"Stated Maturity" - The date or dates on which the principal of the Bonds is scheduled to mature and become due and payable as set forth in the Pricing Certificate.

"Supplemental Resolution" - Any resolution of the Board supplementing this Resolution for the purpose of authorizing and providing the terms and provisions of the Bonds or Additional Obligations, or supplementing or amending this Resolution for any other authorized purpose permitted in Section 18 or 25 hereof, including resolutions authorizing the issuance of Additional Obligations or pledging and encumbering income, revenues, receipts

or property other than the Gross Sales Tax Revenues to the payment and security of the Parity Obligations.

"TIFIA" - Transportation Infrastructure Finance and Innovation Act of 1998, as codified at 23 U.S.C. §§ 601-609, as amended from time to time.

"TIFIA Agreement" - The TIFIA Loan Agreement by and among the Corporation, the City and the TIFIA Lender, as amended and supplemented from time to time.

"TIFIA Lender" - the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau.

"TIFIA Reserve Fund" – The McKinney Community Development Corporation TIFIA Reserve Fund" established and maintained pursuant to Section 14 hereof.

Section 11. Pledge. The Corporation hereby covenants and agrees that the Pledged Revenues, with the exception of those in excess of the amounts required for the payment and security of the Parity Obligations, are hereby irrevocably pledged to the payment and security of the Parity Obligations, including the establishment and maintenance of the special funds created and established in this Resolution and any Supplemental Resolution, all as hereinafter provided or as provided in the Pricing Certificate. The Corporation hereby resolves that the Parity Obligations shall constitute a lien on the Pledged Revenues in accordance with the terms of this Resolution and any Supplemental Resolution, which lien shall be valid and binding and fully perfected from and after the date of adoption of this Resolution without physical delivery or transfer or transfer of control of the Pledged Revenues, the filing of this Resolution or any other act; all as provided in Texas Government Code, Chapter 1208, as amended.

Texas Government Code, Chapter 1208, as amended, applies to the issuance of the Bonds and the pledge of the Pledged Revenues granted by the Corporation under this Section 11, and such pledge is therefore valid, effective and perfected. If Texas law is amended at any time while the Bonds are Outstanding such that the pledge of the Pledged Revenues granted by the Corporation under this Section 11 is to be subject to the filing requirements of Texas Business and Commerce Code, Chapter 9, as amended, then in order to preserve to the registered owners of the Bonds the perfection of the security interest in said pledge, the Corporation agrees to take such measures as it determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas Business and Commerce Code, Chapter 9, as amended, and enable a filing to perfect the security interest in said pledge to occur.

Section 12. Pledged Revenue Fund. The Corporation hereby agrees and covenants to maintain a special banking fund or account at a Depository for the deposit of the Pledged Revenues as received by the Corporation, which fund or account shall be known on the books and records of the Corporation as the "Pledged Revenue Fund". All Pledged Revenues deposited to the credit of such Fund shall be accounted for separate and apart from all other revenues, receipts and income of the Corporation and, with respect to the Gross Sales Tax Revenues, the Corporation shall further account for such funds separate and apart from the other Pledged Revenues deposited to the credit of the Pledged Revenue Fund. All Pledged Revenues deposited to the credit of the Pledged Revenue Fund shall be appropriated and expended to the extent required by this Resolution and any Supplemental Resolution for the following uses and in the order of priority shown:

First: To the payment of the amounts required to be deposited in the Bond Fund for the payment of principal, interest and all other amounts payable on or under the Parity Obligations as the same become due and payable;

Second: To the payment of the amounts required to be deposited in the Reserve Fund to establish and maintain the Required Reserve in accordance with the provisions of this Resolution and any Supplemental Resolution;

Third: To the payment of amounts required to be deposited in any other fund or account required by any Supplemental Resolution authorizing the issuance of Parity Obligations; and

Fourth: To any fund or account held at any place or places, or to any payee, required by any other resolution of the Board which authorized the issuance of obligations or the creation of debt of the Corporation having a lien on the Pledged Revenues subordinate to the lien created herein on behalf of the Parity Obligations.

Any Pledged Revenues remaining in the Pledged Revenue Fund after satisfying the foregoing payments, or making adequate and sufficient provision for the payment thereof, may be appropriated and used for any other lawful purpose now or hereafter permitted by law.

Section 13. Bond Fund. For the purpose of providing funds to pay the principal of and interest on Parity Obligations, the Corporation agrees and covenants to maintain a separate and special account or fund on the books and records of the Corporation known as the "McKinney Community Development Corporation Debt Service Fund" (the "Bond Fund"), and all monies deposited to the credit of such Bond Fund shall be held in a special banking fund or account maintained at a Depository of the Corporation. The Corporation covenants that there shall be deposited into the Bond Fund

prior to each principal and interest payment date from the Pledged Revenues an amount equal to one hundred percent (100%) of the interest on and the principal of the Bonds then falling due and payable, and such deposits to pay principal and accrued interest on the Bonds shall be made in substantially equal monthly installments on or before the tenth (10th) day of each month, beginning on or before the tenth (10th) day of the month next following the delivery of the Bonds to the initial purchasers.

The required deposits to the Bond Fund for the payment of principal of and interest on the Bonds shall continue to be made as hereinabove provided until (i) the total amount on deposit in the Bond Fund and Reserve Fund is equal to the amount required to fully pay and discharge all Parity Obligations (principal and interest) then Outstanding or (ii) the Bonds are no longer Outstanding.

Section 14. Reserve Fund.

- (a) The Corporation agrees and covenants to maintain on the books and records of the Corporation a separate and special fund or account known as the “McKinney Community Development Corporation Reserve Fund” (the “Reserve Fund”) and all monies deposited to the credit of such Reserve Fund shall be held in a special banking fund or account maintained at a Depository of the Corporation.
- (b) As applicable, the total amount required to be deposited to the credit of the Reserve Fund by reason of the issuance of Additional Obligations is hereby determined to be an amount equal to the average annual Debt Service (calculated on a Fiscal Year basis) for all Parity Obligations currently Outstanding (after giving effect to the issuance of the any bonds to which the Reserve Fund is applicable) (the “Required Reserve”), as determined on the date such bonds are to be delivered to the initial purchasers; provided, however, the Corporation may recalculate and adjust the Required Reserve at the end of each Fiscal Year or upon the defeasance, redemption or maturity of any Parity Obligations. For the avoidance of doubt, there was no Required Reserve for the Refunded Bonds.
- (c) The Corporation agrees and covenants to maintain on the books and records of the Corporation a separate and special fund or account known as the “McKinney Community Development Corporation TIFIA Reserve Fund” (the “TIFIA Reserve Fund”) and all monies deposited to the credit of such TIFIA Reserve Fund shall be held in a special banking fund or account maintained at a Depository of the Corporation.
- (d) The total amount required to be maintained on deposit in the TIFIA Reserve Fund at all times during each Fiscal Year in which the Bonds

remain outstanding is hereby determined to be an amount equal to the Average Annual Debt Service (calculated on a Fiscal Year basis for such Fiscal Year) for the Bonds (the "TIFIA Reserve").

- (e) The TIFIA Reserve Fund shall be fully funded in the amount of the TIFIA Reserve starting on the earlier of the Substantial Completion Date and the Debt Service Payment Commencement Date (each as defined in the TIFIA Agreement), with (i) cash, (ii) a surety bond on terms and issued by a surety acceptable to the TIFIA Lender (a "Credit Support Instrument"), or (iii) lawfully available funds of the Corporation.
- (f) The TIFIA Reserve Fund is applicable only to the Bonds, shall be segregated from any other Required Reserve, and shall not be available for any other Parity Obligations unless expressly provided in a Supplemental Resolution with the written consent of the TIFIA Lender.

Section 15. Deficiencies. Without prejudice to Section 19 (Events of Default and Remedies) of the TIFIA Agreement and the rights of any Lender with respect to any failure to fund the TIFIA Reserve as and when required pursuant to Section 15(k) (Reserve Funds; Permitted Investments) of the TIFIA Agreement, if on any date there shall not be sufficient Pledged Revenues to make the required deposits into the Bond Fund or Reserve Fund, such deficiency shall be cured as soon as possible from the next available Pledged Revenues, or from any other sources available for such purpose.

Section 16. Payment of Bonds. While any of the Bonds are Outstanding, the designated financial officer of the Corporation shall cause to be transferred to the Paying Agent/Registrar, from funds on deposit in the Bond Fund amounts sufficient to fully pay and discharge promptly as each installment of interest and principal of the Bonds accrues or matures; such transfer of funds to be made in such manner as will cause immediately available funds to be deposited with the Paying Agent/Registrar for the Bonds at the close of the business day next preceding the date of payment for the Bonds.

Section 17. Investments - Security of Funds. Money in any Fund required to be maintained pursuant to this Resolution may, at the option of the Corporation, be invested in obligations and in the manner prescribed by the Public Funds Investment Act (Texas Government Code, Chapter 2256, as amended), including investments held in book-entry form; provided that (i) all such deposits and investments shall be made in such a manner that the money required to be expended from any Fund will be available at the proper time or times and (ii) all investments in the TIFIA Reserve shall be made only in Permitted Investments as defined in the TIFIA Agreement. Such investments shall be valued in terms of current market value within 45

days of the close of each Fiscal Year and, with respect to investments held for the account of the Reserve Fund, within 45 days of the date of passage of each authorizing document of the Board pertaining to the issuance of Additional Obligations. All interest and income derived from deposits and investments in the Bond Fund immediately shall be credited to, and any losses debited to, the appropriate account of the Bond Fund. All interest and income derived from deposits in and investments of the Reserve Fund shall, subject to the limitations provided in Section 14 hereof, be credited to and deposited in the Pledged Revenue Fund. All such investments shall be sold promptly when necessary to prevent any default in connection with the Parity Obligations.

Money deposited to the credit of the Pledged Revenue Fund, Bond Fund and Reserve Fund, to the extent not invested and not otherwise insured by the Federal Deposit Insurance Corporation or similar agency, shall be secured by a pledge of direct obligations of the United States of America, or obligations unconditionally guaranteed by the United States of America.

Section 18. Issuance of Additional Parity Obligations. Subject to the provisions hereinafter appearing as to conditions precedent which must be satisfied, the Corporation reserves the right to issue, from time to time as needed, Additional Obligations for any lawful purpose. Such Additional Obligations may be issued in such form and manner as the Corporation shall determine, provided, however, prior to issuing or incurring such Additional Obligations, the following conditions precedent for the authorization and issuance of the same are satisfied.

- (1) The President of the Corporation (or other officer of the Corporation then having the primary responsibility for the financial affairs of the Corporation) shall have executed a certificate stating that, to the best of his or her knowledge and belief, the Corporation is not then in default as to any covenant, obligation or agreement contained in this Resolution or a Supplemental Resolution.
- (2) The Corporation has secured from a certified public accountant a certificate or opinion to the effect that, according to the books and records of the Corporation, the Gross Sales Tax Revenues received by the Corporation for the twelve (12)-month period preceding the adoption of the Supplemental Resolution authorizing the Additional Obligations were equal to not less than 1.50 times the maximum annual Debt Service for all Parity Obligations then Outstanding after giving effect to the issuance of the Additional Obligations then being issued.

- (3) The Additional Obligations shall be rated at least “BBB-“ by S&P Global Ratings or “Baa3” by Moody’s Investor Services, Inc. (as applicable or an equivalent rating by another nationally recognized credit rating agency of similar standing).
- (4) Interest on the Additional Obligations shall accrue at a fixed interest rate only.
- (5) If applicable, the Required Reserve to be accumulated and maintained in the Reserve Fund is increased to the extent required by Section 15.

Section 19. Refunding Bonds. The Corporation reserves the right to issue refunding bonds to refund all or any part of the Parity Obligations (pursuant to any law then available) upon such terms and conditions as the Board may deem to be in the best interest of the Corporation so long as such refunding bonds are rated at least “BBB-“ by S&P Global Ratings or “Baa3” by Moody’s Investor Services, Inc., (as applicable or an equivalent rating by another nationally recognized credit rating agency of similar standing) at the time of issuance, and if less than all such Parity Obligations then Outstanding are refunded, the conditions precedent prescribed (for the issuance of Additional Obligations) set forth in Section 18 hereof shall be satisfied, and shall give effect to both the refunding and the refunded obligations. Refunding bonds that (i) extend the final maturity of the obligations being refunded, (ii) have net proceeds (after deducting any amounts required to be deposited to satisfy any applicable reserve requirement or to pay costs of issuance) that exceed the principal amount of the obligations being refunded, or (iii) do not have lower Debt Service in each year of the refunding must meet the conditions set forth in Section 18.

Section 20. Right to Create Subordinate Debt. Except as may be limited by a Supplemental Resolution, the Corporation shall have the right to issue or create any debt payable from or secured by a lien on all or any part of the Pledged Revenues for any lawful purpose without complying with the provisions of Section 18 or 19 hereof, provided the pledge and the lien securing such debt is subordinate to the pledge and lien established, made and created in Section 11 of this Resolution with respect to the Pledged Revenues to the payment and security of the Parity Obligations. For so long as any of the Bonds remain outstanding, if any subordinated lien obligation contains a springing covenant that would enable the lien on such debt to become an obligation with a lien on the Pledged Revenues on parity with the Bonds, any automatic acceleration or any right to accelerate the obligations thereunder, mandatory early redemption provisions, or any other provision having a similar effect as to any of the foregoing, the consent of the TIFIA Lender to issue such obligations (or a waiver of such consent by the TIFIA Lender) is required as a condition precedent to the issuance of such subordinated lien obligation.

Section 21. Confirmation of Sales Tax.

- (a) The Board hereby represents the City has duly complied with the provisions of the Act for the levy of the Sales Tax at the rate voted at the election held by and within the City on January 20, 1996, and such Sales Tax has been and is being imposed within the corporate limits of the City and the receipts of such Sales Tax are being remitted to the City by the Comptroller of Public Accounts on a monthly basis.
- (b) While any Bonds are Outstanding, the Corporation covenants, agrees and warrants to take and pursue all action permissible to cause the Sales Tax, at said rate or at a higher rate if legally permitted, to be levied and collected continuously, in the manner and to the maximum extent permitted by law, and to cause no reduction, abatement or exemption in the Sales Tax or rate of tax below the rate stated, confirmed and ordered in subsection (a) of this Section to be ordered or permitted while any Bonds shall remain Outstanding.
- (c) If hereafter authorized by law to apply, impose and levy the Sales Tax on any taxable items or transactions that are not subject to the Sales Tax on the date of the adoption hereof, to the extent it legally may do so, the Corporation agrees to use its best efforts to cause the City to take such action as may be required to subject such taxable items or transactions to the Sales Tax.
- (d) The Corporation agrees to take and pursue all action legally permissible to cause the Sales Tax to be collected and remitted and deposited as herein required and as required by the Act, at the earliest and most frequent times permitted by law.
- (e) The Corporation agrees to use its best efforts to cause the City to comply with the Act and shall cause the Gross Sales Tax Revenues to be deposited to the credit of the Pledged Revenue Fund in their entirety immediately upon receipt by the City. In the alternative and if legally authorized, the Corporation shall, by appropriate notice, direction, request or other legal method, use its good-faith efforts to cause the Comptroller of Public Accounts of the State of Texas (the "Comptroller") to pay all Gross Sales Tax Revenues directly to the Corporation for deposit to the Pledged Revenue Fund.

Section 22. Records and Accounts. The Corporation hereby covenants and agrees that while any of the Bonds are Outstanding, it will keep and maintain complete records and accounts in accordance with generally accepted accounting principles, and following the close of each Fiscal Year, it will cause an audit of such books and accounts to be made by an independent firm of certified public accountants. Each such audit, in addition to whatever other matters

may be thought proper by the accountant, shall particularly include the following:

- (1) A statement in reasonable detail regarding the receipt and disbursement of the Pledged Revenues for such Fiscal Year; and
- (2) A balance sheet for the Corporation as of the end of such Fiscal Year.

Such annual audit of the records and accounts of the Corporation shall be in the form of a report (and may be reflected in the audit of the City) and be accompanied by an opinion of the accountant to the effect that such examination was made in accordance with generally accepted auditing standards and contain a statement to the effect that in the course of making the examination necessary for the report and opinion, the accountant obtained no knowledge of any default of the Corporation on the Bonds or in the fulfillment of any of the terms, covenants or provisions of this Resolution, or under any other evidence of indebtedness, or of any event which, with notice or lapse of time, or both, would constitute a failure of the Corporation to comply with the provisions of this Resolution or if, in the opinion of the accountants, any such failure to comply with a covenant or agreement hereof, a statement as to the nature and status thereof shall be included.

Copies of each annual audit report shall be furnished upon written request, to any Holders of any of said Bonds. The audits herein required shall be made within 180 days following the close of each Fiscal Year insofar as is possible.

The Holders of any Bonds or any duly authorized agent or agents of such Holders shall have the right to inspect such records, accounts and data of the Corporation during regular business hours.

Section 23. Representations and Other Covenants.

- (a) The Corporation represents and warrants that, except for the deposits associated with the payment and security of the Parity Obligations, the Pledged Revenues are and will be and remain free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge and lien created in or authorized by this Resolution except as expressly provided herein.
- (b) The Bonds and the provisions of this Resolution are and will be the valid and legally enforceable obligations of the Corporation in accordance with their terms and the terms of this Resolution, subject

only to any applicable bankruptcy or insolvency laws or to any laws affecting creditors rights generally.

- (c) The Corporation shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Pledged Revenues and all the rights of the Holders against all claims and demands of all persons whomsoever.
- (d) The Corporation will take, and use its best efforts to cause the City to take, all steps reasonably necessary and appropriate to collect all delinquencies in the collection of the Sales Tax to the fullest extent permitted by the Act.
- (e) The provisions, covenants, pledge and lien on and against the Pledged Revenues, as herein set forth, are established and shall be for the equal benefit, protection and security of the owners and holders of Parity Obligations without distinction as to priority and rights under this Resolution.
- (f) The Parity Obligations shall constitute special obligations of the Corporation, payable solely from, and equally and ratably secured by a parity pledge of and lien on, the Pledged Revenues, and not from any other revenues, properties or income of the Corporation. The Bonds may not be paid in whole or in part from any property taxes raised or to be raised by the City and shall not constitute debts or obligations of the State or of the City, and the Holders, shall never have the right to demand payment out of any funds raised or to be raised by any system of ad valorem taxation.

Section 24. Satisfaction of Obligation of Corporation. If the Corporation shall pay or cause to be paid, or there shall otherwise be paid to the Holders, the principal of, premium, if any, and interest on the Bonds, at the times and in the manner stipulated in this Resolution, then the pledge of the Pledged Revenues under this Resolution and all other obligations of the Corporation to the Holders shall thereupon cease, terminate, and be discharged and satisfied.

Bonds or any principal amount(s) shall be deemed to have been paid within the meaning and with the effect expressed above in this Section when (i) money sufficient to pay in full such Bonds at maturity or to the redemption date therefor, together with all interest due thereon, shall have been irrevocably deposited with and held in trust by the Paying Agent/Registrar, or an authorized escrow agent, or (ii) Government Obligations shall have been irrevocably deposited in trust with the Paying Agent/Registrar, or an authorized escrow agent, which Government Obligations have been certified by an independent accounting or consulting firm to mature as to principal and interest in such amounts and at such times as will insure the

availability, without reinvestment, of sufficient money, together with any moneys deposited therewith, if any, to pay when due the Bonds on the Stated Maturity thereof or (if notice of redemption has been duly given or waived or if irrevocable arrangements therefor accepted to the Paying Agent/Registrar have been made) the redemption date thereof.

Any moneys so deposited with the Paying Agent/Registrar, or an authorized escrow agent, and all income from Government Obligations held in trust by the Paying Agent/Registrar, or an authorized escrow agent, pursuant to this Section in excess of the amount required for the payment of the Bonds shall be remitted to the Corporation or deposited as directed by the Corporation. Furthermore, any money held by the Paying Agent/Registrar for the payment of the principal of and interest on the Bonds and remaining unclaimed for a period of three (3) years after the Stated Maturity, or applicable redemption date, of the Bonds such moneys were deposited and are held in trust to pay shall, upon the request of the Corporation, be remitted to the Corporation against a written receipt therefor. Notwithstanding the above and foregoing, any remittance of funds from the Paying Agent/Registrar to the Corporation shall be subject to any applicable unclaimed property laws of the State of Texas.

Section 25. Resolution a Contract - Amendments. This Resolution shall constitute a contract with the Holders from time to time, be binding on the Corporation, and shall not be amended or repealed by the Corporation while any Bond remains Outstanding except as permitted in this Section. The Corporation, may, without the consent of or notice to any Holders, from time to time and at any time, amend this Resolution in any manner not detrimental to the interests of the Holders, including the curing of any ambiguity, inconsistency, or formal defect or omission herein. In addition, the Corporation may, with the written consent from the owners holding a majority in aggregate principal amount of the Parity Obligations then Outstanding affected thereby, amend, add to, or rescind any of the provisions of this Resolution; provided that, without the written consent of all Holders of Outstanding Bonds effected, no such amendment, addition, or rescission shall (1) extend the time or times of payment of the principal of, premium, if any, and interest on the Bonds, reduce the principal amount thereof, the redemption price therefor, or the rate of interest thereon, or in any other way modify the terms of payment of the principal of, premium, if any, or interest on the Bonds, (2) give any preference to any Bond over any other Bond, (3) reduce the aggregate principal amount of Bonds or Parity Obligations, as the case may be, required to be held for consent to any such amendment, addition, or rescission, or (4) amend Section 11, 12, 13, 14, 18 or 19 hereof.

Section 26. Mutilated - Destroyed - Lost and Stolen Bonds. In case any Bond shall be mutilated, or destroyed, lost or stolen, the Paying Agent/Registrar may execute and deliver a replacement Bond of like form and tenor, and in the

same denomination and bearing a number not contemporaneously outstanding, in exchange and substitution for such mutilated Bond, or in lieu of and in substitution for such destroyed, lost or stolen Bond, only upon the approval of the Corporation and after the filing by the Holder thereof with the Paying Agent/Registrar of evidence satisfactory to the Paying Agent/Registrar of the destruction, loss or theft of such Bond, and of the authenticity of the ownership thereof. The Corporation shall, to the extent permitted by applicable law, indemnify the Paying Agent/Registrar in an amount satisfactory to hold the Paying Agent/Registrar harmless. All expenses and charges associated with such indemnity and with the preparation, execution and delivery of a replacement Bond shall be borne by the Corporation.

Every new Bond issued pursuant to this Section in lieu of any mutilated, destroyed, lost, or stolen Bond shall constitute a replacement of the prior obligation of the Corporation, whether or not the mutilated, destroyed, lost, or stolen Bond shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Resolution equally and ratably with all other Outstanding Bonds.

Section 27. Notices to Holders - Waiver. Wherever this Resolution provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and sent by United States mail, first class postage prepaid, to the address of each Holder as it appears in the Security Register.

In any case where notice to Holders is given by mail, neither the failure to mail such notice to any particular Holders, nor any defect in any notice so mailed, shall affect the sufficiency of such notice with respect to all other Bonds. Where this Resolution provides for notice in any manner, such notice may be waived in writing by the Holder entitled to receive such notice, either before or after the event with respect to which such notice is given, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Paying Agent/Registrar, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Section 28. Cancellation. All Bonds surrendered for payment, redemption, transfer or exchange, if surrendered to the Paying Agent/Registrar, shall be promptly canceled by it and, if surrendered to the Corporation, shall be delivered to the Paying Agent/Registrar and, if not already canceled, shall be promptly canceled by the Paying Agent/Registrar. The Corporation may at any time deliver to the Paying Agent/Registrar for cancellation any Bonds previously certified or registered and delivered which the Corporation may have acquired in any manner whatsoever, and all Bonds so delivered shall be promptly canceled by the Paying Agent/Registrar. All canceled Bonds held

by the Paying Agent/Registrar shall be destroyed as directed by the Corporation.

- Section 29. Bond Issuance. The Bonds authorized by this Resolution are hereby authorized to be issued by the Corporation and delivered to the TIFIA Lender.
- Section 30. Redemption of Refunded Bonds. In order to provide for the refunding, discharge, and retirement of the Refunded Bonds, the Refunded Bonds are hereby called for redemption on the date specified by the Pricing Officer in the Pricing Certificate at the price specified in the resolution authorizing the issuance of the Refunded Bonds, and notice of such redemption shall be given in accordance with the applicable provisions of such resolution. The Pricing Officer is hereby authorized and directed to issue or cause to be issued a Notice of Redemption for the Refunded Bonds in substantially the form set forth as an exhibit to the Pricing Certificate, to the paying agent/registrar for Refunded Bonds, in accordance with the redemption provisions applicable to the Refunded Bonds.
- Section 31. Proceeds of Issuance. The proceeds of issuance of the Bonds, excluding any amounts to pay costs of issuance, shall be deposited with the Paying Agent/Registrar. Such proceeds of sale may be invested in authorized investments in accordance with the provisions of Texas Government Code, Chapter 2256, as amended, including specifically guaranteed investment contracts permitted in Texas Government Code, Section 2256.015, et seq, and any investment earnings realized shall be deposited in the Bond Fund. All surplus proceeds of issuance of the Bonds, including investment earnings, shall be deposited to the credit of the Bond Fund.
- Section 32. Legal Opinion. The obligation of the TIFIA Lender to accept delivery of the Bonds and make the TIFIA Loan is subject to being furnished a final opinion of Norton Rose Fulbright US LLP, Attorneys, Dallas, Texas, approving such Bonds as to their validity, said opinion to be dated and delivered as of the date of delivery and payment for such Bonds. A true and correct reproduction of said opinion is hereby authorized to be printed on the definitive Bonds or an executed counterpart thereof shall accompany the Bonds delivered to the TIFIA Lender. The Board confirms the continuation of the engagement of Norton Rose Fulbright US LLP as the Corporation's bond counsel.
- Section 33. Control and Custody of Bonds. The Chair of the Board of Directors shall be and is hereby authorized to take and have charge of all necessary orders and records pending investigation by the Attorney General of the State of Texas, and shall take and have charge and control of the Initial Bond pending the approval thereof by the Attorney General, the registration thereof by the Comptroller of Public Accounts and the delivery thereof to the Purchasers.

Furthermore, the Chair and Vice Chair of the Board or the President and Chief Executive Officer of the Corporation, individually, jointly or collectively, are hereby authorized and directed to furnish and execute such documents and certifications relating to the Corporation and the issuance of the Bonds, as may be necessary for the approval of the Attorney General, registration by the Comptroller of Public Accounts and delivery of the Bonds to the initial purchasers and, together with the Corporation's financial advisor, general counsel, bond counsel and the Paying Agent/Registrar, make the necessary arrangements for the delivery of the Initial Bond to the Purchasers and the initial exchange thereof for definitive Bonds.

- Section 34. Benefits of Resolution. Nothing in this Resolution, expressed or implied, is intended or shall be construed to confer upon any person other than the Corporation, the Paying Agent/Registrar and the Holders, any right, remedy, or claim, legal or equitable, under or by reason of this Resolution or any provision hereof, this Resolution and all its provisions being intended to be and being for the sole and exclusive benefit of the Corporation, the Paying Agent/Registrar and the Holders.
- Section 35. Inconsistent Provisions. All orders or resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict and the provisions of this Resolution shall be and remain controlling as to the matters contained herein.
- Section 36. Governing Law. This Resolution shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.
- Section 37. Severability. If any provision of this Resolution or the application thereof to any circumstance shall be held to be invalid, the remainder of this Resolution and the application thereof to other circumstances shall nevertheless be valid, and the Board hereby declares that this Resolution would have been enacted without such invalid provision.
- Section 38. Construction of Terms. If appropriate in the context of this Resolution, words of the singular number shall be considered to include the plural, words of the plural number shall be considered to include the singular, and words of the masculine, feminine or neuter gender shall be considered to include the other genders.
- Section 39. Incorporation of Findings and Determinations. The findings and determinations of the Board of Directors contained in the preamble hereof are hereby incorporated by reference and made a part of this Resolution for all purposes as if the same were restated in full in this Section.

Section 40. Further Procedures. Any one or more of the Chair, Vice Chair, Secretary or Treasurer of the Board of Directors, or the President of the Corporation are hereby expressly authorized, empowered and directed from time to time and at any time to do and perform all such acts and things and to execute, acknowledge and deliver in the name and on behalf of the Corporation all agreements, instruments, certificates or other documents, whether mentioned herein or not, as may be necessary or desirable in order to carry out the terms and provisions of this Resolution and the issuance of the Bonds. In addition, prior to the initial delivery of the Bonds, the Chair, Vice Chair, Secretary or Treasurer of the Board of Directors or the President, or Bond Counsel to the Corporation are each hereby authorized and directed to approve any changes or corrections to this Resolution or to any of the documents authorized and approved by this Resolution: (i) in order to cure any ambiguity, formal defect or omission in this Resolution or such other document; or (ii) as requested by the Attorney General of the State of Texas or his representative to obtain the approval of the Bonds by the Attorney General and if such officer or counsel determines that such changes are consistent with the intent and purpose of this Resolution, which determination shall be final. In the event that any officer of the Corporation whose signature shall appear on any document shall cease to be such officer before the delivery of such document, such signature nevertheless shall be valid and sufficient for all purposes the same as if such officer had remained in office until such delivery.

Section 41. Public Meeting. It is officially found, determined, and declared that the meeting at which this Resolution is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Resolution, was given, all as required by Texas Government Code, Chapter 551, as amended.

Section 42. Effective Date. This Resolution shall be in force and effect from and after its passage on the date shown below.

[remainder of page left blank intentionally]

PASSED AND ADOPTED, this March 3, 2026.

MCKINNEY COMMUNITY DEVELOPMENT
CORPORATION

Chair, Board of Directors

ATTEST:

Secretary, Board of Directors

Exhibit B

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

For Up to \$[30,000,000]

With

**MCKINNEY COMMUNITY DEVELOPMENT CORPORATION
as Borrower**

and

**CITY OF MCKINNEY, TEXAS
as Sponsor**

For the

**MCKINNEY NATIONAL AIRPORT NEW TERMINAL
PROJECT
(TIFIA – 20[●])**

Dated as of [●]

TABLE OF CONTENTS

		<u>Page</u>
Section 1.	Definitions.....	2
Section 2.	Interpretation.....	16
Section 3.	TIFIA Loan Amount.....	17
Section 4.	Disbursement Conditions.....	17
Section 5.	Term.....	18
Section 6.	Interest Rate	18
Section 7.	Outstanding TIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule.....	19
Section 8.	Security and Priority; Flow of Funds.....	19
Section 9.	Payment of Principal and Interest.....	20
Section 10.	Prepayment	22
Section 11.	Compliance with Laws	23
Section 12.	Conditions Precedent; Condition Subsequent.....	23
Section 13.	Representations and Warranties of Borrower Related Parties.....	29
Section 14.	Representations and Warranties of TIFIA Lender.....	35
Section 15.	Affirmative Covenants.....	35
Section 16.	Negative Covenants	44
Section 17.	Indemnification.....	47
Section 18.	Sale of TIFIA Loan.....	48
Section 19.	Events of Default and Remedies.....	49
Section 20.	Accounting and Audit Procedures; Inspections; Reports and Records	52
Section 21.	Financial Plan; Financial Statements	53
Section 22.	Oversight and Monitoring.....	56
Section 23.	No Personal Recourse.....	58
Section 24.	No Third Party Rights.....	58
Section 25.	Borrower Related Party’s Authorized Representative.....	58
Section 26.	TIFIA Lender’s Authorized Representative	59
Section 27.	Servicer	59
Section 28.	Fees and Expenses	60
Section 29.	Amendments and Waivers	60
Section 30.	Governing Law	60
Section 31.	Severability	61
Section 32.	Successors and Assigns.....	61
Section 33.	Remedies Not Exclusive.....	61
Section 34.	Delay or Omission Not Waiver.....	61
Section 35.	Counterparts; Electronic Signatures	61
Section 36.	Notices; Payment Instructions	61
Section 37.	Effectiveness	63
Section 38.	Termination.....	63
Section 39.	Integration.....	63

SCHEDULE I – Project Budget

SCHEDULE II – Construction Schedule

SCHEDULE III – Existing Indebtedness

SCHEDULE IV – Section 12 of Bond Resolution

[SCHEDULE 13(f) – Litigation]

EXHIBIT A – Form of TIFIA Bond

EXHIBIT B – Anticipated TIFIA Loan Disbursement Schedule

EXHIBIT C – Non-Debarment Certification

EXHIBIT D – Requisition Procedures

EXHIBIT E – Compliance With Laws

EXHIBIT F – TIFIA Debt Service

EXHIBIT G-1 – Opinions Required from Counsel to Borrower and each other Borrower Related Party

EXHIBIT G-2 – Opinions Required from Bond Counsel

EXHIBIT H – Form of Certificate of Paying Agent/Registrar

EXHIBIT I-1 – Form of Borrower’s Officer’s Certificate

EXHIBIT I-2 – Form of Sponsor’s Officer’s Certificate

EXHIBIT J – Form of Certificate of Substantial Completion

EXHIBIT K – TIFIA Loan Reamortization Methodology

EXHIBIT L – Certification Regarding Lobbying

EXHIBIT M – Reporting Subawards and Executive Compensation

TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of [●] (the “**Effective Date**”), is by and among **MCKINNEY COMMUNITY DEVELOPMENT CORPORATION**, a public instrumentality and non-profit industrial development corporation duly organized and operating under the laws of the State of Texas (the “**State**”), with an address of [7300 SH 121, SB, Suite 200, McKinney, Texas 75070] (the “**Borrower**”), the **CITY OF MCKINNEY, TEXAS**, a Texas municipal corporation, with an address of [●] (the “**Sponsor**”),¹ and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), as codified at 23 U.S.C. §§ 601-609 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Sponsor owns and operates the Airport (as defined herein) and the Sponsor (on behalf of the Borrower) has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[30,000,000]² to be used to refinance the Borrower’s McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2025, the proceeds of which have been used by the Sponsor to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [●], 2026 (the “**Application**”); and

WHEREAS, on [●], 2026 the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

¹ **NOTE TO DRAFT:** McKinney to confirm Borrower and Sponsor legal descriptions.

² **NOTE TO DRAFT:** This amount to be updated at closing to reflect the actual loan amount as per the final financial model and apportionment.

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond (as defined herein) in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the projections in the Base Case Financial Model (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and among the Borrower, the Sponsor and the TIFIA Lender as follows:

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“**Acceleration Remedy MFN Event**” means the incurrence by the Borrower of any indebtedness for borrowed money, including any Additional Obligations, or the modification of the terms of any indebtedness for borrowed money incurred by any Borrower Related Party, that contemplates the right of the applicable lender, bondholder, other creditor or their applicable trustees or agents to declare the principal amount of such indebtedness immediately payable or demand payment in full prior to the final maturity thereof upon the occurrence of a breach, default or other event (other than the occurrence of the final maturity date).³

“**Acceptable Credit Rating**” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers, or issues a Credit Support Instrument, guarantee or other similar instrument, ‘A+’, ‘A1’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.⁴

“**Act**” means the Act as defined in the recitals hereto.

“**Additional Obligations**” means Pari Passu Obligations that are permitted under Section 16(a) (*Indebtedness*) and under the Bond Resolution, that are issued or incurred after the Effective Date (but excluding Initial Obligations), and that satisfy each of the applicable requirements of

³ **NOTE TO DRAFT:** Subject to USDOT’s internal consideration.

⁴ **NOTE TO DRAFT:** Required rating to be updated.

Section 18 (*Issuance of Additional Parity Obligations*) or Section 19 (*Refunding Bonds*), as applicable, of the Bond Resolution.⁵

“**Agreement**” has the meaning provided in the preamble hereto.

“**Airport**” means the McKinney National Airport located in the City of McKinney, Texas.

“**Annual Principal Payment Date**” means each [February 15].

“**Anticipated TIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

“**Anti-Corruption Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“**Anti-Money Laundering Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“**Application**” has the meaning provided in the recitals hereto.

“**Authorized Representative**” of any Borrower Related Party, means any Person who shall be designated as such pursuant to Section 25 (*Borrower Related Party’s Authorized Representative*).

“**Authorizing Legislation**” means [(a) the Development Corporation Act, Texas Local Government Code, Title 12, Subtitle C1, as amended (formerly known as the Development Corporation Act of 1979, Tex. Rev. Civ. Stat. Ann. Article 5190.6), specifically Chapters 501 and 505 of the Local Government Code, (b) the approval of the Sales Tax pursuant to the election held in the City of McKinney, Texas on January 20, 1996, (c) Resolution No. 96-02-07(R) (adopted February 6, 1996) ratifying, confirming and validating the levy and collection of the Sales Taxes, (d) Resolution No. 96-04-27(r) (adopted April 16, 1996) authorizing the creation of the Borrower, (e) Texas Government Code, Chapter 1208, as amended, (f) the Texas Limited Sales, Excise, and Use Tax Act, and (g) the Municipal Sales and Use Tax Act].⁷

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1960 and 31 U.S.C. §§ 312, 5311-5313, and

⁵ **NOTE TO DRAFT:** Conditions/restrictions on terms of Additional Obligations to be included in Bond Resolution.

⁶ **NOTE TO DRAFT:** References to Capital Appreciation Bonds and Deferred Interest Bonds (and related defined terms) have been removed based on a comment from NRF’s February 13 mark-up related to “Valuation Date”. McKinney to confirm or let us know if otherwise.

⁷ **NOTE TO DRAFT:** McKinney to confirm.

5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing;

(c) solely with respect to any Borrower Related Party, (i) any secured creditor shall commence a process pursuant to which all or a substantial part of the Collateral may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing any Obligations, or (ii) any secured creditor shall commence a process pursuant to which all or a substantial part of the Collateral may be sold or otherwise disposed of pursuant to a sale or disposition of such Collateral in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Depository shall transfer, pursuant to directions issued by the Bondholders or any other secured creditor (or any trustee or agent acting for the benefit of any of them) or any court order issued upon request of any Bondholder or any other secured creditor (or any trustee or agent acting for the benefit of any of them), funds on deposit in any of the Funds (as defined in the Bond Resolution) upon the occurrence and during the continuation of an Event of Default under the Bond Issuance Documents for application to the prepayment or repayment of any principal amount of any Obligations other than in accordance with the provisions of the Bond Resolution.

“Base Case Financial Model” means a financial model prepared by the Borrower Related Parties that includes (a) for each Borrower Fiscal Year through the Final Maturity Date, a forecast of Pledged Revenues and other funding obligations reflected in Section 12 (*Pledged Revenue*

Fund) of the Bond Resolution, (b) for each Borrower Fiscal Year through the Final Maturity Date, a forecast of TIFIA Debt Service and Debt Service on Pari Passu Obligations and Subordinated Obligations, and (c) the Project Budget, which model, in each case in clauses (a), (b), and (c) above, shall be based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, and which model shall be provided to the TIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format requested by the TIFIA Lender.⁸

“**Bond Fund**” has the meaning provided in the Bond Resolution.

“**Bond Issuance Documents**” means the Bond Resolution, each Supplemental Resolution, each Credit Support Instrument and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing, that are on a parity with the Bonds.

“**Bond Resolution**” means Resolution No. 2026-[●]-[●], passed and adopted on [●], by the Board of Directors of the Borrower, authorizing, among other things, the issuance of “McKinney Community Development Corporation Sales Tax Revenue Refunding Bonds, Taxable Series 2026 (TIFIA)”.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on October 1 of any calendar year and ending on September 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 16(d) (*Organizational Documents; Fiscal Year*).

“**Borrower Related Party**” means, individually or collectively, the Borrower and the Sponsor.

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, McKinney, Texas, [*the city and state in which the Depository is located*], or the city in which the office where draws are to be made on the Credit Support Instrument is located.

“**Calculation Date**” means each [●] and [●] occurring after the Effective Date.⁹

“**Calculation Period**” means a twelve (12) month period ending on a Calculation Date.

⁸ NOTE TO DRAFT: McKinney to confirm.

⁹ NOTE TO DRAFT: To be the same calendar dates used in the definition of “Semi-Annual Payment Date”.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“**Collateral**” means the “Pledged Revenues” as defined in the Bond Resolution, the “Funds” as defined in the Bond Resolution and all amounts deposited therein, all proceeds of the foregoing, and the revenues and receipts pledged by the Sponsor pursuant to Section 15(1)(ii) (*Appropriations; Collection of Pledged Revenues; Pledge of City’s Interest in Pledged Revenue*).

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction-Related Contracts**” means (a) AIA Document A201 – 2017, General Conditions of the Contract for Construction, dated as of April 7, 2025, between the Sponsor and Corgan, (b) AIA Document A133 – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor, dated as of April 15, 2025, between the Sponsor and Swinerton Builders and (c) Construction Agreement, dated as of December 16, 2025, between the Sponsor and Mario Sinacola & Sons Excavating, Inc., each as amended, amended and restated, modified or supplemented from time to time.¹⁰

“**Construction-Related Contract Party**” means any Person (other than the Borrower) party to a Constructed-Related Contract.

“**Construction Schedule**” means (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached as **Schedule II**, and (b) any updates thereto included in the Financial Plan most recently submitted to the TIFIA Lender pursuant to Section 21(a)(iii)(B) (*Financial Plan*).

“**Consulting Engineer**” means [[●], or any replacement][an] engineering firm selected by the Borrower, subject to Section 22(d).¹¹

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “Controlling” and “Controlled by” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by

¹⁰ **NOTE TO DRAFT:** McKinney to provide copies of the contracts with Architect and Engineer prior to execution of the Loan Agreement.

¹¹ **NOTE TO DRAFT:** McKinney to advise if a Consulting Engineer has been appointed.

the Bureau of Labor Statistics, with, unless otherwise specified herein, January 20[●] as the base period.

“**Credit Support Instrument**” has the meaning provided in the Bond Resolution.

“**Debt Service**” means, with respect to Pari Passu Obligations, for any period, as of any date of calculation, an amount equal to the sum of all interest and principal of such Pari Passu Obligations accruing and payable in respect of such period. In determining the principal and interest amounts of Pari Passu Obligations or due in such period (unless a subsection below of this definition applies for purposes of determining such amounts), payment shall be assumed to be made in accordance with any debt service schedule established for Pari Passu Obligations, including any balloon or bullet maturities (which shall be treated as being paid in full on their respective due dates).¹²

“**Debt Service Payment Commencement Date**” means August 15, 2026.

“**Debt Service Reserve Required Balance**” means, as applicable, the TIFIA Debt Service Reserve Required Balance or the Pari Passu Debt Service Reserve Required Balance.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) two percent (2.00%).

“**Depository**” has the meaning provided in the Bond Resolution.

“**Development Default**” means (a) the Borrower fails to diligently prosecute the work related to the Project or (b) the Borrower fails to complete the Project by November 12, 2029.¹³

“**Effective Date**” has the meaning provided in the recitals hereto.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record in accordance with the Uniform Electronic Transactions Act, Chapter 322 of the Texas Business and Commerce Code, as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower Related Parties in connection with the Project, all of which shall arise from the following:

¹² **NOTE TO DRAFT:** Definition of Debt Service to be conformed between this Agreement and the Bond Resolution.

¹³ **NOTE TO DRAFT:** November 12, 2029 is the third anniversary of the anticipated Substantial Completion Date.

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction;

provided, however, that Eligible Project Costs must be consistent with 49 U.S.C. § 40117(a)(3), and all other applicable federal law.

“**Environmental Laws**” has the meaning provided in Section 13(s) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Existing Indebtedness**” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in **Schedule III**.¹⁴

“**FAA**” means the Federal Aviation Administration, an agency of the USDOT.

“**FAA Division Office**” means Southwest Office of the Regional Administrator of the FAA.

¹⁴ **NOTE TO DRAFT:** To include Initial Obligations (i.e., the 2015 Bonds).

“**FAA Grant Assurances**” means the FAA Grant Assurances for Airport Sponsors, dated as of May 2022, as the same may be updated, supplemented, or amended from time to time.

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Federal Government**” means the Federal Government of the United States of America and its departments and agencies.

“**Final Maturity Date**” means February 15, 2056.

“**Financial Plan**” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 21(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 13(x) (*Financial Statements*).

“**Fixed Level Payment**” has the meaning provided in Section 9(c) (*Fixed Level Payments*).

“**Funds**” has the meaning provided in the Bond Resolution.

“**GAAP**” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, or such other nationally recognized professional body, in effect from time to time in the United States of America.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Government Obligations**” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company

as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

¹⁵“**Indemnitee**” has the meaning provided in Section 17 (*Indemnification*).

“**Initial Obligations**” means the McKinney Community Development Corporation Sales Tax Revenue Bonds, Taxable Series 2015, dated January 15, 2015.¹⁶

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“**Investment Grade Rating**” means a public rating no lower than ‘BBB-’, ‘Baa3’ or the equivalent public rating from a Rating Agency.

“**Level Payment Commencement Date**” means the Payment Date starting on February 15, 2028.

“**Level Payment Period**” means (a) with respect to each Semi-Annual Interest Payment Date, the six (6) month period from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, and (b) with respect to each Annual Principal Payment Date, the twelve (12) month period from (and including) an Annual Payment Date to (but excluding) the immediately succeeding Annual Payment Date, in each case commencing with the period ending on the date immediately prior to the Debt Service Payment Commencement Date.¹⁷

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

¹⁵ **NOTE TO DRAFT:** References to the hedging and variable rate debt concepts have been removed based on NRF’s February 13 mark-up that no hedges or variable rate debt are contemplated. McKinney confirm or let us know if otherwise.

¹⁶ **NOTE TO DRAFT:** Reference to the 2025 Bonds has not been included in “Initial Obligations” as USDOT understands that the 2025 Bonds will be paid in full with cash and proceeds of this financing. McKinney to confirm.

¹⁷ **NOTE TO DRAFT:** Definition of “Level Payment Period” remains subject to discussion between USDOT, the Borrower and their financial advisors.

“Loan Amortization Schedule” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit F**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*).

“Material Adverse Effect” means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Pledged Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of any Borrower Related Party, (c) the legality, validity or enforceability of any material provision of any Bond Issuance Document or TIFIA Loan Document, (d) the ability of any Borrower Related Party to enter into, perform or comply with any of its material obligations under any Bond Issuance Document or TIFIA Loan Document, (e) the validity, enforceability or priority of the Liens provided pursuant to the Authorizing Legislation or under the Bond Issuance Documents on the Collateral in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“NEPA” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means the [Finding of No Significant Impact][Categorical Exclusion][Record of Decision] for the Project issued by the [Texas Department of Transportation Aviation Division on behalf of FAA Division Office on April 21, 2025].

“Obligations” means, as of any date, the TIFIA Loan and any issued and outstanding Pari Passu Obligations and Subordinated Obligations.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organizational Documents” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“**Other Loan Documents**” has the meaning provided in Section 19(a)(vi) (*Events of Default under Bond Issuance Documents and Other Loan Documents*).

“**Outstanding TIFIA Loan Balance**” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*).

“**Pari Passu Debt Service Reserve Fund**” means the “Reserve Fund” as defined in the Bond Resolution.¹⁸

“**Pari Passu Debt Service Reserve Required Balance**” means the “Required Reserve” as defined in the Bond Resolution.

“**Pari Passu Obligations**” means the “Parity Obligations” as defined in the Bond Resolution.

“**Patriot Act**” means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Paying Agent/Registrar**” has the meaning provided in the Bond Resolution.

“**Payment Date**” means each Annual Principal Payment Date and/or Semi-Annual Interest Payment Date, as the context may require.

“**Payment Default**” has the meaning provided in Section 19(a)(i) (*Payment Default*).

“**Permitted Debt**” means:

- (a) Existing Indebtedness;
- (b) the TIFIA Loan;
- (c) Additional Obligations permitted under Section 16(a) (*Indebtedness*) and under the Bond Resolution;
- (d) Subordinated Obligations permitted under Section 16(a) (*Indebtedness*) and under the Bond Resolution; and
- (e) any other indebtedness of the Borrower that is not payable from, is not secured or supported by and does not benefit from a Lien on the Pledged Revenues (other than a Lien that is subordinated to the Lien associated with the TIFIA Bond and the TIFIA

¹⁸ **NOTE TO DRAFT:** Bond Resolution to include defined terms and provisions to incorporate debt service reserve accounts for each series of Additional Obligations and the required balance therefor.

Loan), the Funds, any other Collateral or any other property that is subject to Liens of or other title in favor of the TIFIA Lender.

“Permitted Investments” means (with respect to the investment of any Fund):

(a) Government Obligations;

(b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Pledged Revenue Fund” has the meaning provided in the Bond Resolution.

“Pledged Revenues” has the meaning provided in the Bond Resolution.

“Project” means the design, construction and commissioning of infrastructure on the Airport’s east side to enable aeronautical use of city-owned land adjacent to the Airport’s runway to accommodate the addition of scheduled commercial air service at the Airport, which infrastructure includes a parallel taxiway, terminal apron pavement, FM 546 roadway access construction and loop roadway, paid passenger vehicle parking, east side infrastructure development (e.g., electrical, water, sewer), a new airport rescue and firefighting (ARFF) truck and covered parking structure, new east side fuel farm, and an airport terminal building.

“Project Budget” means the budget for the Project in the aggregate amount of \$[*insert Project budget amount*] attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of

funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Quarterly Construction Progress Report*).

“Projected Substantial Completion Date” means [November 12, 2026].

“Qualified Issuer” means with respect to any Credit Support Instrument issued by an insurance company or other financial institution, any insurance company or other financial institution that is authorized and qualified to do business by the state insurance commissioner (or equivalent body) of its jurisdiction of organization and of the State and that has an Acceptable Credit Rating.

“Rating Agency” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“Rating Category” means one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Related Documents” means the Bond Issuance Documents and the TIFIA Loan Documents.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“Reserve Fund” has the meaning provided in the Bond Resolution.

“Revised Financial Model” means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

“Sales Taxes” means the “Gross Sales Tax Revenues” as defined in the Bond Resolution.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“Secretary” means the United States Secretary of Transportation.

“**Secured Obligations**” means the obligations of the Borrower under this Agreement and the TIFIA Bond and the Pari Passu Obligations.

“**Secured Parties**” means the TIFIA Lender[,] [and] any other Bondholders.

“**Semi-Annual Interest Payment Date**” means each [February 15] and [August 15].

“**Servicer**” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“**Sponsor**” has the meaning provided in the preamble hereto.

“**State**” has the meaning provided in the preamble hereto.

“**Subordinated Obligations**” means the indebtedness authorized to be issued pursuant to Section 20 of the Bond Resolution.

“**Substantial Completion**” means completion of all work for the Project as contemplated by all Construction-Related Contracts and use of the Project for its intended purpose by airport personnel, tenants and passengers.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Resolution**” has the meaning provided in the Bond Resolution.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Bond delivered by the Borrower in the form of **Exhibit A**.

“**TIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate (or, as applicable, the Default Rate), in each case due and payable on such Payment Date in accordance with the provisions of Section 9(d) (*Payment of TIFIA Debt Service*).

“**TIFIA Debt Service Reserve Required Balance**” means the “TIFIA Reserve” as defined in the Bond Resolution.

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein, pursuant to the Act, in a principal amount not to exceed \$[30,000,000] (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower Related Parties.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the Bond Resolution, and the other Bond Issuance Documents.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred by any Borrower Related Party in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance, and costs of issuance; and (b) amounts, if any, required by the Bond Issuance Documents or the TIFIA Loan Documents to be paid into any fund or account upon the incurrence of the TIFIA Loan.¹⁹

“**Uncontrollable Force**” means any cause beyond the control of any Borrower Related Party, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that no Borrower Related Party shall be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of a Borrower Related Party and such Borrower Related Party does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of such Borrower Related Party.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**USDOT**” means the United States Department of Transportation.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever a Borrower Related Party’s or other Person’s knowledge is implicated in this Agreement

¹⁹ **NOTE TO DRAFT:** Clauses (c) and (d) have been removed because they are not part of project costs as provided in the financial model.

or the phrase “to the Borrower Related Parties’ knowledge” or a similar phrase is used in this Agreement, such Borrower Related Party’s or such Person’s knowledge or such phrase(s) shall be interpreted to mean to the best of such Borrower Related Party’s or such Person’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

Section 3. TIFIA Loan AmountThe principal amount of the TIFIA Loan shall not exceed \$30,000,000. TIFIA Loan proceeds shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower Related Parties in connection with the Project. Each of the Borrower Related Parties acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower Related Parties’ risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. If the Borrower Related Parties intend to utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under the Construction-Related Contracts, the Borrower Related Parties shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One to Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower Related Parties to, and approved by, the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*); provided, however, that no

disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower Related Parties shall deliver copies of each Requisition to the TIFIA Lender, the Servicer (if any) and the FAA Division Office on or before the first (1st) day of the month prior to each month for which a disbursement is requested. Subject to Section 4(d), if the TIFIA Lender does not expressly deny a Requisition, disbursements of funds shall be made on the first (1st) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such first (1st) day is not a Business Day. Express denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two** to **Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month. Notwithstanding the foregoing, with respect to the first disbursement requested hereunder, the Borrower may deliver the Requisition therefor not later than [●] Business Days prior to the date on which the disbursement is requested to be made (which may be the first day or other day of the month that is, in each case, a Business Day), so long as (i) the disbursement date is requested to occur within [●] Business Days after the Effective Date and (ii) [all] information and supporting documentation that must be included in or accompany such Requisition is delivered to the TIFIA Lender at least [●] Business Days prior to the requested disbursement date.²⁰

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be [●] percent ([●]%)²¹ per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on

²⁰ **NOTE TO DRAFT:** References to multiple disbursements have been retained to follow the template, but noted that Borrower will request only one disbursement. The final sentence in clause (b) provides Borrower with flexibility as to when the disbursement will occur.

²¹ **NOTE TO DRAFT:** To be included at closing and will be based on the (Slgs rate + 1 bps) / 2 and rounded up.

the Outstanding TIFIA Loan Balance and, to the extent permitted by applicable law, on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; and (ii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit F** from time to time, in accordance with the principles set forth in Section 10(b) (*General Prepayment Instructions*) and in **Exhibit K**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit F** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit F** as revised, but no failure to provide or delay in providing the Borrower Related Parties with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the TIFIA Lender, Liens on the Collateral in

accordance with the provisions of the Bond Issuance Documents. The TIFIA Loan shall be secured by a first priority pledge and Lien on the Collateral.

(b) Except for the Liens granted pursuant to the Bond Issuance Documents and for the Pari Passu Obligations to the extent permitted by the Bond Issuance Documents, the Collateral will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken. There shall be no indebtedness or other obligations or liabilities of the Borrower that have priority over the TIFIA Loan with respect to the Collateral.

(c) The Borrower shall not use Pledged Revenues or any other amount in the Collateral to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Bond Issuance Documents and shall not apply any portion of the Pledged Revenues or any other amount in the Collateral in contravention of this Agreement or the Bond Issuance Documents.

(d) The Bond Resolution provides that all Pledged Revenues shall, subject to Section 12 thereof, be deposited in the Pledged Revenue Fund and applied in the order of priority described in Section 12 of the Bond Resolution, a copy of which Section 12, as of the Effective Date, is attached as **Schedule IV** (all capitalized terms used in **Schedule IV** and not otherwise defined in this Agreement shall have the meanings ascribed in the Bond Resolution).

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Bond Issuance Documents on the applicable Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the acceleration of the maturity of the TIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan and any prepayment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

(b) Payment of TIFIA Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit F**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(e) (*Manner of Payment*).

(c) Fixed Level Payments.²² On each Annual Principal Payment Date and Semi-Annual Interest Payment Date occurring during the Level Payment Period, the Borrower

²² **NOTE TO DRAFT:** This section will be fine tuned in agreement with Pricing Officer (i.e., after February 23).

shall make payments of principal and interest, respectively, and the aggregate payment for each Borrower Fiscal Year during the Level Payment Period (each, a “**Fixed Level Payment**”) shall be approximately equal in amount (subject to (i) in the case any mandatory or optional prepayment of the TIFIA Loan made prior to the Level Payment Commencement Date, the calculation set forth in Part [●] (*Prepayments*) of **Exhibit F** (*TIFIA Debt Service*) and (ii) in the case of any mandatory or optional prepayment of the TIFIA Loan made on or after the Level Payment Commencement Date, the recalculation set forth in the last sentence of this clause (c)). The amount of all Fixed Level Payments shall be calculated as of the Level Payment Commencement Date in such manner that the Outstanding TIFIA Loan Balance as of such date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding TIFIA Loan Balance at the rate per annum set forth in Section 6 (*Interest Rate*) in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal of or interest on the TIFIA Loan (including any prepayment) are made during such period); provided that there shall be due and payable on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 20 (*Events of Default and Remedies*)) all amounts of principal and interest not otherwise paid pursuant to the provisions of this Agreement. Within fifteen (15) days prior to the Level Payment Commencement Date, the TIFIA Lender may (or, upon the request of the Borrower, shall) provide written notice to the Borrower of the amount of the related Fixed Level Payment, which amount (if provided) shall be deemed conclusive absent manifest error; provided that no failure to provide or delay in providing such notice to the Borrower shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents. To the extent that any mandatory or optional prepayment of the TIFIA Loan is made during the Level Payment Period in addition to the Fixed Level Payments, such prepayment shall be applied to the remaining Outstanding TIFIA Loan Balance, and as a result of such application the interest portion of the remaining Fixed Level Payments shall be recalculated, in each case in accordance with the debt service structure set forth in **Exhibit F** (*TIFIA Debt Service*), and such changes shall be reflected in a revised **Exhibit F** (*TIFIA Debt Service*).

(d) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each applicable Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 36 (*Notices; Payment Instructions*), as modified in writing from time to time by the TIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Depository or the Paying Agent/Registrar to make such payment) with funds then on deposit in the [Bond Fund].

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19 (*Events of Default and Remedies*)).

(f) TIFIA Bond. As evidence of the Borrower’s obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount of \$[30,000,000] (excluding capitalized interest) and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

(a) Optional Prepayments. The Borrower may prepay the TIFIA Loan at any time without penalty or premium, in whole or in part; provided, that each partial prepayment shall be in a minimum principal amount of \$1,000,000. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(a) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(b) Mandatory Prepayment. If an Event of Loss shall occur with respect to the Project or any part thereof, and the Sponsor (x) elects not to rebuild, repair or replace the Project in accordance with Section 15(f)(iii) and (y) is not required to pay or apply all loss proceeds stemming from such event for any other purpose in accordance with all applicable federal disposition rules, including those set forth in 2 CFR Part 200 and in, to the extent applicable, the FAA Grant Assurances, the Borrower shall, within [thirty (30)] days of such event, prepay the TIFIA Loan in the amount of the net loss proceeds stemming from such event that the Borrower is not required to pay or apply for any such other purpose.

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of an optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender or certify to the Borrower that the TIFIA Bond has been destroyed and no longer deemed to be outstanding in accordance with the TIFIA Lender's procedures. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Loan, such partial prepayments of principal shall be applied to reduce future payments due on the TIFIA Loan [pro rata][in inverse order of maturity]²³. Following any partial prepayment of the TIFIA Loan, the TIFIA Lender may provide to the Borrower a modified **Exhibit F** in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit F and Loan Amortization Schedule*). Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit F** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. Any principal amount of the TIFIA Loan that is subject to a voluntary prepayment notice (as described in Section 10(a) above)

²³ **NOTE TO DRAFT:** McKinney to confirm.

but that is not so paid on the applicable prepayment date shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 11. Compliance with Laws. The Sponsor shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including all applicable federal and State laws, rules, regulations and executive orders. The list of federal laws attached as **Exhibit E** (*Compliance With Laws*) is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FAA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law and with, to the extent applicable, the FAA Grant Assurances.

Section 12. Conditions Precedent; Condition Subsequent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) Each of the Borrower and the Sponsor shall have duly executed and delivered to the TIFIA Lender this Agreement and the Borrower shall have duly executed and delivered the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Bond Issuance Document[, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date,]²⁴ and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 12(a)(ii) (*Conditions Precedent to Effectiveness*), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) (A) Counsel to the Borrower Related Parties shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-1**), (B) bond counsel to the Borrower Related Parties shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit G-2**) and (C) the Sponsor shall have delivered to the TIFIA Lender a copy of the favorable opinion of the Attorney General of the State of Texas approving the Bonds.

(iv) Each of the Borrower Related Parties shall have provided a certificate from its Authorized Representative as to the absence of debarment, suspension

²⁴ **NOTE TO DRAFT:** Remove bracketed text if the Bond Issuance Documents will be executed and delivered on or about the Effective Date.

or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to such Borrower Related Party and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least one (1) Rating Agency of an Investment Grade Rating to the TIFIA Bond, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vi) Each of the Borrower Related Parties shall have delivered to the TIFIA Lender a certificate from its Authorized Representative in the form attached hereto as (in respect of the Borrower) **Exhibit I-1** or (in respect of the Sponsor) **Exhibit I-2**, (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the TIFIA Lender, (B) designating its Authorized Representative, and (C) confirming such person's position and incumbency.

(vii) The Sponsor shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds (including the TIFIA Loan) shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Sponsor by the providers thereof and that such funds shall be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(viii) The Sponsor shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Construction-Related Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(ix) The Sponsor shall have demonstrated to the TIFIA Lender's satisfaction that (A) the Borrower Related Parties, as applicable, have obtained all Governmental Approvals necessary to (1) commence construction of the Project and (2) to execute and deliver, enter into, consummate the transactions contemplated by and perform its obligations under each of the Related Documents and (B) all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(x) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate that Pledged Revenues in each Calculation Period through the Final Maturity Date are projected to be sufficient to satisfy the Borrower's funding obligations pursuant to Section 12 of the Bond Resolution, and (C) otherwise be in form and substance acceptable to the TIFIA Lender.

(xi) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to the Authorizing Legislation and [other legislation, subject to completion of due diligence], to pledge, assign, and grant the Liens on the Collateral purported to be pledged, assigned, and granted pursuant to the Bond Issuance Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the TIFIA Lender's Lien on the Collateral to the extent contemplated by the Bond Issuance Documents or the Authorizing Legislation, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Bond Issuance Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xii) The Borrower Related Parties shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower Related Parties) to the Borrower Related Parties as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xiii) The Sponsor shall have (A) provided evidence satisfactory to the TIFIA Lender of compliance with NEPA, and (B) complied with all applicable requirements of the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, 3146 and 3147 *et seq.*), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the TIFIA Lender of such compliance upon request by the TIFIA Lender.

(xiv) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xv) Each of the Borrower Related Parties shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Unique Entity Identifier number, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).²⁵

(xvi) The Sponsor shall have delivered to the TIFIA Lender (A) certificates of insurance evidencing (1) that the Sponsor and, as applicable, the Construction-Related Contract Parties, have in effect as of the Effective Date insurance with respect to the Project and the Sponsor, as applicable, that meets the requirements of Section 15(f) (*Insurance*) and (2) that each liability policy (other than workers'

²⁵ **NOTE TO DRAFT:** USDOT will require a separate UEI and registration for the Borrower.

compensation insurance) reflects the TIFIA Lender as an additional insured and (B) at the TIFIA Lender's request, copies of such insurance policies.

(xvii) Each of the Borrower Related Parties shall have provided to the TIFIA Lender evidence that such Borrower Related Party is duly organized and validly existing under the laws of the State, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including, as applicable, the following documents, each certified by its Authorized Representative: (A) a copy of its Organizational Documents and the Authorizing Legislation, as in effect on the Effective Date (and certified by the Secretary of State of the State, to the extent applicable), which Organizational Documents and Authorizing Legislation shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing such Borrower Related Party to execute and deliver, and to perform its obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by such Borrower Related Party relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

(xviii) The Sponsor shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FAA Division Office to review such costs.

(xix) The Sponsor shall have provided the TIFIA Lender (A) a fully executed copy of the grant agreements related to the Airport Improvement Grant awarded to the Borrower in connection with the Project, identified in the Application, (B) a fully executed copy of the grant agreement relating to the Airport Terminal Program grant awarded to the Borrower in connection with the Project, identified in the Application, and (C) a fully executed copy of all grant agreements or other award or appropriation documentation with respect to each other grants or other funding identified in the Financial Plan as a source of funds with respect to the Project.

(xx) The representations and warranties of each of the Borrower Related Parties set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower Related Parties*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxi) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the TIFIA Loan, together with the amount of any other credit assistance provided under the Act to the Borrower Related Parties, does not exceed forty-nine percent (49%)

of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

(xxii) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Paying Agent/Registrar in the form attached hereto as **Exhibit H**.

(xxiii) Each of the Borrower Related Parties shall have provided a certificate from its Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit L** in accordance with 49 CFR §20.100(b).

(xxiv) The Borrower Related Parties shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the Initial Obligations).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) [Reserved]

(ii) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower Related Parties shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan*).

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of any Bond Issuance Documents entered into after the Effective Date.

(iv) To the extent not previously delivered to the TIFIA Lender, the Sponsor shall have provided certified copies of all Construction-Related Contracts, including any amendment, modification or supplement thereto and related performance security instrument, entered into after the Effective Date.

(v) The Sponsor shall have demonstrated to the TIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(vi) Each of the insurance policies obtained by the Sponsor or the Construction-Related Contract Parties in satisfaction of the conditions in Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vii) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder, and no event of default (howsoever described or designated) under any other Related Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of any Borrower Related Party under any other Related Document, in each case, shall have occurred and be continuing.

(viii) The representations and warranties of each of the Borrower Related Parties set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower Related Parties*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(ix) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(x) The Borrower Related Parties shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

(xi) The Borrower Related Parties shall have paid in full all invoices received from the TIFIA Lender (or from advisors to the TIFIA Lender that have direct billing arrangements with the Borrower Related Parties) as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the date of disbursement of the TIFIA Loan, as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan, does not exceed eighty percent (80%) of Total Project Costs.

(c) Condition Subsequent. Notwithstanding anything in this Agreement to the contrary, if the Sponsor has not delivered to the TIFIA Lender a copy of the favorable opinion of the Attorney General of the State of Texas with respect to the authorization to incur the indebtedness under the Related Documents, on or prior to the date that is ten (10) Business Days

after the Effective Date, this Agreement shall terminate immediately and automatically on such date, and become null, void and unenforceable *ab initio*, as if it had never been executed and delivered, without requiring any action by the Borrower, the Sponsor and/or the TIFIA Lender; provided, however, that the Borrower Related Parties' obligations in Section 17 (*Indemnification*) and in Section 28 (*Fees and Expenses*) shall survive the termination, nullity, avoidance and unenforceability of this Agreement, in accordance with the terms of such sections.

Section 13. Representations and Warranties of Borrower Related Parties. Each of the Borrower Related Parties hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Officer's Authorization*) and Section 13(l) (*Credit Ratings*), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a public instrumentality and non-profit industrial development corporation duly organized, validly existing and in good standing under the laws of the State. The Sponsor is a Texas municipal corporation duly organized, validly existing and in good standing under the laws of the State. Each Borrower Related Party has full legal right, power and authority to enter into the Related Documents then in existence, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents. The Borrower has full legal right, power and authority to execute and deliver the TIFIA Bond.

(b) Officers' Authorization. As of the Effective Date, the officers of each Borrower Related Party executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which such Borrower Related Party is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which a Borrower Related Party is a party, has been duly authorized, executed and delivered by such Borrower Related Party and constitutes the legal, valid and binding agreement of such Borrower Related Party enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which any Borrower Related Party is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the such Borrower Related Party's Organizational Documents or the Authorizing Legislation, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by such Borrower Related Party of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which such Borrower Related Party is a party or by which it or its properties or assets are otherwise

subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon the Collateral or any other property of the Borrower, other than the Liens granted pursuant to the Bond Issuance Documents.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of any Borrower Related Party or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by such Borrower Related Party of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the Related Documents or (B) the fulfillment of or compliance by such Borrower Related Party with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, [except as set forth in **Schedule 13(f)**]²⁶, there is no action, suit, proceeding or, to the knowledge of any Borrower Related Party, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of any Borrower Related Party, threatened against or affecting the Project or the ability of any Borrower Related Party to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of any Borrower Related Party, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of any Borrower Related Party, threatened against or affecting the Project, any Borrower Related Party or the assets, properties or operations of such Borrower Related Party, that in any case could reasonably be expected to result in a Material Adverse Effect. No Borrower Related Party is in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Bond Issuance Documents, the Authorizing Legislation and establish, in favor of the TIFIA Lender, the valid and binding Liens on the Collateral that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Collateral, and not *pari passu* with any obligations other than the *Pari Passu* Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Bond Issuance Documents, and applicable laws for the pledge of the Collateral pursuant to and in accordance with the Bond Issuance Documents. No Borrower Related Party is in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the Bond Issuance Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or

²⁶ **NOTE TO DRAFT:** McKinney to confirm if needed. Inclusion of carve out is subject to diligence of disclosed matters.

filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Collateral in favor of the TIFIA Lender to the extent contemplated by the Bond Issuance Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Bond Issuance Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Collateral granted pursuant to the Bond Issuance Documents is governed by Article 9 of the UCC.

(h) No Debarment. Each Borrower Related Party has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither such Borrower Related Party nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*). Further, each Borrower Related Party has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. No Borrower Related Party is aware of any non-compliance by any of its contractors or subcontractors on the Project with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of each Borrower Related Party set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Compliance with Federal Requirements. Each Borrower Related Party has complied, with respect to the Project, with all applicable requirements of NEPA, the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, 3146 and 3147), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(k) Credit Rating. The TIFIA Loan has received an Investment Grade Rating from at least one (1) Rating Agency, and written evidence of such ratings has been provided to the TIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of any Borrower Related Party under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion by the Sponsor of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Construction-Related Contracts. Each Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Construction-Related Contract have been satisfied. The Borrower Related Parties have delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Construction-Related Contract (including, in each case, all exhibits, schedules, and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Sponsor or, to the Borrower Related Parties' knowledge, any Construction-Related Contract Party, the right to terminate such Construction-Related Contract, as applicable. The Sponsor is not in breach of, or in default under, any Construction-Related Contract, and, to the Borrower Related Parties' knowledge, no Construction-Related Contract Party is in breach of, or in default under, any material term of such Construction-Related Contract.

(o) Information. The information furnished by the Borrower Related Parties to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower Related Parties (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower Related Parties nor, to the knowledge of the Borrower Related Parties, any Construction-Related Contract Party is a Sanctioned Person.

(ii) None of the Borrower Related Parties nor, to the knowledge of the Borrower Related Parties, any Construction-Related Contract Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower Related Parties, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, any Borrower Related Party or any Construction-Related Contract Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Compliance with Law. Each Borrower Related Party is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Airport, and the construction of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(s) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable, and with, respect to the Project, all FAA Grant Assurances, to the extent applicable. To the Borrower Related Parties' knowledge, each Construction-Related Contract Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable, and all FAA Grant Assurances, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by (i) the Borrower Related Parties with respect to the Airport (including the Project) or (ii) to the Borrower Related Parties' knowledge, (solely in respect of the Project) any Construction-Related Contract Party other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters. Each of the Sponsor and, to the Borrower Related Parties' knowledge, each Construction-Related Contract Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. No Borrower Related Party has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that such Borrower Related Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to such Borrower Related Party's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by such Borrower Related Party with any such Environmental Law or Governmental Approval. The Borrower Related Parties have provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower Related Parties regarding the Borrower Related Parties' or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(s) Insurance. The Sponsor is in compliance with all insurance obligations required under each Related Document as of the date on which this representation and warranty is made. To the extent the Sponsor self-insures, the Sponsor's self-insurance program is actuarially sound.

(t) No Liens. Except for the Liens granted pursuant to the Bond Issuance Documents, the Borrower has not created, and is not under any obligation to create, and has not

entered into any transaction or agreement that would result in the imposition of, any Lien on the Collateral.

(u) Intellectual Property. The Sponsor owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Sponsor's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Sponsor's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(v) Investment Company Act. No Borrower Related Party is, and after applying the proceeds of the TIFIA Loan will be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(w) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 21(b) (*Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(x) Taxes. [Each Borrower Related Party has (i) filed all tax returns required by applicable laws to be filed by it, and (ii) paid all income taxes payable by it that have become due pursuant to such tax returns and all other material taxes and assessments payable by it that have become due (other than those taxes that it is contesting in good faith and by appropriate proceedings, for which adequate reserves have been established to the extent required by GAAP).][No Borrower Related Party is required to file tax returns with any Governmental Authority.]²⁷

(y) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Tax Code.

²⁷ NOTE TO DRAFT: McKinney to confirm.

(z) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under (A) the Bond Issuance Documents and this Agreement, and (B) the Airport Improvement Grant, Airport Terminals Program grant and each other grant and source of funding, in each case, identified in the Financial Plan, (ii) all delay payments and insurance proceeds in respect of any casualty loss (other than any proceeds of business interruption insurance, delay-in-start-up insurance and proceeds covering liability of the Sponsor to third parties) received by the Sponsor or to which the Sponsor is entitled in accordance with the applicable insurance policies and Construction-Related Contracts, and (iii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(aa) Sovereign Immunity. Pursuant to the Authorizing Legislation, the Sponsor's Home Rule Charter²⁸ and [[McKinney to *insert other relevant constitutional and statutory provision*]], each Borrower Related Party can sue and be sued in respect of its contractual obligations, and judgments against such Borrower Related Party can be legally enforced. The defense of sovereign immunity is not available to any Borrower Related Party in any proceedings in any court of competent jurisdiction relating to the enforcement of (or collection on) the obligations of such Borrower Related Party under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby.

(bb) Patriot Act. No Borrower Related Party is required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 14. Representations and Warranties of TIFIA Lender. The TIFIA Lender represents and warrants that:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 15. Affirmative Covenants. Each of the Borrower Related Parties covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

²⁸ **NOTE TO DRAFT:** McKinney to provide a copy of the Home Rule Charter as part of their organizational documents.

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Collateral (whether now existing or hereafter arising) granted to the TIFIA Lender pursuant to the Bond Issuance Documents, or intended so to be granted pursuant to the Bond Issuance Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Collateral free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Bond Issuance Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Collateral granted pursuant to the Bond Issuance Documents and all the rights of the TIFIA Lender under the Bond Issuance Documents against all claims and demands of all Persons whomsoever, subject to the Liens granted pursuant to the Bond Issuance Documents.

(b) Copies of Documents.

(i) The Borrower shall provide to the TIFIA Lender a copy of any draft Bond Issuance Documents in connection with the incurrence of any Permitted Debt or indebtedness subject to approval by the TIFIA Lender pursuant to Section 16(a) (*Indebtedness*), in each case at least twenty (20) days prior to the incurrence of such indebtedness. The Borrower shall provide to the TIFIA Lender a fully executed or final version of each such Bond Issuance Document (or other comparable transaction documentation) within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Collateral or any portion thereof, including the Pledged Revenues, (B) all notices and other written communications received by the Borrower from any Bondholder, or any of their agents, and (C) all reports, notices and other written materials required to be sent to any Bondholder, or any of their agents, under the Bond Issuance Documents.

(iii) Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document) at least thirty (30) days prior to the effective date thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, any Related Document within five (5) Business Days after execution thereof.

(iv) If any Borrower Related Party enters into a Construction-Related Contract after the Effective Date, the Borrower shall provide to the TIFIA Lender an

executed version of such Construction-Related Contract, together with any related performance security instruments, contracts, side letters or other understandings, promptly following the full execution thereof.

(c) Use of Proceeds. The Borrower Related Parties shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower Related Parties shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of the Borrower Related Parties' industry.

(ii) The Borrower Related Parties shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Operations and Maintenance. The Sponsor shall (i) operate and maintain the Airport, including the Project (A) in a reasonable and prudent manner and (B) substantially in accordance with its regulations, standards and guidelines and those of the FAA and the Texas Department of Transportation, and (ii) maintain the Airport, including the Project, in good repair, working order and condition and in accordance with the requirements of all applicable laws and each applicable Related Document.

(f) Insurance.

(i) The Sponsor shall at all times maintain insurance with responsible insurers, in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Sponsor, or as is required under any Construction-Related Contract or applicable law with respect to the Airport. During the construction of the Project, the Sponsor shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Sponsor and the Airport, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Sponsor shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower Related Parties shall cause all liability insurance policies that it maintains, with respect to the Airport, other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured.²⁹

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower Related Parties shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as

²⁹ NOTE TO DRAFT: McKinney to confirm.

applicable, in respect of such event and (B) pay or apply all loss proceeds stemming from such event to rebuild, repair or replace the Project in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in 2 CFR Part 200 and, to the extent applicable, in the FAA Grant Assurances.

(g) Notices.³⁰

(i) The Borrower Related Parties shall, within five (5) Business Days after any Borrower Related Party learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit J**;

(B) Ratings Changes: any change in the rating assigned to the TIFIA Loan, any Pari Passu Obligations or any Subordinated Obligations by any Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Pledged Revenues;

(C) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(D) Construction-Related Contract Defaults: any default or event of default on the part of any Borrower Related Party or any other party under any Construction-Related Contract;

(E) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against any Borrower Related Party before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by any Borrower Related Party in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against such Borrower Related Party that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, [and] (2) any judgments against any Borrower Related Party with award amounts in excess of \$3,000,000³¹ (inflated annually by CPI) that are payable from the Collateral or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage), either individually or in the

³⁰ **NOTE TO DRAFT:** Additional notice obligations subject to finalization of Bond Resolution and related documentation.

³¹ **NOTE TO NRF:** This is a judgment payable by MCDC whose annual revenue is \$25 million. \$3 million is significant/appropriate in USDOT's view.

aggregate[, and (3) any material notices or filings in respect of any action, petition, suit or proceeding listed in Schedule 13(f)];

(F) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower Related Parties' plans to remedy or mitigate the effects of such failure or delay;

(G) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(I) Project Changes: any (1) change to the Total Project Costs forecasts in excess of ten percent (10%) of forecasted Total Project Costs, (2) proposed change to the Projected Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule;

(J) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of any Borrower Related Party or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 CFR § 200.113, and the Borrower Related Parties shall require their subcontractors to provide it notice of any such violation;

(K) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule); and

(L) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 15(g)(i) (*Notice*).

(h) Remedial Action. Within thirty (30) calendar days after any Borrower Related Party learns of the occurrence of an event specified in Section 15(g)(i) (*Notice*) (other than in Section 15(g)(i)(A) (*Substantial Completion*) or Section 15(g)(i)(B) (*Ratings Changes*) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower Related Parties proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a public instrumentality and non-profit industrial development corporation under the laws of the State. The Sponsor shall maintain its existence as a Texas municipal corporation and a home-rule city under the laws of the State. The Borrower Related Parties shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(j) Annual Rating. The Borrower shall, commencing in 2027, no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on each of the Obligations issued pursuant to the Bond Resolution (including the TIFIA Bond and excluding Subordinated Obligations) by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, in each case prepared no earlier than June 1 of such year.³²

(k) Reserve Funds; Permitted Investments.³³

(i) On or prior to the earlier of (A) the Substantial Completion Date and (B) the Debt Service Payment Commencement Date, the Borrower shall provide the TIFIA Lender evidence satisfactory to the TIFIA Lender that the Borrower has deposited into the Reserve Fund, or delivered to the TIFIA Lender a Credit Support Instrument, in form and substance, and from a surety company acceptable to the TIFIA Lender (including that the draws under such Credit Support Instrument are not reimbursable with Pledged Revenue and that the surety company issuing such Credit Support Instrument has waived subrogation rights with respect to the TIFIA Loan, until the TIFIA Lender has been paid in full all principal, interest and other amounts owed hereunder), in an amount that is sufficient to cause the amount on deposit in (or credited to) the TIFIA Reserve Fund to be at least equal to the TIFIA Debt Service Reserve Required Balance.

(ii) The Borrower shall at all times maintain (A) from and after the earlier of (1) the Substantial Completion Date and (2) the Debt Service Payment Commencement Date, an amount equal to the TIFIA Debt Service Reserve Required Balance in the TIFIA Reserve Fund, and (B) an amount equal to the Pari Passu Debt Service Reserve Required Balance in the Reserve Fund, in each case in accordance with the provisions of this Agreement and the applicable Bond Issuance Documents. Amounts

³² **NOTE TO NRF:** The Annual Rating affirmative covenant is intended to be satisfied by the issuance of an annual surveillance letter by the rating agency mentioning the parity bonds and the TIFIA Loan.

³³ **NOTE TO DRAFT:** Reserve Account structure to be confirmed/discussed.

in the Reserve Fund applicable to the Bonds shall be made available to ensure the timely payment of TIFIA Debt Service, and amounts in the Pari Passu Reserve Funds shall be made available to ensure the timely payment of Debt Service on the Pari Passu Obligations, as applicable.

(iii) The Borrower shall cause the other Funds to be funded in such amounts and under such conditions as are required by this Agreement and the Bond Issuance Documents.

(iv) Amounts on deposit in the Reserve Funds shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Reserve Fund, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in any Reserve Fund in respect of other Obligations corresponding to amounts needed for the payment of interest, not later than the next date on which interest is due and payable with respect to any such Obligations, and (C) with respect to Permitted Investments maintained in the Bond Fund or in any debt service account for other Obligations corresponding to amounts needed for the repayment of principal, the next date on which principal is due and payable with respect to any such Obligations, and (D) with respect to any other Fund, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment, transfer or withdrawal from the applicable Fund. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(v) The Borrower may replace all or a portion of the required balance of any Reserve Fund, in accordance with the terms of the applicable Bond Issuance Documents, with a Credit Support Instrument, so long as any reimbursement or other repayment obligations (including pursuant to any subrogation claim) related to payments made under such Credit Support Instrument are not payable from Pledged Revenues or otherwise from Collateral. If at any time an issuer of such Credit Support Instrument securing a Reserve Fund ceases to be a Qualified Issuer, the Borrower shall cause such Credit Support Instrument to be replaced by a new letter of credit or surety instrument issued by a Qualified Issuer within thirty (30) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or the Paying Agent shall be permitted to immediately draw the full amount of such letter of credit or surety instrument and deposit the proceeds of such drawing into the applicable Reserve Fund. Any new Credit Support Instrument shall have the same terms and conditions (including expiration date and face amount) as the Credit Support Instrument being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any Credit Support Instrument securing a Reserve Fund is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such Credit Support Instrument with a Credit Support Instrument or cash at least ten (10) Business Days prior to the stated expiry date of the existing Credit Support Instrument and such new Credit Support Instrument or cash delivered in lieu thereof shall be in an amount equal to at least the amount of expiring Credit Support Instrument. If the Borrower fails to provide such new Credit Support Instrument or cash

by the date required above, the TIFIA Lender may immediately draw the full undrawn or available amount of the existing Credit Support Instrument and deposit the proceeds of such drawing into the applicable Reserve Fund.

(1) Appropriations; Collection of Pledged Revenues; Pledge of City's Interest in Pledged Revenue.

(i) The Sponsor shall at all times cause the Pledged Revenues to be levied, charged and collected in accordance with the Authorizing Legislation, and enforce all its rights with respect to the levying, charging and collection of the Pledged Revenues, as well as make, or cause to be made, all necessary appropriations for the satisfaction by the Borrower of its obligations under this Agreement, the TIFIA Bond and the other Related Documents, including the allocation of the Pledged Revenues to the Borrower and the application thereof to the payment of the Borrower's obligations hereunder and thereunder. The Borrower Related Parties shall take all necessary actions available to them to cause to be maintained the Authorizing Legislation in full force and effect for so long as any obligations remain outstanding under this Agreement. The Borrower Related Parties shall cause, and shall cooperate with the TIFIA Lender in the enforcement of any rights to cause, all Pledged Revenues to be deposited directly into the Pledged Revenue Fund promptly upon collection thereof and otherwise in accordance with the customary practice therefor as of the date hereof, including pursuant to the Development Corporation Act (Texas Local Government Code, Title 12, Subtitle C1, as amended) and the Organizational Documents of the Borrower. The Borrower Related Parties shall receive and hold in trust for (and remit immediately to) the Depository for deposit into the Pledged Revenue Fund any Pledged Revenues paid to any Borrower Related Party and not directly to the Pledged Revenue Fund.

(ii) Without prejudice to the pledge or any other security interest created by the Borrower on the Collateral pursuant to the Bond Resolution, the Sponsor hereby covenants and agrees that the revenues or receipts due or owing to, or collected or received by or on behalf of the City or otherwise, to the extent of the interest or right of the Sponsor therein or thereto, from or by reason of the levy of the Sales Tax pursuant to the Act and the election held January 20, 1996, less any amounts due and owed to the Comptroller of Public Accounts of the State of Texas as charges for the collection of the Sales Tax or retention by said Comptroller for refunds and to redeem dishonored checks and drafts, to the extent such charges and retention are authorized or required by law, are hereby irrevocably pledged, pursuant to Texas Government Code, Chapter 1208 (as amended), to the payment and security of the TIFIA Loan and the other obligations of the Borrower to the TIFIA Lender hereunder and under the other Related Documents, including the establishment and maintenance of the Funds, all as provided herein and in the Bond Resolution. The TIFIA Loan shall constitute a Lien on such revenues or receipts, which Lien shall be valid and binding and fully perfected from and after the Effective Date without physical delivery or transfer or transfer of control of the pledged revenues or receipts, the filing of this Agreement or any other act; all as provided in Texas Government Code, Chapter 1208, as amended. If Texas law is amended at any time while the TIFIA Loan is outstanding such that the pledge of the Pledged Revenues and receipts granted by the Sponsor hereunder is to be subject to the filing requirements of Texas Business and

Commerce Code, Chapter 9, as amended, or otherwise then in order to preserve to the TIFIA Lender's perfection of the security interest created by said pledge, the Sponsor and the Borrower agree to take such measures as the TIFIA Lender determines are reasonable and necessary under Texas law to comply with the applicable provisions of Texas law and enable a filing to perfect the security interest created by said pledge to occur.

(iii) No Borrower Related Party shall, or permit any Person to, transfer or use any cash or other property on deposit in any of the Funds for any purpose or in any manner other than in strict compliance with the terms of the Bond Resolution, and the Borrower Related Parties shall otherwise comply, and in the case of the Sponsor cause the Borrower to comply, with the terms of the Bond Resolution.

(m) Material Obligations; Liens. Each Borrower Related Party shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Collateral or any portion thereof, including the Pledged Revenues, or such Borrower Related Party's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid, might give rise to a Lien upon such properties or any part thereof or on the Collateral or any portion thereof, including the Pledged Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by such Borrower Related Party in good faith by appropriate proceedings and so long as the such Borrower Related Party shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(n) SAM Registration. Each Borrower Related Party shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions listed in such registration, in each case until the earlier of the first anniversary of the Substantial Completion Date and the date on which the TIFIA Loan has been disbursed in full.

(o) Immunity. Each Borrower Related Party agrees that it will not assert any immunity (and hereby waives any such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(p) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to any Borrower Related Party, then the Borrower Related Parties will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(q) Cargo Preference Act. Pursuant to 46 CFR Part 381, each Borrower Related Party hereby agrees as follows, and shall insert the following clauses in contracts entered into by such Borrower Related Party pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States of America or within thirty (30) Business Days following the date of loading for shipments originating outside the United States of America, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(r) Lobbying. The Borrower Related Parties shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(s) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower Related Parties shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit M** hereto.

(t) Buy America.

(i) The Borrower Related Parties agree that steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 50101, as implemented by FAA. The Borrower Related Parties acknowledge that this Agreement is neither a waiver of 49 U.S.C. § 50101(a) nor a finding under 49 U.S.C. § 50101(b).

(ii) The Borrower Related Parties agree that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and the FAA. The Borrower Related Parties acknowledge that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Section 16. Negative Covenants. Each of the Borrower Related Parties covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Except for Permitted Debt, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness of any kind that is secured (in whole or in part) by the Collateral or that is otherwise payable (in whole or in part) from Pledged Revenues; provided that, without the TIFIA Lender's prior written consent, the Borrower shall not incur any (A) indebtedness of any kind payable from, secured or

supported by any portion of the Collateral or payable from Pledged Revenues, including Permitted Debt following the occurrence, and during the continuation, of an Event of Default, or (B) indebtedness permitted pursuant to Section 20 of the Bond Resolution if the terms of such indebtedness contains (1) a springing covenant that would enable the lien on such debt to become an obligation with a lien on the Pledged Revenues on parity with the Lien associated with the TIFIA Bond and the TIFIA Loan, the Funds, any other Collateral or any other property that is subject to Liens of or other title in favor of the TIFIA Lender, (2) any automatic acceleration or any right to accelerate the obligations thereunder, (3) mandatory early redemption provisions, or (4) any other provision having a similar effect as to any of the foregoing.

(ii) In each case at least twenty (20) days prior to the incurrence of Permitted Debt described in clauses (d), (e) or (f) of the definition thereof, the Borrower shall deliver to the TIFIA Lender (A) a Revised Financial Model that takes into account the proposed indebtedness, which Revised Financial Model shall reflect and be based on the actual amortization schedules for such proposed indebtedness and all Obligations then outstanding in accordance with their respective terms and shall otherwise be in form and substance satisfactory to the TIFIA Lender, and (B) a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (*Indebtedness*) and satisfies the applicable requirements under the Bond Resolution.

(b) No Lien Extinguishment; Adverse Amendments. None of the Borrower Related Parties shall, or shall permit any Person to, without the prior written consent of the TIFIA Lender, either (i) extinguish, impair, or transfer the Liens on the Collateral granted pursuant to the Bond Resolution, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, or (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Bond Issuance Documents and any Lien associated with Permitted Debt, none of the Borrower Related Parties shall create, incur, assume or permit to exist any Lien on the Collateral or any Borrower Related Party's rights therein.

(d) Bond Issuance Documents. The Borrower Related Parties shall not enter into any amendment or modification of the Bond Resolution or any other Bond Issuance Document related to the TIFIA Bond or this Agreement without the prior written consent of the TIFIA Lender.

(e) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of the TIFIA Lender or in the Collateral) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(f) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or to the Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 10 (*Prepayment*).

(g) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. None of the Borrower Related Parties shall, or shall agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures, each in the ordinary course of business) to the extent such acquisition or purchase could reasonably be expected to have a Material Adverse Effect;

(ii) reorganize, consolidate with, or merge into another Person unless (A) such merger or consolidation is with or into the Sponsor or another entity established and Controlled by the Sponsor, and, in each case, including reorganization, would not reasonably be expected to adversely affect or impair to any extent or in any manner (1) the Collateral or any portion thereof, including the Pledged Revenues, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the applicable Borrower Related Party provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the applicable Borrower Related Party is a party. In addition, the applicable Borrower Related Party shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender;

(iii) sell, lease, or assign its rights in and to the Project or in and to a material portion of the assets constituting the Project, to the extent such sale, lease or assignment could reasonably be expected to have a Material Adverse Effect; or.

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(h) No Defeasance of TIFIA Bond. Notwithstanding anything to the contrary in the Bond Issuance Documents, the Borrower shall not defease the TIFIA Bond pursuant to the Bond Resolution without the prior written consent of the TIFIA Lender.

(i) OFAC Compliance.

None of the Borrower Related Parties shall:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or

(C) make a payment, directly or indirectly, to any Construction-Related Contract Party that (1) to any Borrower Related Party's knowledge, has violated any of the laws referenced in Section 16(h)(i) (*OFAC Compliance*) or (2) is a Sanctioned Person.

(i) The Borrower Related Parties shall procure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender, a Construction-Related Contract Party).

(j) Hedging. The Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender.

Section 17. Indemnification. The Borrower Related Parties shall, to the extent permitted by applicable law, indemnify the TIFIA Lender and any official, employee, agent, advisor, or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural

resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower Related Parties shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower Related Parties' expense, and such participation by the Borrower Related Parties in the defense thereof shall not release the Borrower Related Parties of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 (*Indemnification*) is made shall be entitled, after consultation with the Borrower Related Part and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower Related Parties for purposes of this Section 17 (*Indemnification*). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower Related Parties nor the TIFIA Lender shall assert, and each of the Borrower Related Parties and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower Related Parties, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower Related Parties' indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 (*Indemnification*) shall be payable promptly upon demand therefor. The obligations of the Borrower Related Parties under this Section 17 (*Indemnification*) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the termination, nullity, voidance or unenforceability of this Agreement in accordance with Section 12(c) (*Conditions Precedent to Effectiveness*), the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17 (*Indemnification*)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower Related Parties hereunder or thereunder.

Section 18. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 18 (*Sale of TIFIA Loan*). Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower

of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 (*Sale of TIFIA Loan*) shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 19. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*)) or any mandatory prepayment pursuant to Section 10(b) (*Mandatory Prepayment*) when due and payable (such failure, a “**Payment Default**”).

(ii) Covenant Default. Any Borrower Related Party shall fail to observe or perform any covenant, agreement or obligation of such Borrower Related Part under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by such Borrower Related Party from the TIFIA Lender of written notice thereof, (B) any Borrower Related Party's knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period such Borrower Related Party shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of any Borrower Related Party made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided

that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*No Debarment*), Section 13(j) (*Compliance with Federal Requirements*), Section 13 (q) (*OFAC; Anti-Corruption Laws*), Section 13(cc) (*Patriot Act*);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Other Obligations. Any acceleration shall occur of the maturity of any Pari Passu Obligations or Subordinated Obligations or any Pari Passu Obligations or Subordinated Obligations shall not be paid in full upon the final maturity thereof.

(vi) Events of Default under Bond Issuance Documents and Other Loan Documents. Any default under (and as defined in) any Bond Issuance Document or other agreement(s) pursuant to which the Borrower has incurred indebtedness (including Permitted Debt) in an aggregate amount equal to or greater than \$1,000,000 and that is secured by or payable from all or any part of the Collateral, including the Pledged Revenues (“**Other Loan Documents**”) shall occur and shall not have been cured by the Borrower Related Parties or waived in writing in accordance with the requirements of the applicable Bond Issuance Document or Other Loan Document within the applicable cure period (if any) provided under such Bond Issuance Document or Other Loan Document.

(vii) Judgments. One or more [final, non-appealable]³⁴ judgments for the payment of money in an aggregate amount in excess of \$5,000,000 (inflated annually by CPI) that are payable from the Collateral or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by third party insurance (for which the insurer has acknowledged and not disputed coverage) shall be rendered against any

³⁴ **NOTE TO DRAFT:** Under USDOT review.

Borrower Related Party and shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Borrower Related Party to enforce any such judgment.

(viii) Failure to Maintain Existence. The Borrower shall fail to maintain its existence as a public instrumentality and non-profit industrial development corporation or the Sponsor shall fail to maintain its existence as a Texas municipal corporation, unless at or prior to the time such Borrower Related Party ceases to exist in such form a successor public agency or governing body has been created by the Sponsor or the State, as applicable, pursuant to a valid and unchallenged State law and has succeeded to the assets of such Borrower Related Party and has assumed all of the obligations of such Borrower Related Party under the TIFIA Loan Documents and the Bond Issuance Documents, including the payment of all Secured Obligations.

(ix) Occurrence of a Bankruptcy Related Event. A Bankruptcy Related Event shall occur with respect to any Borrower Related Party.

(x) Project Abandonment. The Sponsor shall abandon the Project.

(xi) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any Borrower Related Party contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Bond Issuance Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Collateral, including the Pledged Revenues, other than as a result of actions or a failure to act by, and within the control of, the Depository or any Secured Party, and with the priority purported to be created thereby.

(xii) Authorizing Legislation. Any Authorizing Legislation shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (*Development Default*), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (iii) demand that the Borrower Related Parties immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower, in which event the Borrower Related Parties shall immediately repay any such unexpended TIFIA Loan proceeds to the TIFIA Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to any Borrower Related Parties, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed

terminated, and the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities, and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest, or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower Related Parties, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, (ii) demand that the Borrower Related Parties repay any unexpended TIFIA Loan proceeds disbursed to the Borrower, and (iii) if an Acceleration Remedy MFN Event has occurred, declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, all without presentment, demand, notice, protest, or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity (i) for the collection of any sums due and unpaid hereunder, under the TIFIA Bond or under the other TIFIA Loan Documents with respect to the TIFIA Loan, and may prosecute any such judgment or final decree against the Borrower Related Parties and collect in the manner provided by law out of the property of the Borrower Related Parties the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the TIFIA Bond, or under the other TIFIA Loan Documents with respect to the TIFIA Loan, or (ii) to enforce performance and observance of any obligation, agreement, or covenant of the Borrower Related Parties under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower Related Parties from further participation in any Federal Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 19 (*Events of Default and Remedies*) shall relieve any Borrower Related Party from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower Related Parties shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Pledged Revenues, and any other revenues attributable to the Project, and TIFIA Loan requisitions received and disbursements made with

regard to the Project), so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower Related Parties shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect the Project, to examine the related books of account and records, and any other location where records relating to the Pledged Revenues, the Funds or any other Collateral are located, to make copies and extracts therefrom at the Borrower Related Parties' expense, and to discuss the Borrower Related Parties' affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision each Borrower Related Party irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower Related Parties, whether or not any representative of the Borrower Related Parties is present, it being understood that nothing contained in this Section 20(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower Related Parties agree to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower Related Parties shall maintain and retain all files relating to the Project, the Pledged Revenues and the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Pledged Revenues, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower Related Parties. The Borrower Related Parties shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Project or the Pledged Revenues that the TIFIA Lender may reasonably request from time to time.

(d) Required Audit. The Borrower Related Parties shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2026 and annually thereafter, except to the extent biennial audits are permitted for the Borrower Related Parties pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower Related Parties shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 21. Financial Plan; Financial Statements.

(a) Financial Plan. The Borrower Related Parties shall provide a Financial Plan to the TIFIA Lender and the FAA Division Office within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) Each Financial Plan shall be prepared in accordance with GAAP.

(ii) Together with each Financial Plan, the Borrower Related Parties shall deliver (A) a certificate signed by each Borrower Related Party's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower Related Parties' knowledge and belief and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Project and the Collateral that shall reflect the prior experience and current status of the Project and the Pledged Revenues, and the expectations of the Borrower Related Parties with respect to the Project and the Pledged Revenues, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) a statement of the Pledged Revenues, (2) actual annual outflows (including all Debt Service, TIFIA Debt Service, expenses, replenishment of reserves, and other uses) from the Pledged Revenue Fund, and (3) coverages of the payments and deposits required pursuant to Section 12 of the Bond Resolution;

(B) provide an updated cash flow statement showing projected annual amounts for each of the items described in clause (A) above, in each case through the Final Maturity Date;

(C) provide a written narrative that (1) explains any variances greater than 10% in comparison to the Base Case Financial Model and the most recent Financial Plan with respect to (i) Pledged Revenues and the amounts deposited into each of the Funds established under the Bond Issuance Documents; (ii) cost items payable with Pledged Revenues that are senior to TIFIA Debt Service; (2) includes a description of any material matters that may affect the future performance by any Borrower Related Party of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Pledged Revenues, and third-party transactions; and (3)

discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (D).

(iv) In addition to the above, prior to the Substantial Completion Date, the Financial Plan shall, as applicable:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued in excess of [ten] percent ([10]%) of total forecasted Total Project Costs reflected in the Project Budget, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower Related Parties' obligations under this Agreement.

(b) Financial Statements. The Borrower Related Parties shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than [sixty (60)] days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, (1) an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for (i)

the previous period, and (ii) the same period in the previous Borrower Fiscal Year, in each case certified by the chief executive officer or chief financial officer of the Borrower or the Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments), showing the Pledged Revenues as a separate item; and³⁵

(B) as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, (1) a copy of the audited income statement and balance sheet of the Sponsor as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Sponsor for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Sponsor, showing the Borrower as a discretely presented component unit and (2) a copy of the unaudited annual income statement, balance sheet and fund balance statement of the Borrower.³⁶

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

Section 22. Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FAA Division Office shall be responsible for administering construction oversight of the Project in accordance with the FAA Grant Assurances, to the extent applicable thereto. The Borrower Related Parties agree to cooperate in good faith with the TIFIA Lender and the FAA Division Office in the conduct of such monitoring by promptly providing the TIFIA Lender and FAA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FAA Division Office, or its agents, including any consulting engineer reports, documentation or information.

(b) Quarterly Construction Progress Report. On or before the thirtieth (30th) day following the end of each calendar quarter during the Construction Period, the Sponsor shall

³⁵ **NOTE TO DRAFT:** To be revised based on the Borrower's financial reporting practices and the nature of the Pledged Revenues. McKinney to confirm frequency of issuance of unaudited financial statements. MCDC's website includes only annual financial statements and monthly sales tax figures.

³⁶ **NOTE TO DRAFT:** McKinney to advise if clause (B) accurately captures the existing financial reporting by Sponsor and Borrower (annual or otherwise).

deliver to the TIFIA Lender a report (which may consist in whole or in part of reports received by the Sponsor from one or more of its contractors) that:

specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar quarter and the amount of Total Project Costs estimated to be required to complete the Project;

provides a revised Project Budget updated through the end of the preceding calendar quarter;

demonstrates that the Sponsor has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Sponsor as and when such funds are needed) to complete the Project, taking into account any changes to the amount of Total Project Costs that are reflected in such quarterly construction progress report (or prior quarterly construction progress reports);

to the extent there has been any change (increase or decrease) to the Total Project Costs needed to achieve Substantial Completion since the most recent quarterly construction progress report, provides a narrative description of such changes (specifying the amounts of such changes) and, in the case of any increase to the Total Project Costs, a narrative description of (A) which line items of the Project Budget have been affected by such cost increases (and the extent of any overruns with respect to such line items), (B) any material change orders granted or pending under the Construction-Related Contracts with respect to such cost increases, and (C) how the Sponsor will pay for such increased Total Project Costs;

provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule;

specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently submitted to the TIFIA Lender; and

provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request.

(c) Requested Information. The Borrower Related Parties shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower Related Parties or regarding the Project or the Collateral as the TIFIA Lender may from time to time reasonably request, including copies of agreements, documentation and other information

related thereto requested by the TIFIA Lender. The Borrower Related Parties shall respond, and use commercially reasonable efforts to cause the Construction-Related Contract Parties to respond, to the TIFIA Lender's inquiries regarding the construction of the Project. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender and at the Borrower Related Parties' cost (as provided in Section 28 (*Fees and Expenses*)), to carry out the provisions of this Section 22(c).

(d) Consulting Engineer.

(i) If requested in writing by the TIFIA Lender (in circumstances where the Sponsor does not already have a designated Consulting Engineer), the Sponsor shall hire and retain a Consulting Engineer for so long as required by the TIFIA Lender.

(ii) Any Consulting Engineer retained by the Sponsor shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower Related Parties of their obligations under this Agreement and the Related Documents.

(iii) The Sponsor may designate or replace the Consulting Engineer; provided, that the TIFIA Lender shall have the right to object to any such Consulting Engineer (and the Sponsor shall not retain any proposed Consulting Engineer if the TIFIA Lender has objected in writing to such proposed Consulting Engineer). The Sponsor shall provide the TIFIA Lender with thirty (30) Business Days' advance written notice of any proposed initial or replacement Consulting Engineer, together with supporting information concerning the qualifications of the proposed Consulting Engineer. The Sponsor may designate the proposed Consulting Engineer unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Sponsor's notice above. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed Consulting Engineer. The Sponsor shall pay for all services performed by the Consulting Engineer.

Section 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower Related Parties or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower Related Parties, the Federal Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower Related Parties agree to indemnify and hold the TIFIA Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower Related Parties shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 25. Borrower Related Party's Authorized Representative. Each Borrower Related Party shall at all times have appointed an Authorized Representative by designating such

Person or Persons from time to time to act on such Borrower Related Party's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by such Borrower Related Party.

Section 26. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower Related Parties and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016[, and the redelegation of authority, dated December 16, 2016]³⁷ (the "**Delegation**") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into [agreements implementing credit assistance, and to enter into]³⁸ contracts and sign all contractual and funding documents [(with the exception of the term sheets and credit agreements)]³⁹ necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The TIFIA Lender may from time to time designate another entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower Related Parties written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower Related Parties shall cooperate and respond to

³⁷ **NOTE TO DRAFT:** To be included if the Director of the Credit Office will be signing the TIFIA Loan Agreement and Term Sheet.

³⁸ **NOTE TO DRAFT:** To be included if the Director of the Credit Office will be signing the TIFIA Loan Agreement and Term Sheet.

³⁹ **NOTE TO DRAFT:** To be included if the Executive Director will be signing the TIFIA Loan Agreement and Term Sheet.

any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) The Borrower Related Parties agree, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Collateral, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower Related Parties or the Project by the TIFIA Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower Related Parties under this Agreement or the other TIFIA Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower Related Parties under this Section 28 (*Fees and Expenses*) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the termination, nullity, voidance or unenforceability of this Agreement in accordance with Section 12(c) (*Conditions Precedent to Effectiveness*), the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 31. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower Related Parties' rights or obligations hereunder nor any interest therein may be assigned, delegated, or transferred by any Borrower Related Party without the prior written consent of the TIFIA Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower Related Parties (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender:

Build America Bureau
United States Department of
Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to:

Federal Aviation Administration
Southwest Regional Office
Office of the Regional
Administrator
10101 Hillwood Parkway
Fort Worth, TX 76177
Attention: Rawley Vaughan
FAA Headquarters
Airports Policy Branch (APP-510)
Management and Program Analyst
Email:
Rawley.J.Vaughan@faa.gov

Servicer (at address provided
below)

If to Borrower:

McKinney Community
Development Corporation
[7300 SH 121 SB, Suite 200
McKinney, Texas 75070]⁴⁰
Attention: [●]
Email: [●]

If to the Sponsor:

City of McKinney, Texas
[Address]⁴¹
Attention: [●]
Email: [●]

⁴⁰ **NOTE TO DRAFT:** MCDC to confirm address and provide information for attention and email lines.

⁴¹ **NOTE TO DRAFT:** City to confirm address and provide information for attention and email lines.

With copies to:

[Insert relevant parties]

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by any Borrower Related Party's Authorized Representative, with respect to notices to any Borrower Related Parties, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(e) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time to time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (*Indemnification*), the reporting and record keeping requirements of Section 20(b) (*Inspections*) and Section 20(c) (*Reports and Records*), and the payment requirements of Section 28 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**MCKINNEY COMMUNITY
DEVELOPMENT CORPORATION, as
Borrower**

By: _____
Name: _____
Title: _____

**CITY OF MCKINNEY, TEXAS, as
Sponsor**

By: _____
Name: _____
Title: _____

**UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and
through the Executive Director of the Build
America Bureau**

By: _____
Name: _____
Title: _____

Exhibit C

NINTH AMENDED BYLAWS
OF THE
MCKINNEY COMMUNITY DEVELOPMENT CORPORATION

WHEREAS, the McKinney Community Development Corporation ("Corporation") duly adopted its Eighth Amended Bylaws at a meeting of the Board of Directors in September 2017; and

WHEREAS, the Board has determined that the Eighth Amended Bylaws should be amended to include the annual funding of the *Transportation Infrastructure Initiative and Economic Development Program*.

NOW, THEREFORE, these Ninth Amended Bylaws for the Corporation shall be substituted for and replace the Eighth 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"). 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 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 Section 501.072 of the Act, 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.
- (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 Board subject to all provisions of the City 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.

Section 10. President.

The President shall be a compensated employee of the City. 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. The President shall attend all Board meetings and perform those duties and functions as the Board shall prescribe. The President of the Corporation shall be hired by the Board; however, such hiring shall be subject to the prior notice and consultation with the City Council under the Home Rule Charter. The Board shall have the authority to terminate the President; however, such termination shall be subject to the prior notice and consultation with the City Council under the Home Rule Charter. The Board shall conduct an annual performance review of the President and provide a copy of the annual review to 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 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 thirty-first (31st) 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, including but not limited to, the Program as described in Article VI, Section 5(c) below. 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) The Board finds that the *Transportation Infrastructure Initiative and Economic Development Program* (the "Program"), as contained in

City Resolution No. 2022-06-088(R), and as amended, is a "Project" for which Corporation expenditures are suitable and required for infrastructure necessary to promote or develop new or expanded business enterprises, namely streets and roads, and related improvements, under Tex. Loc. Gov't. Code § 501.103 for which Corporation expenditures shall be budgeted and funded annually in accordance with Funding Option 3, as described in the Program.

- (d) 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.
- (e) The Board shall publish notice of and hold a public hearing on each Project as required by Chapters 501 and 505 of the Act.
- (f) 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 Section 505.160 of the Act, 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 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.

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 _____ day of _____, 2022.

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Tony McDonald on behalf of Tony McDonald

Bar No. 24083477

tony@tonymcdonald.com

Envelope ID: 112666597

Filing Code Description: Plaintiff's Original Petition (OCA)

Filing Description: Plaintiff's Original Petition and Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction

Status as of 3/20/2026 10:53 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Steven Ross	17305500	sross@maxuslegal.com	3/20/2026 10:17:25 AM	SENT
Connor Ellington		connor@tonymcdonald.com	3/20/2026 10:17:25 AM	SENT
Tony McDonald		tony@tonymcdonald.com	3/20/2026 10:17:25 AM	SENT