

CITY

ORDINANCE NO. 29-1984

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS, ORDERING THE CREATION OF A NONPROFIT CORPORATION UNDER SECTION 55.35(b), TEXAS EDUCATION CODE, AS AMENDED; APPROVING THE FORM OF ARTICLES OF INCORPORATION OF THE CORPORATION; APPROVING THE FORM OF BYLAWS OF THE CORPORATION; CONTAINING OTHER PROVISIONS AND MAKING CERTAIN FINDINGS RELATING THERETO.

WHEREAS, Section 53.35(b), Texas Education Code, as amended (the "Act"), authorizes the governing body of a city to order the creation of a nonprofit corporation under the Act to act on behalf of the City as its duly constituted authority and instrumentality for the purpose of aiding institutions of higher education in providing educational facilities and housing facilities and facilities incidental, subordinate or related thereto or appropriate in connection therewith; and

WHEREAS, the Act authorizes such a nonprofit corporation to issue revenue bonds for said purposes on behalf of the City, provides that the directors of the corporation shall be appointed and be subject to removal by the governing body of the City, and further provides that a private person may not share in any of the corporation's earnings; and

WHEREAS, this Council, the governing body of the City of Abilene, Texas, by this ordinance intends to order the creation of a nonprofit corporation pursuant to and under the Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ABILENE, TEXAS;

PART 1: That Abilene Higher Education Facilities Corporation (the "Corporation"), is ordered to be created under the Act with articles of incorporation (the "Articles") in substantially the form attached hereto as Exhibit A, and the following persons are designated and appointed to act on behalf of the City as the incorporators of the Corporation:

- William J. Teague
- Jesse C. Fletcher
- Thomas K. Kim

and the Articles, in substantially the form attached hereto, are approved and said incorporators are ordered and authorized to file the Articles with the Secretary of State in substantially the form attached hereto.

PART 2: That the Corporation is to be a duly constituted authority and instrumentality acting in behalf of the City within the meaning of regulations of the Department of the Treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended.

PART 3: That the Bylaws of the Corporation, substantially in the form attached hereto as Exhibit B, are approved.

PART 4: That the incorporators appointed in Part 1 hereof are authorized to modify the Articles prior to filing the Articles with the Secretary of State as, in their discretion and upon the advice of counsel, they may deem necessary.

PART 5: That this ordinance shall take effect immediately from and after its date of final passage.

PASSED ON FIRST READING, this 23 day of February, A.D. 1984.

PASSED ON SECOND AND FINAL READING, this 8 day of March, A.D. 1984.

ATTEST:

Saturnia Patton
CITY SECRETARY

[Signature]
MAYOR

APPROVED:

[Signature]
CITY ATTORNEY

Exhibit "A" to

Ordinance No. 29-1984

ARTICLES OF INCORPORATION

OF

ABILENE HIGHER EDUCATION FACILITIES CORPORATION

Pursuant to Section 53.35(b), Texas Education Code, as amended (the "Act"), we, the undersigned natural persons, acting on behalf of and as directed and ordered by the City of Abilene, Texas (the "City"), as incorporators of a nonprofit corporation under the Act, do hereby adopt the following Articles of Incorporation therefor:

ARTICLE I

The name of the corporation is ABILENE HIGHER EDUCATION FACILITIES CORPORATION.

ARTICLE II

The Corporation is a nonprofit corporation created under the Act by order of the governing body of the City pursuant to the Act.

ARTICLE III

The duration of the Corporation is perpetual, subject to dissolution as herein provided.

ARTICLE IV

The Corporation is organized solely and exclusively for the purpose of aiding nonprofit institutions of higher education in providing educational facilities and housing facilities and facilities which are incidental, subordinate, or related thereto or appropriate in connection therewith in accordance with and subject to the provisions of the Act, all to be done on behalf of the City and as its duly constituted authority and instrumentality.

The Corporation shall have and may exercise all powers granted under the Act, except as such powers are limited by these Articles of Incorporation or by the bylaws of the Corporation.

ARTICLE V

The Corporation shall have no members and is a nonstock corporation.

ARTICLE VI

The street address of the initial registered office of the Corporation is 1600 Campus Court, Abilene, Texas 79699, and the name of the initial registered agent at such address is William J. Teague.

ARTICLE VII

All powers of the Corporation shall be vested in a board of directors consisting of not less than seven nor more than eleven directors, as may be fixed by the bylaws of the Corporation, each of whom shall be appointed by the governing body of the City. Each director shall serve for a term of two years or until his or her successor is appointed by the governing body of the City. No officer or employee of the City is eligible for appointment as a director. Directors are not entitled to compensation for services but are entitled to reimbursement for expenses incurred in performing such services. Any director may be removed from office at any time, with or without cause, by written ordinance of the governing body of the City. All vacancies, from whatever cause, shall be filled by the governing body of the City.

ARTICLE VIII

All matters pertaining to the internal affairs of the Corporation shall be governed by the bylaws of the Corporation, so long as such bylaws are not inconsistent with these Articles of Incorporation or with the Act.

ARTICLE IX

The number of directors constituting the initial board of directors is seven. The names and addresses of the initial directors are:

<u>NAME</u>	<u>ADDRESS</u>
William J. Teague	1274 Kingsbury, Abilene, TX 79601
Jesse C. Fletcher	69 Tamarisk Circle, Abilene, TX 79608
Thomas K. Kim	1429 Tanglewood, Abilene, TX 79605
Walter F. Johnson	1417 Tanglewood, Abilene, TX 79605
Syd Niblo	2727 Oldham Lane, Abilene, TX 79601
Hudson Smart	3758 Woodridge, Abilene, TX 79605
Lee Underwood	<u>3447 South 12th</u> , Abilene, TX 79605

ARTICLE X

The names and street addresses of the incorporators are:

<u>NAME</u>	<u>ADDRESS</u>
William J. Teague	1274 Kingsbury, Abilene, TX 79601
Jesse C. Fletcher	69 Tamarisk Circle, Abilene, TX 79608
Thomas K. Kim	1429 Tanglewood, Abilene, TX 79605

ARTICLE XI

On March 8, 1984 the governing body of the City duly adopted an ordinance ordering the creation of the Corporation, approving the form of these Articles of Incorporation, and authorizing the Corporation to act on its behalf and as its duly constituted authority and instrumentality to further the public purposes provided in the Act, in the ordinance, and in these Articles of Incorporation.

ARTICLE XII

These Articles of Incorporation may at any time and from time to time be amended by either of the following methods: (1) the members of the board of directors of the Corporation may file with the governing body of the City a written application seeking permission to amend these Articles of Incorporation, specifying in such application the amendment proposed to be made, and if the governing body finds and determines that it is advisable that the proposed amendment be made and approves the form and substance of the amendment and authorizes the same to be made, then the board of directors of the Corporation may amend these Articles of Incorporation by adopting such amendment and delivering articles of amendment to the Secretary of State; or (2) the governing body of the City may, in its sole discretion, and at any time, adopt an amendment to these Articles of Incorporation and direct the board of directors to amend the same whereupon the board of directors shall amend the same by filing articles of amendment with the Secretary of State.

ARTICLE XIII

The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses, bonds, or other obligations shall ever inure to the benefit of any individual, firm, or corporation, except that in the event sufficient provision has been made for the

full payment of expenses, bonds, and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate 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 XIV

(a) In addition to the power to amend these Articles of Incorporation, as provided elsewhere herein, the governing body of the City may, in its sole discretion, and at any time, alter or change the structure, organization, programs, or activities of the Corporation or terminate and dissolve the Corporation, subject only to any limitations provided by the respective constitutions and laws of the State of Texas or of the United States prohibiting the impairment of contracts entered into by the Corporation.

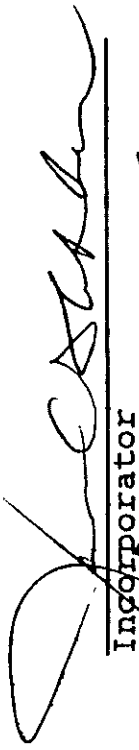
(b) If the board of directors shall determine that the purposes for which the corporation was formed have been substantially accomplished and that all expenses, bonds, and other obligations theretofore issued or incurred by the Corporation have been fully paid or payment provided for, the members of the board of directors shall, upon receipt of the approval of the governing body of the City, thereupon dissolve the Corporation in the manner provided by law subject to the same limitations provided in paragraph (a) of this Article XIV pertaining to dissolution directed by the City.

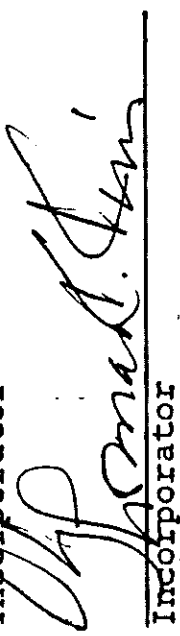
(c) If the Corporation ever should be dissolved, whether instituted by the governing body of the City or by the board of directors, all interests in any funds or property of any kind, real, personal, or mixed, shall be transferred and delivered to the City, after satisfaction has been made of all debts and claims against the Corporation.

(d) The initial bylaws of the Corporation and all amendments thereto, substitutes therefor, and repeals thereof shall be subject to the approval of the governing body of the City.

IN WITNESS WHEREOF, we have hereunto set our hands this
21st day of March, 1984


Incorporator

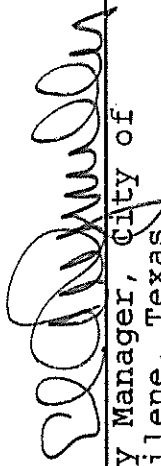

Incorporator


Incorporator

CITY MANAGER'S CERTIFICATE

THE UNDERSIGNED, City Manager of the City of Abilene, Texas, hereby certifies that pursuant to the specific provisions of Section 53.35(b), Texas Education Code, as amended, the referenced Corporation was ordered created by the City Council, the governing body, of said City on the date stated in Article XI of the above foregoing Articles of Incorporation pursuant to the ordinance therein described, that said Articles of Incorporation are those which were approved by said ordinance, and that a true and correct copy of said ordinance is on file among the permanent records of said City Council and City.

TO CERTIFY WHICH, witness my hand and the seal of said City the _____



City Manager, City of
Abilene, Texas

(SEAL)

STATE OF TEXAS

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COUNTY OF TAYLOR

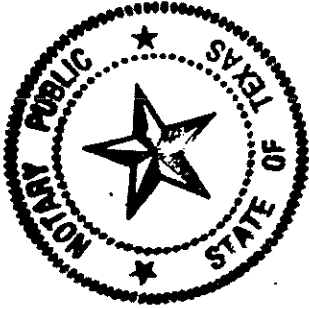
I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on the 23rd day of March, 1984, personally appeared before me William J. Teague who, being by me first duly sworn, declared that he is the person who signed the foregoing document as an incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

Jereleene Fulked
Notary Public, State of Texas

My Commission Expires: 9-30-84

[SEAL]



STATE OF TEXAS

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COUNTY OF TAYLOR

I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on the 23rd day of March, 1984, personally appeared before me Jesse C. Fletcher who, being by me first duly sworn, declared that he is the person who signed the foregoing document as an incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

Jesslene Fubler
Notary Public, State of Texas

My Commission Expires: 9-30-84

[SEAL]



STATE OF TEXAS

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COUNTY OF TAYLOR

I, the undersigned, a Notary Public of the State of Texas, do hereby certify that on the 23rd day of March, 1984, personally appeared before me Thomas K. Kim who, being by me first duly sworn, declared that he is the person who signed the foregoing document as an incorporator and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

Jacqueline Fuller
Notary Public, State of Texas

My Commission Expires: 9-30-84

[SEAL]

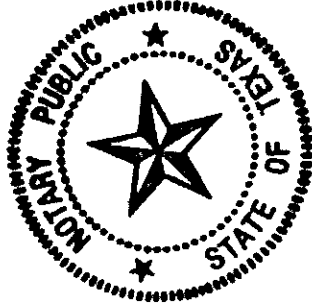


Exhibit "B"

Ordinance No. 29-1984

BYLAWS

OF

ABILENE HIGHER EDUCATION FACILITIES CORPORATION

ARTICLE I

POWERS AND PURPOSES

Section 1.1. Financing of Projects. In order to implement the purposes for which the Abilene Higher Education Facilities Corporation (the "Corporation") was formed, as set forth in the Articles of Incorporation, the Corporation may issue obligations to finance all or part of the cost of one or more projects pursuant to the provisions of the Section 53.35(b), Texas Education Code, as amended (the "Act").

Section 1.2. Use of Obligation Proceeds. The proceeds of any notes, bonds, or other obligations of the Corporation shall be used solely for secular purposes.

Section 1.3. Approval by the City of Issuance of Notes, Bonds and Other Obligations. The Corporation will only issue its notes, bonds and other obligations after obtaining the approval of the City of Abilene, Texas ("City") to the issuance of such bonds, notes or other obligations.

(a) At least thirty (30) days prior to the issuance of the bonds, notes or other obligations, the Corporation shall file with the City a full and complete description of the educational or housing facilities or facilities which are incidental, subordinate or related thereto or appropriate in connection therewith, the cost of which is to be paid in whole or in part from the proceeds of such bonds, notes or other obligations of such Corporation, together with a complete explanation of the project costs and the necessity for such proposed facilities and a full and complete description of the bonds, notes or other obligations proposed to be issued in connection with the corporate financing including the sources of revenues from which payments of principal and interest will be made, and in addition those copies of the instruments that may be used in such financing by the Corporation.

(b) The Corporation will only issue revenue bonds to finance facilities located within the corporate limits of the City.

(d) Neither the faith and credit nor the taxing powers of the City shall be pledged for the payment of principal and redemption premium, if any, on such bonds, notes or other obligations of the Corporation.

Section 1.4. Books and Records; Approval of Programs and Financing Statements. The Corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its board and directors (the "Board of Directors") and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any director or his agent or attorney for any proper purpose at any reasonable time; and at all times the governing body of the City will have access to the books and records of the Corporation. The governing body of the City shall be entitled to review and to revise the financial affairs, programs, and activities of the Corporation at any time and from time to time, and the City shall have all other rights reserved to it in the Articles of Incorporation of the Corporation.

Section 1.5. Nonprofit Corporation. The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses, bonds, or other obligations shall ever inure to the benefit of any individual, firm, or corporation, except that in the event sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City.

Section 1.6. Effect of Articles of Incorporation and Ordinance. The affairs of the Corporation shall at all times be conducted in a manner subject to and in compliance with the provisions and requirements of the Articles of Incorporation of the Corporation and the Ordinance of the City ordering its creation.

Section 1.7. Servicing and Closing Fees. The applicant for any financial assistance by the Corporation shall pay a minimum servicing fee of \$1,000, payable at the time of the filing of any application. Additionally, upon the closing of any financing by the Corporation, the applicant shall pay a closing fee calculated in accordance with the following schedule:

\$1,000 for an issue of \$2.5 million or less
\$2,000 for an issue greater than \$2.5 million but not
more than \$5 million
\$4,000 for an issue greater than \$5 million but not
more than \$7.5 million
\$6,000 for an issue greater than \$7.5 million

ARTICLE II

BOARD OF DIRECTORS

Section 2.1. Powers, Number, and Term of Office. The property and affairs of the Corporation shall be managed and controlled by the Board of Directors, and subject to the restrictions imposed by law, the Articles of Incorporation, and these Bylaws, the Board of Directors shall exercise all of the powers of the Corporation.

The Board of Directors shall consist of not less than seven nor more than eleven directors, each of whom shall be appointed by the governing body of the City.

The directors constituting the first Board of Directors shall be those directors named in the Articles of Incorporation, each of whom, as well as any subsequent directors, shall serve for a term of two years or until his or her successor is appointed by the governing body of the City. No officer or employee of the City is eligible for appointment as a director.

Any director may be removed from office at any time, with or without cause, by written ordinance of the City. All vacancies, from whatever cause, shall be filled by the governing body of the City.

Section 2.2. Meetings of Directors. The Board of Directors may hold its meetings at any place which the Board of Directors may from time to time designate; provided that, in the absence of any such designation by the Board of Directors, the meetings shall be held at the principal offices of the City.

Section 2.3. Regular Meetings. Regular meetings of the Board of Directors shall be held without necessity of notice at such times and places as shall be designated, from time to time, by resolution of the Board of Directors, a copy of which shall be given to the City Manager of the City.

Section 2.4. Special Meetings. Special Meetings of the Board of Directors shall be held whenever called by the president, by the secretary, by a majority of the directors

at the time in office or upon advice of or request by the governing body of the City. At least three (3) days prior to any meeting, the Corporation shall notify the City Manager of the City that such meeting is to be held and the purposes thereof. It is provided, however, that with the approval of the City Manager, a meeting may be held without such notice.

The Corporation shall give notice to each director of each Special Meeting in person, or by mail, telephone, or telegraph, at least two hours before the meeting. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a Special Meeting. At any meeting at which every director shall be present, the City Manager having been notified or waived notice as herein required and permitted, even though without any notice to the directors, any matter pertaining to the purpose of the Corporation may be considered and acted upon.

Section 2.5. Quorum. A majority of the directors fixed by these Bylaws shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board of Directors, unless the act of a greater number is required by law.

Section 2.6. Conduct of Business. At the meetings of the Board of Directors, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board of Directors may determine.

At all meetings of the Board of Directors, the president shall preside, and in the absence of the president, the vice president shall exercise the powers of the president.

The secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, but in the absence of the secretary, the presiding officer, subject to the first paragraph of Section 3.1, may appoint any person to act as secretary of the meeting.

Section 2.7. Executive Committee. The Board of Directors, by resolution passed by a majority of the directors in office, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board of Directors in the management of the Corporation, except where action of the Board of Directors is specified by law or by the Articles of Incorporation. The executive committee shall

act in the manner provided in such resolution. The executive committee so designated shall keep regular minutes of the transactions of its meetings, shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall file such minutes with the Board of Directors from time to time.

Section 2.8. Compensation of Directors. Directors as such shall not receive any salary or compensation for their services, except that they may be reimbursed for their actual expenses incurred in performing such services.

ARTICLE III

OFFICERS

Section 3.1. Titles and Term of Office. The officers of the Corporation shall be a president, a vice president, a secretary and a treasurer, and such other officers as the Board of Directors may from time to time elect or appoint. Only the offices of the secretary and treasurer may be combined. In the absence of the secretary, any officer other than the president may act in the secretary's place. Terms of the officers shall not exceed two years.

All officers shall be subject to removal from office, with or without cause, at any time by a vote of a majority of the entire Board of Directors.

A vacancy in the office of any officers shall be filled by a vote of a majority of the directors.

Section 3.2. Powers and Duties of the President. The president shall be the chief executive officer of the Corporation, and subject to the Board of Directors, the president shall be in general charge of the properties and affairs of the Corporation; he shall preside at all meetings of the Board of Directors; in furtherance of the purposes of the Corporation, the president may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments in the name of the Corporation.

Section 3.3. Vice President. The vice president shall have such powers and duties as may be assigned by the Board of Directors and shall exercise the powers of the president during that officer's absence or inability to act. Any action taken by the vice president in the performance of the duties of the president shall be conclusive evidence of the absence or inability of the president to act at the time such action was taken.

Section 3.4. Treasurer. The treasurer shall have custody of all the funds and securities of the Corporation which come into his hands. When necessary or proper, he may endorse, on behalf of the Corporation, for collection, checks, notes, and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board of Directors; he may sign all receipts and vouchers for payment made to the Corporation; either alone or jointly with such other officer as is designated by the Board of Directors; whenever required by the Board of Directors, he shall render a statement of his cash account; he shall enter or cause to be entered regularly in the books of the Corporation to be kept by him for that purpose full and accurate amounts of all monies received and paid out on account of the Corporation; he shall perform all acts incident to the position of treasurer subject to the control of the Board of Directors; he shall, if required by the Board of Directors, give such bond for the faithful discharge of his duties in such form as the Board of Directors may require.

Section 3.5. Secretary. The secretary shall keep the minutes of all meetings of the Board of Directors in the books provided for that purpose; he shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation, he may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he shall have charge of the corporate books, records, and securities of the Corporation except those of which the treasurer shall have custody and charge pursuant to the preceding Section 3.4, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection upon application at the office of the Corporation during business hours, and he shall in general perform all duties incident to the office of secretary subject to the control of the Board of Directors.

Section 3.6. Compensation. Officers as such shall not receive any salary or compensation for their services, except that they may be reimbursed for their actual expenses incurred in performing such services.

ARTICLE IV

PROVISIONS REGARDING ARTICLES OF INCORPORATION
AND BYLAWS

Section 4.1. Effective Date. These Bylaws shall become effective only upon the occurrence of the following events:

- (1) the approval of these Bylaws by the governing body of the City; and
- (2) the adoption of these Bylaws by the Board of Directors.

Section 4.2. Amendments to Articles of Incorporation and Bylaws. The Articles of Incorporation may at any time and from time to time be amended by the methods prescribed therein.

These Bylaws may be amended at any time and from time to time by majority vote of the Board of Directors with approval of the governing body of the City.

ARTICLE V

GENERAL PROVISIONS

Section 5.1. Principal Office. The principal office of the Corporation shall be located at 1600 Campus Court.

Section 5.2. Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors.

Section 5.3. Seal. The seal of the Corporation shall be as determined by the Board of Directors.

Section 5.4. Resignations. Any director or officer may resign at any time. Such resignations shall be made in writing directed to the Mayor of the City and the president of the Corporation. A resignation shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the Mayor and the president. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 5.5. Action Without a Meeting of Directors of Committees. Any action that may be taken at a meeting of the Board of Directors or of any committee may be taken without a meeting if a consent in writing, setting forth the

action to be taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be, and by the City Manager of the City. Such consent shall have the same force and effect as a unanimous vote of the Board of Directors.

Section 5.6. Special Counsel and Special Financial Advisor. The Corporation's special counsel, McCall, Parkhurst & Horton, Dallas, Texas ("Special Counsel") and the Corporation's Special Financial Advisor, First Southwest Company, Abilene, Texas ("Special Financial Advisor") will be the Special Counsel and the Special Financial Advisor for the Corporation and will serve in such position as long as their respective firms serve as bond counsel and financial advisor to the City. If the City changes either bond counsel or financial advisor the Corporation may change the Special Counsel or Special Financial Advisor after obtaining approval of the City. Such firms shall review financing documents on behalf of the City with respect to the protection of the City and its financial integrity and reputation.

-END-

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