

**FIFTH AMENDMENT TO
LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT**

THIS FIFTH AMENDMENT TO LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT (this "*Amendment*") dated as of September 25, 2014 (the "*Effective Date*"), is between the Texas Economic Development and Tourism Office of the Office of the Governor of the State of Texas, which is commonly known as and operates under the name Economic Development and Tourism Division (the "*Division*") and JPMorgan Chase Bank, N.A. (the "*Bank*").

RECITALS

WHEREAS, pursuant to the provisions of Section 52-a of Article III of the Constitution of the State of Texas, Chapter 481 of the Texas Government Code (the "*Act*"), Chapter 1371, Texas Government Code ("*Chapter 1371*") and a master resolution adopted by the policy board of the Texas Department of Commerce (the "*Policy Board*") on September 9, 1992, as amended by the amendment dated August 11, 1993 (collectively, the "*Master Resolution*"), the Policy Board has authorized the issuance and delivery from time to time of the Texas Department of Commerce's Taxable Commercial Paper Notes, Series A (the "*Notes*"); and

WHEREAS, pursuant to a first supplemental resolution adopted on September 9, 1992 (the "*First Supplemental Resolution*" and together with the Master Resolution, the "*Resolution*"), the Policy Board authorized the issuance and delivery of an initial installment of Notes in the initial aggregate principal amount not to exceed \$25,000,000 at any one time outstanding; and

WHEREAS, pursuant to the laws of the State of Texas, the Division assumed the rights, duties and obligations of the Texas Department of Commerce, including the rights, duties and obligations set forth in the Master Resolution and the First Supplemental Resolution; and

WHEREAS, Chapter 1371 authorizes the Division to cause to be issued a letter of credit to support the Notes and to execute a reimbursement agreement with respect to a letter of credit; and

WHEREAS, the Bank issued its Irrevocable, Direct-Pay, Transferable Letter of Credit No. CTCS-320912 dated April 3, 2008 (the "*Original Letter of Credit*") in the initial amount of \$6,500,000 (the "*Letter of Credit Amount*"), and the Bank and the Division entered into the Letter of Credit and Reimbursement Agreement, dated as of April 3, 2008 (the "*Original Reimbursement Agreement*"), which provides for the reimbursement of the Bank for draws made upon the Letter of Credit (defined herein) for payment of maturing Notes; and

WHEREAS, the Original Letter of Credit and the Original Reimbursement Agreement were amended pursuant to (i) the Notice of Increase dated August 24, 2009 (the "*First Increase*") and the First Amendment to Letter of Credit and Reimbursement Agreement dated August 24, 2009 (the "*First Amendment*") to increase the Letter of Credit Amount to an aggregate amount not to exceed \$15,000,000; (ii) the Notice of Increase and Extension dated March 9, 2011 (the "*Second Increase*") and the Second Amendment to Letter of Credit and Reimbursement Agreement dated March 8, 2011 (the "*Second Amendment*") to increase the

Letter of Credit Amount to an aggregate amount not to exceed \$20,000,000; (iii) the Notice of Increase dated April 19, 2012 (the "**Third Increase**") and the Third Amendment to Letter of Credit and Reimbursement Agreement dated April 10, 2012 (the "**Third Amendment**") to increase the Letter of Credit Amount to an aggregate amount not to exceed \$25,000,000; and (iv) the Notice of Reduction and Extension Amendment dated February 21, 2014 (the "**First Decrease**") and together with the Original Letter of Credit, the First Increase, the Second Increase, and the Third Increase, the "**Letter of Credit**") and the Fourth Amendment to Letter of Credit and Reimbursement Agreement dated as of February 20, 2014 to be effective on March 8, 2014 (the "**Fourth Amendment**") and together with the Original Reimbursement Agreement, the First Amendment, the Second Amendment, and the Third Amendment, the "**Reimbursement Agreement**"); and

WHEREAS, the Division and the Bank are willing to amend the Reimbursement Agreement to establish a fixed Reserve Requirement (defined herein) consisting of the Required Reserve Requirement (defined herein) and the Excess Reserve Requirement (defined herein), including the creation of a Required Reserve Subaccount (defined herein) and an Excess Reserve Subaccount (defined herein), and eliminate the increases to the Reserve Requirement based on the Delinquency Threshold, to accommodate the ongoing release of funds above the new Reserve Requirement for additional funding capacity for the Division, subject to the terms and conditions of the Reimbursement Agreement and this Amendment; and

WHEREAS, in order to accomplish the foregoing, the parties hereto desire, subject to the terms and conditions herein contained, to provide for the written amendment of the Reimbursement Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Division and the Bank hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. Terms capitalized but not defined herein shall have the meanings assigned to them in the Reimbursement Agreement.

ARTICLE II AMENDMENTS TO REIMBURSEMENT AGREEMENT

Section 2.01 Amendments to Section 1.01.

(a) The definition of "Delinquency Threshold" in Section 1.01 of the Reimbursement Agreement is hereby deleted in its entirety.

(b) The definition of "Excess Reserve Requirement" is hereby added as a defined term in Section 1.01 of the Reimbursement Agreement and shall read as follows:

"Excess Reserve Requirement" shall have the meaning given such term in Section 4.02(b) of this Agreement.

(c) The definition of "Excess Reserve Subaccount" is hereby added as a defined term in Section 1.01 of the Reimbursement Agreement and shall read as follows:

"Excess Reserve Subaccount" means the "Excess Reserve Subaccount" established in Article IV, section (4) of the First Supplemental Resolution, and as further described in Section 4.02(b) of this Agreement.

(d) The definition of "Required Reserve Requirement" is hereby added as a defined term in Section 1.01 of the Reimbursement Agreement and shall read as follows:

"Required Reserve Requirement" shall have the meaning given such term in Section 4.02(b) of this Agreement.

(e) The definition of "Required Reserve Subaccount" is hereby added as a defined term in Section 1.01 of the Reimbursement Agreement and shall read as follows:

"Required Reserve Subaccount" shall have the meaning given such term in Section 4.02(b) of this Agreement.

(f) The definition of "Reserve Account" in Section 1.01 of the Reimbursement Agreement is hereby amended and restated in its entirety as follows:

"Reserve Account" means the "Reserve Account" established in Section 4.03 of the Master Resolution and shall be comprised of the Required Reserve Subaccount and the Excess Reserve Subaccount.

(g) The definition of "Reserve Requirement" in Section 1.01 of the Reimbursement Agreement is hereby amended and restated in its entirety as follows:

"Reserve Requirement" means, collectively, the Required Reserve Requirement and the Excess Reserve Requirement.

Section 2.02 Amendment to Section 4.02(b). Section 4.02(b) of the Reimbursement Agreement is hereby replaced in its entirety as follows:

(b) In connection with the issuance of the Letter of Credit, the Division shall establish and maintain with the Comptroller a required reserve subaccount (the "Required Reserve Subaccount") and an excess reserve subaccount (the "Excess Reserve Subaccount") together comprising the reserve account (the "Reserve Account") within the EDT Economic Development Fund. The Division shall maintain in the Required Reserve Subaccount an amount equal to not less than 6.5% of the Letter of Credit Amount (the "Required Reserve Requirement"). The Division shall maintain in the Excess Reserve Subaccount an amount equal to not less than 3.5% of the Letter of Credit Amount (the "Excess Reserve Requirement" and together with the Required Reserve Requirement, the "Reserve Requirement"). The Excess Reserve Requirement is in addition to any other

amounts required under the Resolution to be deposited or maintained in the Excess Reserve Subaccount. The Required Reserve Requirement on deposit in the Required Reserve Subaccount and the Excess Reserve Requirement on deposit in the Excess Reserve Subaccount shall be used solely to reimburse the Bank for draws on the Letter of Credit. To the extent amounts on deposit in the Note Payment Fund and the Program Account are insufficient or otherwise not available to reimburse the Bank for draws on the Letter of Credit, the Division shall use funds *first* from the Excess Reserve Subaccount and *second* from the Required Reserve Subaccount to make such reimbursements. The Required Reserve Subaccount and the Excess Reserve Subaccount currently are each funded in an amount no less than the Required Reserve Requirement and the Excess Reserve Requirement, respectively. Amounts held in the Required Reserve Subaccount and the Excess Reserve Subaccount may be invested only through the Treasury Pool. Amounts on deposit in the Required Reserve Subaccount and the Excess Reserve Subaccount in excess of the Required Reserve Requirement and the Excess Reserve Requirement may be transferred, deposited or used for any purpose authorized under the Resolution and this Reimbursement Agreement. The State of Texas shall be entitled to receive the interest income on the investment through the Treasury Pool.

Section 2.03 Addition of Section 4.02(f)(iii). Section 4.02(f)(iii) is hereby added to the Reimbursement Agreement and shall read as follows:

(iii) The Division shall maintain an amount equal to the Required Reserve Requirement and the Excess Reserve Requirement in specific sub-accounts established on the accounting records in the accounting system maintained by the Texas Comptroller of Public Accounts to be used solely as provided in the Resolution and this Reimbursement Agreement.

Section 2.04 Amendment to Attachment to Exhibit B. The "Attachment" to Exhibit B, "No-Default and Reporting Certificate of the Office of the Governor of the State of Texas, Economic Development and Tourism Division," to the Reimbursement Agreement is hereby replaced in its entirety and shall read as provided in Exhibit A hereto.

ARTICLE III CONDITIONS TO EFFECTIVENESS

Section 3.01 Conditions Precedent. This Amendment shall not become effective until the Bank has received the following in form and substance satisfactory to Bank (or waived by the Bank):

- (a) this Amendment duly executed by the Division and the Bank;
- (b) the Bank not becoming aware of any information affecting either the Division or this transaction which is inconsistent in a material manner with what has been previously disclosed to the Bank and such information is true and correct in all material respects;

(c) the Bank's determination that there is no material adverse change in the business, condition (financial or otherwise), operations, performance, or properties of the Division as reflected in the financial statements as of February 28, 2014;

(d) the absence of any situation occurring which would, in the opinion of the Bank, materially adversely affect the Division or this transaction;

(e) the Division currently maintains all necessary approvals, orders, authorizations, consents, licenses, certificates, and permits from all applicable governmental authorities, which are or may be required to operate its program;

(f) no Event of Default has occurred and is continuing and no event or condition has occurred that with the giving of notice or lapse of time or both would be an Event of Default under the Reimbursement Agreement or any other Transaction Document;

(g) no litigation or governmental proceeding pending, nor to the knowledge of the Division threatened, against the Division which (A) if adversely determined could result in any material adverse change in the financial condition or business or operations of the Division, (B) in any manner draws into question the validity or enforceability of any of the Transaction Documents or any security interest created thereby, or (C) in any way contests the existence, organization or powers of the Division, or the titles of its officers to their respective offices; and

(h) The Division delivers such other information reasonably requested by the Bank.

ARTICLE IV RATIFICATIONS, REPRESENTATIONS AND WARRANTIES

Section 4.01 Ratifications. The terms and provisions set forth in this Amendment shall modify and supersede all inconsistent terms and provisions set forth in the Reimbursement Agreement and except as expressly modified and superseded by this Amendment, the terms and provisions of the Reimbursement Agreement are ratified and confirmed and shall continue in full force and effect. The parties hereto agree that the Reimbursement Agreement, as amended hereby, shall continue to be legal, valid, binding, and enforceable in accordance with its terms.

Section 4.02 Representations and Warranties. The Division hereby represents and warrants to the Bank that (i) the execution, delivery and performance of this Amendment and any and all other documents executed and/or delivered in connection herewith have been authorized by all requisite action on the part of the Division or the Policy Board and this Amendment constitutes a valid binding and enforceable obligation of the Division in accordance with its terms; (ii) the representations and warranties contained in the Reimbursement Agreement are true and correct on and as of the date hereof as though made on and as of the date hereof; (iii) there has been no material adverse change from the Programs financial conditions and operation as reflected in the financial statements of the Program as of February 28, 2014; (iv) no Event of Default has occurred and is continuing and no event or condition has occurred that with the giving of notice or lapse of time or both would be an Event of Default under the Reimbursement Agreement or any other Transaction Document; and (v) no litigation or governmental proceeding pending, nor to the knowledge of the Division threatened against the Division which (A) if

adversely determined could result in any material adverse change in the financial condition or business or operations of the Division, (B) in any manner draws into question the validity or enforceability of any of the Transaction Documents or any security interest created thereby, or (C) in any way contests the existence, organization or powers of the Division or the titles of its officers to their respective offices.

ARTICLE V MISCELLANEOUS

Section 5.01 Miscellaneous.

(a) *Payment of Fees.* The Division shall pay to the Bank an amendment fee in the amount of \$250 and reimburse the Bank for its legal expenses incurred in connection with the preparation of this Amendment and review of the Transaction Documents in an amount not to exceed \$10,000 unless the Bank requests and receives written approval from the Division.

(b) *Reference to Agreement.* Each of the Transaction Documents, including the Reimbursement Agreement, as amended hereby, and any and all other agreements, documents, or instruments now or hereafter executed and delivered relating to the Notes, are hereby amended so that any reference in such Transaction Documents to the Reimbursement Agreement shall mean a reference to the Reimbursement Agreement, as amended hereby.

(c) *Severability.* Any provision of this Amendment held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Amendment and the effect thereof shall be confined to the provision so held to be invalid or unenforceable.

(d) *Applicable Law.* This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

(e) *Successors and Assigns.* This Amendment is binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except such parties may not assign or transfer any of their respective rights or obligations except as provided in the applicable financing documents.

(f) *Counterparts.* This Amendment may be executed in one or more counterparts, each of which when so executed shall be deemed to be an original, but all of which when taken together shall constitute one and the same instrument.

(g) *Heading.* The headings, captions, and arrangements used in this Amendment are for convenience only and shall not affect the interpretation of this Amendment.

Section 5.02 THIS AMENDMENT AND ALL OTHER INSTRUMENTS, DOCUMENTS, AND AGREEMENTS EXECUTED AND DELIVERED IN CONNECTION WITH OR RELATING TO THIS AMENDMENT EMBODY THE FINAL, ENTIRE AGREEMENT AMONG THE PARTIES HERETO AND SUPERSEDE ANY AND ALL PRIOR COMMITMENTS, AGREEMENTS, REPRESENTATIONS, AND UNDERSTANDINGS, WHETHER WRITTEN OR ORAL, RELATING TO THIS

AMENDMENT, AND MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES HERETO.

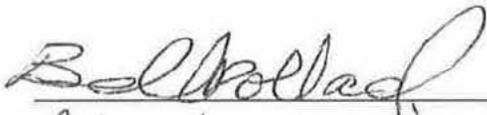
[EXECUTION PAGE FOLLOWS.]

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

OFFICE OF THE GOVERNOR OF THE STATE
OF TEXAS, ECONOMIC DEVELOPMENT AND
TOURISM DIVISION

By: 
Title: GO GO / CHIEF OF STAFF

JPMORGAN CHASE BANK, N.A.

By: 
Title: Authorized Officer

EXECUTION PAGE TO FIFTH AMENDMENT TO LETTER OF
CREDIT AND REIMBURSEMENT AGREEMENT

EXHIBIT A

Attachments to No-Default and Reporting Certificate
Dated as of _____
Calculations as of _____

- A. Required Reserve Subaccount and Excess Reserve Account Requirements [Reimbursement Agreement, Sections 4.02(b) and 4.02(f)(iii)]

- B. Minimum Net Income [Reimbursement Agreement, Section 4.02(f)(i)]

- C. Minimum Net Assets [Reimbursement Agreement, Section 4.02(f)(ii)]

- D. IDC Participant Debt Service Coverage Ratio or Payment [Reimbursement Agreement, 3.04(a)(ii)]

- E. Other Program Guidelines non-compliance