

RESOLUTION NO. 2015-09-___ (R)

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, APPROVING THE FIFTH AMENDED BYLAWS OF THE MCKINNEY ECONOMIC DEVELOPMENT CORPORATION; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council, by this Resolution, desires to approve of the Fifth Amended Bylaws of MEDC

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

Section 1. The City Council of the City of McKinney, Texas hereby approves of the Fifth Amended Bylaws of the McKinney Economic Development Corporation attached hereto as Exhibit A; and

Section 2. This Resolution shall be in full force and effect from and after its passage and adoption.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 15th DAY OF SEPTEMBER, 2015.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

ATTEST:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney

EXHIBIT A
FIFTH AMENDED BYLAWS OF
MCKINNEY ECONOMIC DEVELOPMENT CORPORATION

ARTICLE I

- Section 1. **Purpose:** The Corporation is incorporated for the purposes set forth in its Articles of Incorporation, the same to be accomplished on behalf of the City of McKinney, Texas, (the "City") as its duly constituted authority and instrumentality in accordance with the Development Corporation Act of 1979, as amended; Tex. Loc. Gov't. Code Ann., Chapter 501 (the "Act"), as amended, and other applicable laws.
- Section 2. **Powers:** In the fulfillment of its corporate purpose, the Corporation shall be governed by Tex. Loc. Gov't. Code Ann. Chapter 501, and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed herein.

ARTICLE II

OFFICES

- Section 1. **Principal Office:** The principal office of the Corporation in the State of Texas shall be located in the City of McKinney, Collin County, Texas.
- Section 2. **Registered Office and Registered Agent:** The Corporation shall have and continuously maintain in the State of Texas a registered office and a registered agent, whose office is identical with such registered office, as required by the Texas Non-Profit Corporation Act. The registered office may be, but need not be identical with the principal office of the corporation in the State of Texas, and the address of the registered office may be changed from time to time by the Board.

ARTICLE III

Members: The Corporation shall have no members or stockholders.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. **Powers, Number and Term of Office.**

- a. The property and affairs of the Corporation shall be solely managed and controlled by a Board of Directors (the "Board") and, subject to the restriction imposed by law, by the Articles of Incorporation, and by these Bylaws, save and except those operational functions managed by the City Manager under Article VI, Section 8, the Board shall solely exercise all of the powers of the Corporation, including but not limited to those powers vested in the Board under Tex. Loc. Gov't. Code Ann. Chapter 501, and specifically pursuant to §501.054 and §501.062 thereof. For purposes of this section, "property and affairs" shall include, among other things, promulgating economic development policies, establishing company recruitment practices, asset management, applicant and application review, project negotiation, and project consummation.
- b. The Board shall consist of seven (7) directors, each of whom, as well as each replacement, shall be appointed by the City Council (the "Council") of the City. The City Council shall consider an individual's experience, accomplishments and educational background in appointing members to the Board.
- c. The directors shall serve terms in accordance with City Council policy on Board and Commission Member Appointment and Eligibility.
- d. Any director may be removed from office by the Council, with or without cause.
- e. Unless otherwise provided, terms shall expire on September 30.

Section 2: **Meeting of Directors:** The directors may hold their meetings at such place or places, but in any event within the City, as the Board may from time to time determine; provided, however, in the absence of any such determination by the Board, the meetings shall be held at the principal office of the City.

Section 3. **Open Meetings Act:** All meetings and deliberations of the Board shall be called, convened, held and conducted, and notice shall be given to the public, in accordance with the Texas Open Meetings Act, Tex. Gov't Code Ann. Section 551, as amended.

Section 4. **Notice of Meetings:** To the extent that the Open Meetings Act conflicts with the provisions of this section, the Open Meetings Act shall govern.

- a. Regular meetings of the Board shall be held without the necessity of written notice to the Directors at such times and places as shall be designated from time to time by the Board. Special Meetings of the Board shall be held whenever called by the Chairman, by a majority of the directors, by the City Manager, by the Mayor of the City, or by the City Council.
- b. The secretary shall give notice to each director for any Emergency Meeting (as defined in the Texas Open Meetings Act) in person or telephone, at least two (2) hours before the meeting. 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. At any meeting at which every director shall be present, even though without any individual notice, any matter pertaining to the purpose of the Corporation may be considered and acted upon consistent with applicable law.

- c. Whenever any notice is required to be given to Board, said notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postage paid 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. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objection to the transaction of any business on the grounds that the meeting is not lawfully called or convened. The business to be transacted and the purpose of any Regular or Special meeting of the Board need be specified in the notice or waiver of notice of such meeting. A waiver of notice in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

Section 5. **Quorum and Voting:** A majority of the directors shall constitute a quorum for conducting the official business of the Corporation. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation unless the act of a greater number is required by law. However, in no event shall any project or expenditure be approved upon the affirmative vote of less than four (4) directors present at a meeting. A director may not vote by proxy. Directors must be present in order to vote at any meeting. Attendance at the Board meetings is required in accordance with City Council policy on Board and Commission Member Appointment and Eligibility.

Section 6. **Conduct of Business:**

- a. At the meetings of the Board, matters pertaining to the business of the Corporation shall be considered in accordance with rules of procedure as from time to time prescribed by the Board or the law.
- b. At all meetings of the Board, the Chairman shall preside, and in the absence of the chairman, the Vice Chairman shall exercise the powers of the Chairman.
- c. The Secretary of the corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as Secretary of the meeting.

Section 7. **Compensation of Directors:** Directors shall not receive a salary or any other compensation for their service as directors. However, directors may be reimbursed for their actual and reasonable expenses incurred in the performance of their duties.

ARTICLE V

PRESIDENT

Section 1. **Roles and duties of the President:** The President shall be a compensated employee of the City. Subject to the City Manager's supervision and

management of the President under Article VI, Section 8, the President shall be responsible for all daily operations and the implementation of Board policies and resolutions, including the management and supervision of subordinate Loaned Employees, as such are defined hereinafter. In the event a conflict arises between the Board and the City Manager regarding management of the operational functions of the Corporation, the decision of the City Manager shall be final. Unless otherwise provided by a Resolution of the Board, the President and City Manager shall jointly sign, in the name of the Corporation, and/or attest to the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments approved by the Board. The President shall attend all called Board meetings and perform those duties and functions as the City Manager and the Board shall prescribe. The President of the Corporation shall be hired by the City Manager; however, such hiring shall be subject to the prior notice and consultation with the Board under these Bylaws and with the City Council under the Home Rule Charter. The City Manager shall have the authority to terminate the President; however, such termination shall be subject to the prior notice and consultation with the Board under these Bylaws and with the City Council under the Home Rule Charter. The City Manager and the Board, or any Board-authorized subcommittee of the Board, shall conduct an annual performance review of the President and provide a copy of the annual review to the full Board and the City Council upon its completion.

ARTICLE VI

OFFICERS

Section 1. ***Titles, Duties, and Term of Office:***

- a. The officers of the Corporation shall be a Chairman, a Vice Chairman, a President, a Secretary and a Treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that the Chairman shall not hold the office of Vice Chairman or Secretary. Terms of office shall be one (1) year, ending September 30, with the right of an officer to be reelected.
- b. All officers, save and except the President, shall be elected by and be subject to removal from office at any time, by a vote of a majority of the entire Board.
- c. A vacancy in the office of any officer shall be filled for the remaining term by a vote of a majority of the entire Board.

Section 2. ***Chairman:*** The Chairman shall be the presiding officer of the Board with the following authority:

- a. Shall preside over all meetings of the Board.
- b. Shall vote on all matters coming before the Board.
- c. Shall have the authority, upon notice to the members of the Board, to call a Special Meeting of the Board when in his or her judgment such a meeting is required.
- d. Shall have the authority to appoint, with Board approval, standing committees to aid and assist the Board in its business undertakings or other matters incidental to the operation and functions of the Board.
- e. Shall have the authority to appoint, with Board approval, ad hoc committees which may address issues of a temporary nature of

concern or which have a temporary effect on the business of the Board.

- f. In addition to the above mentioned duties, the Chairman shall jointly sign with the City Manager and any other Board-designated person any deed, mortgage, bonds, contracts, or other instruments which the Board has approved and unless the execution of said document has been expressly delegated to some other officer or agent of the Corporation by appropriate Board resolution, by a specific provision of these Bylaws, or by statute.
- g. In general, the Chairman shall perform all duties incident to the office, and such other duties as shall be prescribed from time to time by the Board.

Section 3. **Vice Chairman:** The Vice Chairman shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the chairman during that officer's absence or inability to act. Any action taken by the Vice Chairman in the performance of the duties of the Chairman shall be presumptive evidence of the Chairman's absence or inability to act at the time such action was taken.

Section 4. **Treasurer:** The City's Finance Department shall have the responsibility for the disbursement, custody and security of all funds and securities of the Corporation in accordance with these Bylaws and statutes governing the Corporation formed under the Act. The Treasurer shall maintain the financial reports provided by the City's Finance Department.

Section 5. **Secretary:** The Secretary may sign with the President upon the express approval of the Board in the name of the Corporation, and/or attest to the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation, shall have charge of the corporate books, records, documents and instruments, except the papers as the Board may direct, all of which shall at all reasonable time be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of secretary subject to the control of the Board. The Secretary shall submit a copy of all corporation minutes and actions to the City Secretary within a reasonable time after a meeting.

Section 6. **Election of Officers:** The Chairman, Vice Chairman, Secretary, and Treasurer shall be elected from among the members of the Board.

Section 7. **Compensation:** Officers who are members of the Board shall not receive any salary or compensation for their services, except that they may be reimbursed for their actual and reasonable expenses incurred in the performance of their duties.

Section 8. **Personnel:** The Corporation shall establish full-time and/or part-time personnel positions in accordance with this Section 8. Personnel positions so established shall be reflected in the Annual Corporation Budget and approved accordingly, as referenced in Article VII, Section 2 of these Bylaws. Corporation personnel shall be City employees performing work for the MEDC under the supervision and direction of the City Manager or the President, as described below, while retaining their status as City employees.

- a. The City, through its City Manager, **shall:**

1. Provide employees ("Loaned Employees") for use by the MEDC. "Loaned Employees" shall include the President and all other employees of MEDC.
 2. Provide all City employee benefits, including but not limited to, vacation, sick leave, health insurance, family medical leave and TMRS, for all Loaned Employees.
 3. Provide direct supervision, discipline and compensation decision-making for the President. Any compensation decision-making for other Loaned Employees and bonus compensation for all Loaned Employees shall be determined solely by the City Manager.
 4. Provide indirect supervision and discipline for the other Loaned Employees through the President's direct supervisory authority over such other subordinate Loaned Employees as prescribed by Article V, Section 1.
 5. Provide the hiring, management, training, and termination functions for all Loaned Employees, subject to the limitations of Article V, Section 1 and Article VI, Section 8(a)(4) above.
 6. Provide supervisory and management support assistance to MEDC, in the event MEDC has a vacancy in the position of President.
- b. The MEDC, through its Board of Directors or through any Board-authorized subcommittee, **may**:
1. Provide periodic input to the City Manager regarding the supervision (including any performance evaluations performed by the City Manager), compensation, management and discipline of Loaned Employees, including participation in the preparation of the job description and candidate profile for the President.
 2. Provide input into the interview process for the President.
 3. Notwithstanding the foregoing, any two (2) Board members shall have the right to place an agenda item on any regular or special Board meeting to discuss the performance of the President. The agenda items shall first be placed on a closed session agenda; however the Board may take action resulting therefrom. Any subsequent meeting may include an agenda item on an open session agenda regarding the performance of the President.
- c. The MEDC, through its Board of Directors, or through any Board-authorized subcommittee, **shall**:
1. Pay the actual costs incurred by City for administering TMRS, health insurance and all other benefits for all Loaned Employees.
 2. Adhere to all City personnel policies and procedures, including disciplinary appeals, for all Loaned Employees.
 3. Provide office space, supplies and a safe working environment for all Loaned Employees.
 4. Adhere to City policies and state and federal laws regarding workplace safety, accessibility, family leave and employment

discrimination.

5. Conduct an annual performance review of the President in conjunction with the City Manager.

Section 9. **Contracts for Service:** The Corporation may contract with any qualified and appropriate person, association, corporation or governmental entity to perform and discharge designated tasks which will aid or assist the Board in the performance of its duties. However, no such contract shall ever be approved or entered into which seeks or attempts to divest the City Manager or the Board of its discretion and policy-making functions in discharging the duties herein above set forth in this section or in Section 8 above.

ARTICLE VII

FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

Section 1. **Economic Development Plan:** The Board shall research, develop, prepare, and submit to the Council for its approval, an economic development plan for the City, which shall include proposed methods and the expected costs of implementation. The plan shall include both short-term and long-term goals for the economic development of the City. Said plan should take into consideration general development plans and policies of the City Council.

Section 2. **Annual Corporate Budget:** On or before July 25th of each year, the Board shall adopt a proposed budget, prepared by the City Manager and submitted to the Board for its consideration, including any Board-directed amendments thereto, of expected revenues and proposed expenditures of the next ensuing fiscal year. Upon the Board's adoption of its proposed budget, the Chairman shall forward same to the City Council for its consideration. The budget shall not be effective nor shall expenditures occur until the same has been approved by the Council.

Section 3. **Books, Records, Audits:**

- a. The Corporation shall keep and properly maintain, in accordance with generally accepted accounting principles, complete books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs. Notwithstanding Article VI, Section 4, the Corporation may maintain any financial records solely at the City offices.
- b. The books, records, accounts, and financial statements of the Corporation shall be audited at least once each fiscal year by an outside, independent auditing and accounting firm approved by the Board. Such audit shall be at the expense of the Corporation.

Section 4. **Deposit and Investment of Corporate Funds:**

- a. All proceeds from the issuance of bonds, notes, other debt instruments ("Debt Obligations") issued by the Corporation shall be deposited and invested as provided in the resolutions, orders, indentures, or other documents authorizing or relating to the issuance.
- b. All other monies of the Corporation shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City. The Board shall designate authorized signatures on all payment authorization and/or

check requests of Ten Thousand (\$10,000.00) or more. Unless otherwise provided by Board Resolution, any check request or other financial instrument for a proposed expenditure totaling less than Ten Thousand (\$10,000.00) Dollars shall require only one signature of either the Treasurer or President of the Corporation. The accounts reconciliation and investment of such funds and accounts may be reviewed by the Finance Department of the City, at the City's expense.

Section 5. **Expenditures of Corporate Money:** The monies of the Corporation, including sales and use taxes collected pursuant to Tex. Loc. Gov't Code Ann. Chapter 504, monies derived from the repayment of loans, rents received from the lease or use of property, the proceeds from the investment of funds of the Corporation, the proceeds from the sale of property, and the proceeds derived from the sale of Obligations, may be expended by the Corporation for any of the purposes authorized by the Act, subject to the following limitation:

- a. Expenditures for the proceeds of Obligations shall be identified and described in the order, resolutions, indentures or other agreements submitted to and approved by the City Council prior to the sale and delivery of the Obligations to the purchasers thereof required by Section 6 of this Article.
All other proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required by Section 2 of this Article.

Section 6. **Issuance of Obligations:** No Obligations, including refunding Obligations, shall be sold and delivered by the Corporation unless the City Council shall approve such Obligations by action taken no more than sixty (60) days prior to the date of sale of the Obligations.

Section 7. **Conflicts of Interest:** A Board member, officer or Loaned Employee of the Corporation, or member of the City Council may not lend money to or borrow money from the Corporation or otherwise transact business with the Corporation.

Section 8. **Gifts:** The Board may accept on behalf of the Corporation any contribution, gift, bequest, or devise for the general purposes or for any special purposes of the Corporation.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 1. **Fiscal Year:** The fiscal year of the Corporation shall be the same as the fiscal year of the City.

Section 2. **Seal:** The seal of the Corporation shall be determined by the Board.

Section 3. **Resignation:** Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein; or, if no time is specified, at the time of its receipt by the chairman or secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 4. **Approval or Advice and Consent by the Council:** To the extent that these Bylaws refer to any approval by the City or the Council or refer to advice and consent by the Council, such approval, or advice and consent shall be evidenced by a certified copy of a resolution, order, or motion duly adopted by the Council.

Section 5. **Services of City Staff and Officers:** Subject to the approval of the City Manager, the Corporation shall have the right to utilize the services of City personnel for usual and routine matters, provided that the performance of such service does not materially interfere with the other duties of such personnel of the City and may further utilize the services of City personnel for unusual and non-routine matters. The Corporation shall pay reasonable compensation to the City for such services or use of any City personnel.

Section 6. **Indemnification of Directors, Officers and Employees:**

- a. As provided in the Act, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.
- b. The Corporation shall indemnify a person who was, is or has been threatened to be made a named defendant or respondent in a proceeding because the person is or was a Board member, officer, employee, or agent, but only if the determination to indemnify is made in accordance with the provision of Tex. Bus. Org. Code Ann. Chapter 8, as amended.
- c. The Corporation shall indemnify each and every member of the Board, its officers, its employees, its agents, and each member of the City Council and each employee of the City, to the fullest extent permitted by law and not otherwise covered by insurance, against any and all actions or omissions that may arise out of the functions and activities of the Corporation.
- d. The Corporation may purchase and maintain insurance on behalf of any Board member, officer, employee or agent of the Corporation, or on behalf of any person serving at the request of the Corporation as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against that person and incurred by that person in any such capacity or arising out of any such status with regard to the Corporation, whether or not the Corporation has the power to indemnify that person against liability for any of those acts.
- e. Any indemnification or liability insurance provided under this Section may be obtained through the City's general insurance coverage.

ARTICLE IX

EFFECTIVE DATE, AMENDMENTS

Section 1. **Effective Date:** These Bylaws shall become effective upon the occurrence of the following events:

- a. The adoption of these Bylaws by the Board; and
- b. The approval of these Bylaws by the City Council.

Section 2. **Amendments to Articles of Incorporation and Bylaws:** The Articles of Incorporation and the Bylaws may be amended or repealed and amended articles of incorporation and bylaws may be adopted by an affirmative vote of at least four (4) Board members present at any regular meeting or at any special meeting, if at least three (3) days written or electronic notice is given of an intention to amend or repeal the articles of incorporation and bylaws or to adopt new articles of incorporation and bylaws at such meeting. Any

amendment of the articles of incorporation and bylaws will be effective upon approval by the City Council.

Adopted this, the _____ day of _____, 2015.

Chairman of the Board of Directors

Attest:

Corporate Secretary