

## **PUBLIC NOTICE**

### DEVELOPMENT CORPORATION OF ABILENE, INC.

A meeting of the Development Corporation of Abilene, Inc. ("DCOA") will be held on November 17, 2020, by videoconference commencing at 9:30 am, to consider the Agenda set forth below.

In accordance with social distancing guidelines, the DCOA Board room will not be open to the public, and the meeting will be held by videoconference. In accordance with the Texas Open Meetings Act, or under the provisions provided by the Governor of Texas in conjunction with the Proclamation and Declaration of Disaster enacted March 13, 2020: 1) Board Members of the DCOA may participate in this meeting remotely by videoconference; and 2) Members of the public may attend this meeting free of charge by videoconference at the following link: <https://global.gotomeeting.com/join/223868053>. The videoconference will remain open from 9:30 am until the end of the meeting.

Under Agenda Item 3, the opportunity for public comment will be announced and members of the public should identify themselves at that time should he or she choose to make any comments concerning any Items on the Agenda. Under Item 3 on the Agenda, public comments concerning Items on the Agenda are allowed for up to 3 minutes per person (or in the event that a person addresses the Board through a translator, such public comments on Items on the Agenda is allowed for up to 6 minutes). While the Board is in executive session the videoconference will remain active. Should you get disconnected at any time during the meeting, you may log back into the meeting using the same link that is set forth above to re-join the meeting.

The following public telephone dial-in number may also be used during the meeting to access the Board's open session deliberations and/or provide public comment on any Items on the Agenda under Agenda Item 3: +1 (224) 501-3412, Access Code 223-868-053.

## **AGENDA**

November 17, 2020  
9:30 am

1. Call the meeting to order
2. Invocation
3. Public Comment on Agenda Items
4. Governance Schedule
5. Approval of minutes from the October 29, 2020 board meeting
6. Sales Tax Report for November and Financial Report for October 2020

7. Executive Session:  
The DCOA reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by the Texas Government Code Sections:
  1. 551.071 (Consultation with Attorney)
    - A. Bylaws
    - B. Certificate of Formation (formerly Articles of Incorporation)
  2. 551.072 (Deliberations about Real Property)
  3. 551.074 (Personnel Matters)
    - A. CEO Evaluation
    - B. CEO Compensation
    - C. CEO Incentive Bonus
  4. 551.087 (Business Prospect/Economic Development)
    - A. Project Double T
    - B. Project One Stop
    - C. Project Tiger
    - D. Project Legacy
8. December meeting with Halff and Associates regarding the City of Abilene's City Master Plan: December 10 or 11
9. Discussion and possible approval of a Resolution approving an Agreement with Project Legacy
10. Discussion and possible approval of a Resolution approving an Agreement with Project One Stop
11. Discussion and possible approval of a Resolution authorizing an amendment to the DCOA CEO's Employment Agreement and/or salary and benefits
12. Discussion and possible approval of a Resolution appointing a non-voting ex-officio member to the Abilene Industrial Foundation, Inc.'s Executive Committee
13. Discussion and possible approval of a Resolution authorizing changes to the DCOA's Bylaws
14. Discussion and possible approval of a Resolution approving of (i) a Restated Certificate of Formation (formerly Articles of Incorporation) of the DCOA with amendments and (ii) an Application to present to the Abilene City Council to amend the DCOA's Certificate of Formation (formerly Articles of Incorporation)
15. Discussion of the next board meeting date
16. Adjournment

**CERTIFICATE**

I hereby certify that the above notice of meeting was posted on the bulletin board at the City Hall of Abilene, Texas, on the 12th day of November, 2020 at 8:30 a.m.

  
\_\_\_\_\_  
Deputy City Secretary

**NOTICE**

Persons with disabilities who would like special assistance or need special accommodations to participate in this meeting should contact the Development Corporation of Abilene, Inc., (325) 676-6390, at least forty-eight (48) hours in advance of this meeting. Telecommunication device for the deaf is (325) 676-6360.

## DCOA Governance Schedule

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Post Agenda (72 hrs prior to the meeting)
x	x	x	x	x	x	x	x	x	x	x		Monthly board meeting
										x		Annual Report presentation to City Council (Nov. or Dec.)
			x	x								Semi-Annual Report presentation to City Council (April or May)
						x						Annual proposed budget to City Council (July or Aug)
												State of the City Address by Mayor
												Other meetings
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Governance: Semi-Annual & Annual Reviews
x												Presentation/proclamation to Outgoing Board Members (City of Abilene and the Board)
x												Welcome new board member(s)
x												New board member(s) onboarding
x												Officer election (President, Vice President, Secretary and Treasurer & others as determined)
x												Bank account signature card
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Presentations: Written Reports (DCOA, AIF, ABI, SDBC & MAC) Oct. - Mar.:
	x											Written Report of Activity -- MAC (6 mos ending 9/30)
					x							Written Report of Activity -- DCOA (6 mos ending 9/30)
				x								Written Report of Activity -- ABI/Airport (6 mos ending 9/30)
					x							Written Report of Activity -- AIF (6 mos ending 9/30)
					x							Written Report of Activity -- SBDC (6 mos ending 9/30)
						x						Written Report of Activity -- BE in Abilene
							x					Written Report of Activity -- NEXTUniversity
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Presentations: Oral Reports (DCOA, AIF, ABI, SDBC & MAC) Apr. - Sept.:
			x									Oral Report of Activity -- MAC (6 mos ending 3/31)
			x									Oral Report of Activity -- ABI/Airport (6 mos ending 3/31)
			x									Oral Report of Activity -- AIF (6 mos ending 3/31)
			x									Oral Report of Activity -- DCOA
			x									Oral Report of Activity -- SBDC (6 mos ending 3/31)
			10									Partners: Oral Reports of Activity (Oct. - Mar.) due April 10
									15			Partners: Written Annual Reports of Activity (Apr. - Sept.) due October 15
					3							Partners: Annual Budget Request (AIF, ABI, SBDC & MAC & Griggs) due June 3
								x				New fiscal year contract (Abilene Independent School District)



# **BOARD MEETING MINUTES OCTOBER 29, 2020**

**DEVELOPMENT CORPORATION OF ABILENE, INC.  
BOARD MEETING MINUTES  
OCTOBER 29, 2020**

<b>MEMBERS PRESENT:</b>	Jack Rich Floyd Miller	Vic Corley Shea Hall	Sam Vinson
<b>STAFF PRESENT:</b>	Misty Mayo Julie Johncox	Brock New Akane Thaxton	Amy Whitmer
<b>GUESTS PRESENT:</b>	Mark Zachary Chris Shelton Doug Williamson  Anthony Michelic Samuel Garcia	McMahon Surovik Suttle, PC McMahon Surovik Suttle, PC Abilene Chamber of Commerce, Military Affairs Committee The PACE Group	

1. **CALL THE MEETING TO ORDER:** President Jack Rich called the meeting to order at 9:00 am by videoconference. President Jack Rich thanked the Board for their time and effort for attending meetings and reported that according to his records, the DCOA Board has had 12 meetings since January and only one absence at one meeting. President Jack Rich also acknowledged the DCOA team for their efforts and work during the pandemic.

2. **INVOCATION:** Board Member Vic Corley offered the invocation.

3. **PUBLIC COMMENT ON AGENDA ITEMS:** President Jack Rich announced an opportunity for the public to comment on any of the agenda items. He further stated that there would be no votes or formal action taken during public comment, that this would allow members of the public to present ideas and information to the DCOA Board and staff pertaining to the items on the agenda, and that if there was anyone who would like to make a public comment, to please state their name and address.

Samuel Garcia spoke during public comment regarding his concerns and/or questions about a) the DCOA's Agenda; b) the Board's vote in reference to DCOA Resolution 2020.46; and c) the Bylaws and Articles of Incorporation not being included in the General Session packet.

President Jack Rich thanked Mr. Garcia for his public comment and called for any additional members of the public who would like to make a public comment. No other members of the public requested to make public comment. Thus, President Jack Rich moved on to agenda item 4.

4. **GOVERNANCE SCHEDULE:** CEO Misty Mayo stated that the governance schedule is in the packet. This is a plan that considers items to be addressed at each DCOA Board meeting.

5. **APPROVAL OF MINUTES FROM THE SEPTEMBER 23, 2020 BOARD MEETING:** Shea Hall moved to approve the minutes from the September 23, 2020 Board Meeting. Sam Vinson seconded, and the motion carried.

**6. SALES TAX REPORT FOR OCTOBER AND FINANCIAL REPORT FOR SEPTEMBER 2020:** Akane Thaxton, DCOA Finance Manager, presented the Sales Tax Report for October as reported by the City of Abilene and the Financial Report for September. The sales tax rebate for October is \$3,717,725.96, which represents August sales. This is the first rebate for FY21. Economic Development received \$929,431.49, which is 4.30% below last year and 4.30% below the projected FY21 budget amount.

**7. EXECUTIVE SESSION:** President Jack Rich stated: I hereby announce we are going into Executive Session pursuant to Texas Government Code Sections 551.071, .072, .074, and .087 to consult with legal counsel, discuss real property transactions, personnel matters, and discuss economic development negotiations involving a business prospect, as set forth on the agenda, and that any vote or action will be taken in open session.

President Rich announced the date is October 29, 2020 and the time is 9:12 am. Later, President Rich announced the date is still October 29, 2020 and the time is 12:07 pm, and that no vote or action was taken in Executive Session.

**8. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPROVING OF (I) A RESTATED CERTIFICATE OF FORMATION (FORMERLY ARTICLES OF INCORPORATION) OF THE DCOA WITH AMENDMENTS AND (II) AN APPLICATION TO PRESENT TO THE ABILENE CITY COUNCIL TO AMEND THE DCOA'S CERTIFICATE OF FORMATION (FORMERLY ARTICLES OF INCORPORATION):** It was announced that agenda items 8 and 9 would be discussed together because they are in line with each other, that the Board's discussion concerning the items with the DCOA's attorney has continued and that plans are for both agenda items to move forward to the next board meeting. There was no action or vote taken on this item.

**9. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION AUTHORIZING CHANGES TO THE DCOA BYLAWS:** There was no action or vote taken on this item.

**10. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPROVING THE EARLY TERMINATION OF THE LEASE WITH ZOLTEK ON BUILDING C/D AT 1121 FULWILER ROAD:** CEO Misty Mayo presented Resolution DCOA-2021.01 authorizing the DCOA's CEO to terminate the lease agreement with Zoltek Companies, Inc. for 1121 Fulwiler Road. CEO Misty Mayo provided her understanding that it was anticipated when entering into the Lease that Zoltek might request an early termination. The resolution allows the company to exit at the end of the month.

President Jack Rich asked CEO Misty Mayo to clarify if this would be beneficial to the DCOA and the City of Abilene to have the property available for potential projects. CEO Misty Mayo stated it would be beneficial because the company is no longer operating in the facility and it would be vacant until the lease expired in the first quarter of next year. The early termination accelerates the DCOA's ability to begin to upgrade the building and market it as a competitive asset for the community.

Sam Vinson made a motion to approve Resolution DCOA-2021.01 authorizing the DCOA's CEO to terminate the lease agreement with Zoltek Companies, Inc. for 1121 Fulwiler Road. Shea Hall seconded, and the motion passed.



**11. DISCUSSION ABOUT THE DCOA'S CORE PILLAR PLAN:** CEO Misty Mayo explained the DCOA team has defined under the Core Pillars what aligns with the DCOA's Mission. The DCOA's Core Pillars include 3 main pillars: Business Attraction, Business Retention and Expansion, and Entrepreneurial, and 2 additional supporting pillars: Workforce and Talent Development and Marketing and Brand Awareness. The DCOA leads all Core Pillars and is responsible for the following Core Pillars: Business Attraction and Marketing and Brand Awareness.

CEO Misty Mayo stated that the DCOA team has done the same thing internally as they have done with all partner organizations and is working to plan their timeline and deliverables. President Jack Rich expressed that it would be interesting and helpful to see the deliverables in a presentation to the Board at an appropriate time. CEO Misty Mayo agreed that the Board will see the deliverables once they are completed.

**12. DISCUSSION OF THE NEXT BOARD MEETING DATE:** Board members considered dates for the next meeting, and President Rich announced the next scheduled regular meeting of the DCOA Board will be on Tuesday, November 17, 2020 at 9:30 am.

**13. ADJOURNMENT:** There being no further business, the meeting was adjourned.

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Jack Rich, President

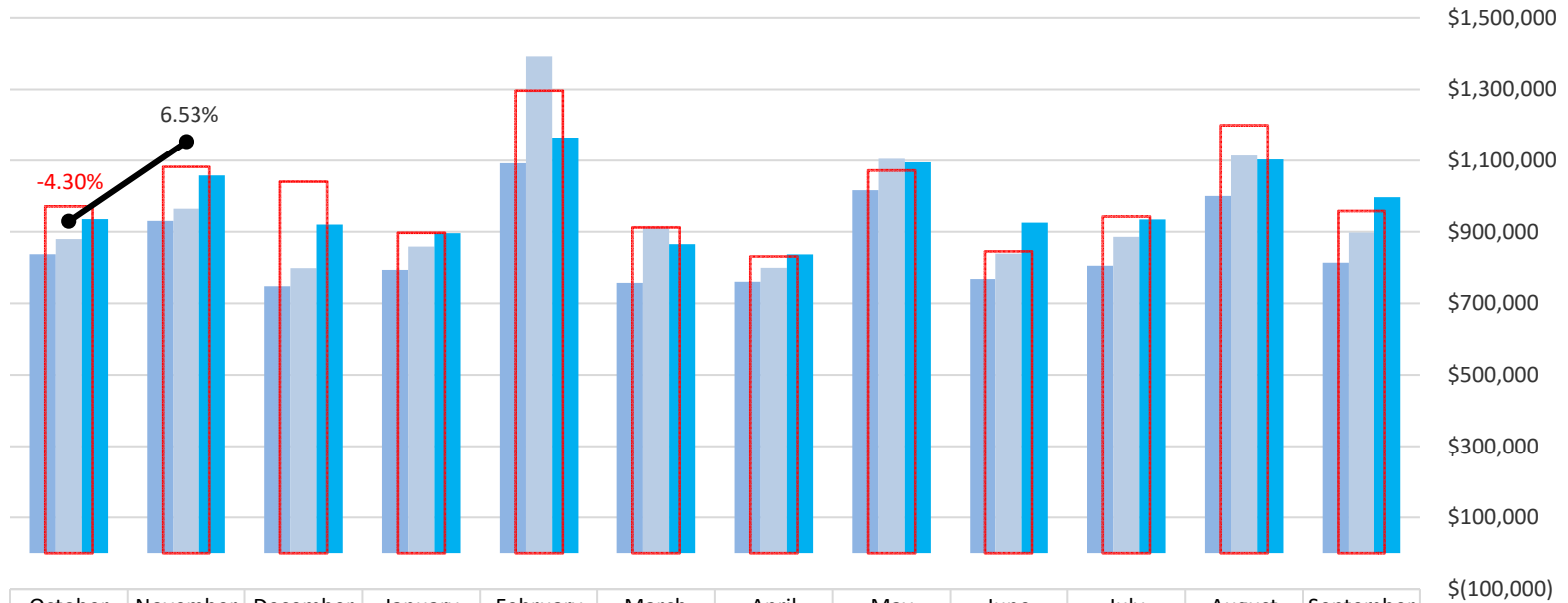
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Vic Corley, Secretary/Treasurer

# **SALES TAX REPORT NOVEMBER 2020**

## November Sales Tax Revenue Report for Economic Development Representing September 2020 Sales

### 1/2 Cent Sales Tax Revenue 5-Year Comparisons % Change Compared to FY20 and FY21



	October	November	December	January	February	March	April	May	June	July	August	September
FY17	\$837,118	\$930,685	\$747,969	\$793,214	\$1,092,35	\$757,151	\$760,192	\$1,016,08	\$767,736	\$805,208	\$1,000,25	\$813,341
FY18	\$879,590	\$964,521	\$798,352	\$858,624	\$1,392,37	\$911,871	\$799,041	\$1,104,58	\$838,840	\$885,910	\$1,114,19	\$897,771
FY19	\$935,573	\$1,057,74	\$920,280	\$896,175	\$1,164,52	\$865,352	\$836,708	\$1,094,92	\$925,759	\$934,495	\$1,102,81	\$996,654
FY20	\$971,166	\$1,082,33	\$1,040,87	\$897,279	\$1,296,94	\$912,615	\$830,828	\$1,072,27	\$845,130	\$942,858	\$1,199,29	\$958,055
FY21	\$929,431	\$1,152,96										

■ FY17   
 ■ FY18   
 ■ FY19   
  FY20   
 ● FY21

**Note:**

- Report reflects the month sales tax received from Austin. Revenue is recorded on this basis for budgetary purposes.
- The Comprehensive Annual Financial Report (CAFR) will reflect revenue based upon the month the sales tax is paid by the vendor to the State Comptroller in accordance with GASB 33 requirements.
- Approximately \$43,514.65 of the rebate is from prior periods, audit, future, and unidentified payments. \$8,759.21 is from Single Local Rate collections.
- Audit Payments: Larger businesses submit sales tax collections to the State Comptroller every month and smaller ones either quarterly or annually. The Comptroller audits the books of these businesses on a four year cycle to determine if sales tax was collected on all taxable sales. Audit collections represent

# **FINANCIAL REPORT OCTOBER 2020**

**PRELIMINARY**

**Development Corporation of Abilene  
Summary Balance Sheet  
As of October 31, 2020**

Accrual Basis

	<u>Oct 31, 20</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
Checking/Savings	8,569,501.88
Accounts Receivable	2,050,617.61
Other Current Assets	24,157,003.81
<b>Total Current Assets</b>	<u>34,777,123.30</u>
<b>Fixed Assets</b>	40,757,224.79
<b>Other Assets</b>	19,004,245.25
<b>TOTAL ASSETS</b>	<b><u>94,538,593.34</u></b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Accounts Payable	187,456.01
Credit Cards	-13,338.20
Other Current Liabilities	71,292.76
<b>Total Current Liabilities</b>	<u>245,410.57</u>
<b>Total Liabilities</b>	245,410.57
<b>Equity</b>	94,293,182.77
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b><u>94,538,593.34</u></b>

# **PROJECT ONE STOP**

**RESOLUTION NO. DCOA-2021.03**

**A RESOLUTION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC. (“DCOA”), ABILENE, TEXAS AUTHORIZING AN INCENTIVE FOR PROJECT ONE STOP (“COMPANY”).**

WHEREAS, Company is an architectural and engineering firm that delivers diversified services and solutions to building sustainable communities with a vision for the future, and the Company has been serving Texas for over seven decades in its offices around the state; and,

WHEREAS, Company desires to locate a new facility in downtown Abilene, Texas and projects a capital investment of approximately \$3,500,000.00 for the purchase and renovation of a new corporate headquarters; and,

WHEREAS, Company currently employs 69 full-time employees (“FTEs”) and projects to create, by the end of a five-year period, an additional 9 FTEs for total employment of 78 FTEs; and,

WHEREAS, the DCOA’s staff requests the DCOA’s Board of Directors approve an incentive for Project One Stop in an amount up to \$525,000.00; and,

WHEREAS, the DCOA's Board of Directors finds that Project One Stop (a) creates and/or retains primary jobs, and (b) is suitable for the development, retention or expansion of a regional or national corporate headquarters facility and/or any other facilities described in Section 501.101(2) of the Texas Local Government Code.

**NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT CORPORATION OF ABILENE, INC., ABILENE, TEXAS, THAT:**

**PART 1.** DCOA hereby authorizes an incentive package for Project One Stop in an amount not to exceed \$525,000.00 in exchange for the Company’s retention of at least 69 FTEs and creation of 9 new FTEs for total employment of 78 FTEs at the end of a five-year period.

The incentive package will be up to \$525,000.00 funded at 15% of the Company’s actual capital investment for the purchase and renovation of a new facility, earned over five years.

**PART 2.** The funding commitment authorized under this Resolution shall expire without notice 180 days from the date of adoption of same unless all required documents and agreements are executed prior to that expiration date or the funding commitment herein is extended in writing by the DCOA’s Chief Executive Officer (“CEO”) prior to the expiration date.

**PART 3.** The CEO is hereby authorized to, on behalf of the DCOA, negotiate, enter into and execute all agreements and to take any steps necessary which are consistent with and necessary to effectuate the actions outlined above.

**PART 4.** This Resolution takes effect immediately upon passage.

ADOPTED this the 17<sup>th</sup> day of November, 2020.

ATTEST:

\_\_\_\_\_  
Vic Corley  
Secretary/Treasurer

\_\_\_\_\_  
Jack Rich  
President

APPROVED AS TO FORM:

\_\_\_\_\_  
Mark Zachary, Attorney at Law



# **PROJECT ONE STOP SLIDES**

**(PROVIDED IN GENERAL SESSION)**

**NON-VOTING EX-OFFICIO  
MEMBER OF THE AIF  
EXECUTIVE COMMITTEE**

**RESOLUTION NO. DCOA-2021.02**

**A RESOLUTION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC. (“DCOA”), ABILENE, TEXAS, APPOINTING A NON-VOTING EX-OFFICIO MEMBER TO THE EXECUTIVE COMMITTEE OF THE ABILENE INDUSTRIAL FOUNDATION, INC. (“AIF”).**

WHEREAS, the DCOA’s Services Agreement with the AIF allows the DCOA’s Board of Directors to appoint a non-voting ex-officio member to the AIF’s Executive Committee.

**NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT CORPORATION OF ABILENE, INC., ABILENE, TEXAS, THAT:**

**PART 1.** DCOA hereby appoints \_\_\_\_\_ as a non-voting ex-officio member of the AIF’s Executive Committee.

**PART 2.** This Resolution takes effect immediately upon passage.

ADOPTED this the 17<sup>th</sup> day of November, 2020.

ATTEST:

\_\_\_\_\_  
Vic Corley  
Secretary/Treasurer

\_\_\_\_\_  
Jack Rich  
President

APPROVED AS TO FORM:

\_\_\_\_\_  
Mark Zachary, Attorney at Law

# **DCOA BYLAWS**

**RESOLUTION NO. DCOA-2021.04**

**A RESOLUTION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC. (“DCOA”) ABILENE, TEXAS ADOPTING AMENDED AND RESTATED BYLAWS.**

WHEREAS, the DCOA desires to adopt Amended and Restated Bylaws; and

WHEREAS, the attached Amended and Restated Bylaws of the Development Corporation of Abilene, Inc. are hereby adopted.

**NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT CORPORATION OF ABILENE, INC., ABILENE, TEXAS, THAT:**

**PART 1.** DCOA approves the attached Amended and Restated Bylaws of the Development Corporation of Abilene, Inc.

**PART 2.** This Resolution takes effect immediately upon passage.

ADOPTED this the 17<sup>h</sup> day of November, 2020.

ATTEST:

\_\_\_\_\_  
Vic Corley  
Secretary/Treasurer

\_\_\_\_\_  
Jack Rich  
President

APPROVED AS TO FORM:

\_\_\_\_\_  
Mark Zachary, Attorney at Law

**AMENDED AND RESTATED BYLAWS OF THE  
DEVELOPMENT CORPORATION OF ABILENE, INC.**

**ARTICLE I  
Purpose and Powers**

**Section 1.01 PURPOSE.** The Development Corporation of Abilene, Inc. (the “DCOA”) is incorporated, on behalf of the City of Abilene, Texas (the “City”), and in accordance with the Development Corporation Act, as set forth in Tex. Loc. Gov’t Code, Chapters 501, 502, and 504, as amended (collectively the “Act”), and other applicable laws. The purpose of the DCOA is to promote, assist, and enhance economic development activities for the City of Abilene, Texas in accordance with its ~~Articles of Incorporation~~ [Restated Certificate of Formation](#).

**Section 1.02 POWERS.** In the fulfillment of its corporate purpose, the DCOA shall be governed by the Act and the Texas Nonprofit Corporation Law, as set forth in the Tex. Bus. Orgs. Code, Chapters 20 and 22, as amended, and shall have all of the powers set forth and conferred in its ~~Articles of Incorporation~~ [Restated Certificate of Formation](#), the Act, the Texas Nonprofit Corporation Law, and other applicable laws, subject to the prescribed limitations (collectively the “Governing Laws”).

**ARTICLE II  
Board of Directors**

**Section 2.01 POWERS, NUMBER AND TERM OF OFFICE.**

(a) The affairs of the DCOA shall be managed and controlled by a Board of Directors (individually a “Director” and collectively the “Board”) and, subject to the restrictions imposed by the Governing Laws and these Bylaws.

(b) The Mayor of the City of Abilene (the “Mayor”) shall appoint the Directors of the DCOA with the approval of the City Council of the City of Abilene (the “City Council”). Each Director shall meet at least one (1) of the following qualifications:

(i) The candidate for appointment has served or is serving as the Chief Executive officer of a company; or

(ii) The candidate for appointment has served or is serving in a position of executive management of a company; or

(iii) The candidate for appointment is serving or has served the community in a professional capacity; or

(iv) The candidate for appointment shall have experience equivalent to any of the above qualifications.

The City Council shall consider an individual's experience, accomplishments, and educational background in appointing members to the Board to ensure that the interests and concerns of all segments of the community are considered, as well as the mission of the DCOA.

(c) The number of Directors shall be five (5). Directors shall serve for a term of two (2) years and each Director's term of office is set forth in the Restated Certificate of Formation.

(d) Except for Replacement Directors (defined hereafter), Director terms shall commence on January 1 of the calendar year ~~following appointment~~ that his or her term of office begins, and ~~ends~~ ends on December 31 of the ~~last~~ calendar year ~~of appointment~~ that his or her term of office ends, regardless of the date of appointment to, qualification for, or assumption of said office. No Director shall serve more than three (3) consecutive terms unless a Director is serving in a leadership role and it is determined that, to ensure the continuity and stability of the Board, a Director should be appointed for a fourth (4<sup>th</sup>) consecutive term.

(e) Directors who have been appointed to complete an unexpired term of a resigning or removed Director (a "**Replacement Director**") shall complete the term of the Director who he or she has been appointed to replace, and such term shall not be considered to be a consecutive terms of said Director for purposes of this Section.

(f) Any Director may be removed from office by the City Council for cause or at will upon the affirmative vote of at least four (4) City Council members; however, should the City Council vote to remove a second Director within six (6) months from the removal of the first Director, then removal of any additional Directors within one (1) year of the removal of the first Director shall only be allowed with the affirmative vote of at least five (5) City Council members.

(g) The Board shall elect a Chairman of the Board (the "**Chair**") and a Vice Chair for one (1) year term at each annual meeting of the Board. The term of the Chair and Vice Chair shall commence on January 1 of the year of ~~appointment~~ election, and end on December 31 that same year. No Director shall serve more than two (2) consecutive terms as Chair ~~or~~ and no Director shall serve more than two (2) consecutive terms as Vice Chair.

(h) The Chair shall: (i) preside at all meetings of the Board; (ii) as directed by the Board, direct the President in the performance of duties of the President; and (iii) perform other duties prescribed by the Board. Additionally, the Chair may enter into agreements and/or deliver instruments that the Board has authorized the Chair to execute.

(i) When the Chair is absent, is unable to act, or refuses to act, the Vice Chair shall perform the duties of the Chair. When the Vice Chair acts in place of the Chair, the Vice Chair shall have all the powers of and be subject to all the restrictions upon the Chair. The Vice Chair shall perform other duties as assigned by the Chair or Board.

(j) Regular attendance of the Board meetings is required of all Directors. The following number of absences may constitute the need for replacement of a Director: three (3) consecutive absences or attendance reflecting absences constituting 50% or more of the meetings over a twelve (12) month period. In the event replacement is appropriate, the Chair or the President shall meet with the Director, and unless the Chair or the President receives a commitment from the absentee Director to remedy their attendance at Board meetings, and such is shown by the Director's improved attendance at such meetings, the Chair or the President shall submit in writing to the City Secretary a request that the Director be replaced because of said Director's failure to meet the attendance requirements of this Section. Any vacancy occurring pursuant to this Section shall be filled by appointment of the Mayor with approval by the City Council.

## **Section 2.02 MEETINGS.**

(a) The Board shall meet at least quarterly at places and times to be determined by the Chair. Any Director may request that an item be placed on the agenda by delivering the same in writing to the Secretary of the Board no later than ten (10) days prior to the date of the Board meeting.

(b) The annual meeting of the Board shall be during the first regularly scheduled Board meeting of each calendar year.

(c) Notice of all meetings of the Board shall be given to each Director at or before the time that any meeting notice is posted according to the Texas Open Meetings Act. The notice shall contain information regarding the time, date, and location of the meeting and agenda to be considered.

(d) All meetings of the Board shall be held in the City of Abilene, Texas. Subject to the requirements of the Texas Open Meetings Act as set forth in Tex. Gov't Code, Chapter 551, as amended (the "**Texas Open Meetings Act**"), Board members may attend Board meetings remotely.

(e) The City Manager and the Mayor may attend all meetings of the Board or Committees, provided, however, that they may not attend the executive session portion of a meeting, if the DCOA's Board determines that such attendance could waive the attorney/client privilege of the DCOA. These representatives shall not have the power to vote in the meetings they attend. [If so designated by the City Manager, a Deputy or Assistant City Manager may attend meetings in place of the City Manager with the same restrictions; likewise, if so designated by the Mayor, another member of the City Council may attend meetings in place of the Mayor with the same restrictions.](#)

**Section 2.03 QUORUM.** Directors must be present in order to vote at any meeting. A majority of the entire membership of the Board shall constitute a quorum for the conduct of the official business of the DCOA. 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 DCOA, unless the act of a greater number is required by law.



**Section 2.04 CONDUCT OF BUSINESS.**

(a) At the meetings of the Board, matters pertaining to the business of the DCOA shall be considered in accordance with rules of procedure as from time to time prescribed by the Board.

(b) The Board may plan and direct its work through the President, who is given the powers set forth in Section 3.02 and charged with the responsibility of carrying out the DCOA's programs as may be adopted and planned by the Board. The President shall serve as the Chief Executive Officer ("CEO") of the DCOA unless the Board determines otherwise.

**Section 2.05 IMPLIED DUTIES.** The DCOA is authorized to do that which the Board deems desirable to accomplish, any of the purposes or duties set out or alluded to in these Bylaws, and in accordance with Texas law.

**Section 2.06 COMMITTEES OF THE BOARD.** The Chair may designate not more than two (2) Directors to constitute an official committee of the Board, with such other non-Board members of the committee as may be appointed by the Board, to exercise such authority of the Board as may be specified in a resolution. It is provided, however, that all final, official actions of the DCOA may be exercised only by the Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded for that purpose in the principal office of the DCOA.

**Section 2.07 BOARD'S RELATIONSHIP WITH ADMINISTRATIVE DEPARTMENTS OF THE CITY.**

(a) Any request for services made to the administrative departments of the City shall be made by the Board or the President in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he or she finds such requested services are available within the administrative departments of the City and that the DCOA has agreed to reimburse the administrative department's budget for the costs of such services so provided.

(b) Any requests for legal assistance shall be made by the Board or the President to the City Attorney. The City Attorney may provide such assistance when such services are available and the DCOA has agreed to reimburse the City for providing the legal services.

**Section 2.08 COMPENSATION OF DIRECTORS.** Directors shall not receive any salary or compensation for their services as Directors. However, they shall be reimbursed for their actual expenses incurred in the performance of their duties hereinunder.

**Section 2.09 CONFLICT OF INTEREST.** In the event that a Director is aware of a conflict of interest or potential conflict of interest with regard to any particular vote, the Board's actions shall be governed by the Tex. Bus. Org. Code, Section 22.230, as amended.

### ARTICLE III Officers

#### Section 3.01 TITLES AND TERMS OF OFFICE.

(a) The ~~elected~~ officers of the DCOA shall be a Chair, Vice Chair, President, ~~a~~ Secretary and ~~a~~ Treasurer, and such other officers as the Board may from time to time elect or appoint, including one or more Vice Presidents. One person may hold more than one office, except that neither the President nor the Chair shall hold the office of Secretary. The terms of office for each officer shall be as follows:

(i) The Chair and Vice Chair shall be elected in accordance with Section 2.01 (g).

(ii) ~~(i)~~The President, Secretary and Treasurer shall be appointed by the Board ~~and. The President shall be an employee or contractor of the DCOA.~~ ~~The President, and~~ shall serve at the pleasure of the Board until such time as he or she resigns the position, is removed by the Board, his or her term ends, or his or her contract terminates.

(iii) ~~(ii)~~The term of the President, Secretary and Treasurer shall commence on January 1 of the year of appointment, and end on December 31 of that same year, regardless of the date of appointment to, qualification for, or assumption of said office.

(b) All officers shall be subject to removal from office at any time by a vote of a majority of the entire Board.

(c) Vacancies may be filled by the Board for the unexpired portion of the term of that office, in the same manner as other officers are elected or appointed to the Board.

**Section 3.02 POWERS AND DUTIES OF THE PRESIDENT.** The President shall have the general powers and authority set forth below so that the President may transact the general business of the DCOA and efficiently carry out the DCOA's programs, oversee the administrative functions of the DCOA, and otherwise oversee the DCOA's affairs. The DCOA's President is authorized to take the following actions:

(a) Make expenditures of the funds as set forth in the DCOA's annual budget, as such annual budget is approved by the Board and the City Council;

(b) Enter into contracts for the purchase of goods and services, so long as said contracts do not involve expenditures that exceed the amounts set forth for said expenditure in the DCOA's annual budget;

(c) Employ, direct, control, evaluate, discipline, and discharge the DCOA's employees, other than the President;

(d) Establish the compensation for each DCOA position other than the President position, provided that the DCOA's annual budget has sufficient funds for the expenditures; and

(e) Develop various DCOA policies and procedures, provided that any financial, accounting, and purchasing policies and procedures shall also be approved by the Board.

The authority described above shall also authorize the President to enter into agreements and/or deliver instruments in the name of and on behalf of the DCOA. Said agreements and/or instruments may have provisions for contingent liabilities, provided that the contingent liability obligations are not reasonably expected to exceed the amounts set forth in the DCOA's annual budget, as determined by the President in his or her reasonable discretion.

**Section 3.03 POWERS AND DUTIES OF THE INTERIM PRESIDENT.** In the absence of the President, the Board shall appoint a person to perform the duties of President on an interim basis (the "**Interim President**") until such time that the Board appoints a new President. The Interim President may be either an employee or contractor of the DCOA. The Interim President shall perform such other duties as from time to time may be assigned to him or her by the Board.

**Section 3.04 POWERS AND DUTIES OF THE VICE PRESIDENT.** If a Vice President is appointed by the Board, he or she shall perform such duties as from time to time may be assigned to him or her by the President.

**Section 3.05 POWERS AND DUTIES OF THE TREASURER.** The Treasurer shall lead the Board in its process of selecting an auditor to audit the DCOA's books, records, accounts and financial statements on an annual basis in accordance with Section 4.04(b).

**Section 3.06 POWERS AND DUTIES OF THE SECRETARY.** The Secretary shall ensure that a record of the minutes of all meetings of the Board and of any committees of the Board are kept and are located at the principal office of the DCOA. The Secretary shall ensure that the President remains the custodian of the corporate records and seal of the DCOA, and keeps a registered mailing address and street address (if different) of each Director.

**Section 3.07 EMPLOYEES.**

(a) The Board shall, in the annual budget, make provisions for the compensation to be paid to the President and such compensation so established by the Board shall comprise the salary and benefits paid to the President for his or her services. The President shall be hired by the Board.

(b) The DCOA may employ, or contract for, such full or part-time employees as needed to carry out the programs of the DCOA. These employees shall perform those

duties as are assigned to them by the President. As provided in Section 3.02, the President shall hire, direct, and control the work of all DCOA employees.

**Section 3.08 BENEFITS.** In accordance with Tex. Loc. Gov't Code, Section 501.067, the DCOA may obtain:

(a) health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the City's insurance policies, through self-funded coverage, or under coverage provided under an interlocal agreement with a political subdivision; and/or

(b) retirement benefits under a retirement program the City participates in or operates.

Health benefits coverage may be extended to the DCOA's employees, and to the dependents of the DCOA's employees. Workers' compensation benefits may be extended to the Directors, employees, and volunteers. Liability coverage may be extended to protect the DCOA, the Directors, and the DCOA's employees. Retirement benefits may be extended to the DCOA's employees. The DCOA must reimburse the City for any expense incurred in providing said benefits.

**Section 3.09 CONTRACTING FOR SERVICES.** The DCOA 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 Board of its discretion and policy-making functions in discharging its duties as set forth herein.

## ARTICLE IV

### Functional Corporate Duties and Requirements

**Section 4.01 GENERAL DEVELOPMENT PLAN.**

(a) The President shall, in consultation with the Board, research, develop, prepare, and submit to the City 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, proposed methods for the expansion and development of a sound economic base for the City.

(b) The President shall review and update the plan each year, prior to or in conjunction with the submission of the DCOA's annual budget to the City Council.

**Section 4.02 ANNUAL CORPORATE BUDGET.** Prior to the commencement of each fiscal year of the DCOA, the Board shall adopt a proposed budget of expected revenues and proposed expenditures for the ensuing fiscal year. The budget shall not be effective until the same has been approved by resolution of the City Council. The City Council's approval of the

budget shall be the City Council’s approval of the DCOA’s programs and expenditures outlined in the budget as required by the Act.

The Board and/or President may make expenditures within the total budget amount approved by the City Council so long as such expenditures (a) do not increase the total budget amount previously approved by the City Council, and (b) do not increase any single fund or budget classification by more than ten (10) percent.

**Section 4.03 EXPENDITURES OF CORPORATE FUNDS.** For any “Project” as such is defined by the Act (each a “Project Expenditure” and collectively “Project Expenditures”), in the amount of \$1,000,000 or less, the Board has sole approval authority over each Project Expenditure upon approval by the Board. For any Project Expenditure which exceeds \$1,000,000, the City Council shall also approve said Project Expenditure. The DCOA shall not make a Project Expenditure over \$1,000,000 if the Project Expenditure fails to receive the required City Council approval. This Section shall satisfy the requirements of Tex. Loc. Gov’t Code, Section 501.073 requiring approval of project expenditures by the City Council, and it shall not be necessary for the DCOA to obtain the City Council’s approval of an amended budget before making said Project Expenditure.

**Section 4.04 BOOKS, RECORDS, AND AUDITS.**

(a) The DCOA shall keep and properly maintain, in accordance with generally accepted accounting principles, corporate funds, activities, and affairs.

(b) The DCOA shall cause its books, records, accounts, and financial statements to be audited at least once each fiscal year by an outside, independent, auditing and accounting firm selected by the Board. Such audit shall be at the expense of the DCOA and shall be a certified audit.

**Section 4.05 DEPOSIT AND INVESTMENT OF CORPORATE FUNDS.**

(a) All proceeds from the issuance of bonds, notes, or other debt instruments (“Obligations”) issued by the DCOA shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their issuance.

(b) All other monies of the DCOA shall be deposited, secured and/or invested in accordance with Tex. Gov’t Code, Chapter 2257, as amended; and investments of funds and accounts, not needed for obligations of the DCOA, shall be performed in accordance with Tex. Gov’t Code, Chapter 2256, as amended. The Board shall (i) designate the accounts and depositories to be created and designated for such purposes, (ii) adopt financial policies and procedures to account for such funds, and (iii) adopt investment policies to make such investments.

(c) At the request of the DCOA and with the approval of the City Council, the monies of the DCOA may be deposited, secured and/or invested for the DCOA by the accountant, staff and personnel of the City. In such event, the DCOA shall pay to the City reasonable compensation for such service.

**Section 4.06 ISSUANCE OF OBLIGATIONS.** No Obligations, including refunding Obligations, shall be sold and delivered by the DCOA, 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.

## **ARTICLE V Miscellaneous Provisions**

### **Section 5.01 PRINCIPAL OFFICE & REGISTERED AGENT.**

(a) The principal office of the DCOA in the State of Texas shall be located in the City of Abilene, County of Taylor, and it may be, but need not be, identical with the registered office of the DCOA.

(b) The DCOA shall have and shall continually designate a qualified registered agent at its registered office, as required by the Act.

**Section 5.02 FISCAL YEAR.** The fiscal year of the DCOA shall begin on October 1 and end on September 30 of the following year.

**Section 5.03 OPEN MEETINGS ACT AND PUBLIC INFORMATION ACT.** The DCOA is subject to the Texas Open Meetings Act, and the Texas Public Information Act, as set forth in Tex. Gov't Code, Chapter 552, as amended.

**Section 5.04 CORPORATE SEAL.** The Board shall obtain a corporate seal which shall bear the words "Corporate Seal of Development Corporation of Abilene, Inc.". The Board may thereafter use the corporate seal and may later alter the seal as necessary without changing the corporate name; but these Bylaws shall not be construed to require the use of the corporate seal.

**Section 5.05 MEMBERS.** The DCOA shall have no members.

## **ARTICLE VI Indemnification of Directors, Officers, and Employees**

As provided in Tex. Loc. Gov't Code, Section 504.107, the DCOA is, for the purposes of the Texas Tort Claims Act, as set forth in Tex. Civ. Prac. & Rem. Code, Chapter 101, as amended, a governmental unit and its actions are governmental functions.

The DCOA shall indemnify each and every Director or former Director of the Board, its officers, its employees, its attorneys, each member of the City Council ([including the Mayor](#)) and each employee of the City, to the fullest extent permitted by law, against any and all liability or expense, including attorneys' fees incurred by any of such persons by reason of any actions or omissions that may arise out of the functions and activities of the DCOA.

~~The~~[In addition \(but not to limit\) the foregoing, to the fullest extent permitted by law, the](#) Board shall authorize the DCOA to pay or reimburse any current or former Director or officer of

the DCOA for any costs, expenses, fines, settlements, judgments, and other amounts, actually and reasonably incurred by such person in any action, suit, or proceeding to which he or she is made a party by reason of holding such position as officer or Director; provided, however, that such officer or Director shall not receive such indemnification if he or she be finally adjudicated in such instance to be liable for gross negligence or intentional misconduct in office. The indemnification herein provided shall also extend to good faith expenditures incurred in anticipation of, or preparation for, threatened or proposed litigation. The Board may, in proper cases, extend the indemnification to cover the good faith settlement of any such action, suit, or proceedings, whether formally instituted or not.

To the extent the Board authorizes indemnification to Directors ~~or~~, officers or employees of the DCOA, the City shall, to the fullest extent permitted by law, also provide indemnity to said Directors ~~and~~, officers and employees. However, the City's indemnification shall only apply after the DCOA's ability to indemnify has been exhausted. Nothing in this Section creates personal liability on the part of officers ~~and~~, Directors and employees to any extent not otherwise provided by statute or case law.

Furthermore, the DCOA agrees to indemnify and hold harmless and defend the City, its officers, agents, and its employees, from and against liability for any and all claims, liens, suits, demands, and/or actions for damages, injuries to persons (including death), property damage (including loss of use), and expenses, including court costs and attorneys' fees and other reasonable costs arising out of or resulting from the DCOA's activities and from any liability arising out of or resulting from the intentional acts or negligence or intentional acts or omissions of the DCOA, including but not limited to its officers, agents, employees, licensees, invitees, and other persons.

The DCOA further agrees that it shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, agents, employees, licensees, invitees, and other persons, as well as their property, while in the vicinity where activities are being performed. It is expressly understood and agreed that the City shall not be liable or responsible for the negligence of the DCOA, including but not limited to, its officers, agents, employees, licensees, invitees, and other persons.

It is further agreed with respect to the above indemnity, that the City and the DCOA will provide the other prompt and timely notice of any event covered which in any way, directly or indirectly, contingently or otherwise, affects or might affect the DCOA or the City, and the City shall have the right to compromise and defend the same to the extent of its own interests. It is further agreed this indemnity clause shall be an additional remedy to the City and not an exclusive remedy.

## ARTICLE VII Effective Date, Amendments

**Section 7.01 EFFEKTIVE DATE.** These Bylaws shall become effective upon the occurrence of all of the following events: the adoption of these Bylaws by the Board; and the approval and adoption of these Bylaws by the City Council.

**Section 7.02 AMENDMENTS TO BYLAWS.** These Bylaws may be amended or repealed and amended Bylaws may be adopted by an affirmative vote of at least three (3) Directors present at any regular meeting or any special meeting of the Board, if at least three (3) days written notice is given of an intention to amend, repeal, and/or adopt new Bylaws. Any Bylaw amendments will be effective upon approval of the City Council by resolution.

## ARTICLE VIII

### ~~Dissolution~~-Termination

~~Upon the properly authorized dissolution of the DCOA, when~~

As provided by Tex. Loc. Gov't Code, Section 504.351, on petition of ten percent (10%) or more of the registered voters of the City of Abilene requesting an election on the termination of the DCOA, the City Council shall order an election on the issue. The election must be conducted according to the applicable provision of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition:

"Termination of the Development Corporation of Abilene, Inc."

If a majority of voters voting on the issue approve the termination, the DCOA shall continue operations only as necessary to pay the principal of and interest on its bonds and to meet obligations incurred before the date of the election and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations. When the last of the ~~DCOA's~~ obligations are satisfied, any remaining assets of the DCOA shall be transferred to the City, and the ~~existence of the~~ DCOA ~~shall be~~is terminated.

## ARTICLE IX

### CERTIFICATE OF ADOPTION OF AMENDED AND RESTATED BYLAWS

These Amended and Restated Bylaws were adopted on the \_\_\_ day of \_\_\_\_\_, 2020 by DCOA Resolution \_\_\_\_\_ and on the \_\_\_ day of \_\_\_\_\_, 2020 by the City Council.

\_\_\_\_\_  
Misty Mayo, President and CEO



# **CERTIFICATE OF FORMATION**

**(FORMERLY ARTICLES OF INCORPORATION)**

**RESOLUTION NO. DCOA-2021.05**

**A RESOLUTION OF THE DEVELOPMENT CORPORATION OF ABILENE, INC. (“DCOA”) ABILENE, TEXAS AUTHORIZING A WRITTEN APPLICATION REQUESTING APPROVAL OF AMENDMENTS TO THE DCOA’S CERTIFICATE OF FORMATION F/K/A ARTICLES OF INCORPORATION (THE “CERTIFICATE OF FORMATION”).**

WHEREAS, the DCOA desires to adopt a Restated Certificate of Formation with new amendments; and

WHEREAS, the attached Restated Certificate of Formation with new amendments of the Development Corporation of Abilene, Inc. is hereby adopted, provided that the City Council of the City of Abilene (“**City Council**”) approves of same; and

WHEREAS, the members of the DCOA’s Board of Directors desire to file with the City Council a written application requesting approval of the Restated Certificate of Formation with new amendments.

**NOW THEREFORE, BE IT RESOLVED BY THE DEVELOPMENT CORPORATION OF ABILENE, INC., ABILENE, TEXAS, THAT:**

- PART 1.** DCOA approves the attached Restated Certificate of Formation with new amendments of the Development Corporation of Abilene, Inc.
- PART 2.** The members of the DCOA’s Board of Directors approve and authorize the attached written application requesting approval of the attached Restated Certificate of Formation with new amendments to be filed with the City Council.
- PART 3.** This Resolution takes effect immediately upon passage.

ADOPTED this the 17<sup>th</sup> day of November, 2020.

ATTEST:

\_\_\_\_\_  
Vic Corley  
Secretary/Treasurer

\_\_\_\_\_  
Jack Rich  
President

APPROVED AS TO FORM:

\_\_\_\_\_  
Mark Zachary, Attorney at Law



Develop **Abilene**  
DEVELOPMENT CORPORATION OF ABILENE

November 17, 2020

City Council  
Attn: Mayor Anthony Williams and  
City Secretary Shawna Atkinson  
City Hall  
555 Walnut Street  
Abilene, TX 79601

***RE: Written application requesting approval of a Restated Certificate of Formation with amendments***

Dear City Council:

Please find the attached Restated Certificate of Formation of the Development Corporation of Abilene, Inc. with new amendments.

Pursuant to DCOA Resolution No. DCOA-2021.05, the DCOA's Board of Directors respectfully request that you approve the Restated Certificate of Formation of the Development Corporation of Abilene, Inc. and the amendments included therein.

Sincerely,

Jack Rich, President

Enclosures

**RESTATED CERTIFICATE OF FORMATION OF THE DEVELOPMENT  
CORPORATION OF ABILENE, INC., A TEXAS NON-PROFIT CORPORATION**

**THE STATE OF TEXAS §**

**COUNTIES OF TAYLOR AND JONES §**

The Development Corporation of Abilene, Inc., a Texas non-profit economic development corporation (the “**Corporation**”) under the Development Corporation Act, as set forth in Tex. Loc. Gov’t Code, Chapters 501, 502, and 504, as amended (collectively the “**Act**”), with the approval of the governing body of the City of Abilene, Texas (the “**City**”), as evidenced by the Resolution attached hereto and made a part hereof for all purposes, do hereby adopt this Restated Certificate of Formation f/k/a the Articles of Incorporation (this “**Certificate of Formation**”) for the Corporation. Each amendment included in this Certificate of Formation conforms to the Act and this restated Certificate of Formation is an accurate copy of the Corporation’s certificate of formation and all amendments to the certificate of formation that are in effect and all additional amendments made to the certificate of formation. This restated Certificate of Formation does not contain any other change to the Corporation’s certificate of formation that is not set forth in this Certificate of Formation.

**ARTICLE I NAME**

The name of the Corporation is DEVELOPMENT CORPORATION OF ABILENE, INC.

**ARTICLE II NON-PROFIT CORPORATION**

The Corporation is a non-profit corporation specifically governed by the Act which includes, but is not limited to, Chapter 504 of the Tex. Loc. Gov’t Code.

**ARTICLE III DURATION**

The period of duration of the Corporation is perpetual.

**ARTICLE IV PURPOSE**

The Corporation is organized exclusively for the purposes of benefiting and accomplishing public purposes of the City by promoting, assisting, and enhancing economic development activities for the City as provided by the Act.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of Texas to non-profit corporations by the Texas Nonprofit Corporation Law, as set forth in the Tex. Bus. Orgs. Code, Chapters 20 and 22, as amended, and the additional powers as provided in Section 501.054 of the Act, including the issuance of bonds. If any conflict should arise between these statutes regarding the Corporation's powers, the Act shall control and govern the Corporation.

**ARTICLE V  
REGISTERED OFFICE AND AGENT**

The street address of the registered office of the Corporation is 400 Pine Street, Ste. 800, Abilene, Texas 79601, and the name of the registered agent at such address is Mark Zachary.

### ARTICLE VI DIRECTORS

The affairs of the Corporation shall be managed by a Board of Directors. The number of Directors constituting the Board of Directors of the Corporation is five (5). The names and addresses of the persons who are currently serving as the Directors and the date their term expires (“**Term Expiration Date**”) and years served upon the Term Expiration Date are as follows:

<b>Director Number</b>	<b>Director</b>	<b>Address</b>	<b>Term Expiration Date</b>	<b>Years Served Upon Term Expiration Date</b>
1	Jack Rich	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2020	6
2	Vic Corley	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2020	3
3	Sam Vinson	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2021	3
4	Shea Hall	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2022	3
5	Floyd Miller	174 Cypress St., Ste. 301 Abilene, Texas 79601	December 31, 2022	3

As described above, each of the foregoing described Directors shall serve until the expiration of their existing three (3) year term. Upon the Term Expiration Date of Director Number 2, an individual shall be appointed to a three (3) year term as Director Number 2 that expires on December 31, 2023. All other subsequent terms of office for the Directors shall be two (2) years. The Mayor shall appoint the Directors of the Corporation with the approval of the Council. No Director shall serve more than three (3) consecutive terms unless a Director is serving in a leadership role and it is determined that, to ensure the continuity and stability of the Board, a Director should be appointed for a fourth (4<sup>th</sup>) consecutive term.

Each Director shall meet at least one (1) of the following qualifications:

- (a) serve, or have served, as Chief Executive Officer of a company; or
- (b) serve, or have served, in a position of executive management of a company; or
- (c) serve, or have served, in a professional capacity; or
- (d) have experience equivalent to any of the above qualifications.

Any vacancy occurring shall be filled by appointment of the Mayor with approval by the City Council. Directors who have been appointed to complete an unexpired term of a resigning Director shall complete the term of the Director who he or she has been appointed to replace, and such term shall not be considered a consecutive term of said Director for purposes of this Article.

Each of the Directors shall reside or own a business that operates within the City or within the extra-territorial jurisdiction of the City of Abilene. Each Director shall be eligible for reappointment. Any Director may be removed from office as set forth in the Corporation's Bylaws. The Directors shall serve without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties as Directors.

#### **ARTICLE VII MEMBERSHIP/STOCK**

The Corporation has no members and is a non-stock corporation.

#### **ARTICLE VIII AMENDMENTS**

This Certificate of Formation may at any time and from time to time be amended as provided in the Act so as to make any changes therein and add any provisions thereto which might have been included in this Certificate of Formation in the first instance. Any such amendment shall be effected in either of the following manners: (i) the members of the Board of Directors of the Corporation shall file with the governing body of the City a written application requesting approval of the amendments to this Certificate of Formation, specifying in such application the amendments proposed to be made, such governing body shall consider such application and, if it shall by appropriate resolution duly find and determine that it is advisable that the proposed amendments be made and shall approve the form of the proposed amendments, then the Board of Directors of the Corporation may amend this Certificate of Formation by adopting such amendments at a meeting of the Board of Directors of the Corporation and delivering an amended certificate of formation to the Secretary of State, or (ii) the governing body of the City may, at its sole discretion, and at any time, amend this Certificate of Formation, and alter or change the structure, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of the Act, and subject to any limitation provided by the constitutions and laws of the State of Texas and the United States of America on the impairment of contracts entered into by the Corporation) by written resolution adopting the amendment to this Certificate of Formation or a certificate of termination at a meeting of the governing body of the City and delivering an amended certificate of formation or a certificate of termination to the Secretary of State, as provided in the Act or upon election as provided in the Act. A restated certificate of formation may be filed with the Secretary of State as provided in the Act.

#### **ARTICLE IX AUTHORIZATION**

The City has specifically authorized the Corporation by Resolution to act on its behalf to further the public purposes stated in said Resolution and this Certificate of Formation, and the City has by said Resolution approved this Certificate of Formation. A copy of said Resolution is attached to this Certificate of Formation and made a part hereof for all purposes.

#### **ARTICLE X RESTRICTIONS**

The Corporation may not take any action that would be inconsistent with the requirements for a tax exemption under Internal Revenue Code Section 501(c)(3) and related regulations, rulings, and procedures and regardless of any other provision in this Certificate of Formation (i) no dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its Directors or officers or any individual, firm, corporation or association and (ii) the Corporation may not devote more than an insubstantial part of its activities to the carrying on of propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in, (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

#### **ARTICLE XI DISSOLUTION**

If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.