

PUBLIC NOTICE

DEVELOPMENT CORPORATION OF ABILENE, INC.

A meeting of the Development Corporation of Abilene, Inc. (“DCOA”) will be held on December 15, 2020, by videoconference commencing at 9:00 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/498136413>. The videoconference will remain open from 9:00 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 (312) 757-3121, Access Code 498-136-413.

AGENDA

December 15, 2020

9:00 am

1. Call the meeting to order
2. Invocation
3. Public Comment on Agenda Items
4. Governance Schedule
5. Approval of minutes from the November 17, 2020 and November 24, 2020 board meetings
6. Sales Tax Report for December and Financial Report for November 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. Consent to lien on property located at 1221 Fulwiler Road, Abilene, Texas that is subordinate to DCOA's lien
 2. 551.072 (Deliberations about Real Property)
 3. 551.074 (Personnel Matters)
 4. 551.087 (Business Prospect/Economic Development)
 - A. Project Legacy
 - B. Project Golden
 - C. Project Formula One
8. Discussion and possible approval of consent to lien on property located at 1221 Fulwiler Road, Abilene, Texas that is subordinate to DCOA's lien
9. Discussion and possible approval of a Resolution authorizing changes to the DCOA's Bylaws
10. Discussion and possible approval of the DCOA's FY 2020 Annual Report
11. Discussion of the next board meeting date
12. 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 11th day of December, 2020 at 10:20 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	x	Monthly board meeting
										x	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)

DCOA Governance Schedule

								x					New fiscal year contracts (AIF, ABI, SBDC, MAC & ACU)
					x								Annual budget proposal for following year presented to Board
													Staffing/Staff evaluation (Staff potential conflicts of interest)
				x									Financial audit prepared/presented by 3rd party auditor
				x									Approve annual street expenditure projects per agreement COA ('20-'23)
									x				Annual consideration/commission for a financial audit
				x									Review financial audit
x													Share the financial audit with the City
		x											Submit required report (Local Gov. Code 502.151) to Comptroller by April 1

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Governance: Monthly Board Meeting Review	
x	x	x	x	x	x	x	x	x	x	x	x	x	Approval of last meeting's minutes
x	x	x	x	x	x	x	x	x	x	x	x	x	Financial Report presented by DCOA Staff (accounting firm, as requested)
x			x			x			x				Sales Tax Report - quarterly
													Analysis of investments, including manager risk & fees (once DCOA handles investments)
x	x	x	x	x	x	x	x	x	x	x	x	x	Schedule next meeting date
					x			x					Review of Strategic Plan
						x							Review of governance checklist

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Project & Properties Review on Demand	
x	x	x	x	x	x	x	x	x	x	x	x	x	Properties, as needed
x	x	x	x	x	x	x	x	x	x	x	x	x	Projects, as needed
													● Benchmark comparisons

Rv. 12/07/20

BOARD MEETING MINUTES NOVEMBER 17, 2020

**DEVELOPMENT CORPORATION OF ABILENE, INC.
BOARD MEETING MINUTES
NOVEMBER 17, 2020**

MEMBERS PRESENT:	Jack Rich Floyd Miller	Vic Corley Shea Hall	Sam Vinson
STAFF PRESENT:	Misty Mayo Julie Johncox Allysun Gutierrez Ashley Whitmer	Brock New Akane Thaxton	Amy Whitmer Cynthia Nesmith
GUESTS PRESENT:	Mark Zachary Chris Shelton Doug Williamson Anthony Michelic Samuel Garcia David Raymond Ray Ferguson	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 9:30 am by videoconference.
2. **INVOCATION:** Board Member Shea Hall 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 CEO's compensation and bonus agenda item; c) the Board taking action on the Bylaws and Certificate of Formation items at this meeting; and d) the inclusion of the DCOA's Board Meetings on the City of Abilene's website.

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 Item 4.

4. **GOVERNANCE SCHEDULE:** CEO Misty Mayo explained the governance schedule is intended to be a roadmap by which the DCOA endeavors to provide reports on schedule throughout the year. CEO Misty Mayo noted that the posted governance schedule shows the DCOA is tracking in line with the plan that was outlined in January 2020.

5. APPROVAL OF MINUTES FROM THE OCTOBER 29, 2020 BOARD MEETING: Shea Hall made a motion to approve the minutes from the October 29, 2020 Board Meeting. Floyd Miller seconded, and the motion carried.

6. SALES TAX REPORT FOR NOVEMBER AND FINANCIAL REPORT FOR OCTOBER 2020: Akane Thaxton, DCOA Finance Manager, presented the Sales Tax Report for November as reported by the City of Abilene and the Financial Report for October. The sales tax rebate for November is \$4,611,858.42, which represents September sales. This is 6.53% above last year and 6.53% above the projected FY21 budget amount. Economic Development received \$1,152,964.60, which is 1.41% above last year and 1.41% above the projected FY21 budget amount. The DCOA's total assets as of October 31, 2020, were \$92,211,211.09.

CEO Misty Mayo explained that FY20's originally budgeted sales tax was projected to be \$11,913,770. This projection is based on what the City of Abilene projects sales tax revenues to be for the fiscal year. Once COVID-19 happened, the DCOA adjusted their projections to reflect a 10% decrease in sales tax, projecting a revised sales tax revenue of \$10,722,393. The actual sales tax revenue for FY20 was \$12,049,651, which slightly exceeded the original projection.

CEO Misty Mayo clarified this was good news and meant that the immediate implications of COVID-19 did not necessarily impact the City of Abilene as anticipated. However, the DCOA is now following economists' predictions that the impacts of COVID-19 are yet to come. This means that the impacts of people moving or losing jobs, companies' shifting their priorities, and the impacts of spending are not only due to the national election as typically predicted, but also COVID-19. These projected impacts happening in FY21 are what is leading the City of Abilene to come out with a more modest sales tax revenue projection for FY21.

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 November 17, 2020 and the time is 9:41 am. Later, President Rich announced the date is still November 17, 2020 and the time is 12:02 pm, and that no vote or action was taken in Executive Session.

8. DECEMBER MEETING WITH HALFF AND ASSOCIATES REGARDING THE CITY OF ABILENE'S CITY MASTER PLAN: DECEMBER 10 OR 11: CEO Misty Mayo explained the City of Abilene announced they are launching a City Master Plan and have hired the consulting firm Halff and Associates. Halff and Associates requested to meet with the DCOA Board to discuss strategy and input for the City of Abilene's City Master Plan on either December 10 or 11.

Board members considered dates for the meeting with Halff and Associates, and CEO Misty Mayo announced that the scheduled meeting will be on Thursday, December 10, 2020 at 3:00 pm. CEO Misty Mayo clarified the meeting will be held virtually in order to support the

personal needs of the Board and contribute to lowering the current spike in COVID-19 numbers.

9. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPROVING AN AGREEMENT WITH PROJECT LEGACY: President Jack Rich tabled the Item until next Board meeting.

10. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPROVING AN AGREEMENT WITH PROJECT ONE STOP: CEO Misty Mayo presented Resolution DCOA-2021.03 authorizing an incentive package for Project One Stop, pending City Council's approval. Project One Stop is a local business expansion project for a corporate headquarters expansion and relocation to Downtown Abilene. The capex is \$3,500,000 and the incentive is 15% of actual capital investment up to \$525,000 with the retention of 69 full-time employees and creation of 9 jobs, with an average salary of \$64,592 for both the jobs created and retained.

Shea Hall made a motion to approve Resolution DCOA-2021.03 authorizing an incentive for Project One Stop. Sam Vinson seconded, and the motion passed.

11. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION AUTHORIZING AN AMENDMENT TO THE DCOA CEO'S EMPLOYMENT AGREEMENT AND/OR SALARY AND BENEFITS: President Jack Rich stated that the Board discussed this during Executive Session with no action taken.

Shea Hall made a motion to appoint Board Member Sam Vinson to negotiate, approve and make changes to the current salary, and to establish an incentive bonus structure/retention package for the DCOA's current CEO, Misty Mayo with the clarification that the motion is based on the Board's discussion in Executive Session. Floyd Miller seconded, and the motion passed.

12. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPOINTING A NON-VOTING EX-OFFICIO MEMBER TO THE ABILENE INDUSTRIAL FOUNDATION, INC.'S EXECUTIVE COMMITTEE: CEO Misty Mayo presented Resolution DCOA-2021.02 appointing a non-voting ex-officio member to the Abilene Industrial Foundation, Inc.'s Executive Committee and provided details concerning this position to the Board. President Jack Rich made a recommendation to appoint John Beckham to the position.

Sam Vinson made a motion to approve Resolution DCOA-2021.02 appointing John Beckham as a non-voting ex-officio member to the Abilene Industrial Foundation, Inc.'s Executive Committee. Vic Corley seconded, and the motion passed.

13. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION AUTHORIZING CHANGES TO THE DCOA'S BYLAWS: CEO Misty Mayo presented Resolution DCOA-2021.04 approving the Amended and Restated Bylaws of the DCOA, pending City Council approval. President Jack Rich clarified the changes shown in the Bylaws as presented are compared to the original Resolution passed by the Board with consideration of comments from members of City Council and the Public.

President Jack Rich reminded everyone that the Bylaws recognize that it is the responsibility of the City Council and the Mayor of Abilene to appoint members to the DCOA Board. President Jack Rich asked CEO Misty Mayo to clarify if there were any concerns or if the Bylaws were ready to be recommended to the Board to vote on today. CEO Misty Mayo stated the DCOA was prepared to recommend the attached Bylaws to the Board.

Sam Vinson made a motion to approve Resolution DCOA-2021.04 approving the Amended and Restated Bylaws of the DCOA, pending City Council approval. Shea Hall seconded, and the motion passed.

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): CEO Misty Mayo presented Resolution DCOA-2021.05 approving the Restated Certificate of Formation with new amendments of the DCOA, pending City Council approval. CEO Misty Mayo explained there was one edit from the version that was previously passed by the Board in August.

Shea Hall made a motion to approve Resolution DCOA-2021.05 approving the Restated Certificate of Formation with new amendments of the DCOA, pending City Council approval. Sam Vinson seconded, and the motion passed.

15. DISCUSSION OF THE NEXT BOARD MEETING DATE: Board members considered dates for the next meeting, and President Rich announced that a special called meeting of the DCOA Board will be on Tuesday, November 24, 2020 at 9:00 am and the next scheduled regular meeting of the DCOA Board will be on Tuesday, December 15, 2020 at 9:00 am.

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

Jack Rich, President

Vic Corley, Secretary/Treasurer

BOARD MEETING MINUTES NOVEMBER 24, 2020

**DEVELOPMENT CORPORATION OF ABILENE, INC.
BOARD MEETING MINUTES
NOVEMBER 24, 2020**

MEMBERS PRESENT:	Jack Rich Floyd Miller	Vic Corley Shea Hall	Sam Vinson
STAFF PRESENT:	Misty Mayo Julie Johncox Allysun Gutierrez Ashley Whitmer	Brock New Akane Thaxton	Amy Whitmer Cynthia Nesmith
GUESTS PRESENT:	Mark Zachary Chris Shelton Doug Williamson Victor Sotelo Lisa Britton	McMahon Surovik Suttle, PC McMahon Surovik Suttle, PC Abilene Chamber of Commerce, Military Affairs Committee KTAB	

1. **CALL THE MEETING TO ORDER:** President Jack Rich called the meeting to order at 9:00 am by videoconference.

2. **INVOCATION:** President Jack Rich 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. No members of the public requested to make public comment. Thus, President Jack Rich moved on to agenda item 4.

4. **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 November 24, 2020 and the time is 9:02 am. Later, President Rich announced the date is still November 24, 2020 and the time is 10:53 am, and that no vote or action was taken in Executive Session.

5. **DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPROVING AN AGREEMENT WITH PROJECT DOUBLE T:** President Jack Rich tabled Agenda Item 5.

6. **DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION APPROVING AN AGREEMENT WITH PROJECT LEGACY:** CEO Misty Mayo presented Resolution DCOA-

2021.07, as amended at the meeting, authorizing the CEO and presiding officer of the Board to negotiate and take any steps necessary which are consistent and necessary to effectuate the actions outlined in Resolution DCOA-2021.07.

CEO Misty Mayo reminded the Board and the public that the DCOA is in active negotiations with the project so they will continue to operate under the project name. Project Legacy is a business attraction project for a food manufacturer. The capex is \$180,000,000 and an incentive of \$27,500,000 is being considered in exchange for the Company's creation of 400 new jobs.

CEO Misty Mayo explained the Resolution has been amended from the Resolution that was included in the Board packet, and that the incentive is subject to the subsequent approval of the DCOA Board of Directors prior to the execution of any final agreements.

Sam Vinson and Jack Rich praised the DCOA team on their hard work bringing this project to this stage. This is an exciting opportunity for Abilene and they looked forward to seeing where the project goes.

Sam Vinson made a motion to approve Resolution DCOA-2021.07, as amended at the meeting, authorizing the CEO and presiding officer of the Board to negotiate and take any steps necessary which are consistent and necessary to effectuate the actions outlined in Resolution DCOA-2021.07. Floyd Miller seconded, and the motion passed.

7. DISCUSSION AND POSSIBLE APPROVAL OF A RESOLUTION REGARDING THE AUTHORITY OF THE DCOA'S CHIEF EXECUTIVE OFFICER TO TAKE ACTIONS ON BEHALF OF THE DCOA: CEO Misty Mayo presented Resolution DCOA-2021.08 regarding the authority of the DCOA's Chief Executive Officer to take actions on behalf of the DCOA. CEO Misty Mayo explained that the Resolution aligns with the updated Bylaws.

President Jack Rich asked for the approval limit that is used by the City of Abilene for the City Manager. CEO Misty Mayo explained that the City of Abilene uses a \$50,000 approval limit for the City Manager.

Sam Vinson made a motion to approve Resolution DCOA-2021.01 regarding the authority of the DCOA's Chief Executive Officer to take actions on behalf of the DCOA with the amount of \$50,000 being included in the Resolution as the expenditure amount in Part 2 of the Resolution. Shea Hall seconded, and the motion passed.

8. ADJOURNMENT: Misty reminded the Board there is a regularly scheduled Board Meeting on December 15 at 9:00 am with the possibility of a special called Board Meeting depending on how the projects discussed today progressed. There being no further business, the meeting was adjourned.

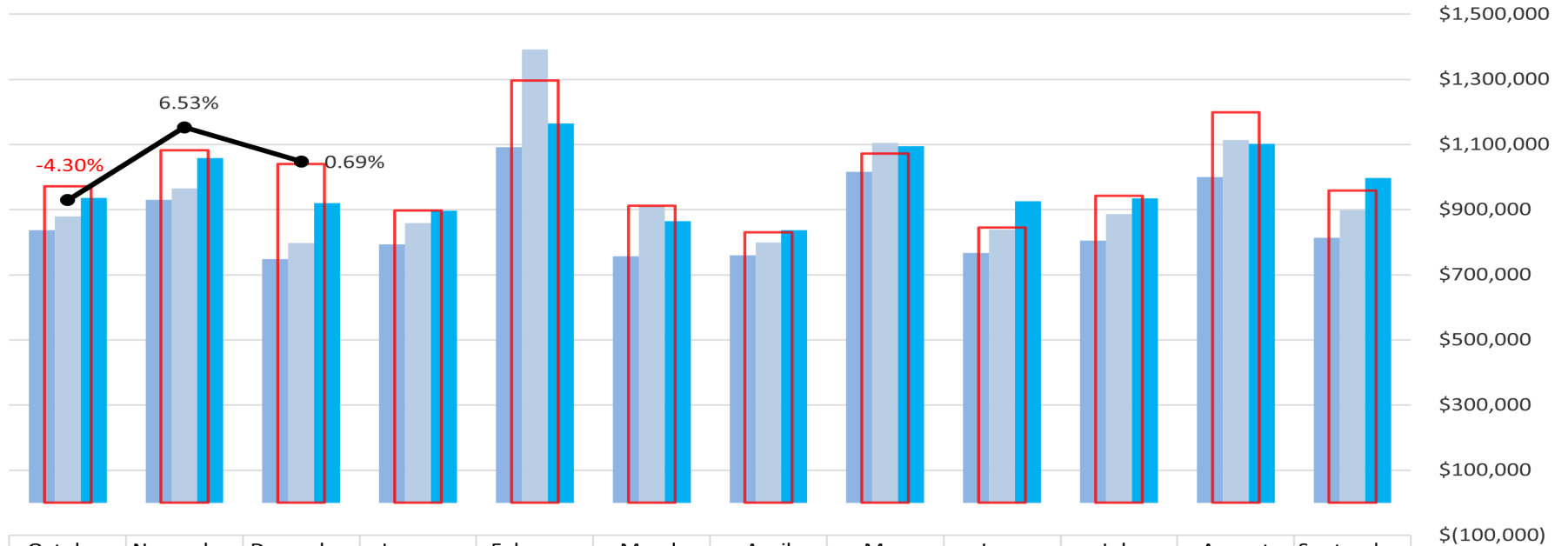
Jack Rich, President

Vic Corley, Secretary/Treasurer

SALES TAX REPORT DECEMBER 2020

December Sales Tax Revenue Report for Economic Development Representing October 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	\$1,048,02									

■ FY17
 ■ FY18
 ■ FY19
 FY20
 ● FY21

Note:

- Report reflects the month sales tax that is 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 \$27,199.38 of the rebate is from prior periods, audit, future, and unidentified payments. \$8,518.94 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 the sales tax revenue from prior sales and submitted or refunded subsequent to the audit.

FINANCIAL REPORT NOVEMBER 2020

Unaudited
Accrual Basis

Development Corporation of Abilene
Summary Balance Sheet
As of November 30, 2020

	<u>Nov 30, 20</u>
ASSETS	
Current Assets	
Checking/Savings	9,788,840.83
Accounts Receivable	2,043,743.99
Other Current Assets	24,157,003.81
Total Current Assets	<u>35,989,588.63</u>
Fixed Assets	40,757,224.79
Other Assets	16,658,601.94
TOTAL ASSETS	<u><u>93,405,415.36</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	202,009.68
Credit Cards	6,599.99
Other Current Liabilities	315,462.43
Total Current Liabilities	<u>524,072.10</u>
Total Liabilities	524,072.10
Equity	92,881,343.26
TOTAL LIABILITIES & EQUITY	<u><u>93,405,415.36</u></u>

**CONSENT TO LIEN ON
PROPERTY LOCATED AT 1221
FULWILER ROAD**

(PROVIDED IN GENERAL SESSION)

DCOA'S BYLAWS

RESOLUTION NO. DCOA-2021.09

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 15th day of December, 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 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 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 that his or her term of office begins, and ends on December 31 of the calendar year 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 (4th) 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 election, and end on December 31 that same year. No Director shall serve more than two (2) consecutive terms as Chair 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 ~~monthly unless there is no business to discuss, but~~ at least quarterly, ~~and~~ 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~~ ~~three or more Directors~~ 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 officers of the DCOA shall be a Chair, Vice Chair, President, Secretary and 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. A Director may not serve as the President, or as a Vice President, nor shall a former Director serve as the President or as the Vice President within two years of leaving office. 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) The President, Secretary and Treasurer shall be appointed by the Board. The President shall be an employee or contractor of the DCOA, 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. The City Council shall confirm the appointment of the President, or Interim President.

(iii) 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, and provided that expenditures greater than or equal to \$50,000 require Board approval before the expense may be made or contracted;

(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, or that may be amended thereafter.~~

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 ~~\$1,000,500~~,000 or less, the Board has sole approval authority over each Project Expenditure upon approval by the Board. For any Project Expenditure which exceeds ~~\$5001,000~~,000, the City Council shall also approve said Project Expenditure. The DCOA shall not make a Project Expenditure over ~~\$1,000,500~~,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.

~~(b)(c)~~ The City Council acting through the City Manager may review, or cause to be reviewed the books, records, accounts, and financial statements of the DCOA at any time.

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.

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, officers or employees of the DCOA, the City shall, to the fullest extent permitted by law, also provide indemnity to said Directors, 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, 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 EFFECTIVE 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
Termination**

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 obligations are satisfied, any remaining assets of the DCOA shall be transferred to the City, and the DCOA 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

**DCOA'S FY 2020
ANNUAL REPORT
(PROVIDED IN GENERAL SESSION)**