

**AMENDED AND RESTATED  
BYLAWS OF  
THE MIDLAND DEVELOPMENT CORPORATION**

ARTICLE I  
PURPOSE AND DUTIES

Section 1. **Purpose.** The Corporation is incorporated for the purposes set forth in Article Four of its Articles of Incorporation, and in accordance with the Development Corporation Act of 1979, as amended; Tex. Loc. Gov't Code Ann. Chapter 501, (the “*Act*”), and other applicable laws.

Section 2. **Duties and Powers.** In the fulfillment of its corporate purpose, the Corporation shall be governed by the Act, and shall have all of the powers set forth and conferred in its Articles of Incorporation, in the Act, and in other applicable law, subject to the limitations prescribed therein and in these Bylaws and Articles of Incorporation. All actions and contracts undertaken by the Corporation shall be governmental functions.

ARTICLE II  
BOARD OF DIRECTORS

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

(a) The affairs of the Corporation shall be managed and controlled by a Board of Directors (the “*Board*”) and, subject to the restrictions imposed by law, by the Articles of Incorporation, and by these Bylaws. The Board shall exercise all of the powers of the Corporation.

(b) The Board shall consist of seven (7) directors, each of whom shall be appointed by the City Council (the “*Council*”) of the City of Midland, Texas (“*City*”).

(c) The directors shall be appointed and shall serve for three (3) years or until

his or her successor is appointed as hereinafter provided.

(d) No director shall serve more than two (2) consecutive full terms.

(e) Any director may be removed from office by the Council at will, by the affirmative vote of four (4) Council Members.

(f) The Mayor or his designee, the City Manager or his designee and the City Attorney or his designee may attend all meetings of the Board of Directors or Committees, including executive or public. These representatives shall not have the power to vote in the meetings they attend. Their attendance shall be for the purpose of ensuring that information about the meetings is accurately communicated to the City Council and to satisfy the City Council obligation to control the powers of the Corporation.

The Board of Directors and Council may appoint ex-officio members to serve on the Board of Directors until the next annual meeting. All ex-officio members must be approved by the City Council. The ex-officio members may attend all public meetings of the Board of Directors or Committees. The representatives shall not have the power to vote in the meetings they attend.

(g) Regular attendance of the Board meetings is required of all members. The following number of absences may constitute the need for replacement of a director: three (3) consecutive absences, or attendance reflecting absences constituting fifty percent (50%) of the meetings over a twelve (12) month period. In the event replacement is indicated, the director in question will be counseled by the Chairman and, subsequently, the Chairman shall submit in writing to the City Manager the fact that there may be a need to replace the director in question.

(h) Any vacancy occurring among the directors shall be filled by appointment by the Mayor with approval by the City Council.

Section 2. **Notice of Meetings.** The Board shall meet at least quarterly in the Midland City Hall Basement Conference Room or at such other places within the City as the Board may from time to time designate. All meetings of the Board shall provide notice thereof as provided and set forth in the Texas Open Meetings Act. A 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. The Chairman of the Board shall set regular meeting dates and times at the beginning of his/her term. The annual meeting of the Board of Directors shall be in January of each year.

Notice of any meeting of the Board shall be given to the public in accordance with the requirements of the Texas Open Meetings Act. The notice shall contain information regarding the particular time, date, and location of the meeting and the agenda to be considered. All meetings of the Board shall be conducted in accordance with the Texas Open Meetings Act.

All meetings of the Board shall be held in the City of Midland, Texas.

Section 3. **Quorum.** Directors must be present in order to vote at any meeting. A majority of the directors shall constitute a quorum for the conduct of the official business of the Corporation. The act of a majority of the directors present at a meeting at which a quorum is in attendance shall constitute the act of the Board and of the Corporation, unless the act of a greater number is required by law.

Section 4. **Conduct of Business.**

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

(b) At all meetings of the Board, the Chairman shall preside, and in the absence of the Chairman, the First Vice Chairman shall exercise the powers of the Chairman. In the absence of the Chairman and First Vice Chairman, the Second Vice Chairman shall exercise the powers of the Chairman. In the absence of the Chairman and First Vice Chairman, and if the Board has not elected officers for the new calendar year then the most senior director present shall exercise the powers of the Chairman.

(c) The Secretary or Assistant Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as Secretary of the meeting.

Section 5. **Committees of the Board.** The Board may appoint advisory committees to provide advice and counsel to the Board. Such committees may not exercise any authority of the Board. Such committees may include ex officio members of the Board, individuals who are not members of the Board, and no more than three (3) directors.

Each member of a committee shall continue as such until his or her successor on the committee is appointed, unless the committee shall be sooner terminated or unless such member has ceased to serve on the Board of Directors or such member has been removed from such committee. Any committee member may be removed from committee membership by the Chairman, with Board approval, whenever in their

judgment the best interests of the Corporation would be served by such removal.

Section 6. **Board's Relationship with Administrative Departments of the City.**

Any request for services made to the administrative department of the City shall be made by the Board or its designee in writing to the City Manager. The City Manager may approve such request for assistance from the Board when he finds such requested services are within the budget parameters previously approved by the City Council. The City Manager must also find that the requested services are available within the administrative departments of the City and that the Board has agreed to reimburse the administrative department's budget for the costs of such services so provided. Any requests for legal assistance shall be made by the Board or its designee to the City Attorney. The City Attorney may provide such assistance when he finds such requested services are within the budget parameters previously approved by the City Council. The City Attorney must also find that the requested services are available within the Legal Department and the Board has agreed to reimburse the City for the cost of providing the legal services.

Section 7. **Compensation of Directors.** Directors shall not receive any salary or compensation for their services as Directors. However, they shall be reimbursed for their actual and reasonable expenses incurred in the performance of their duties hereunder.

Section 8. **Bonds.** The Board of Directors shall give an official bond in the sum of not less than One Hundred Thousand Dollars (\$100,000.00). The bonds referred to in this Section shall be considered for the faithful accounting of all monies and things of value coming into the hands of such directors. The bonds shall be paid by the Corporation. A copy of each bond shall be filed with the City Secretary.

ARTICLE III  
OFFICERS

Section 1. **Titles and Term of Office.**

(a) The officers of the Corporation shall be a Chairman, a First Vice Chairman, a Second Vice Chairman, a Secretary, a Treasurer, an Executive Director, and such other officers as the Board shall elect or appoint at each annual meeting of the corporation. One person may hold more than one office, except that the Chairman shall not hold the office of Secretary. Terms of office for each officer other than the Executive Director shall be for one (1) year with the right of an officer to be re-appointed or re-elected.

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

(c) A vacancy in the office of any officer other than Chairman shall be filled by a vote of a majority of the Board of Directors. A vacancy in the office of Chairman shall be filled by election by a majority vote of the Board of Directors with the advice and counsel of the Mayor and the Midland City Council.

Section 2. **Powers and Duties of the Chairman.** The Chairman shall be the chief executive officer of the Corporation, and, subject to the paramount authority of the Board. The Chairman shall be in general charge of the properties and affairs of the Corporation, shall preside at all meetings of the Board, and may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

Section 3. **First Vice Chairman.** The First Vice Chairman shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the

Chairman during that officer's absence or inability to act. Any action taken by the First Vice Chairman in the performance of the duties of the Chairman shall be conclusive evidence of the absence or inability to act of the Chairman at the time such action was taken.

Section 4. **Second Vice Chairman.** The Second Vice Chairman shall have such powers and duties as may be prescribed by the Board and shall exercise the powers of the First Vice Chairman during that officer's absence or inability to act. Any action taken by the Second Vice Chairman in the performance of the duties of the Chairman or First Vice President shall be conclusive evidence of the absence or inability to act of the Chairman or First Vice President at the time such action was taken.

Section 5. **Treasurer.** The Treasurer and Assistant Treasurer shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation in accordance with these Bylaws. When necessary or proper, the Treasurer may endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes and other obligations in or drawn upon such bank or banks or depositories as shall be designated by the Board consistent with these Bylaws.

The Board may appoint the City Treasurer as an Assistant Treasurer, who shall have all the powers and duties as may be prescribed by the Board and shall be able to exercise all of the powers of the Treasurer. The City Treasurer acting as Assistant Treasurer shall see to the entry in the books of the Corporation full and accurate accounts of all monies received and paid out on account of the Corporation. The Assistant Treasurer shall, at the expense of the Corporation, give such bond for the faithful discharge of his duties in such form and amount as the Board or the Council may require.

Section 6. **Secretary**. The Secretary shall keep the minutes of all meetings of the Board in books provided for that purpose, shall give and serve all notices, may sign with the Chairman 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, shall have charge of the corporate books, records, documents and instruments, except the books of account and financial records and securities, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to public inspection upon application at the office of the Corporation during business hours, and shall in general perform all duties incident to the office of Secretary subject to the control of the Board.

The Board may appoint an Assistant Secretary, who shall have all the powers and duties as may be prescribed by the Board and shall be able to exercise all of the powers of the secretary.

Section 7. **Executive Director**. The Executive Director shall be a compensated employee of the Corporation. The Executive Director shall be the Chief Operating Officer of the Corporation, responsible for the daily operations and the implementation of Board policies. The Executive Director shall perform the duties and functions prescribed by the Board. The Executive Director shall have the responsibility of overseeing and managing the employees of the Corporation; provided, however, that the Board shall have the responsibility for the employment and termination of the employees of the Corporation and all employees shall serve at the pleasure of the Board.

Section 8. **Compensation**. Officers that serve as directors shall not receive any salary or compensation for their services, except that they shall be reimbursed for their



actual expenses incurred in the performance of their duties hereunder. Officers that do not serve as directors may be compensated as directed by the Corporation.

Section 9. **Other Employees.** The Corporation may employ full or part-time employees to carry out the programs of the Corporation. These employees shall perform those duties as are assigned to them by the Board. The employees may have titles such as Executive Director or other titles as might be appropriate to their job descriptions. The employees shall receive salaries and benefits as budgeted by the Board.

Section 10. **Contracts for Service.** The Corporation may contract for services in lieu of employing full-time employees. Any such contract shall be with a person or entity qualified, necessary and appropriate to perform designated work and services that will assist the Board in the performance of its duties; provided, however, no such contract shall divest the Board of its discretionary and policymaking functions in connection with the performance of its duties set forth herein. The determination of whether a contract for services under this Section requires Council approval shall be in accordance with the provisions of the Council resolution approving the then-current budget of the Corporation.

#### ARTICLE IV FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

##### Section 1. **General Development Plan.**

(a) The Board shall research, develop, prepare, and submit to the Council for its approval, an economic development plan for the City. The plan shall include both short-term and long-term goals for the economic development of the City.

(b) The Board shall review and update the plan each year following the annual meeting of the Corporation.

Section 2. **Annual Corporate Budget.** At least one hundred twenty (120) days prior to the commencement of each fiscal year of the Corporation, the Board shall recommend to the Council a proposed budget of expected revenues and proposed expenditures for the ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the Council. The budget shall not be effective until the same has been approved by resolution of the Council.

The Board may make expenditures within the total budget amount approved by the Council so long as such expenditures do not increase (i) the total budget amount previously approved by the Council or (ii) any single fund or budget classification by more than ten percent (10%).

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

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

(b) At the direction of the Council, the books, records, accounts, and financial statements of the Corporation may be maintained for the Corporation by the accountant, staff and personnel of the City. In such event, the Corporation shall pay to the City reasonable compensation for such services only.

(c) The Corporation, or the City if the option described in Section 3(b) of this Article is selected, 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 Corporation and approved by the City Manager. Such audit shall be at the expense of the Corporation. The Corporation may, at its own expense, arrange for the independent, periodic audit of the appropriate books, records, accounts and financial

statements of any consultant(s) or contractor(s) doing business with the Corporation.

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

(a) All proceeds from the issuance of bonds, notes, or other debt instruments (“*Obligations*”) issued by the Corporation 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 Corporation shall be deposited, secured, and/or invested in the manner provided for the deposit, security, and/or investment of the public funds of the City. The Board shall designate the accounts and depositories to be created and designated for such purposes, and the methods of withdrawal of funds therefrom for use by and for the purposes of the Corporation upon the signature of its treasurer and such other persons as the Board shall designate. The investment of such funds and accounts shall be performed by the Department of Finance of the City. The Corporation shall pay reasonable compensation for such services to the City.

Section 5. **Expenditures of Corporate Money.**

(a) The monies of the Corporation, including sales and use taxes collected pursuant to the Act, monies derived from the repayment of loans, rents received from the lease or use of property, the proceeds from the investment of funds of the Corporation, the proceeds from the sale of property, and the proceeds derived from the sale of obligations, may be expended by the Corporation for any of the purposes authorized by the Act, subject to the following limitations:

- (i) Expenditures from the proceeds of obligations shall be identified and described in the orders, resolutions, indentures, or other

agreements submitted to and approved by the City Council prior to the sale and delivery of the Obligations to the purchasers thereof required by Section 6 of this Article;

- (ii) Expenditures that may be made from a fund created with the proceeds of Obligations, and expenditures of monies derived from sources other than the proceeds of obligations may be used for the purposes of financing or otherwise providing one or more “Projects,” as defined in the Act. The specific expenditures shall be described in a resolution or order of the Board and shall be made only after the approval thereof by the City Council;
- (iii) No bonds may be issued by the Corporation and no project may be financed with bond proceeds or other revenues of the Corporation unless such bonds or projects are first approved by the Council; and
- (iv) All other proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required by Section 2 of this Article.

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

Section 7. **Uncommitted and Unexpended Funds.** Any uncommitted or unexpended funds remaining at the end of a fiscal year shall be retained by the

Corporation and considered a part of the corporation's fund balance. Such funds may be expended by the Corporation in the future for any purpose allowed under these Bylaws and the laws governing the Corporation.

ARTICLE V  
MISCELLANEOUS PROVISIONS

Section 1. **Principal Office.**

(a) The principal office and the registered office of the Corporation shall be the registered office of the Corporation specified in the Articles of Incorporation.

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

Section 2. **Fiscal Year.** The fiscal year of the Corporation shall be the same as the fiscal year of the City.

Section 3. **Seal.** The Corporation shall not have a seal.

Section 4. **Resignations.** Any director or officer may resign at any time. Such resignation shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the Chairman or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 5. **Approval or Advice and Consent of the Council.** To the extent that these Bylaws refer to any approval by the City or refer to advice and consent by the Council, such advice and consent shall be evidenced by a certified copy of a resolution, order or motion duly adopted by the Council.

Section 6. **Services of City Staff and Officers.** Subject to the paramount authority of the City Council under the Charter of the City, the Corporation shall have the

right to utilize the services of the City Manager, City Attorney, the City Secretary, and the staff and employees of the Finance Department of the City, provided that (i) the Corporation shall pay reasonable compensation to the City for such services and (ii) the performance of such services does not materially interfere with the other duties of such personnel of the City.

Section 7. **Indemnification of Directors, Officers and Employees.**

(a) As provided in the Act and in the Articles of Incorporation, the Corporation is, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practices and Remedies Code), a governmental unit and its actions are governmental functions.

(b) The Corporation shall indemnify each director, its officers, and its employees, each member of the Council, 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 Corporation.

ARTICLE VI  
EFFECTIVE DATE, AMENDMENTS

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

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

Section 2. **Amendments to Articles of Incorporation and Bylaws.** The Articles of Incorporation of the Corporation and these Bylaws maybe amended only in the manner provided in the Articles of Incorporation and the Act.

ARTICLE VII  
DISSOLUTION

On petition of ten percent (10%) or more of the registered voters of the City of Midland requesting an election on the dissolution of the Corporation, the City Council shall order an election on the issue. The election must be conducted according to the applicable provisions of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition:

“Dissolution of the Midland Development Corporation.” If a majority of voters voting on the issue approve the dissolution, the Corporation 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, dispose of its assets and apply the proceeds to satisfy these obligations. When the last of the obligations is satisfied, any remaining assets of the Corporation shall be transferred to the City, and the Corporation will be dissolved.

The City Council may call an election at any time to allow the citizens to decide whether to dissolve the Corporation and stop the collection of the sales and use tax.

ARTICLE VIII  
RECAPTURE OF INCENTIVES PROVIDED

Each entity which is financially assisted in any manner by the Corporation shall provide to the Corporation such information as the number of jobs to be created or retained, the capital investment to be made in the City and Midland County, Texas (the “*County*”) and the time period in which the entity agrees to maintain that number of jobs and the capital investment in the City and County. The Corporation, before agreeing to provide any financial assistance to an entity, shall require the entity to execute a contract or agreement whereby the entity shall pay back to the Corporation all or part of the

financial assistance expended by the Corporation if the contract or agreement terms are not met.

ARTICLE IX  
SPECIFIC TERMS OF AGREEMENTS

An agreement made under these Bylaws between the Corporation and another entity shall:

- a. describe all proposed improvements on the property in question;
- b. list the number of jobs to be created or retained by the entity, if required;
- c. provide access to and authorize inspection of the property by municipal employees, employees of the Corporation and the Board of Directors to ensure compliance with the terms of the agreement;
- d. limit the uses of the property consistent with the general purpose of encouraging development or redevelopment;
- e. provide for recapturing all or part of any financial incentives as a result of the agreement if the recipient of the funds fails to comply with the terms of the agreement;
- f. contain each term agreed to by the recipient of the funds and the Corporation;
- g. require the recipient of the funds to certify annually to the Board of Directors that the recipient of the funds is in compliance with each applicable term of the agreement; and
- h. provide that the Corporation may cancel or modify the agreement if the recipient of the funds fails to comply with the agreement.