May 19, 2025 ***Via E-File***

Blake A. Hawthorne
Clerk, Supreme Court of Texas
Supreme Court Building
201 W. 14th Street, Room 104
Austin, Texas, 78701

Re: Case No. 24-0102 JP Morgan Chase Bank, N.A., Petitioner, v. City of Corsicana and Navarro County, Respondents

Dear Mr. Hawthorne:

Texas Bankers Association ("TBA") files this amicus letter in support of the Petition for Review of J.P. Morgan Chase Bank, N.A. ("Chase") in the above referenced matter. Established in 1885, the Texas Bankers Association is America's oldest and largest state banking association. TBA members include large banks with national footprints, regional banks, community banks, and savings banks. TBA members serve communities from the Texas Panhandle to the Valley, and communities stretching from the East Texas Pineywoods to El Paso. With a strong commitment to community development, TBA members contribute to local economies and build stronger communities.

Importance of this case. The Court's decision in this case will have a direct and immediate impact on any bank's decision to finance the construction of any facility for Texas economic development projects where the loan payments are

dependent upon sales tax incentives. If the decision of the appellate court stands or is affirmed, every bank that has participated in financing local development projects supported by incentives will be required to reevaluate those existing projects to determine if those loans are now at risk of default and will be required to increase loan loss reserves for potential losses that will have impacts on those banks' current earnings.

Argument. The Supreme Court should grant the Petition for Review of this case so that banks will know what the rules of the game are for lending money for local economic development projects. If the law is to be that government can renege on its promise after a lender has advanced all of the loan proceeds, banks need to know. If the Court permits a city or county to terminate its commitment in a contract years after the bank has fully performed its obligations to fund construction of infrastructure and buildings that are still being used and generating sales taxes today, banks need to know.

Real estate loans made to finance infrastructure and construction are considered to be high risk loans. Lessons learned from Texas bank failures between 1985 and 1990 placed a higher level of scrutiny on real estate lending because losses incurred from real estate loans were a major factor in those failures. As a result, banking regulators now require higher risk weighting for these loans, extensive

underwriting criteria for individual loans, and aggregate limits for the amount of these loans a bank may carry on its balance sheet at any one time. Loans made to a non-profit industrial foundation, as in this case, also pose additional credit risks because of their unique nature. The grant by government of sales tax incentives to secure payment of the construction and development loan to a local industrial foundation are inducements on which a bank relies in determining whether to make such a loan and upon what terms. But for the sales tax incentives, this loan would not have been made.

If the decision of the Court of Appeals stands, two outcomes are likely with respect to future projects : (1) banks and other potential lenders will be less likely to provide money to finance local economic development projects that involve tax incentives; (2) the uncertainty created by this case will likely cause increased costs of all lending to government or on governmental projects as higher interest rates may be imposed to cover the increased risk of not being able to enforce the contractual commitments of government.

What is not known is the Pandora's box that may be opened for all other existing projects supported by sales tax incentive payments if the Court of Appeals opinion stands. Not only will the decision have a chilling effect on future economic development projects, but the decision of the Court of Appeals likely invites other

counties and cities to similarly initiate reviews to determine what other "take backs" could be initiated for existing projects.

The Federal Deposit Insurance Corporation, Office of the Comptroller of Currency, the Federal Reserve, and other bank regulators require that banks include in their financial statements an allowance for loan losses, sometimes called "loan loss reserves." Loan loss reserves reflect the bank's evaluation of the credit risk of nonpayment in its loan portfolio and the individual loans within that portfolio. If a bank determines that current circumstances make it likely a loan will not be repaid in full, the bank is required to increase the loan loss reserves accordingly. Any increase in the loan loss reserves is an immediate deduction from earnings even if the loan is currently performing and not currently in default. Increased in loan loss reserves result in decreases to a bank's capital.

If the Court of Appeals decision stands, it will be necessary for every bank to review the loans to support local economic development projects to determine whether or not the decision in this case will impair the prospect of repayment of those loans. Prudent bankers may be required to make increases to their loan loss reserves and thus record current losses on these loans because of the uncertainty created by an adverse outcome in this case. Prudent bankers might also need to anticipate future expansions of the Court's opinions beyond sales tax incentives to

other forms of financial incentives granted by local government to support repayment of loans made for local economic development projects.

For these reasons, Texas Bankers Association urges the Court to grant the petition for review and to reverse the decision of the Court of Appeals.

We believe Chief Justice Gray is correct when he states in his dissenting opinion in the Court of Appeals decision: "From a policy perspective, this holding will be the death knell of this type of economic development agreement. No creditor will make a loan in reliance on a dedication of sales tax to repay the loan if the taxing entities can have the contract determined to be unconstitutional after payments have been made for 10 years." (*Corsicana Industrial Foundation, Inc. v. City of Corsicana*, 685 S.W.3d 171, 187 (Tex. App.—Waco 2024, pet. filed).

Conclusion. This case will have wide-ranging implications on the Texas financial industry. It is critical that courts uphold the sanctity of contracts entered into by governmental entities.

Source of Fee. The source of any fee paid for the preparation of this brief is the Texas Bankers Association.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of this letter has been served upon the below all counsel of record through the electronic filing system on May 19, 2025.

/s/ Celeste M. Embrey
Celeste M. Embrey

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Filing Code Description: Amicus Brief
Filing Description: Amicus Letter of Texas Bankers Association
Status as of 5/19/2025 12:50 PM CST

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