



## RESOLUTION NO. 2014-021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS AUTHORIZING THE CREATION OF NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC. AS A LOCAL GOVERNMENT CORPORATION; APPROVING THE FORM OF CERTIFICATE OF FORMATION FOR SAID CORPORATION; APPROVING THE FORM OF BYLAWS FOR SAID CORPORATION; APPOINTING THE CITY MANAGER TO SERVE AS AN INITIAL DIRECTOR OF SAID CORPORATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Carrollton, Town of Addison, City of Coppell and City of Farmers Branch (collectively, “the Cities”) entered into that certain *Interlocal Cooperation Agreement Regarding Establishment of the Metrocrest Quad Cities Local Government Corporation* (“the ILA”) effective January 27, 2014, for the purpose of jointly establishing a Local Government Corporation pursuant to Chapter 431, Texas Transportation Code, to finance, construct, own, manage and operate a regional public safety communications center for the benefit of the Cities; and

**WHEREAS**, pursuant to the ILA, the City Managers of the Cities, in conjunction with the city attorneys of the Cities, have prepared and now recommend approval of a *Certificate of Formation for the North Texas Emergency Communications Center, Inc.*; and

**WHEREAS**, the City Council of the City of Farmers Branch finds it to be in the public interest to authorize the creation of North Texas Emergency Communications Center, Inc., approve the form of Certificate of Formation and Bylaws for said corporation, and appoint an initial director for said corporation;

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

**SECTION 1.** The creation of the *North Texas Emergency Communications Center, Inc.* (“the Corporation”) as a local government corporation pursuant to Chapter 431 of the Texas Transportation Code is hereby authorized and approved by the City of Farmers Branch.

**SECTION 2.** The form of the *Certificate of Formation for North Texas Emergency Communications Center, Inc.*, attached hereto as Exhibit “A” and incorporated herein by reference is hereby approved.

**SECTION 3.** The form of the *Bylaws of the North Texas Emergency Communications Center, Inc.*, attached hereto as Exhibit “B” and incorporated herein by reference, is hereby approved and is hereby authorized to be adopted by the Board of Directors of the Corporation as the bylaws of the Corporation.

**SECTION 4.** Gary D. Greer, City Manager, is hereby appointed to serve as the City's appointee as the initial director to the Board of Directors of the Corporation.

**SECTION 5.** This resolution shall take effect immediately from and after its passage, and it is duly resolved.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THIS 3<sup>rd</sup> DAY OF MARCH, 2014.**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Angela Kelly, City Secretary

\_\_\_\_\_  
William P. Glancy, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Peter G. Smith, City Attorney  
(kbl:2/28/14:64750)

**Exhibit A to Resolution No. 2014-021**

**CERTIFICATE OF FORMATION  
OF  
NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.**

We, the undersigned natural persons, each of whom is at least eighteen (18) years of age or more, and a resident and a qualified voter of the Town of Addison, Texas, City of Carrollton, Texas, City of Coppell, Texas, or the City of Farmers Branch, Texas (collectively, the “Cities” and, each individually, a “City”) and a citizen of the State of Texas, acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), and Chapter 394, Texas Local Government Code, do hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I  
Corporation Name**

The name of the corporation is the **NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.** (the “Corporation”).

**ARTICLE II  
Nature of Corporation**

The Corporation is a public non-profit corporation.

**ARTICLE III  
Duration of Corporation**

The period of duration of the Corporation shall be perpetual.

**ARTICLE IV  
Corporate Purpose and Authority**

4.01 The Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the Cities in the performance of their governmental functions to promote the common good and general welfare of the Cities, including, without limitation, financing, constructing, owning, managing and operating a regional public safety communications center (the “Facility”) on behalf of the Cities, and to perform such other governmental purposes of the Cities, as may be determined from time to time by the City Councils of the Cities (the “City Councils”). Subject to applicable state law and any contractual obligations of a City or the Corporation, a City or the Cities may discontinue participation in the activities of the Corporation, or a non-participating unit of local government, business, or individuals may join in the activities of the Corporation, under procedures established in the Bylaws of the Corporation (the “Bylaws”).

4.02 The Corporation is formed pursuant to the provisions of the Act as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the

Corporation to assist and act on behalf of the Cities and to engage in activities in the furtherance of the purposes for its creation.

4.03 The Corporation, with the prior written consent of the Cities or as may be provided by the Bylaws, shall have the following powers to carry out the purposes of the Corporation, by and through its Directors:

- A. appoint an Executive Director and employ persons to carry out the purposes of the Corporation;
- B. issue debt or enter into and administer other contractual obligations to carry out the purposes of the Corporation;
- C. own, lease, maintain and dispose of real and personal property; and
- D. contract with other political subdivisions and units of governments.

4.04 The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Nonprofit Corporation Law (Tex. Bus. Org. Code, Chapters 20 and 21 and the provisions of Title I thereof to the extent applicable to non-profit corporations, as amended) or their successor.

4.05 The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue any bond, certificate, note or other obligation evidenced by an instrument without the prior written consent of each of the Cities or as otherwise allowed by the Bylaws.

4.06 The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (3), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for all purposes, including for purposes of the Texas Tort Claims Act, Section 101.001, et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

4.07 References herein to the consent or written consent of a City shall refer to an ordinance, resolution or order of the governing body of the City.

**ARTICLE V**  
**No Members or Shareholders**

The Corporation shall have no members and shall have no stock.

## **ARTICLE VI**

### **Board of Directors**

6.01 All powers of the Corporation shall be vested in a Board of Directors consisting of four (4) members (the “Board”) subject to the oversight of the Cities and as otherwise provided in the Bylaws. The Board shall independently manage and operate the Facility in accordance with all applicable laws and documents, including this Certificate, the Bylaws, one or more Operations Agreements (as defined in the Interlocal Cooperation Agreement by and among the Cities effective January 27, 2014 (the “ILA”), and such other documents agreed to by the Cities and as the same may be amended from time to time.

6.02 The initial directors of the Corporation (“Director” or “Directors”) shall be those persons named in Article VIII, below. With respect to the initial Board, the terms of the initial Directors shall commence on the date the Secretary of State has issued the certificate of incorporation for the Corporation. Subsequent Directors shall be appointed to the Board for a term of three (3) years as prescribed herein. Except as set forth in this Certificate or the Bylaws, any Director may be removed from office at any time, with or without cause, by the City responsible for the appointment of that Director.

6.03 The number of Directors shall be four (4), and shall be selected as follows:

A. The Town Council of the Town of Addison shall appoint one (1) Director who shall at all times during the term of office be the Addison City Manager;

B. The City Council of the City of Carrollton shall appoint one (1) Director, who shall at all times during the term of office be the Carrollton City Manager;

C. The City Council of the City of Coppell shall appoint one (1) Director, who shall at all times during the term of office be the Coppell City Manager; and

D. The City Council of the City of Farmers Branch shall appoint one (1) Director, who shall at all times during the term of office be the Farmers Branch City Manager.

6.04 The majority of the Directors must at all times be residents of the Cities.

6.05 Except as set forth in Section 6.02 above, Directors shall serve a term of office of three (3) years, with no limit imposed by this Certificate on the number of terms that a Director may serve.

6.06 Vacancies on the Board that occur before the end of a Director’s term shall be filled in the same manner as appointments made pursuant to Article 6.03.

6.07 The Directors may be removed at any time, with or without cause, by the City appointing such Director.

6.08 All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws, so long as such Bylaws are not inconsistent with this Certificate of Formation or the laws of the State of Texas.

**ARTICLE VII  
Registered Office and Agent**

The street address of the initial registered office of the Corporation is 13000 William Dodson Parkway, Farmers Branch, Texas 75234, and the name of its initial registered agent at such address is Gary D. Greer.

**ARTICLE VIII  
Initial Directors**

The names, addresses and terms of office of the four (4) initial Directors are:

<b>NAME</b>	<b>ADDRESS</b>	<b>TERM EXPIRES</b>
Leonard Martin	1945 E. Jackson Road P.O. Box 110535 (75011-0535) Carrollton, Texas 75006	March 31, 2017
Lea Dunn	5300 Belt Line Road Dallas, Texas 75254-7606	March 31, 2017
Gary D. Greer	13000 William Dodson Parkway Farmers Branch, Texas 75234	March 31, 2017
Clay Phillips	255 E. Parkway Boulevard Coppell, Texas 75019	March 31, 2017

**ARTICLE IX  
Incorporators**

The names and street addresses of the incorporators, each of whom resides within one of the Cities forming the Corporation are:

<b>NAME</b>	<b>ADDRESS</b>
Leonard Martin	1945 E. Jackson Road P.O. Box 110535 (75011-0535) Carrollton, Texas 75006
_____	_____ Carrollton, Texas 75___

**NAME**

**ADDRESS**

\_\_\_\_\_  
Carrollton, Texas 75\_\_\_\_

Ron Whitehead  
3919 Bobbin  
Addison, Texas 75001

John O'Neal  
16300 Ledgemont Lane #2007  
Addison, Texas 75001

Jeff Sharp  
15800 Spectrum #1404  
Addison, Texas 75001

Gary D. Greer  
13000 William Dodson Parkway  
Farmers Branch, Texas 75234

\_\_\_\_\_  
Farmers Branch, Texas 75234

\_\_\_\_\_  
Farmers Branch, Texas 75234

Clay Phillips  
255 E. Parkway Boulevard  
Coppell, Texas 75019

\_\_\_\_\_  
Coppell, Texas 75\_\_\_\_\_

\_\_\_\_\_  
Coppell, Texas 75\_\_\_\_\_

**ARTICLE X**  
**Approval of Certificate of Formation by Cities**

Resolution No. \_\_\_\_\_ approving the form and substance of this Certificate of Formation has been adopted by the City Council of the Town of Addison, Texas, on \_\_\_\_\_, 2014.

Resolution No. \_\_\_\_\_ approving the form and substance of this Certificate of Formation has been adopted by the City Council of the City of Carrollton, Texas, on \_\_\_\_\_, 2014.

Resolution No. \_\_\_\_\_ approving the form and substance of this Certificate of Formation has been adopted by the City Council of the City of Coppell, Texas, on \_\_\_\_\_, 2014.

Resolution No. \_\_\_\_\_ approving the form and substance of Certificate of Formation has been adopted by the City Council of the City of Farmers Branch, Texas, on \_\_\_\_\_, 2014.

**ARTICLE XI**  
**Director Liability**

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director, except for liability (i) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (ii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (iii) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article by the Directors shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

**ARTICLE XII**  
**Limits on Use of Corporate Assets; Income of Corporation**

12.01 In accordance with the provisions of Section 501(c)(3) of the Internal Revenue Code (the "Code"), and regardless of any other provisions of this Certificate of Formation or the laws of the State of Texas, the Corporation shall not:

- A. permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes);
- B. devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise;
- C. participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; and
- D. attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives.

No part of the Corporation's income shall inure to the benefit of any private interests.

12.02 Notwithstanding Section 431.107 of the Act, entitling the Cities at all times to have the right to equally receive the income earned by the Corporation, any income earned by the Corporation after payment of reasonable expenses, reasonable reserves for future activities, debt, establishment of a capital reserve, and establishment of a reserve for other legal obligations

of the Corporation, shall be retained by the Corporation and applied equitably as a credit to the charges to Cities for the operation and maintenance of the Facility, or distributed to the Cities in an equitable manner to be determined by the Board in accordance with the provisions of the Bylaws of the Corporation.

### **ARTICLE XIII** **Corporation as Private Foundation**

If the Corporation is a private foundation within the meaning of Section 509(a) of the Code, the Corporation: (a) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code; (b) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Code; (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Code; and (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

### **ARTICLE XIV** **Dissolution**

14.01 If the Board determines by resolution that the purposes for which the Corporation was formed have been substantially met and all bonds or notes issued by and all obligations incurred by the Corporation or on behalf of the Corporation have been fully paid, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Section 394.026 of Texas Local Government Code, or with applicable law then in existence.

14.02 Subject to any restrictions contained in applicable state law, if each of the Cities considers and approves a concurrent resolution or ordinance directing the Board to proceed with the dissolution of the Corporation, the Board shall promptly proceed with the dissolution of the Corporation. The failure of the Board to promptly proceed with the dissolution of the Corporation in accordance with this Section 14.02 shall be deemed a cause for the removal from office of any or all of the Directors as permitted by Article VI of this Certificate of Formation.

14.03 Upon the dissolution of the Corporation:

A. the assets of the Corporation shall be distributed among the Cities in accordance with the percentage of each City's contribution to the purchase of the assets of the Corporation; and

B. any remaining liabilities of the Corporation shall be allocated as follows:

(1) if the liability was incurred for the benefit of fewer than all of the Cities, the liability shall be allocated to those Cities for whom the benefit was incurred based on the agreement of the benefited Cities; and

(2) if the liability was incurred for the benefit of all of the Cities, the liability shall be based on the percentage of each City's contributions to the purchase of the assets of the Corporation.

Nothing in the Certificate shall prohibit the Cities from agreeing to an allocation of assets and liabilities contrary to this Section 14.03 provided such agreement is not contrary to applicable state law.

## **ARTICLE XV**

### **Indemnification of Directors and Officers**

15.01 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article XV and the Bylaws of the Corporation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by the Texas Nonprofit Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article XV shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article XV shall be deemed contract rights, and no amendment, modification or repeal of this Article XV shall have the effect of limiting or denying any such rights with respect to action taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article XV could involve indemnification for negligence or under theories of strict liability.

15.02 *Advance Payment.* The right to indemnification conferred in this Article XV shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 15.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification, provided; however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article XV and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article XV or otherwise.

15.03 *Indemnification of Employees and Agents.* The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article XV, and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status of such a person to the same extent that it may indemnify and advance expenses to Directors under this Article XV.

15.04 *Appearance as a Witness.* Notwithstanding any other provision of this Article XV, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

15.05 *Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article XV shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 15.03, above, may have or hereafter acquire under any law (common or statutory), provision of this Certificate of Formation or the Bylaws of the Corporation, agreement, or vote of disinterested Directors or otherwise.

15.06 *Insurance.* The Corporation may purchase and maintain insurance, at its expense to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venture, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article XV.

15.07 *Notification.* Any indemnification of or advance of expenses to a Director or officer in accordance with this Article XV shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

15.08 *Savings Clause.* If this Article XV or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article XV as to costs, charges and expenses (including attorneys' fees), judgments, fines and in amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article XV that shall not have been invalidated and to the fullest extent permitted by applicable law.

**ARTICLE XVI**  
**Amendments**

This Certificate of Formation may not be changed or amended unless approved in writing by each of the Cities.

**IN WITNESS WHEREOF**, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

*(Incorporator Signatures on Following Page)*

**TOWN OF ADDISON INCORPORATORS**

\_\_\_\_\_  
Ron Whitehead

\_\_\_\_\_  
John O'Neal

\_\_\_\_\_  
Jeff Sharp

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

Before me, a notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, appeared **Ron Whitehead, John O'Neal, and Jeff Sharp**, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

\_\_\_\_\_  
Notary Public, State of Texas

**CITY OF CARROLLTON INCORPORATORS**

\_\_\_\_\_  
Leonard Martin

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS           §

§

COUNTY OF DALLAS       §

Before me, a notary public, on this \_\_\_\_ day of \_\_\_\_\_, 2014, appeared **Leonard Martin**, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

\_\_\_\_\_  
Notary Public, State of Texas

**CITY OF FARMERS BRANCH  
INCORPORATORS**

\_\_\_\_\_  
Gary D. Greer

\_\_\_\_\_  
\_\_\_\_\_  
  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

Before me, a notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, appeared **Gary D. Greer**, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

\_\_\_\_\_  
Notary Public, State of Texas

**CITY OF COPPELL INCORPORATORS**

\_\_\_\_\_  
Clay Phillips

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

Before me, a notary public, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, appeared **Clay Phillips**, \_\_\_\_\_, and \_\_\_\_\_, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.

\_\_\_\_\_  
Notary Public, State of Texas

**Exhibit B to Resolution No. 2014-021**

**BYLAWS OF THE  
NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.**

A Texas Non-Profit Local Government Corporation created by and on behalf of the Town of Addison, City of Carrollton, City of Coppell, and City of Farmers Branch, Texas

**ARTICLE I  
Corporate Purpose and Authority**

1.01 *Purpose.* The Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the Town of Addison, the City of Carrollton, Texas, Texas, the City of Coppell, Texas, and the City of Farmers Branch, Texas (collectively “the Cities” and each a “City”) in the performance of their governmental functions to promote the common good and general welfare of the Cities, without limitation, financing, constructing, owning, managing and operating a regional public safety communications center (the “Facility”) on behalf of the Cities. Subject to applicable state law and any contractual obligations of a City or the Corporation, a City or the Cities may discontinue participation in the activities of the Corporation, or a non-participating unit of local government, business, or individuals may join in the activities of the Corporation, under procedures established in these Bylaws of the Corporation (the “Bylaws”). The Corporation, with the prior written consent of the Cities or as may be provided by the Bylaws, shall have the following powers to carry out the purposes of the Corporation, by and through its Directors:

- A. appoint an Executive Director and employ persons to carry out the purposes of the Corporation;
- B. issue debt or enter into and administer other contractual obligations to carry out the purposes of the Corporation;
- C. own, lease, maintain and dispose of real and personal property; and
- D. contract with other cities, political subdivisions, units of governments, and other persons and non-governmental entities.

1.02 *Local Government Corporation.* The Corporation is formed pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the Cities and to engage in activities in the furtherance of the purposes for its creation.

1.03 *Non-Profit Corporation.* The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Nonprofit

Corporation Law (Tex. Bus. Org. Code, Chapters 20 and 21 and the provisions of Title I thereof to the extent applicable to non-profit corporations, as amended) or their successor.

1.04 *Powers of Non-Profit Corporation.* The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue any bond, certificate, note or other obligation evidenced by an instrument without the prior written consent of each of the Cities or as otherwise allowed by these Bylaws.

1.05 *Governmental Entity for Immunity.* The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (3), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for all purposes, including for purposes of the Texas Tort Claims Act, Section 101.001, et seq., Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time.

1.06 *City Consent.* References herein to the consent or written consent of a City shall refer to an ordinance, resolution or order of the governing body of the City.

1.07 *Other Units of Government.* The Corporation may contract with a non-member unit of government to provide services on behalf of such non-member unit of government.

1.08 *Approved Projects.* The Corporation, by and through its Board of Directors, may approve capital improvements, services, or other projects consistent with the purposes of the Corporation to assist the Cities in the performance of their governmental functions (each an “Approved Project”). Each City shall have the right to elect not to participate in any Approved Project and such City shall not be responsible for funding such Approved Project through any required contribution agreement.

## **ARTICLE II**

### **Board of Directors**

2.01 *Powers Vested in Board.* All powers of the Corporation shall be vested in a Board of Directors consisting of four (4) members (the “Board”) subject to the oversight of the Cities and as otherwise provided in these Bylaws. The qualification, selection, terms, removal, replacement, and resignation of the members of the Board of Directors of the Corporation (“Director” or “Directors”) shall be governed by Article VI of the Certificate of Formation (“Certificate”).

2.02 *Initial Board and Transition.* The initial directors of the Corporation (“Director” or “Directors”) shall be those persons named in Article VIII of the Certificate. To provide for terms which end at the end of a calendar month, each initial Director named in Article VIII of the

Certificate shall serve for the term prescribed therein. With respect to the initial Board, the terms of the initial Directors shall commence on the date the Secretary of State has issued the certificate of incorporation for the Corporation. Upon the expiration of the terms of office of the initial Directors, the subsequent Directors shall be appointed for a three (3) year term, or until his or her successor is appointed by the entity authorized to appoint the Director; provided, however, upon the death, resignation or removal of a Director, the entity responsible for that Director's appointment shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director.

2.03 *Governing Documents.* All other matters pertaining to the internal affairs of the Corporation shall be governed by these Bylaws, so long as these Bylaws are not inconsistent with the Certificate, and such other documents agreed to by the Cities and as the same may be amended from time to time, or the laws of the State of Texas.

2.04 *Voting Rights.* All Directors shall have full and equal voting rights. All references herein to an act, resolution or vote of the Directors shall refer to a vote of the Directors entitled to vote on the matter as provided herein.

2.05 *Meetings of Directors.* The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Dallas County, Texas, as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State of Texas. The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required under Chapter 551, Texas Government Code (the "Open Meetings Act"); provided that the notice of each meeting of the Board shall be posted on the official bulletin board designated by the Cities for the posting of meetings of the Cities' respective City Councils. The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

2.06 *Annual Meetings.* The annual meeting of the Board shall be held at the time and at the location in Dallas County, Texas, designated by the resolution of the Board for the purposes of transacting such business as may be brought before the meeting.

2.07 *Regular Meetings.* Regular meetings of the Board shall be held at least quarterly at such times and places as shall be designated, from time to time, by resolution of the Board.

2.08 *Special and Emergency Meetings.* Special and emergency meetings of the Board shall be held whenever called by the President of the Board or the Secretary of the Board or by any two (2) of the Directors who are serving duly appointed terms of office at the time the meeting is called. A majority of the Board must be present for any special called or emergency meeting. The Secretary shall give notice of each special meeting in person, by telephone, facsimile, mail or email at least three (3) days before the meeting to each Director and to the public in compliance with the Open Meetings Act. Notice of each emergency meeting shall also be given in the manner required under the Open Meetings Act. An emergency meeting may only be held when there is an emergency or an urgent public necessity exists and immediate action is

required of the Board because of an imminent threat to public health and safety, or a reasonably unforeseeable situation. The agenda notice of the emergency meeting must be posted at least two (2) hours before the meeting and clearly identify the emergency or urgent public necessity. The President, or the Board member who calls an emergency meeting must notify by telephone, facsimile transmission, or electronic mail not later than one hour before the meeting those members of the news media that have previously filed at the Corporation a request containing all pertinent information for the special notice and has agreed to reimburse the Board for the cost of providing the special notice. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special meeting to the same extent as they may be considered and acted upon in a regular meeting. At any meeting at which every Director shall be present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon to the extent allowed by the Open Meetings Act.

2.09 *Quorum.* A majority of the entire Board (three (3) Directors) shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, those present may adjourn the meeting. The vote of a majority of the entire membership of the Board in favor of a motion, resolution, or other act shall be required to constitute the act of the Board, unless the vote of a greater number of Directors is required by law, by the Certificate of Formation, or by these Bylaws.

2.10 *Assent Presumed Without Express Abstention or Dissent.* A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless such person's dissent or abstention shall be entered in the minutes of the meeting or unless such person shall file written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof. Such right to dissent or abstain shall not apply to a Director who voted in favor of the action.

2.11 *Conduct of Business.* At the meetings of the Board, matters pertaining to the purpose of the Corporation shall be considered in such order as the Board may from time to time determine. At all meetings of the Board, the President shall preside, and in the absence of the President, the Vice President shall preside. 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.

2.12 *Executive Committee, Other Committees.* The Board may, by resolution passed by a majority of the entire Board, designate two (2) or more Directors to constitute an executive committee or other type of committee. In addition, the Board may appoint members of Corporation staff and citizens and/or employees of the Cities to be members of a committee, except for an Audit, Compensation or Governance Committee, which committees may only be composed of Directors.

2.13 *Power of Committees.* Except to the extent provided in the authorizing resolution for the committee and the Board-approved committee charter, a committee may not exercise the authority of the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings, shall cause such minutes to be recorded in books kept for that

purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees authorized to exercise the powers of the Board shall give notice of any meeting in the manner required for a meeting of the Board.

2.14 *Compensation of Directors.* Directors, as such, shall receive no salary or compensation for their services as Directors; provided, however, Directors may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes.

2.15 *Operations Advisory Committee.*

(a) Creation and Membership. The Operations Advisory Committee ("OAC") is created to serve in an advisory capacity to the Board of Directors. The OAC shall be composed of the chief or his/her designee from each police department and fire department of each City. In addition, the Executive Director shall be an ex-officio non-voting member of the OAC with the right to receive notice of, attend, and participate in discussions and deliberations of all meetings of the OAC.

(b) Committee Representatives. People serving on the OAC are referred to as Representatives and shall serve without compensation from the Corporation.

(c) Alternates. Representatives to the OAC may designate one alternate to serve when such Representative is absent or unable to serve provided that such alternates must have operational responsibilities within their respective agencies.

(d) Powers. The OAC shall meet for the purpose of promoting interdisciplinary and interagency collaboration and cooperation, information sharing, development and recommend to the Board for approval Corporation operational policies and practices relating to the use of the Facility for public safety communications, and such other matters as the Board may direct. The OAC shall provide advice, information, and recommendations to both the Board and the Executive Director.

(e) Quorum. A majority of the members of the OAC (or their alternates) shall constitute a quorum. Representatives may participate and be considered present in meetings by telephone conference or other comparable means.

(f) Voting. All actions and recommendations of the OAC shall be approved by majority vote of those present and voting. Each person serving on the OAC shall have one vote.

(g) Officers. The OAC shall have two officers, a Chair and Vice-Chair. It will be the function of the Chair to preside at the meetings of the OAC, and the Vice-Chair shall assume this role in absence of the Chair. The officers shall be initially elected at the first meeting of the OAC by majority vote of the Representatives on the OAC and shall serve until the completion of the end of the first full fiscal year of the Corporation. Annually thereafter, the Vice Chair shall assume the role of Chair and the OAC shall elect a new Vice-Chair. In the event of a vacancy in the Chair position, the Vice-Chair shall assume the Chair for the balance of the term of the departed Chair. In the event of a vacancy in the Vice-Chair position, the OAC shall elect a new

Vice-Chair to serve to the balance of the term of the departed Vice-Chair. An officer of the OAC elected to fill the unexpired term of his or her predecessor shall not be precluded from serving a full annual term of office following the end of such unexpired term.

(h) Staffing. The Corporation, through the Executive Director, shall provide such clerical and staffing support to the OAC as the Executive Director deems reasonable and necessary to allow the OAC to perform its purposes or as otherwise determined by the Board.

(i) Meetings. The OAC shall meet monthly at a time and place designated by the Chair of the OAC or by a majority of its Representatives. Not less than seven (7) days advance notice of regular meetings shall be given, provided, however, it shall not be necessary to provide advance notice of a regular meeting of the OAC if the OAC adopts a regular day and time each month on which to hold its regular meetings. Special meetings may be called by the Chair of the OAC or Representatives representing at least one-third of the total seats on the OAC and upon giving all other Representatives not less than five (5) days prior notice of such meeting. In an emergency, the OAC may dispense written notice requirements for special meetings, but must, in good faith, implement best efforts to provide fair and reasonable notice to all Representatives.

2.16 *Director's Reliance on Consultant Information*. A Director shall not be liable if, while acting in good faith and with ordinary care, such person relies on information, opinions, reports or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation;
- (b) an employee of a City;
- (c) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
- (d) a committee (including the OAC) of the Board of which the Director is not a member.

2.17 *Executive Director*. The Board is authorized to hire an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall be the chief executive officer of the Corporation and shall have the duties and powers as set forth in Article VI of these Bylaws. The Board shall establish the compensation, and may establish duties and responsibilities of the Executive Director in addition to those prescribed by Article VI of these Bylaws. The hiring and/or removal of the Executive Director shall be by a majority vote of the entire Board.

2.18 *Attorneys and Consultants*. The Board may employ attorneys, auditors, certified accountants engineers, and such other professionals and consultants as may be required for the purposes of the Corporation from time to time.

## **ARTICLE III**

### **Officers**

3.01 *Titles and Term of Office.* The officers of the Corporation shall be a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint. Each officer shall be a current Director. One person may hold more than one office, except the President shall not hold the office of Secretary. The term of office for each officer shall be one (1) year and shall serve from October 1 through the following September 30, except that such office shall terminate on the earlier of: (a) the date that the officer is replaced by the Board; or (b) the date that the officer is no longer a member of the Board.

All officers shall be appointed and subject to removal at anytime, with or without cause, by a vote of a majority of the entire Board.

A vacancy in any office elected pursuant to this Article III shall be filled by a vote of a majority of the entire Board.

3.02 *Powers and Duties of the President.* The President shall be a member of the Board and shall preside at all meetings of the Board. Such person shall have such duties as are assigned by the Board. The President may call special or emergency meetings of the Board. Any special or emergency called meeting shall be called and conducted in accordance with Section 2.08 of these Bylaws. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Certificate, the President or Vice President may sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, notes, contracts and other obligations in the name of the Corporation. The President shall be an ex-officio member of all committees.

3.03 *Powers and Duties of the Vice President.* A Vice President shall be a member of the Board and shall have such powers and duties as may be assigned to such person by the Board or the President, including the performance of the duties of the President upon the death, absence, disability, or resignation of the President, or upon the President's inability to perform the duties of such office. Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken.

3.04 *Treasurer.* The Treasurer shall have custody of all the funds and securities of the Corporation which come into possession of the Corporation. When necessary or proper, the Treasurer (i) may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; (ii) may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; (iii) shall enter or cause to be entered regularly in the books of the Corporation to be kept by such person for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; (iv) shall perform all acts incident to the position of Treasurer subject to the control of the Board; including the monitoring

and audit of all cash accounts whose existence must first be approved by the Board; and (v) shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require. The Corporation may contract with one or more of the Cities to provide financial services for the Corporation in deciding the performance of the duties of the Treasurer set forth in this Section 3.04.

3.05 *Secretary.* The Secretary (i) shall keep the minutes of all meetings of the Board in books provided for that purpose; (ii) shall attend to the giving and serving of all notices; (iii) in furtherance of the purposes of the Corporation and subject to the limitations contained in the Certificate of Formation, may sign with the President in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; (iv) shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, (v) shall in general perform all duties incident to the office of Secretary subject to the control of the Board. Nothing in this Section 3.05 shall be construed as prohibiting the Board or the Executive Director from providing to the Secretary such support as may be reasonable and necessary to assist the Secretary in carrying out the duties set forth herein.

3.06. *Compensation.* Officers shall serve without compensation for their duties, but are entitled to receive reimbursement for their reasonable expenses only in performing their functions in accordance with any policies that may be adopted by the Board.

3.07 *Officer's Reliance on Consultant Information.* In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation, including members of the Board;
- (b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
- (c) an employee of one of the Cities.

#### **ARTICLE IV**

##### **Financial Responsibilities**

4.01 *Audit.* Not later than one hundred twenty (120) days after the close of each fiscal year, the Board shall have an annual audit prepared by an independent auditor who is duly licensed or certified as a public accountant in the State of Texas of the financial books and

records of the Corporation. The Corporation shall provide a copy of the completed audit to each City not later than fifteen (15) days after its receipt by the Corporation.

4.02 *Capital Spending Authority:* The Board may expend funds for capital improvements in accordance with a capital improvement plan approved by the Board for the current fiscal year budget as follows:

(a) Funds from the Cities shall be used for the purposes of the Corporation as authorized and directed by the Cities.

(b) Funds from other sources, such as donations, may be used at the discretion of the Board for capital purposes as long as the uses are consistent with the direction of the Cities and are not reasonably expected by the Board to increase the operation and maintenance costs of the Corporation above the limits established in Section 4.04, below, or have a capital cost greater than \$100,000.

(c) Proceeds of bonds, notes and other obligations shall be expended in accordance with the terms of the resolution authorizing the issuance of such bonds, notes or other obligations.

4.03 *Issuance of Debt.*

(a) The Corporation, with the approval of the Cities, is authorized to issue short-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable not later than one (1) year from their initial date of issuance. Where possible, the amount and purpose of the short term debt shall be projected by the Corporation in its annual budget to the Cities. Cities shall be given the first opportunity to provide these funds before the Board incurs debt.

(b) The Corporation, with the approval of the Cities, is authorized to issue long-term debt in the form of bonds, notes, and other obligations which by their terms mature and are payable beyond one (1) year from their initial date of issuance. Long term debt may be issued to finance capital improvements and costs related thereto, and to refund or refinance any outstanding bonds, notes, or obligations issued or incurred by the Corporation, or for such other reasons as may be approved by the Cities.

(c) Short-term debt as defined in Subsection (a) and long-term debt as defined in Subsection (b) of this Section 4.03 may be issued only if:

(i) the issuance of said debt is approved by a majority of the entire Board; and

(ii) the issuance of said debt is approved by resolution or ordinance of the Cities.

(d) Any debt issuance approved by the Cities shall be paid from any source or sources permitted by law including the income and revenue of the Corporation.

4.04 *Increase of O&M Costs.* Except for items mandated by changes in state or federal law or regulation that could not reasonably have been anticipated prior to submission of the Corporation's annual budget to the Cities for review and comment, in the event any one or more items are added during a fiscal year that would increase or cause the annual operation and maintenance costs to exceed ten percent (10%) above the budgeted amount for that year, the Board must receive prior approval from the Cities prior to making that addition. Failure of a City to reject, to ask for additional information regarding, or to request modification of, the request on or before the thirtieth (30<sup>th</sup>) day after submission of the request to the City shall be deemed an approval of the request by that City (and a request for additional information or for modification may be provided by an employee of a City).

4.05 *Fiscal Year.* The fiscal year of the Corporation shall begin October 1 of each year.

4.06 *Annual Budget.*

(a) No later than ninety (90) days prior to the beginning of each fiscal year, the Board or the Executive Director (if the Corporation has employed an Executive Director) shall prepare, or cause to be prepared, and approve a budget (the "Budget") for the fiscal year. The Budget must be approved by a majority vote of the entire Board. After approval by the Board, the Budget shall be submitted to each City for approval. Failure of a City to reject, to ask for additional information regarding, or to request modification of, the Budget approved by the Board on or before the thirtieth (30<sup>th</sup>) day after submission of the Budget to the City shall be deemed an approval of the Budget by that City (and a request for additional information or for modification may be provided by an employee of a City).

(b) The Budget shall, at a minimum, include capital, operational, debt service and project-specific expenditures and corresponding revenues. The Budget shall clearly indicate the sources and purposes of revenues contributed by a City or a non-participating unit of government.

(c) If the Board fails to approve the Budget, or if the Budget is not approved by each City, then the Budget for the prior fiscal year shall be deemed approved.

(d) From time to time, the Board may undertake one or more projects related to the purposes of the Corporation requiring the expenditure of funds not approved in the Annual Budget with the approval of a quorum of the Board of Directors. While the Board may elect to amend the Annual Budget for a particular project(s) related to the purposes of the Corporation, such expenditures may not be undertaken in that regard unless or until an agreement with a City or the non-member unit of government is executed with the Corporation, which shall contain at least the following:

- (i) the service(s) to be provided by the Corporation;

(ii) the method by which the Corporation intends to provide the service(s) (i.e., the Corporation intends to contract with a private entity or perform the service(s) itself, or some blending of the various methods);

(iii) the total cost of the project(s) to be undertaken by the Corporation;

(iv) written agreement by the member and/or participating Cities to contribute an agreed-upon portion of the stated project expenditures, along with the agreed-upon portion being contributed by other member and/or participating Cities; and

(v) unless otherwise agreed by the Cities in the respective Interlocal Cooperation Agreement, the share of the project expenditures will be evenly distributed on a pro-rata population basis based on the most recent Decennial Census.

(e) A City not required to financially contribute or participate in any particular project for which an annual budget amendment occurs, can “opt-in” or “opt-out” of any particular project approved by the Board of Directors and the Cities.

4.07 *Line Item Flexibility.* The Executive Director has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Board or the Cities. The Board, by a vote of at least three-fourths of the members of the entire Board, has the authority to shift operation and maintenance funds from one line item of the Budget to another without the approval of the Cities.

4.08 *Reserve Fund.* The Budget shall provide for one or more reserve funds for the replacement of scheduled assets, for capital improvements and reasonable reserves for future activities, debt, establishment of a capital reserve. Any unencumbered funds remaining at the end of the fiscal year shall be converted to the Reserve Fund.

4.09 *Other Funds.* Other funds, such as unrestricted charitable donations, may be used by the Board in accordance with the approved budget or, if not anticipated in the Budget, as the Board directs, provided that the limitation set out in Section 4.04, above or a capital cost of \$100,000 is not exceeded.

4.10 *Appropriations and Grants.* The Corporation shall have the power to request and accept any appropriations, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

4.11 *Sale or Transfer of Assets.* The Corporation may not sell, transfer or assign real property or permits of the Corporation, in whole or in part, without the approval of the Board. After approval by the Board, the proposed sale, transfer or assignment of the assets (“the Asset Transfer”) must be submitted to each City for approval. The Cities will approve or disapprove the Asset Transfer in whole or in part. Failure of the Cities to reject the Asset Transfer approved by the Board on or before the thirtieth (30<sup>th</sup>) day after submission to the Cities of the proposed Asset Transfer shall be deemed an approval of the Asset Transfer. Notwithstanding the

foregoing, the Board shall not be required to obtain the consent of the Cities to sell, convey, or transfer to a third party personal property of the Corporation determined by the Board to be surplus and which has a depreciated unit value of less than \$1000.00 per unit.

## **ARTICLE V**

### **Indemnification of Directors and Officers**

5.01 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article V and the Certificate, each person who was or is made a party, is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a “proceeding”), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by the Texas Nonprofit Corporation Law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including, without limitation, attorneys’ fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnify hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

5.02 *Advance Payment.* The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 5.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person’s ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

5.03 *Indemnification of Employees and Agents.* The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; .

5.04 *Appearance as a Witness.* Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

5.05 *Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 5.03 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Certificate or these Bylaws, agreement or disinterested Directors or otherwise.

5.06 *Insurance.* The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

5.07 *Notification.* Any indemnification or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the ninety (90) day period immediately following the date of the indemnification or advance notification.

5.08 *Savings Clause.* If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

## **ARTICLE VI**

### **Executive Director; Employees**

#### *6.01 Powers and Duties of the Executive Director.*

(a) *Chief Executive.* The Executive Director shall be the chief executive officer of the Corporation and, subject to the control of the Board, shall be in general charge of the properties and affairs of the Corporation. The Executive Director has management and control of the properties and operations of the Corporation, including the powers of a general manager. The Executive Director shall be an ex-officio of all Board committees, except the Audit Committee. The Executive Director will be responsible for implementing all orders and resolutions of the

Board, and all other powers that are not specifically reserved to the Directors or Cities will be executed by the Executive Director within the general guidelines and policies of the Board and Cities.

(b) *Responsible for hiring and supervision of Employees.* The Executive Director shall be responsible for hiring and terminating the employees of the Corporation. All employees hired by the Executive Director shall be terminable at-will and not be provided any term or promise of employment.

(c) *Spending Authority.* The Executive Director is authorized to approve expenditures, make purchases, and enter into contracts on behalf of the Corporation which require an expenditure not to exceed \$50,000 without Board approval as long as funds are budgeted and are available for the expenditure.

(d) *Annual Budget.* The Executive Director is responsible for the preparation of the Corporation's annual budget.

(e) *Annual Business Plan.* The Executive Director shall prepare a Corporation business plan (the "Business Plan") on an annual basis for review and approval by the Board. The Business Plan shall include such items and matters required by the Board and, at a minimum, shall include the following: (i) performance measures and benchmarks; and (ii) possible future activities.

#### 6.02 *Corporation Employees.*

(a) The Executive Director shall be a full time employment position of the Corporation, except that the Board may contract with a person or entity as an independent contractor to serve as an Executive Director.

(b) The Corporation may contract with any one or more of the Cities for utilization of employees of such City. The Corporation may, without compensation, use the services of employees of a City with the prior written consent of the applicable City Manager. The Board is authorized to employ or contract for project-specific personnel to manage or operate a service provided by the Corporation.

### **ARTICLE VII Code of Ethics**

#### 7.01 *Policy and Purposes.*

(a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

(b) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

#### 7.02 *Conflicts of Interest*

(a) *Abide by State and Criminal Laws for Public Officers.* All Directors, Officers and employees shall abide by the state civil and criminal laws regarding conflict of interest, official misconduct and other regulations and restrictions involving their official duties.

(b) *Disclosure and Abstention.* It is the intent of these Bylaws that the Directors, Executive Director and Officers shall take all steps to avoid the appearance of impropriety in the conduct of their affairs on behalf of the Corporation. This includes not engaging in any conduct or business that may be deemed to compromise their independent judgment in executing their duties as Corporation officials. In the event that a Director, officer, or the Executive Director has any financial or equitable interest, direct or indirect, in a transaction that comes before the Board, or a committee or the Executive Director, the affected Director or officer, must:

- (i) disclose that interest in writing and file it with the Board Secretary; and,
- (ii) refrain from discussing or voting on the same.

(c) *Restrictions on Executive Director.* The Executive Director is precluded from having any financial or equitable interest in any contract, service (other than such person's employment) or acquisition that is subject to such person's approval or that the subordinates of the Executive Director may approve or monitor.

(d) *Definition of Financial Interest/Relative.* The "financial or equitable interest" contemplated under (b) and (c) of this Section requires that the affected person who is the Director, Officer, or Executive Director or their relative receive an actual financial benefit from the transaction with the Corporation. A relative is a person related within the first degree of consanguinity or affinity to the Director, Officer, or Executive Director. A financial or equitable interest does not include the following:

- (i) An ownership in the entity transacting business with the Corporation where the ownership interest is less than one percent (1%).
- (ii) Compensation as an employee, officer or director of the entity transacting business with the Corporation where such compensation is not affected by the entity's transaction with the Corporation.
- (iii) An investment or ownership in a publicly held company in an amount less than TEN THOUSAND DOLLARS (\$10,000.00).

(iv) The status of the person being an employee of a public entity serving as a Director on the Board.

7.03 *Acceptance of Gifts.* No Director or Officer, nor the Executive Director, shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or Officer, nor the Executive Director, shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or Officer's, or the Executive Director's, discretion. As used here, "benefit" does not include:

(a) a fee prescribed by law to be received by a Director or officer or Executive Director or any other benefit to which the Director or officer or Executive Director is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a Director or officer or Executive Director;

(b) a gift or other benefit conferred on an account of kinship or a personal, professional, or business relationship independent of the official status of the Director or Officer or Executive Director;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(1) not more than one honorarium is received from the same person in a calendar year;

(2) not more than one honorarium is received for the same service; and

(3) the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or Officer or Executive Director in performance of the services.

(d) A benefit consisting of food, lodging, transportation, or entertainment accepted as a guest is reported as may be required by law.

7.04 *Nepotism.* No Director or Officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or Officer so appointing, voting or confirming, or to any other Director or Officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship employment or duty at least thirty (30) days prior to the appointment of the Director or Officer so appointing or voting.

**ARTICLE VIII**  
**Miscellaneous Provisions**

8.01 *Seal.* The seal of the Corporation shall be such as may be from time to time approved by the Board. The seal of the Corporation shall not be required to be placed on a document in order for the document to be considered a valid act or agreement of the Corporation.

8.02 *Notice and Waiver of Notice.* Whenever any notice, other than public notice of a meeting given to comply with the Open Meetings Act, is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. If transmitted by facsimile or email, such notice shall be deemed to be delivered upon successful transmission of the facsimile or email. A Director may waive notice of any meeting. The attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless such attendance is for the purpose of objecting to the failure of notice. A waiver of notice, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

8.03 *Gender.* References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

8.04 *Distribution of Net Income; Return of Funds.* Notwithstanding Section 431.107 of the Act entitling the Cities at all times to have the right to equally receive the income earned by the Corporation, any income earned by the Corporation after payment of reasonable expenses, reasonable reserves for future activities, debt, establishment of a capital reserve, and establishment of a reserve for satisfaction of other legal obligations of the Corporation shall be retained by the Corporation and applied equitably as a credit to the charges to Cities for operations of the Facility and/or other services provided by the Corporation to the Cities.

8.05 *City Access to Records of Corporation.* Notwithstanding the provisions of the Public Information Act or any exceptions contained therein to disclosure and the rights or limitations thereof regarding the review of records of Texas non-profit corporations, the Cities shall have a special right to review and obtain copies of the records of the Corporation, regardless of format, upon reasonable notice and during regular business hours of the Corporation; provided, however, such special right of access to the Cities shall not apply to records to which law or regulation expressly prohibit disclosure to third parties that would by definition include the Cities.

8.06 *Amendments.* A proposal to alter, amend or repeal these Bylaws shall be made by the affirmative vote of a majority of the entire Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by resolution of each City to be effective.