

WHAT THE HECK IS A LOCAL GOVERNMENT CORPORATION AND WHY WOULD MY CITY EVER WANT TO CREATE ONE?

PRESENTED BY

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ABOUT THE PRESENTER

Kevin B. Laughlin is a partner with the Dallas firm of Nichols, Jackson, Dillard, Hager & Smith, L.L.P., whose practice is focused exclusively on the representation of cities and other local governmental entities in and around the Dallas/Fort Worth Metroplex. Following graduation from Southern Methodist University Law School in 1985, Kevin served SMU as its Assistant University Counsel (yes, those were the “death penalty” years). In 1989, Kevin joined the Midland, Texas, city attorney’s office as a municipal court prosecutor, and from September 1991 to March 1996 served as Midland’s First Assistant City Attorney. In March 1996, Kevin was appointed City Attorney for the City of Kerrville, where he served until May, 2002, when he returned to West Texas and went into private practice with the Odessa firm of Atkins & Peacock, L.L.P. practicing in the areas of real estate, probate, general corporate, school, and local government law. Kevin returned to the full-time practice of municipal law upon joining Nichols, Jackson in April 2008. Kevin is licensed to practice in Texas, Oklahoma, and in the U.S. District Courts for the Western and Northern Districts of Texas. Kevin is a long time member of the Texas City Attorneys Association, serving as TCAA president in 2002-2003, and presently serving as the TCAA representative to the Texas Municipal League board of directors.

Kevin has been married to his college sweetheart and best friend, Libby, for 34 years and has three grown children, all of whom have fond memories of attending this conference with their parents in summers past.

DISCLAIMER

You are not my client, and I am not your attorney (with the exception of a few of you who have engaged our firm to consult on various matters as outside counsel). Therefore, while much of the information contained in this paper and in the presentation offered at this conference is readily available in your law library or on the Internet, how I put this paper together and the comments I make about this topic may not be the same way you, based on your own experience or fact situation, may do things or advise your client. My hope is that you can use this as a reference tool to provide some alternatives to projects where the creation and operation of a local government corporation may be appropriate. But PLEASE, because fact situations are different and new laws and court decisions can change the outcome of any prior opinion, always be sure to confirm anything I might advise with your own research, especially if a significant amount of time has passed between the time this paper was originally presented and the time you actually find the need to refer to it.

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WHAT THE HECK IS A LOCAL GOVERNMENT CORPORATION AND WHY WOULD MY CITY EVER WANT TO CREATE ONE?

Introduction

During the Second Called Session of the 68th Texas Legislature, the Texas Legislature approved House Bill 125 (“HB 125”) enacting the Texas Transportation Corporation Act¹ (“the Act”). The bill analysis provided to the House Transportation Committee stated the purpose of the bill was to “encourage donations of right of way for state highways, and donations of funds for preliminary planning and design for those highways.”² By way of background, the bill analysis stated:

The bill provides a presently unavailable vehicle for private citizens to contribute property and money for the development of roadways, including contributions for feasibility, and new alignment studies as well as right of way acquisition. Under present law, contributions may be made to the State, through the Highway Commission, for use in roadway projects, but there is no assurance for contributors that their donations will be used on any particular project.

Id. HB 125, when originally enacted, authorized the creation of a Texas non-profit corporation to act on behalf of the State Highway and Public Transportation Commission (now known as the Texas Transportation Commission) (“the Commission”) within certain defined areas of the state upon adoption of a resolution by the Commission following approval of a petition, accompanied by articles of incorporation, submitted by at least three individual voters of the State³. The purpose of such a “transportation corporation” was (and still is) limited to the promotion and development of public transportation facilities and systems⁴. Transportation corporations were given the same power and authority as a Texas non-profit corporation along with additional authority to act on behalf of the Commission⁵. While not governmental entities, transportation corporations from their very inception were required to comply with the Open Meetings Act and the Public Information Act⁶. During the next legislative session, the Act was amended to actually allow transportation corporations to contract with other governmental entities, including the State, to construct highways and other transportation facilities⁷.

Then, in 1989, the 71st Texas Legislature adopted House Bill 2485 which, among other acts, amended Article 1529I to provide for the creation of an entity called a “local government corporation” by cities and counties⁸. In reviewing the bill analysis for HB 2485, and after listening to the recording of a Senate Transportation Committee hearing at which the bill was debated, it is not really clear why the Legislature provided for the creation of local government corporations

¹ Acts 1984, 68th Leg. 2nd C.S. ch. 27, Tex. Rev. Civ. Stat. art. 1529I (now codified in Chapter 431, Tex. Trans. Code)

² Bill Analysis, HB 125, p.2 (House Transportation Committee, 2nd Called Session, 68th Texas Legislature)

³, Tex. Rev. Civ. Stat. art. 1529I §4 (now Tex. Trans. Code §§431.022 and 431.023)

⁴ Tex. Trans. Code §431.021

⁵ Tex. Rev. Civ. Stat. art. 1529I §16 (now Tex. Trans. Code §§431.006 and 431.061-431.073)

⁶ Tex. Rev. Civ. Stat. art. 1529I §10(c) and §11(e) (now Tex. Trans. Code §§431.004 and 431.005)

⁷ Acts 1985, 69th Leg. R.S., ch. 927

⁸. Acts 1989, 71st Leg. R.S., ch 1241, §7, enacting Tex. Rev. Civ. Stat. art. 1529I §4A

(LGCs). Much of the discussion appeared to focus on toll roads, county road and bridge districts and road utility districts. For reasons that will become more evident later in this paper, it is even more puzzling why provisions relating to LGCs were placed in the Transportation Corporation Act. With all of that said, let's launch into discussions of just what an LGC is.

What is a Local Government Corporation (and What is it NOT)?

By definition, a Local Government Corporation or "LGC" is a corporation incorporated as provided in Subchapter D of Chapter 431, Texas Transportation Code⁹. By being lumped into the definition of "corporations" as defined in Chapter 431, an LGC is subject to all laws applicable to Texas non-profit corporations as set forth in Chapter 22, Tex. Bus. Org. Code¹⁰.

Despite the inclusion of the word "government" in its name, a local government corporation may or may not be a local governmental entity¹¹. Reading through Chapter 431 of the Transportation Code, an LGC appears to be more like a Type A or Type B Corporation in the way it is formed. Except for the purposes of application of the Texas Tort Claims Act, nowhere else in Chapter 431 is an LGC referred to as a political subdivision or a local governmental entity. On the other hand, a number of courts in lawsuits to which an LGC is a party have actually referred to the LGC as a local government entity or political subdivision¹². This confusion is often fueled by the fact that LGCs are by statute given some of the attributes of a local governmental entity such as:

1. Required compliance with the Open Meetings Act¹³
2. Required compliance with the Public Information Act¹⁴
3. With one exception, the property of an LGC is tax exempt to the same extent as a housing development corporation created under Chapter 394, Texas Local Government Code¹⁵
4. Like Type A and Type B Corporations created under the Development Corporation Act, LGCs are deemed to be governmental units for the purpose of extending the limited waiver of immunity provided under the Tort Claims Act (Ch. 101, Tex. Civ. Prac & Rem Code), except that all operations of an LGC are deemed to be governmental and not proprietary¹⁶.

⁹ Tex. Trans. Code §431.003(4)

¹⁰ Tex. Trans Code §§431.003(2) and 431.006. Note that §431.006, as well as the remainder of Chapter 431, has not been updated to conform to the statutory references and terminology of the Texas Business Organizations Code which was adopted in 2006 and became fully applicable to all Texas business entities in 2010.

¹¹ Interestingly, there are courts that have referred to an LGC as a "governmental entity."

¹² See *Fort Bend County Toll Rd. Auth. v. Olivares*, 316 S.W.3d 114, 128 (Tex. App.—Houston [14th Dist.] 2010, no pet.) ("...by providing that local-government corporations are "governmental units" performing governmental functions, and by imbuing them with "nature, purposes, and powers," it is clear the legislature intended such corporations to be *separate and discrete political subdivisions* from those they act on behalf of and aid.");

¹³ Tex. Trans. Code §431.004

¹⁴ Tex. Trans. Code §431.005

¹⁵ Tex. Trans. Code §431.102(b), the one exception being the property an LGC created by a municipal power agency if the property is located outside of the incorporated limits of the city that created the LGC.

¹⁶ Tex. Trans. Code §431.108

5. An LGC is tax exempt with respect to payment of state and local sales and use taxes and state franchise taxes¹⁷ (though it is not automatic...one must make application to the Texas Comptroller to obtain an exemption certificate).

This somewhat schizophrenic character of an LGC has its plusses and minuses, some of which will be noted later in this paper.

Purpose and Authority of an LGC

As noted in the Introduction, the purpose of a transportation corporation created with the consent of the Texas Transportation Commission is limited to the promotion and development of public transportation facilities and systems¹⁸. A review of the various sections in Subchapter C of Chapter 431, Tex. Trans. Code show a clear indication that the function of a transportation corporation is to be limited to the matters relating to the promotion, design, construction, and financing of roads, highways, and other transportation systems in association with TxDOT.

The purpose and authority of LGCs is not so limited. In addition to having all of the authority and powers of a transportation corporation¹⁹, an LGC may be created “to aid and act on behalf of one or more local governments to accomplish *any governmental purpose* of those local governments²⁰.” “Any governmental purpose” means just what it says...anything that a city, county, or other local government authorized to create an LGC can do under state law, the LGC can do as well. This would include things like:

- Constructing and owning a convention center hotel and contracting for its operation (e.g. City of Dallas created an LGC to construct, own, and contract for the operation of the Omni Hotel at the Dallas Convention Center.)
- Operating, managing, and leasing major sports venues (e.g. Harris County Sports and Convention Corporation, created for the specific purpose of managing, operating, maintaining, and developing Reliant Park. HCSCC is also the landlord for Reliant Stadium.)
- Construction and operation of a landfill (Cities of Bryan and College Station jointly created the Brazos Valley Solid Waste Management Authority, Inc. to own and operate their joint landfill and recycling operations)
- Own and manage a cities mineral interests (original reason City of Farmers Branch created its LGC)
- Contract with cities to provide on-demand bus and taxi services (e.g. DART has created an

¹⁷ Tex. Trans. Code §431.033

¹⁸ Tex. Trans. Code §431.021.

¹⁹ Tex. Trans. Code §431.101(b)

²⁰ Tex. Trans. Code §431.101(a)

LGC to provide such services in areas outside of its general service area to non-DART cities)

- Own and operate a regional public safety communications center on behalf of multiple cities (NTECC, created by Addison, Carrollton, Coppell, and Farmers Branch)

The possibilities of what an LGC can be authorized to do are limited solely by one's imagination and the legal limits on what cities are authorized to do under state law. As for home rule cities, those limits are few and far between.

Who Can Create an LGC?

Not just any governmental entity is authorized to create an LGC. This list is short, but getting longer as the years go on. As for now, the following are defined as "local governments" in Tex. Trans. Code §431.003(3) for purposes of establishing LGC's:

- municipalities (note, this is not limited to home rule municipalities, but can include general law cities)
- counties
- a navigation district, hospital district, or hospital authority
- a regional transportation authority governed by Chapter 452 (e.g., Dallas Area Rapid Transit and Fort Worth Transportation Authority)
- a rapid transit authority governed by Chapter 451 (e.g., Metropolitan Transit Authority of Harris County, VIA Metropolitan Transit Authority (San Antonio) and Capital Metropolitan Transportation Authority (Austin))
- a coordinated county transportation authority governed by Chapter 460 (e.g. Denton County Transportation Authority)

How Does a City Create an LGC?

The mechanics are pretty simple if only one local government (as defined in the Act) is seeking to create the LGC. Even when two or more local governments are working to create an LGC, the steps are basically the same, but the process for getting some of the necessary approvals, not to mention preparation of the initial documents get more complicated and time consuming because of the need to actually negotiate the initial corporation documents. For purposes of setting out the basic steps in creating an LGC, I have included several steps that may apply only in situations where multiple local governments will be involved in creating the LGC.

Step 1. Interlocal Agreement Regarding LGC Creation

This first step is one of the optional steps that applies to situations where there will be multiple governmental entities involved in creating the LGC. This can be in the form of either a memorandum of understanding or an interlocal agreement. The purpose of such a document is to set out the agreement of the governmental entities on the basic organizational elements of the LGC and other business terms such as (a) its defined purpose for the LGC, (b) the LGC's governance structure, (c) where the LGC will not be independent of its owner-cities for funding, the rights of the governmental entities to terminate participation and funding, and (d) the division of costs for creating the LGC (this is especially necessary if one of more of the entities will be employing outside counsel to assist in the process). The parties may want to outline how additional issues will be addressed in the founding documents for the LGC, such as how transfer of current city employees will be addressed (if the LGC is taking over an existing city function), the amounts and divisions of startup funding each is willing to pay, division of assets on dissolution, etc.

Step 2. Determine the Name of the Proposed LCG and its Availability

Seems silly to even say it, but someone has to come up with a name. Many times, the name will simply be "City of _____ Local Government Corporation" or just "(insert name of city without 'City of' Local Government Corporation." However, the city or cities may want the name to reflect the purpose of the LGC. For example, the four cities (discussed later) desiring to create an LGC to own and operate a regional dispatch and communications center wanted the name to reflect what the LGC was going to do as well as reflect the regional nature of the operation anticipating the possibility that other cities may join center in the future. Ultimately, the group came up with the name "North Texas Emergency Communications Center, Inc." ("NTECC" for short).

Before preparing and filing the Certificate of Formation, you check the name availability with the Texas Secretary of State's records. This can be done a couple of ways. An informal method would be to use the first two or three words of the proposed name as a search term in Westlaw or LexisNexis (assuming your subscription includes business organization filing information). However, using this first method may not catch all similar names. Recall that if you proceed to file the Certificate of Formation with a name that is similar to one already used by an existing business entity, the Secretary of State's office will reject the filing and tell you to either pick another name or get permission from an authorized officer of the other entity to use the similar name.

The better method would be to perform a name availability search through the Texas Secretary of State's *SOSDirect* site. The cost is minimal (possibly as little as \$1.00 plus a small service fee if you charge the fee to a credit card). If you find the name is already in use, or another entity has a name that is close to the proposed name, then either pick another name or file an application for name reservation. If the Secretary of State's office thinks the name is too close to a name already in use, you will still lose a little time, but at least you will not have gone through the full blown approval process

with the City Council for the Certificate of Formation only to have to return to the City Council requesting they approve an amended filing with the new name.

Once you have determined the desired name is available, file for a name reservation with the Texas Secretary of State to ensure no one comes along and grabs the name while the Certificate of Formation process is being completed.

Step 3. Draft the Certificate of Formation (aka Articles of Incorporation)²¹

The Certificate of Formation is the founding document for the LGC (as well as any other corporation...for profit or non-profit)...in Texas. The Certificate of Formation must contain several pieces of key information, such as:

- Name of the corporation
- Duration of the corporation (which will be perpetual)
- Type of corporation (which will be non-profit)
- The purpose of the corporation (as general or as specific as desired)
- The authority of the corporation (this can be combined with the purpose article, and is intended to set out some of the basic powers of the corporation)
- Whether or not the corporation will have members or shareholders (“no” on both)
- The number of directors, how the directors will be selected, terms for the directors, etc (more on this later)
- The name and address of the registered agent for the corporation
- The names and addresses of the initial directors of the corporation
- The names and addresses of the incorporators of the corporation (Unlike other types of corporations, the creation of an LGC requires three incorporators who must be registered voters of the local government(s) that are creating the LGC, but who can be employees and/or members of the governmental body. Because the law is not clear on this point, it is recommended in cases where there is more than one local government creating the LGC that there be three incorporators

²¹ As noted earlier, Tex. Trans Code Chapter 431 has not been amended to reflect the new terminology in the Texas Business Organizations Code. Tex. Bus Org Code §1.052 provides that a statutory reference to a law that was revised by the Texas Business Organizations Code is deemed to be a reference to the Code provision. Likewise, Tex. Bus Org. Code §1.006(1) provides that a reference in state law to “articles of incorporation” includes “certificate of formation,” which is name given to the formation document for all new corporations.

for each of the creating local governments.)

- Reference to the method of approval by the governing body of the creating local government(s) (The city or cities creating the LGC must approve the Certificate of Formation by resolution or ordinance²².)
- Statement on director liability for acts of the LGC
- Provisions relating to the prohibition on use of the LGC's assets for the personal benefits of any individual (Standard provision usually contained in non-profit corporation certificates of formation to preserve option to become a Section 501(c) organization under the Internal Revenue Code. Also needed to ensure the Texas Comptroller will issue the tax exemption certificate you will be getting later.)
- Provisions relating to dissolution and, most importantly, how any assets of the LGC get distributed if the creating city or cities determine to dissolve the LGC after it has completed its purpose (or, as happened with one of our clients, before the LGC completed its purpose).
- Director and Office indemnification
- Method for adopting amendments to the Certificate of Formation

Tex. Trans Code §431.102(a)(4) requires the Certificate of Formation conform to the requirements as to form and content of the Certificate of Formation of a housing finance corporation created pursuant to Chapter 394, Texas Local Government Code. Therefore, it will be necessary to review Tex. Loc. Govt. Code §394.014 to ensure that the Certificate of Formation contains all required information. Included at the back of this paper is a copy of the NTECC Certificate of Formation which can be reviewed as one sample of a Certificate of Formation that managed to touch all the bases needed to get approved.

As I hinted earlier, if the LGC is to be jointly created by more two or more local governments, it will be necessary to make sure everyone is on the same page with the key items in the Certificate of Formation, especially on the structure of the board of directors (numbers, term of office, who can be appointed and who can do the appointing, etc.) The more cities involved, the longer it will take as the document has to be reviewed the city manager, city manager, any department heads and other city staff who have a stake in the LGC purpose, and, ultimately the City Council for each city.

²² Tex. Trans. Code §431.101(a)

Step 4. Draft the Bylaws (aka the Bylaws)

Because the two documents will necessarily need to be consistent and must ultimately be approved by the city council(s) that are creating the LGC, the LGC's bylaws should be drafted concurrently with the Certificate of Formation. The Bylaws are typical of most corporation bylaws, setting forth more of the operational rules for the LGC and its board of directors. Because the creating city council must approve the Bylaws, and city councils tend to want to have their related organizations reflect many of their own policy and practices, there may be a desire to insert provisions into the Bylaws that are not standard, such as inclusion of a code of ethics, provisions relating to budget preparation and approval (especially if the LGC funding is coming from budgeted city funds), any limitations on the issuance of debt by the LGC (inclusive of requirements for city council approval), and limitations on the authority of corporation officers or executive directors to approve expenditures above a certain dollar amount without board approval. As with the Certificate of Formation, if there is more than one local government that is going to be involved in forming and owning the LGC, anticipate the need for extra time in the schedule for creation of the LGC to accommodate the number of additional individuals that will need/want to review and comment on each draft of the Bylaws that is produced. A copy of the NTECC bylaws are attached as a sample. Note there are many ways and styles for bylaws, and the final content will come down to local preference and the level of control the creating city desires to maintain over the LGC.

Step 5. Obtain Approval of the Form of Certificate of Formation and Bylaws

As noted above, before the Certificate of Formation and Bylaws can be effective, the governing body of each local government involved in the creation of the LGC must approve the form of Certificate of Formation and Bylaws by ordinance, resolution, or order²³. My recommendation would be to have a copy of the final version of both documents attached as exhibits to the resolution or ordinance.

Once approved by the city council(s), at least two duplicate originals (three are recommended, but not required) of the Certificate of Formation must be signed by all of the incorporators and a jurat attached (not merely a notary acknowledgment) stating that the incorporators declare the statements contained in the Certificate of Formation are true and correct.

Step 6. File the Certificate of Formation

Once signed, two duplicate originals²⁴ of the Certificate of Formation must be filed with the Texas Secretary of State along with a fee of \$25.00. Upon issuance of a Certificate of Incorporation by the Secretary of State's office, the LGC is alive...but you are not yet finished.

²³ Tex. Trans. Code §431.101(a)

²⁴ Tex. Loc. Govt. Code §394.015(a)

Step 7. Hold Organizational Board Meeting

After the Secretary of State's office returns the Certificate of Incorporation, nothing else can happen until the initial directors of the LGC named in the Certificate of Formation conduct their first meeting. At the first meeting, a number of initial organizational matters should be addressed, such as:

- Select from among themselves a temporary board chairman to run the meeting.
- Adoption of the Bylaws (Yes, the Board needs to adopt them, even though the creating city council(s) have already done so.)
- Election of the corporation officers, who shall be at least a President, a Secretary, a Treasurer (Secretary and Treasurer could be one office), and any Vice-Presidents.
- Establishing the initial official location for Board meetings
- Setting the initial schedule for regular board meetings
- Setting the location for where meeting notices will be posted as required by the Open Meetings Act (must be posted at on official posting locations for the creating cities as a minimum)
- Approving of any initial agreements and/or policies related to operation of the LGC and/or approval of any project in which the LGC is involved. For example, if the creating local government is going to provide administrative services for the operation of the LGC, then such an agreement should be approved at the initial meeting. In the case of both NTECC and BVSWMMA, the initial board meeting included approval of operational agreements related to funding the LGC operations, the agreement between the creating cities and the LGC as to the services to be provided by the LGC to the cities, and other matters related to the LGC's operations in relation to the cities.

Recall that because LGC's are subject to the Open Meetings Act, even the initial meeting of the LGC's board of directors must be posted on the official bulletin board for each of the creating cities more than 72 hours before the start of the meeting.

Step 8. Obtain a Federal Employer Identification Number

Recall that an LGC is a separate legal entity from its creating local government. This means the LGC cannot operate under the local government's Federal employer identification number (EIN). An EIN can be obtained very quickly on-line through the IRS website at www.irs.gov. Depending on the activities of the LGC, the LGC may be required to file federal tax returns, collect from employees their federal payroll withholdings and pay them over to the IRS, pay social security taxes, etc.

Step 9. File for Exemption Certificate with Texas Comptroller of Public Accounts

Notwithstanding the fact that state law is pretty clear on the matter of tax exemption for LGCs, it is still necessary to file the necessary forms and other supporting documents with the Texas Comptroller to obtain an exemption letter acknowledging that the LGC is exempt from the payment of local and state sales and use taxes, motor vehicles taxes, and state corporate franchise taxes. The forms filed on behalf of NTECC, the accompanying cover letter which I prepared, and the letter received back from the Texas Comptroller's office are all included with this paper.

Other Post-Creation Matters

Depending on the purpose for which the LGC is being created, other matters may need to be addressed either prior to or shortly after incorporation of the LGC. Such matters may include, but not be limited to:

- **Administrative Services:** If the LGC is going to be conducting active, on-going operations in serving its purpose, the board needs to determine who is going to handle accounting, billing, check writing, contract negotiating, purchasing, human resources (if the LGC is going to have employees), and other administrative services. If the creating city is going to provide such services, an interlocal agreement between the LGC and the city needs to be prepared and signed.
- **Adoption of Operational Policies:** Again, if the LGC is going to be an on-going, active operation that really does stuff, the adoption of purchasing and finance policies should be considered and, in fact, may be necessary. The LGC will also need to adopt personnel policies if the LGC is going to have employees.
- **Records Management and Records Retention:** Chapter 431, while subjecting LGCs to the Public Information Act, does not require that LGCs comply with the Local Government Records Act (Chapter 201, Tex. Loc. Govt. Code), nor does the Local Government Records Act state that it applies to LGCs. Nevertheless, the Open Meetings Act requires the creation and preservation of the minutes of meetings, including the recordings or certified agendas of closed meetings. In addition, depending on the requirements set forth in any adopted bylaws, the Board may need to establish some type of records management and retention policies.
- **Employee Benefit Plans:** LGCs which are going to have employees will need to seek proposals for a variety of group benefits, such as medical, dental, long and short term disability, life insurance, and last, but not least, retirement plans. Depending on the number of employees, and based on prior claims experience by those employees, prepare for sticker shock. Keep in mind that the LGC is a separate entity from its creating local government, and, therefore, may not be able to pool the LGC employees and their claims experience with its parent city in order to get a reduction in rates. This can, actually, work the other way as well, if the LGC employees have a much more positive overall claims experience.

Also, be warned: employees of LGCs created by cities are not eligible to enroll in the Texas Municipal Retirement System (TMRS). This is largely based on the current state of the statutes creating TMRS and, so I have been told, some prior IRS rulings. BSWMA, Inc. contracted with an entity related to ICMA to obtain retirement benefits for its employees, all of who at initial startup were former employees of either the City of Bryan or City of College Station who had been enrolled in TMRS. NTECC, the majority of whose initial employees are former city employees enrolled in TMRS, was able to obtain entry into the Texas County and District Retirement System, largely because of the government-like characteristics of the LGC, because NTECC was created by four home rule cities, and because the purpose of NTECC is to provide dispatching and communications services to the police and fire departments for the four owner cities.

- **Insurance:** As a non-profit corporation and a separate legal entity from the local governments that created them, LGCs are not related entities such that they fall under the creating entities' insurance coverage. Prior to or shortly after the creation of the LGC, and in any case before LGC becomes the owner of any property or commences entering project contracts, commercial general liability, errors and omissions, and property and casualty insurance coverage should be purchased.
- **Bank and Investment Accounts:** The funds held by the LGC may, but are not required to be, retained in an account in the depository bank of the creating local government. Consideration needs to be given regarding the establishment of separate bank accounts for the LGC. Depending on the purpose and functions of the LGC, it may also be necessary for the LGC to establish investment accounts to hold idle surplus funds pending their spending. For example, because TCEQ requires BSWMA to begin to accumulate a post-closure reserve fund with respect to the landfill it operates for Bryan and College Station, such funds will need to be invested in order to protect principal in future years. This also means BSWMA was compelled to adopt an investment policy and engage a financial advisor.
- **Sales Tax Certificate:** If the LGC is going to be providing a service or selling goods for which sales taxes must be collected, the LGC must obtain a sales tax certificate from the Texas Comptroller.
- **Legal Counsel:** As a separate legal entity, the LGC will need to engage an attorney to handle its legal work. In many instances, the attorney that represents the creating local government can perform such legal services. However, in instances where the LGC is created by more than one local government, concerns over conflicts of interest and assurances that the LGC treats its creating local governments equally and without bias toward any one of the entities may make it necessary for the LGC to hire its own attorney.

There are any number of additional matters that will need to be addressed concurrently with or immediately following the creation of the LGC which will be largely dictated on the functions of the LGC, whether or not it will own and/or operate real property and perform other active functions associated with its creating local governments, and whether or not the LGC will be employing its

own workforce.

Why Create an LGC?

An LGC may be overkill in many instances. For example, at the time of this writing, the Cities of Carrollton, Coppell, and Farmers Branch are presently funding and constructing a joint fire training facility on a previously unused portion of land located at one of Farmers Branch's fire stations. The parties determined that the construction and on-going operation of the training facility could be handled through an interlocal agreement setting forth many of the operational procedures without using an LGC. On the other hand, in determining they wanted to establish a consolidated regional dispatch and communications center in conjunction with the joint purchase of a new radio system, the same three cities, along with the Town of Addison, determined that establishing an LGC would better ensure long term stability with respect to the service to be provided and that such services would more likely be provided without bias toward any one or more of the owner cities'.

So what are some of the considerations in whether or not to establish an LGC for a particular project?

Governance: The appointment of the board of an LGC, the board members' terms of service, and the manner and the conditions under which the board serves is the same as set forth for housing finance corporations in Chapter 394 of the Texas Local Government Code²⁵, more specifically, Tex. Loc. Govt. Code §394.021, save and except the residency requirement. Tex. Loc. Govt. Code §394.021 provides the following regarding the board of directors:

1. The board may consist of any number of directors.
2. A director may be a member of the governing body, an officer, or an employee of the local government²⁶.
3. Members of the initial board of directors hold office for the period specified in the certificate of formation²⁷.
4. After the initial directors, the governing body of the local government shall appoint directors in the manner and for the terms provided by the certificate of formation or the bylaws. Directors may be divided into classes, and the terms of office of the various classes may differ.
5. Each director shall hold office for the term for which the director is elected or appointed and until the director's successor is elected or appointed and has qualified.

²⁵ Tex. Trans. Code §431.102(a)(2) and (3)

²⁶ Tex. Trans. Code §431.101(f)(1) provides that a member of the board of directors of an LGC is not a public official by virtue of that position. Therefore, placing a councilmember on the board of an LGC will not run afoul of any dual office holding restrictions.

²⁷ The statute actually uses the phrase "articles of incorporation." I have elected to use the updated term used in the Business Organizations Code because that is the document which would be created.

6. A director may be removed from office under any removal procedure provided by the certificate of formation or the bylaws.
7. The governing body shall fill any vacancy in the board of directors by appointment in the manner provided by the certificate of formation or the bylaws.

The provision of Tex. Loc. Govt. Code §394.021(a) requiring the directors be residents of the creating local government do not apply; provided, however, at least a majority of the members of the board of an LGC must be residents of the local government. In the case of an LGC created by multiple local governments, we have advised at least one of our clients that as long as the majority of the directors live within the cities that created the LGC, it is not required that a majority of the directors live within any one of the creating cities. This opinion is largely based on the provision in Tex. Loc. Govt. Code §396.012(e) that states for purposes of Chapter 396, the sponsoring local governments are considered to be one local government.

Given the broad flexibility of selection of board members, a city that wants to have effective control over the actions of the LGC could do so by requiring that all, or at least a majority, of the directors be current councilmembers and/or city employees. In the case of an LGC which is created by multiple local governments, the certificate of formation can provide that each local government appoint an equal number of seats on the board, with a methodology for selection of at least one additional neutral board member who would serve as a tie-breaker if a dispute arose among the remaining directors divided along city lines. In the latter situation, having a separate board that governs the LGC where no one of the creating local governments can determine the decisions of the LGC without at least one neutral director siding with that side of the issue should, in theory, insulate the LGC and its activities from political changes occurring in the governing body of only one of the creating local governments. Such insulation is important if the LGC is going to be charged with hiring employees, owning property and equipment that require a substantial financial investment by the participating cities, and providing critical city services for all of the participating entities.

Contracting and Purchasing for Goods, Services, and Real Estate: When it comes to purchasing goods and services, as a general rule, LGC's are not subject to the laws which govern cities with respect to the procurement of goods and services. The provisions of the Texas Business Organizations Code that govern the creation of non-profit corporations contain no provisions regarding the procedures for such corporations to purchase goods and services other than a requirement for directors to disclose any interest they may have in a transaction which comes before the board. Such absence of restrictions allows an LGC to procure goods and services faster by avoiding the advertising and bidding process when time is of the essence. It also provides an LGC more flexibility to negotiate the terms of a procurement that otherwise cannot occur even under a competitive sealed proposal process.

As for real estate, neither Chapter 431 of the Transportation Code nor Chapter 22 of the Business Organizations Code contain provisions regulating the purchase and/or sale of real property. Consequently, unless the transaction is with a governmental entity (in which case state laws regarding the sale of real estate would apply because of the governmental entity, not the

LGC), the LGC is free to negotiate for the purchase and, more importantly, for the sale of real estate without the requirement to obtain bids, sell at auctions, or even sell for fair market value based on an appraisal.

Notwithstanding the foregoing “freedom” afforded LGCs relating to purchasing, the creating local government(s) can impose requirements regarding procurement in the Certificate of Formation and/or bylaws of the LGC. However, adding too many restrictions may defeat the advantages that an LGC has over the creating local government relating to the time it takes to effect a procurement and the negotiating flexibility that exists by not being tied to a formal bidding/proposal process.

Contracting for Design and Construction Services for Projects: There is, however, an exception to the general rule. With respect to the design and construction of projects, an LGC must comply with the state laws with which the creating local government must comply, including laws applicable to the procurement of design and construction services²⁸. The word “project” is not defined in Chapter 431 or anywhere else in the Transportation Code. It would be reasonable to assume that “project” at least means “public works project.” Thus, the design and construction of roads, hotels, convention centers, stadiums, water and sewer plants, etc. would all be required to follow state law applicable to obtaining bids and proposals on such projects. However, this means that, just like its creating local government, the LGC can engage in design-build, construction manager at risk, and other alternative methods of procurement set out in Chapter 2269 of the Government Code²⁹.

Insulation from Liability: Because the LGC is a separate legal entity from its creating local government(s), the creating governmental entity, while certainly concerned about the well-being of the LGC it has created, is insulated from any liability from the acts of the LGC. In the case of an LGC set up to operate and manage a large project, such as Reliant Stadium, such insulation from liability can relieve the city from what would potentially be a large burden on city resources. Add that to the fact that all LGC functions are by law “governmental,” the cap on liability afforded to local governments under the Texas Tort Claims Act are afforded to the LGC³⁰ no matter the purpose of the LGC. Thus, certain projects in which a city might engage that would be classified as “proprietary” and for which there are no Tort Claim Act waiver limits if performed by the creating local government become subject to Tort Claim Act limitations by being performed by the LGC.

Issues Relating to Multi-City LGC’S

My primary interest in preparing this paper and presentation was to show the possible use of LGCs in situations where two or more cities desire to engage in a joint project or consolidate

²⁸ Tex. Trans. Code §431.101(g)

²⁹ Tex. Govt. Code §2269.002

³⁰ It should be noted that while Tex. Trans. Code §431.108 makes the Tort Claims Act applicable to LGCs, the statute is not clear as to which waiver limits Tort Claims Act will apply, i.e., do the limits applicable to the creating local government apply, or is the lower limits set forth in the Tort Claims Act for counties? And if it the law is that the limits applicable to the creating local government apply, what would the limits be in the case where a city and a county jointly create the LGC?

services. Our firm (and I in particular), have been involved in two such projects over the last few years and, in hopes it would be a good resource for other cities, wanted to share some of the lessons learned (both positive and negative) with respect to both projects.

Case 1: Brazos Valley Municipal Solid Waste Agency, Inc. (BVSWMA, Inc.)

On or about May 9, 1990, the City of Bryan (“Bryan”) and City of College Station (“College Station”) entered into an interlocal agreement (“the Original BVSWMA Agreement”) to establish an agency to be known as the *Brazos Valley Municipal Solid Waste Management Agency* (“BVSWMA”) which would be responsible for managing and operating on behalf of the cities, as undivided one-half interest owners, a solid waste landfill that would receive and landfill the solid waste collected in both cities. Under the Original BVSWMA Agreement, though directed by an advisory board made up of council members and the city managers of both cities, the day to day operations of the landfill were managed by employees of College Station. The administrative services regarding the financial aspects of BVSWMA (purchasing, accounts payable, accounts receivable, investments, etc.) were also managed by the various departments of College Station.

For reasons about which I am still to this day not clear, around the 2007-2008 time frame, Bryan began expressing displeasure to College Station over matters relating to BVSWMA, the operations of the existing landfill and the manner in which the process for developing a new, replacement landfill was proceeding. That displeasure and the apparent inability of College Station to address all of whatever concerns had been expressed by Bryan resulted in Bryan filing suit against College Station. Because the details of the lawsuit are not relevant to this paper, they will not be set out here. What is relevant to this paper is that mediation of the lawsuit resulted in the cities agreeing to establish some type of joint venture or other entity that would place the ownership and operation of the assets being managed by BVSWMA into the hands of a neutral entity. Ultimately, our firm was engaged on behalf of the mediator to work with the parties to develop the necessary agreements and other documents to create such neutral entity.

After the initial discussions with the parties, it became clear the most prudent option would be the creation of an LGC. The primary reason for selecting creation of an LGC was the ability to place the assets of BVSWMA into a separate legal entity that was not loyal to either city which would be managed by an executive director that was not previously employed by either city.

The primary issues (i.e. hurdles) which needed to be addressed relating to establishing what would become the Brazos Valley Municipal Solid Waste Agency, Inc. d/b/a “BVSWMA, Inc.” were:

1. **Governance** – As noted above, the Cities wanted to be sure that neither City could control the board of directors and, therefore, control the entire operation. The Cities agreed to a seven member board, three appointed by each City Council. The seventh director would be appointed by the other six directors; provided that if the six could not agree (such as a split board along City-lines) then each City Council would submit one nominee to the secretary of the corporation and the winner would be determined by coin toss. At least one of the directors from each City must be a City Council member and the others residents of their respect Cities. The seventh director could be a resident of either City.

2. **Protection of Existing Employees and the “Borrowed Employee” Agreement** – Both Cities, especially College Station (which had the vast majority of employees engaged in BVSWMA operations), desired to protect their current employees as much as possible by preserving to the extent reasonable the pay and benefits of those employees once they went work for BVSWMA, Inc. Resolving this matter was especially complicated by the fact that LGC employees are not eligible to be TMRS members.

Initially, the Cities entered into a “borrowed employee” agreement with BVSWMA, Inc. The basic substantive terms of the borrowed employee agreement were:

- The employees of the respective Cities would perform work for BVSWMA, Inc., under directions given by a supervisor employed by each City, who would be working under a scope of work provided by BVSWMA, Inc. management.
- As the City employees retired, quit, or were terminated by the City, other employees of the Cities previously working for BVSWMA could apply to transfer to fill the vacancy, failing which the vacancy would be filled by a person hired as a BVSWMA, Inc. employee. The intent of such an arrangement was to, over time, have all personnel employed by BVSWMA, Inc.
- The City employees would have the option at any time to become BVSWMA, Inc. employees.
- While borrowed employees would be required to comply with all operational safety policies of BVSWMA, Inc., the borrowed employees remained subject to the personnel policies of the respective Cities, including disciplinary policies. BVSWMA, Inc. management could not discipline borrowed employees, but could recommend disciplinary action to the City.
- A borrowed employee could not be terminated by BVSWMA, Inc. management. Such dismissal could only occur upon authorization of the City Manager.
- BVSWMA, Inc. would pay to reimburse each City for the personnel costs for the borrowed employees.

While the borrowed employment agreement seemed like a good idea at the time, the test of the agreement came the first time a personnel issue arose over matters which resulted in the BVSWMA, Inc. executive director requesting the removal or reassignment of a borrowed employee. The City Manager of the City which employed that borrowed employee refused to either reassign the employee to another position within the City or allow that employee to be terminated. After several months and several discussions of the matter with the BVSWMA, Inc. board of directors (which was by this time staffed by the mayor and at least one additional sitting councilmember from each City), along with a growing number of the borrowed employees deciding they would prefer to be BVSWMA, Inc., employees, the parties agreed to set a date and terminate the borrowed employee

agreements. At the time of termination of the agreements, the remaining City employees had the choice of either becoming a BVSWMA, Inc. employee, transferring to a vacant City position for which the employee was qualified, retiring (if eligible), or be terminated as a reduction in force. With few exceptions (mainly those with very little time remaining before they were eligible to retire), the borrowed employees elected to become BVSWMA, Inc. employees.

Bottom Line: If any aspect of the startup of BVSWMA, Inc. had any downside, it was probably the decision to go with the borrowed employee concept rather than having BVSWMA, Inc. immediately hiring all of the Cities' employees from the first day of operations. Not giving the BVSWMA, Inc. control over its employees went contrary to the efficient operation of the LGC and the desire to make BVSWMA, Inc. an operationally independent entity.

3. **Operational and Financial Oversight** – The Cities had significant concerns about ensuring that (1) the Cities were equitably treated with respect to the payment for solid waste disposal services, (2) BVSWMA, Inc. could not become so independent that it could unilaterally begin to determine what it would charge its owner Cities for services, (3) the services that BVSWMA, Inc. would be providing to the Cities were defined, and (4) the Cities had some say in, and would receive credit for, revenues generated by tipping fees and other charges collected from third parties for disposal of solid waste at the BVSWMA, Inc. To resolve these concerns, both the certificate of formation and, more particularly, the BVSWMA, Inc. bylaws, were drafted to provide a budget process which required each City Council to review and make objections to any proposed budget on which charges to the Cities would be based. The Cities and BVSWMA, Inc. also negotiated and signed an “Operations Agreement” which specifically set out the relationship of the parties, the services to be provided by BVSWMA, Inc. to the Cities, the obligations of BVSWMA, Inc. relating to regulatory compliance in operating the landfill, rate setting methodology, how to account for, and give the Cities credit for, revenue generated by third party payments, and many other matters. Though amended since its initial effective date to adjust the agreement to the realities of how the relationship amongst the parties was really working, the Operations Agreement was an invaluable tool in getting the parties to feel comfortable in proceeding with the creating of BVSWMA, Inc.
4. **Asset Transfer**. In order for the Cities to feel that the operation of the landfill was fully under the control of BVSWMA, Inc., as well as to resolve any concerns about future claims on who owned the assets being operated by BVSWMA, Inc., the Cities agreed to transfer title to BVSWMA, Inc. all real and personal property which had been previously purchased through the revenues generated through operations of BVSWMA. Because the BVSWMA, Inc. operations included the post-closure maintenance of the closed landfill as well as the operations of the new landfill, it was also necessary to transfer all related TCEQ permits to BVSWMA, Inc.³¹

³¹ The transfer of the TCEQ permits had its own challenges which are not relevant to this discussion but which I will be glad to share with anyone who asks.

5. **Use of Surplus Revenues (i.e. Profits).** Another concern expressed was the disposition of any surplus revenues generated from BVSWMA, Inc. operations. Local governments that create LGCs are entitled to the income received by the LGCs not needed to pay LGC expenses and obligations³². Knowing this, the Cities elected instead to provide that any surplus revenue be equitably distributed between the Cities and applied as a credit against the amounts which the Cities owed BVSWMA, Inc. for operations.
6. **Dissolution and Disposition of Assets.** The Transportation Code provides that upon dissolution, the assets of an LGC would be transferred to the local governments that created the LGC³³. However, the Transportation Code is silent on how any split of that distribution would be determined. Though the parties did not at the time foresee any future where BVSWMA, Inc., would be dissolved given the nature of the operations that would be conducted by BVSWMA, Inc., the parties agreed in the context of the Certificate of Formation that should BVSWMA, Inc. ever be dissolved, the assets would be evenly split between the Cities.

As of October 1, 2016, BVSWMA, Inc. will have been in operation for six years working on behalf of Bryan and College Station and providing quality solid waste and recyclables collection services to not only its owner Cities but others in the region. According to all reports, operations are running smoothly and, to my knowledge, the Cities have long since moved on to other issues without the inter-city arguing over landfills and related issues that existed six years ago.

Case 2: North Texas Emergency Communications Center, Inc. (NTECC)

For many years, the Town of Addison and Cities of Farmers Branch and Carrollton have jointly owned an analogue radio system used for police and fire communications. As technology has changed and the current radio system has aged, the three cities decided to join together to purchase and operate a new digital P-25 radio system. Along the way, because of its adjacency to the other three cities (primarily Carrollton) and the decision of its radio system partner, City of Lewisville, to begin its move to a new radio system, the City of Coppell joined the radio system project.

Concurrently with the discussions on the radio system project, the four cities (referred to hereafter as either “Owner Cities” or “NTECC Cities”) explored the possibility of combining their public safety dispatching operations into a single, regional dispatch center. The concept of operating a multi-jurisdictional dispatch center is not new. In fact, our firm represents the three cities which a number of years ago established a regional dispatch center in south Dallas County. However, after discussing how to set up the governance structure for the new center, the Owner Cities elected to establish an LGC to own and operate the dispatch center on behalf of the Owner Cities. The Owner Cities found that having an LGC own and operate the center would, in both the short and long term, protect the center and its vital operations from future changes in the attitudes of the governing bodies of the Owner Cities toward each other and the people who make up those governing bodies, and insulate the center, its operations, and its personnel from disputes that might

³² Tex. Trans. Code §431.107(a)

³³ Tex. Trans. Code §431.186.

arise from time to time between or among the cities that have nothing to do with public safety dispatching³⁴.

The primary issues in establishing the LGC, which was given the name “North Texas Emergency Communications Center, Inc.” or “NTECC,” were similar to those in setting up BVSWMMA, Inc. However, the approach to resolving those issues was significantly different³⁵. Aside from some of the creative drafting in the documents relating to the method for providing for adjustments to the cost allocation among the Owner Cities in future years, the greatest challenge was simply getting four city councils, four city managers, eight chiefs, four finance directors, and a handful of IT staff (not to mention two other city attorneys) to agree on the text of the documents, and then later coordinating the council meeting schedules to get all of the documents approved. However, notwithstanding the different approach to the project, the main issues that needed to be addressed were basically the same as with the establishment of BVSWMMA, Inc.

1. **Governance.** Rather than worry about having any type of appointment process, the Owner Cities decided that the city managers of the Owner Cities would automatically be the NTECC directors. On the one hand, this method of determining who the directors will be removes the selection of directors from the political process (for the most part) and makes it easy to fill vacancies³⁶. However, having a board of directors consisting of four city managers for cities that are engaged in a number of other joint projects has its challenges. Because there are only four directors, two of the NTECC Cities, even if they do not own the majority interest of NTECC or make up a majority of the board, can prevent action on a matter brought before the board. In addition, we have on occasion run up against the restrictions of the Open Meetings Act and have had to caution the city managers that if more than two of them get together to discuss matters of common interest that matters related to NTECC not be part of that discussion.
2. **Protection of Existing Employees.** In planning for NTECC to hire the current dispatchers and supervisors who wanted to transfer to NTECC, the NTECC Cities had a similar desire to maintain their pay and benefits that was had by Bryan and College Station. However, for a variety of reasons, not the least of which was the fact that we were dealing with employees from four different cities as opposed to just two, the NTECC Cities decided up front they were not going to use the “borrowed employee” concept and simply let NTECC hire the NTECC Cities’ employees effective on the date when NTECC was ready to bring them on. To make all of this happen, and to help prevent a mass exodus of experienced dispatchers from all four cities, the NTECC Cities and/or NTECC board did the following:

³⁴ In fact, during the period since the commencement of both the radio system project and the creation of NTECC, Addison and Farmers Branch have been in a dispute regarding the impoundment and use of water in one of Addison’s city parks that is up stream of a creek that runs through residential areas of Farmers Branch, and Carrollton has sued Farmers Branch with respect to Farmers Branch’s application to TCEQ for a vertical expansion of the Farmers Branch landfill in Lewisville, which is located just across the city limits line from a Carrollton golf course residential development.

³⁵ The difference may, at least in part, be attributable to the fact that the project did not arise out of a lawsuit between the parties over issues related to an on-going project.

³⁶ Since NTECC was established, the city managers for two of the Owner Cities has changed, during which times the interim city managers served as the directors for their respective cities.

- Paid the employees all vacation and sick leave accrued while employed with their respective city which was due them in the same manner as if they were separating from their respective city...which, in fact, they were. This allowed the NTECC Cities to clear the liability off of their books and allowed NTECC to start their new employees at zero with respect to vacation and sick leave accumulation as opposed to having to carry the liability forward by assignment.
 - Did not cut current pay of any employee when the employee moved to NTECC. This meant that employees above the top of the pay scale that was eventually adopted by the NTECC board for the job classification might be redlined, but at least they were not having to take pay cuts.
 - Paid a retention incentive/signing bonus for those who agreed to move to NTECC by a date certain. Good, experienced dispatchers are in short supply, and the city managers wanted to be sure to do what they could to retain current staff rather than have them go to work for another agency.
 - With tremendous assistance from the NTECC Cities' HR staffs, particularly Carrollton's, we persuaded the Texas County and District Retirement System ("TCDRS") board to accept NTECC employees as eligible participants based on many of the government-like characteristics of an LGC and the fact that NTECC is owned by and exists to serve the NTECC Cities. In doing so, the NTECC employees were able to carry over their TMRS service credits and continue to enjoy substantially similar retirement benefits as they did when employed by their respective cities.
 - For the most part, adopted the most beneficial vacation and sick leave accrual policies that existed among the NTECC Cities.
3. **Financial and Operational Oversight:** With the NTECC board of directors consisting of the city managers of all four NTECC Cities, the NTECC Cities have direct financial oversight of all financial matters relating to NTECC operations and, therefore, matters that will impact their respective city budgets. With the NTECC Executive Director answering directly to the board of directors/city managers, the board structure also provides the NTECC Cities with direct operational oversight of NTECC. This oversight has been especially critical and valuable in working out conflicts, both anticipated and unanticipated, that have arisen in trying to integrate into a unified operation four sets of employees who have previously operated in different cultures and environments but who are being managed by NTECC senior staff who were previously employed by none of the NTECC Cities.

In addition to the NTECC Board of Directors, the NTECC Bylaws provide for a standing Operations Advisory Committee ("OAC") consisting of the four police chiefs and the four fire chiefs or their designees. The purpose of the OAC is to provide advice and counsel to the NTECC Executive Director relating to day to day operational policies and procedures and recommend operational procedures to be adopted by the NTECC Board. The unstated purpose of the OAC is to provide a forum where the eight public safety departments can

work out differences in the way they have always operated their dispatch and communications operations and settle on a single set of operational policies and procedures so that the NTECC dispatchers have a unified manner in which they operate.

4. **Asset Transfer:** Being a new entity, this was not an issue. Everything with NTECC has been purchased specifically for NTECC.
5. **Dissolution and Withdrawal of Participation:** Because the NTECC Cities agreed at the outset to split the capital costs in relation to their anticipated use of NTECC resources, the NTECC Cities agreed that any dissolution of NTECC would result in a division of the assets and remaining liabilities based on the percentages of capital investment adjusted over time. Furthermore, the NTECC Cities agreed in the Operations Agreement that a city can withdraw from participation from NTECC at the end of a fiscal year with two years' notice, but that the withdrawing city will not be allowed to take its share of the NTECC assets with it, nor be paid for its ownership share unless and until NTECC is dissolved (which most involved in the project anticipate will not be in our lifetimes). Such an arrangement prevents the withdrawing city from hitting the remaining cities with a huge expenditure relating to capital costs reimbursement on top of the reallocation of fixed costs that will be incurred.

Only within the last 45 days has NTECC transitioned all of the remaining dispatchers from all four NTECC Cities to the NTECC facilities so that they are all working under one roof as NTECC employees. Bringing employees from four different cities and mixing them with employees who have worked for none of the cities has had its challenges. However, with those employees being under a single LGC management umbrella that has as its governing body the city managers of the four cities being served by NTECC, the issues are being regularly discussed and resolved by those who are most interested in seeing the operation of NTECC being successful.

State Agency Treatment of LGCs

One final note of caution. I have learned during this process that a number of state agencies have no idea how to treat an LGC that seeks to operate in its realm. Most state laws and regulations relating to local governments and their authority do not apply to local government corporations. For example, trying to convince the TCEQ that they really could transfer the old BSWMA landfill permits to BSWMA, Inc. was not easy, and, even then, it became necessary for Bryan and College Station to initially guarantee the post-closure funds for the old landfill that was to be closed and managed by BSWMA, Inc. pursuant to the operations agreement. And because NTECC is not run by a city police department, it took some fast talk to convince the US Department of Justice as well as the Texas Department of Public Safety that NTECC should be provided access to the NCIC/TCIC database in order to provide necessary criminal record and warrant information to the four police departments it was supporting, notwithstanding the fact that NTECC is owned by four cities, the dispatching supports the police departments of the four cities, the board of directors is the cities' city managers, the operational funds come from the four cities, and the NTECC management structure includes a committee on which the four police chiefs are members. And even under federal law, it has not been easy determining how to classify an LGC for purposes for filing federal tax returns.

Conclusion

As noted in the Introduction, LGCs have been around for a while and have been used successfully by Texas cities for major public/private projects and some major public operations. Given the broad authority and the relative operational flexibility which LGCs are granted by law, it is surprising that LGCs are not used more often for operating and managing significant municipal projects. It may be the fact that we just do not know that this tool exists because the statutes relating to LGCs are tucked away in a chapter of the Texas Transportation Code to which most city attorneys and other city staff never turn. It may also be the fact that drafting an interlocal agreement can be done faster and involves fewer steps for approval.

Regardless of the reason, in addition to the large sports, convention hotel, or entertainment venue projects in which LGCs are used to facilitate public/private partnership developments, the formation of an LGC should be considered when looking at consolidating city services with those of another local government that involve a long term commitment and where the operation needs to be insulated from future changes in governing bodies. Thus, when considering joint operations of municipal facilities or the consolidation of city services with another local government, be sure to review Texas Transportation Code Chapter 431, Subchapter D and see if creation of a local government corporation will be appropriate and, in fact, beneficial.

STATE OF TEXAS § **Interlocal Cooperation Agreement Regarding**
 § **Establishment of the Metrocrest Quad Cities**
 COUNTY OF DALLAS § **Local Government Corporation**

This Interlocal Cooperation Agreement (the "Agreement") is entered into as of the Effective Date by and among the **TOWN OF ADDISON, TEXAS**, ("Addison"), the **CITY OF CARROLLTON, TEXAS** ("Carrollton"), the **CITY OF COPPELL, TEXAS** ("Coppell") and the **CITY OF FARMERS BRANCH, TEXAS**, ("Farmers Branch"), all of whom are Texas home rule municipalities operating under the authority of their respective governing bodies (Addison, Carrollton, Coppell, and Farmers Branch, are hereinafter sometimes referred to collectively as "the Cities" or the "Parties" or individually as a "City" or a "Party")."

RECITALS:

WHEREAS, the Cities are political subdivisions within the State of Texas engaged in the provision of governmental functions and services for the benefit of their citizens; and

WHEREAS, the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended (the "Act") provides authority for local governments of the State of Texas to enter into interlocal agreements with each other for the purpose of performing governmental functions and services as set forth in the Act; and

WHEREAS, the Cities have entered into that certain *Metrocrest Quad Cities Public Safety Radio System Interlocal Agreement* effective June 26, 2013, ("the Radio System Agreement") for the purpose of establishing the Cities' agreement regarding the purchase, installation, maintenance, operation, management, and use of a wide area, multi-site ("simulcast") digital trunked radio system compliant with P-25 interoperability standards ("the System") to be used jointly by the Cities for providing public safety dispatch and communications for the Cities' respective Fire/EMS and Police departments; and

WHEREAS, the Cities jointly commissioned a study regarding the method of public safety dispatching and communications conducted by each of the Cities, and the options, advantages, and disadvantages to consolidating the public safety dispatch and communications operations of the Cities into a single consolidated public safety communications center (the "System Study"); and

WHEREAS, the findings of the System Study indicate that the operation by the Cities of a consolidated public safety communications center ("Communications Center") will result in significant efficiencies and savings in both human and financial resources and allow for a higher level of coordination of public safety services within the Cities that will enhance the safety of residents and other inhabitants of each of the Cities; and

WHEREAS, the System Study further recommended that the Communications Center should be managed and operated by a separate entity created by the Cities pursuant to applicable state law; and

WHEREAS, having received and considered the System Study and the recommendations of their respective city administrations, the Cities have decided to create a local government corporation pursuant to the authority of Subchapter D of Chapter 431, Texas Transportation Code (the "LGC Act"), to be known as *Metrocrest Quad Cities Local Government Corporation* (the "Corporation"), which will be organized for the purpose of assisting and acting on behalf of the Cities in the performance of their governmental functions and services, including, but not limited to, the construction, development, management, and operation of the Communications Center and other joint projects as authorized in the Certificate of Formation and the Bylaws of the Corporation, as may be amended from time to time; and

WHEREAS, it is the intention of the Cities that this Agreement set forth the general process for: (i) the creation of the Corporation; and (ii) the development of agreements regarding the operation of the Corporation; and

WHEREAS, subsequent to the execution of this Agreement, the Cities intend to negotiate and sign one or more operation agreements (each an "Operations Agreement") with the Corporation, under which each City will approve specific projects or services to be operated and/or provided by the Corporation, and pursuant to which each City will provide the necessary capital contribution and/or other financing ("Approved Projects"); and

WHEREAS, the Cities agree that, to the extent any payments are required hereunder, such payments shall be from current revenues or other lawful funds available to the paying party.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises set forth herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

Article I Purpose

The purpose of this Agreement is to describe the process for the creation of the Corporation and the development of agreements related to the financing and operating the Corporation ("Related Agreements"), and to evidence the agreement of the Cities to jointly establish a local government corporation under Subchapter D of Chapter 431, Texas Transportation Code (the "LGC Act"), to be known as the *Metrocrest Quad Cities Local Government Corporation* for the purpose of financing, constructing, owning, managing and operating a regional public safety communications center in accordance with the terms and provisions of this Agreement and the Related Agreements.

Article II Creation of Local Government Corporation

2.1 The Cities agree to jointly create the Corporation under the LGC Act for the purpose of financing, constructing, owning, managing and operating Approved Projects in accordance with the terms and provisions of this Agreement. To this end, the Cities agree to have prepared and formally approved by ordinance or resolution of their respective governing

body, and to cause to be filed with the Texas Secretary of State, a Certificate of Formation creating the Corporation (the "Certificate"). The Corporation, following its formation, shall be governed by Bylaws (the "Bylaws") which must also be approved by the Cities.

2.2 The Certificate and Bylaws shall provide for a Board of Directors of the Corporation initially consisting of four (4) members with the initial directors to be the current Town/City Manager of each of the Cities.

2.3 The Certificate shall provide that the Corporation shall have all of the powers provided by law as a non-profit corporation and a local government corporation under the Act, the LGC Act, and the Texas Non-Profit Corporation Laws (Chapters 20 and 22, Texas Business Organizations Code, as amended) including, but not limited to, the authority to do anything reasonable and necessary relating to the development, construction, management, and operation of the Communications Center. The Certificate may also provide for certain powers to be reserved to the Cities, which may include, but may not be limited to, approval of amendments to the Certificate and Bylaws and the issuance of debt by the Corporation.

2.4 The Certificate and the Bylaws shall provide that the Board of Directors of the Corporation shall have the authority to select an Executive Director and to establish the duties, responsibilities, and compensation of the Executive Director.

Article III
Communications Center Operations Agreement

Upon creation of the Corporation, the Cities agree to negotiate in good faith and seek to enter into an Operations Agreement among themselves and the Corporation setting forth the agreement among the Cities and the Corporation regarding the financing, development, operation, and management of the Communications Center, including but not limited to, the amounts to be paid by the Cities to the Corporation for operation and management of the Communications Center and methodologies for determining the allocation of said costs.

Article IV
Miscellaneous

4.1 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received when sent in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, by hand-delivery, or facsimile transmission and addressed to the respective City at the following address:

If intended for City of Carrollton, to:

City of Carrollton, Texas
Attn: Leonard Martin, City Manager
1945 E. Jackson Road
P.O. Box 110535 (75011-0535)
Carrollton, Texas 75006

With a copy to:

Clayton Hutchins
City Attorney
1945 E. Jackson Road
P.O. Box 110535 (75011-0535)
Carrollton, Texas 75006

If intended for Town of Addison, to:

Town of Addison, Texas
Attn: Ron Whitehead, City Manager
5300 Belt Line Road
Dallas, Texas 75254-7606

With a copy to:

City Attorney
Cowles & Thompson
901 Main Street, Suite 4000
Dallas, Texas 75202-3746

If intended for City of Farmers Branch, to:

City of Farmers Branch, Texas
Attn: Gary D. Greer, City Manager
13000 William Dodson Parkway
Farmers Branch, Texas 75234

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
500 N. Akard, Suite 1800
Dallas, Texas 75201

If intended for City of Coppell:

City of Coppell
Attn: City Manager
255 E. Parkway Boulevard
Coppell, Texas 75019

With copy(ies) to:

Robert E. Hager
Nichols, Jackson, Dillard, Hager
& Smith, LLP
500 N. Akard, Suite 1800
Dallas, Texas 75201

4.2. **Governing Law.** The validity of this Agreement and any of its terms and provisions as well as the rights and duties of the Cities shall be governed by the laws of the State of Texas, and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Cities agree to submit to the personal and subject matter jurisdiction of said court.

4.3. **Entire Agreement.** This Agreement represents the entire agreement among the Cities with respect to the subject matter covered by this Agreement. There is no other collateral, oral or written agreement between the parties that in any manner relates to the subject matter of this Agreement.

4.4. **Recitals.** The recitals to this Agreement are incorporated herein.

4.5. **Amendment.** This Agreement may be amended by the mutual written agreement of all of the Cities.

4.6. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

4.7. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

4.8. **Legal Construction.** In the event any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

4.9. **Assignment.** No City may assign this Agreement without the prior written consent of the other Cities.

4.10. **Consents.** Whenever the consent or the approval of a City is required herein, such City shall not unreasonably withhold, delay or deny such consent or approval.

4.11. **Good Faith Negotiation; Dispute Mediation.** Whenever a dispute or disagreement arises under the terms of this Agreement, the Cities agree to enter into good faith negotiations to resolve such disputes. If the matter continues to remain unresolved, the Cities shall refer the matter to outside mediation prior to engaging in litigation.

4.12. **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the Cities, pertaining to a period of time following the termination of this Agreement shall survive termination.

4.13. **Termination.** The Agreement shall become effective on the date it bears the signatures of authorized representatives of all of the Cities (the "Effective Date") and shall continue on an annual basis until each City has fully satisfied its respective obligations hereunder, unless sooner terminated as provided herein. However, notwithstanding the foregoing or any other provision of this Agreement, in the event the Cities are unable to unanimously agree upon any of the instruments or documents described in this Agreement, including but not limited to the Certificate of Formation, the Bylaws, and any Operations Agreement, any City may withdraw from participation in this Agreement and terminate its rights, duties, and obligations hereunder by giving to the other Cities at least thirty (30) days written notice thereof. Prior to the date of termination, the terminating City must pay any remaining financial obligations related to its share of the costs described in Section 4.14 below that were

incurred or accrued prior to the date of the termination of the terminating City's participation in this Agreement.

4.14 **Costs.**

A. **Filing Fees.** The Cities will share equally the costs to file the Certificate of Formation of the Corporation with the Texas Secretary of State.

B. **Initial Draft Expenses.** Coppell has incurred out of pocket legal expenses prior to the Effective Date in the amount of \$800.00 for the preparation of the initial draft of this Agreement, and the Cities other than Coppell agree to pay to Coppell the sum of \$200.00 as reimbursement for their equal pro rata (one-fourth) share of such expenses within 30 days after the Effective Date.

C. **Legal Expenses; Certificate of Formation, etc.** With respect to the Certificate of Formation and the Bylaws of the Corporation, and an Operations Agreement, it is anticipated that the City of Coppell (the "Drafting City") will take the lead in preparing the initial draft of one or more of those instruments and will incur legal expenses in connection therewith ("Legal Fees"). Following distribution by the Drafting City of the initial draft to the other Cities, the Drafting City will submit to the other Cities an invoice showing the amount of the Legal Fees, a description of the work performed, and the number of hours worked. The hourly rate for such legal work performed shall not exceed \$160.00. Upon receiving the invoice, the Drafting City will provide any additional information regarding the invoice as any other City may request (and will provide that information to all of the other Cities). If there is a dispute regarding the invoice, the Cities will seek to amicably resolve the same (and a resolution may result in a revision to the amount of Legal Fees). Once all issues (if any) regarding an invoice have been resolved by all of the Cities, each City other than the Drafting City will promptly pay to the Drafting City their equal pro rata (one-fourth) share of the invoice amount as the same may have been revised.

4.15 **Responsibility.** To the extent allowed by law, and without waiving any governmental immunity available to the Cities under Texas law, or any other defenses the Cities are able to assert under Texas law, each City agrees to be responsible for its own negligent or otherwise tortious acts or omissions in the course of performance of this Agreement.

4.16 **Authorization.** The persons signing this Agreement on behalf of the respective Cities is authorized to do so.

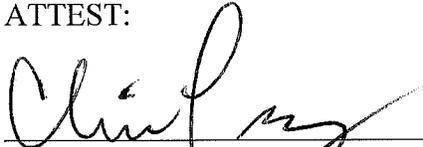
(Signature page to follow)

SIGNED AND AGREED this 22 day of January, 2014.

TOWN OF ADDISON

By: 
Ron Whitehead, City Manager

ATTEST:


Chris Terry, City Secretary

APPROVED AS TO FORM:

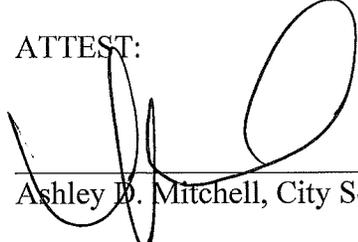

City Attorney

SIGNED AND AGREED this 23 day of January 2014

CITY OF CARROLLTON

By: 
Leonard Martin, City Manager

ATTEST:


Ashley D. Mitchell, City Secretary

APPROVED AS TO FORM:


City Attorney

SIGNED AND AGREED this 27th day of January, 2014.

CITY OF COPPELL

By: [Signature]
Clay Phillips, City Manager

ATTEST:

[Signature]
Christel Pettinos, City Secretary

APPROVED AS TO FORM:

[Signature]
City Attorney

SIGNED AND AGREED this 27th day of January, 2014.

CITY OF FARMERS BRANCH

By: [Signature]
Gary D. Greer, City Manager

ATTEST:

[Signature]
Angela Kelly, City Secretary

APPROVED AS TO FORM:

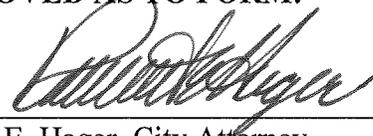
[Signature]
City Attorney

[Type text]

ATTEST:


Christel Pettinos, City Secretary

APPROVED AS TO FORM:



Robert E. Hager, City Attorney
(kbl:1/3/14:63663)

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Nandita Berry
Secretary of State

Office of the Secretary of State

CERTIFICATE OF INCORPORATION OF

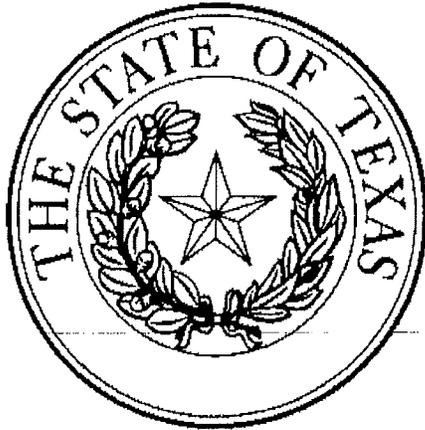
NORTH TEXAS EMERGENCY COMMUNICATIONS CENTER, INC.
FILE NUMBER: 801964401

The undersigned, as Secretary of State of Texas, hereby certifies that Articles of Incorporation for the above corporation pursuant to the provisions of the Local Government Corporation Act have been received in this office and have been found to conform to law.

ACCORDINGLY the undersigned, as Secretary of State, and by virtue of the authority vested in the Secretary by law hereby issues this Certificate of Incorporation and attaches hereto a copy of the Articles of Incorporation.

Dated: 03/27/2014

Effective: 03/27/2014



NANDITA BERRY

Nandita Berry
Secretary of State

MAR 27 2014

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

Corporations Section

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:

| NAME | ADDRESS | TERM EXPIRES |
|----------------|---|---------------------|
| 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:

| NAME | ADDRESS |
|----------------|--|
| Leonard Martin | 2336 Castle Rock Road Carrollton, Texas 75007 |
| John G. Murphy | 1628 Lomar Drive Carrollton, Texas 75007 |
| Rex Redden | 2000 Lavaca Trail Carrollton, Texas 75007 |

| NAME | ADDRESS |
|-------------------|--|
| 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 | 3316 Highland Meadows Drive Farmers Branch, Texas 75234 |
| William P. Glancy | 3808 Wooded Creek Farmers Branch, Texas 75234 |
| Ben Robinson | 13824 Wooded Creek Farmers Branch, Texas 75234 |
| Clay Phillips | 444 Hidden Valley Coppell, Texas 75019 |
| Mario Canizares | 102 Castlebury Court Coppell, Texas 75019 |
| Mike Land | 600 Allen Road Coppell, Texas 75019 |

ARTICLE X
Approval of Certificate of Formation by Cities

Resolution No. R14-002 approving the form and substance of this Certificate of Formation was adopted by the City Council of the Town of Addison, Texas, on February 25, 2014.

Resolution No. 3689 approving the form and substance of this Certificate of Formation was adopted by the City Council of the City of Carrollton, Texas, on February 18, 2014.

Resolution No. 2014-0225.2 approving the form and substance of this Certificate of Formation was adopted by the City Council of the City of Coppell, Texas, on February 25, 2014.

Resolution No. 2014-021 approving the form and substance of this Certificate of Formation was adopted by the City Council of the City of Farmers Branch, Texas, on March 3, 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 on the dates indicated below.

(Incorporator Signatures on Following Pages)

Exhibit A to Resolution No. 014-002

TOWN OF ADDISON INCORPORATORS

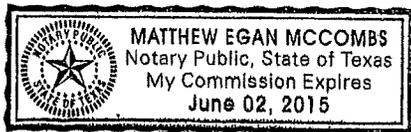
Ron Whitehead
Ron Whitehead

John O'Neal
John O'Neal

Jeff Sharp
Jeff Sharp

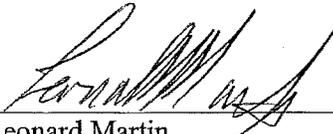
STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, a notary public, on this 5 day of March, 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.

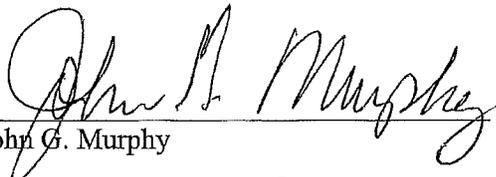


Matthew Egan McCombs
Notary Public, State of Texas

CITY OF CARROLLTON INCORPORATORS



Leonard Martin



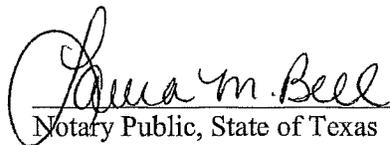
John G. Murphy



Rex Redden

STATE OF TEXAS §
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COUNTY OF DALLAS §

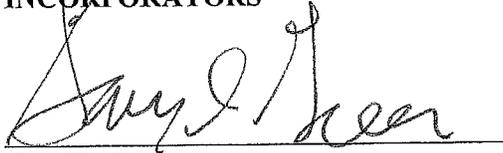
Before me, a notary public, on this 4 day of March, 2014, appeared **Leonard Martin, John G. Murphy, and Rex Redden**, known to me to be the persons whose names are subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are true and correct.



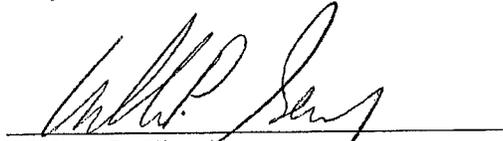
Notary Public, State of Texas



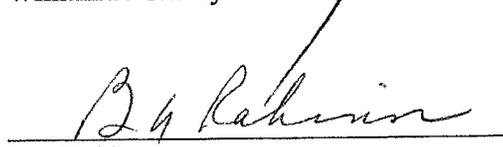
CITY OF FARMERS BRANCH
INCORPORATORS



Gary D. Greer



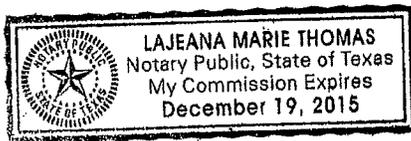
William P. Glancy

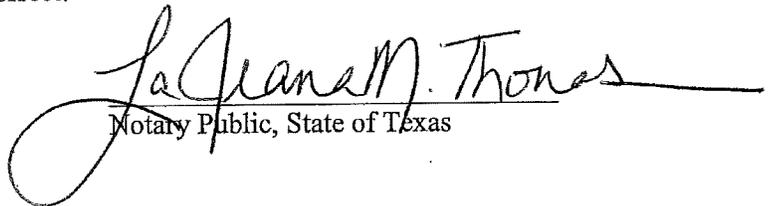


Ben Robinson

STATE OF TEXAS §
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COUNTY OF DALLAS §

Before me, a notary public, on this 6 day of March, 2014, appeared **Gary D. Greer, William P. Glancy, and Ben Robinson**, 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

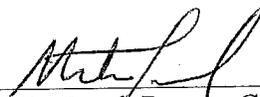
CITY OF COPPELL INCORPORATORS



Clay Phillips, City Manager



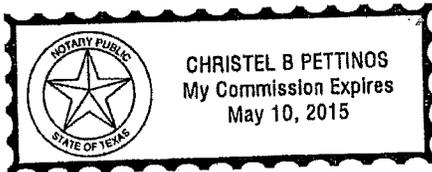
Mario Canizares, Deputy City Manager

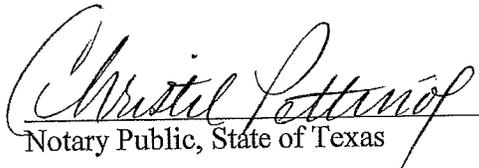


Mike Land, Deputy City Manager

STATE OF TEXAS §
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COUNTY OF DALLAS §

Before me, a notary public, on this 4th day of March, 2014, appeared **Clay Phillips, Mario Canizares, and Mike Land**, 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

**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 (30th) 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 (30th) 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 (30th) 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 of 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.



TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

March 19, 2015

Mr. Kevin B. Laughlin
Nichols, Jackson, Dillard, Hager & Smith L.L.P.
500 N. Akard Street
Dallas, Texas 75201

Dear Mr. Laughlin:

Effective March 27, 2014, North Texas Emergency Communications Center, Inc. is exempt from Texas franchise tax as a public interest organization, and from sales and use tax under Texas Transportation Code, Chapter 431. The exemption does not extend to hotel occupancy tax.

Vendors that require verification of the exemption may use our search located online at http://window.state.tx.us/taxinfo/exempt/exempt_search.html.

We have assigned Texas taxpayer number 32053660620 to the organization. Please reference this number in correspondence with us. The assignment of the taxpayer number does not mean the organization is permitted to collect or remit Texas taxes. Exempt organizations must collect taxes on most of their sales. Please give our Tax Assistance section a call at (800) 252-5555 if you need a sales tax permit.

The sales tax exemption extends to goods and services purchased for use by your organization. The exemption does not apply if the purchase is for the personal benefit of an individual or private party, or is not related to the organization's exempt purpose. For more information, please see our publication # 96-122, *Exempt Organizations – Sales and Purchases*.

A valid exemption certificate (form 01-339/Back) can be issued instead of paying tax when buying taxable items necessary to the exempt purpose of the organization. The exemption certificate does not need a taxpayer number to be valid, but you may provide your taxpayer number if the seller requests it. The exemption certificate can be obtained online at <http://www.cpa.state.tx.us/taxinfo/taxforms/01-339.pdf>.

Changes to the organization's registered agent and registered office address must be filed with the Texas Secretary of State. The changes can be made online at <http://www.sos.state.tx.us/corp/sosda/index.shtml> or you can download the forms and instructions from http://www.sos.state.tx.us/corp/forms_option.shtml. You can also contact them at corpinfo@sos.state.tx.us or by calling (512) 463-5582. It is important to maintain current registered agent information, because this is how we will contact you if we have reason to believe that your organization no longer qualifies for exemption.

Our goal is to provide you with prompt, professional service. Please take a moment to complete our on-line survey at aixtcp.cpa.state.tx.us/surveys/tpsurv2/index.html.

If you have any questions, write to us at exempt.orgs@cpa.state.tx.us or P. O. Box 13528, Austin, Texas 78711-3528, or call us at 844-519-5677. The fax number is 512-475-5862. Also, our publications and other helpful information are online at www.window.state.tx.us/taxinfo/exempt.

Sincerely,

A handwritten signature in cursive script that reads "WynNelle Leeth".

WynNelle Leeth
Exempt Organizations Section