

By-Laws

Flatonia Economic Development Corporation

Initially adopted December 21, 2017
approved by City Council January 9, 2018

Amended April 23, 2020
approved by Council May 12, 2020

Amended May 21, 2020
Approved by Council June 9, 2020

RESOLUTION 2020.6.1

**A RESOLUTION OF THE CITY OF FLATONIA, TEXAS
APPROVING AN AMENDMENT TO THE BYLAWS OF
THE FLATONIA ECONOMIC DEVELOPMENT
CORPORATION, AN INSTRUMENT OF THE CITY OF
FLATONIA, TEXAS; AND CONTAINING OTHER
PROVISIONS RELATING TO THE SUBJECT.**

WHEREAS, the City Council of the City of Flatonia, Texas has previously approved the Bylaws of the Flatonia Economic Development Corporation on January 9, 2018 and amended on May 12, 2020; and

WHEREAS, the said approved Bylaws contain a provision in which Sarah Novo, City Manager for the City of Flatonia, was named the registered agent for service of process for the Flatonia Economic Development Corporation; and

WHEREAS, the Board of Directors has recommended that the City Council of the City of Flatonia, Texas approve an amendment to the Bylaws wherein the provision that the name of the current City Manager is named as the new registered agent for service of process is amended to show the title City Manager and strike the verbiage that all changes must also be reflected in the Certificate of Formation (the "Articles"); and

WHEREAS, the City Council of the City of Flatonia, Texas has determined that the adoption of the proposed amendment to the Bylaws of the Flatonia Economic Development Corporation should be approved.

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

SECTION 1. That the Bylaws of the Flatonia Economic Development Corporation, as amended, in the form attached hereto as Exhibit "A," be and they are hereby approved.

SECTION 2. That the amended Bylaws of the Flatonia Economic Development Corporation approved hereby shall govern the transaction of business by the Board of Directors of the Flatonia Economic Development Corporation.

SECTION 3. That the Bylaws of the Flatonia Economic Development Corporation, as amended, are effective immediately upon passage of this Resolution.

SECTION 4. That the City Council has found and determined that the meeting at which this resolution is considered is open to the public and that notice thereof was given in accordance with the provisions of the Texas Open Meetings Act.

PASSED AND APPROVED by the City Council of the City of Flatonia, Texas, on this the 9th day of June 2020.

CITY OF FLATONIA, TEXAS

By: 
Bryan Milson
Mayor

ATTEST:


Melissa Brunner, TRMC, CMC
City Secretary

APPROVED AS TO FORM AND LEGALITY:


Maria Angela Flores Beck
City Attorney

**BYLAWS
OF
FLATONIA ECONOMIC DEVELOPMENT CORPORATION**

These bylaws govern the affairs of the Flatonia Economic Development Corporation (the “Corporation”), a nonprofit corporation authorized by the Development Corporation Act of 1979 (the “Act”) and governed by Local Government Code, Chapter 501-Provisions Governing Development Corporations, and Chapter 505-Type B Corporations.

The Corporation was formed by Flatonia City Council Resolution 2017.8.2, adopted on August 08, 2017.

ARTICLE I. PURPOSE AND POWERS

Section 1.01 GENERAL PURPOSE

The Corporation shall be a non-profit Corporation as defined by the Internal Revenue Code of 1986, as amended, and the applicable regulations of the United States prescribed and promulgated thereunder. The Corporation is incorporated for the purposes set forth in the Certificate of Formation acting on behalf of the City of Flatonia, Texas (the "City") as its duly constituted authority and instrumentality in accordance with Texas Local Government Code, Title 12, Sections 501 and 505, Type B Corporations, formerly Section 4B of the Texas Development Corporation Act of 1979, (Tex. Rev. Civ. Stat., Ann., Art. 5190.6, § 4B, as amended), and all other applicable laws to which it is subject and from which it derives its powers.

The Corporation is organized for charitable purposes under section 501(c)(3) of the Internal Revenue Code for the further purposes of benefiting and accomplishing public purposes of, and to act on behalf of, the City by financing any project as described in Chapter 501 and 505 of the Act, including but not limited to projects such as land, land acquisition, building, equipment, facilities, expenditures, targeted infrastructure and improvements that are:

1. For the creation or retention of primary jobs and found by the board of directors of the Type B corporation to be required or suitable for the development, retention or expansion of manufacturing and industrial facilities, research and development facilities, military facilities, including closed or realigned military bases, transportation facilities, including airports, hangars, rail ports, rail switching facilities, maintenance and repair facilities, cargo facilities and related infrastructure located on or adjacent to an airport or rail port facility, marine ports, inland ports, mass commuting facilities and parking facilities, sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for furnishing water to the public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, primary job training facilities for use by institutions of higher education and regional or national corporate headquarters facilities,

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2. Found by the board of directors of the Type B corporation to be required or suitable for job training offered through a business enterprise that has committed in writing to create new jobs that pay wages that are of at least equal to the prevailing wage for the applicable occupation in the local labor market area or to increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local market area,
3. Found by the board of directors of the Type B corporation to be required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment tourist, convention and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and any improvements that enhance any of the items described herein,
4. Found by the board of directors of the Type B corporation to be required or suitable projects for the promotion of development and expansion of affordable housing,
5. Found by the board of directors of the Type B corporation to promote or develop new or expanded business enterprises that create or retain primary jobs, including projects to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements and any improvements or facilities related to such projects and any other project the board of directors of the Type B corporation, in its discretion, determines promotes or develops new or expanded business enterprises that create or retain primary jobs, or
6. Found by the board of directors of the Type B corporation to promote new or expanded business development.

All proposals shall be submitted to the president for general and financial review prior to consideration by the Board.

Section 1.02 POWERS

The Corporation has all the powers, both express and implied, granted to corporations governed by the Act and by Local Government Code Chapters 501 and 505, as well as powers conferred by these bylaws so long as the bylaws do not conflict with Texas State statutes. The Board may exercise all powers of the Corporation and do all lawful acts and things that are not prohibited by law, or the election held on May 6, 2017, or these bylaws including, but not limited to the following:

1. Develop policies and operating procedures that do not conflict with any City policy.
2. Undertake actions and Projects which are determined by the Board to lead to the creation or retention of primary jobs and/or provide significant capital investment and which benefit the community of Flatonia.
3. Develop long-range goals and programs for the Corporation.
4. Appoint standing committees as follows:

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- a. Finance Committee - Prepares the EDC budget for the Board, prioritizes Projects for the Board with regards to costs vs. budget, coordinates with the Projects Committee funding sources for Projects (grants, loans, etc.). Shall meet quarterly (at a minimum) or more often as required by the committee chair.
- b. Recruitment Committee - Organized to recruit business to Flatonia that will generate jobs and sales tax revenue for the City. Shall meet quarterly (at a minimum) or more often as required by the committee chair.
- c. Nominations Committee – Shall meet annually to propose a list of candidates for Board membership, officer nominations for the Board and answer nomination questions to City Council. Shall meet annually in May of each year to begin the nomination process and see it through to approval prior to the start of the new fiscal year. The committee may also meet at the discretion of the Board President to submit nominations for vacancies from either resignation of council member changes that affect Board membership.
- d. Projects Committee – Drafts, organizes, prioritizes and coordinates with the Finance Committee the list of projects for Board consideration that are allowed by law. Shall meet quarterly (at a minimum) or more often as required by the committee chair.

5. Appoint Ad – Hoc Committees as follows:

Ad-Hoc committees shall be approved by the Board, are intended for the non-regular business of the Corporation, shall be short-term (less than four months for the task from start to finish), and shall not supersede the authority of any standing committee or the powers of the Board.

- a. Bylaws - Reviews, researches, writes and coordinates with the Flatonia City Attorney proposed bylaws changes to the Board, and subsequent City Council approval.
- b. Other Committees as approved by the Board.

ARTICLE II. OFFICES

Section 2.01 LOCATION, REGISTERED OFFICE AND REGISTERED AGENT

The registered office and mailing address of the Flatonia Economic Development Corporation (the "Corporation") is located at 125 E. South Main Street, PO Box 329, Flatonia, Texas 78941. Such address shall also serve as the principal office of the Corporation and Board of Directors (the "Board"). The Corporation shall maintain their office in the State of Texas.

The Registered Agent for the Corporation shall be City Manager, Flatonia, Texas, provided that the Board from time to time, may change the registered agent and/or the address of the registered office, in accordance with state law and subject to City Council approval, provided that such change is appropriately reflected in these bylaws.

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ARTICLE III. MEMBERS

Section 3.01 MEMBERS

The Corporation shall have no members.

ARTICLE IV. DIRECTORS

Section 4.01 NUMBER, APPOINTMENT, AND TERM OF OFFICE

The business affairs of the Corporation shall be managed by a Board of seven (7) Directors, two of which shall be Flatonia City Council members. Five (5) Directors shall be non-City employees. Two additional members of the Board shall be the City Manager and City Secretary in an ex-officio capacity with no voting privileges.

Directors shall be appointed by the City Council and serve at the pleasure of the City Council for staggered terms of two years, except as provided in the following. To initially establish staggering of terms, the City Council shall determine the terms of the initial Board. City Council members serving as Directors should, to the fullest extent possible, have Director terms match the respective terms as a City Council member. City Council member serving as a Director shall serve a term of two years or until the expiration of their council term whichever is earlier. Other Directors appointed by the City Council shall be staggered to establish an overall Board composition that has no more than four Directors rotate normally at the conclusion of the term. Unless otherwise specified, the initial Board shall begin on October 1, 2017. A Director completing a term, if qualified, may be reappointed at the discretion of the City Council. Notwithstanding any provisions herein to the contrary, a Director shall hold office until his/her successor shall have been appointed and qualified.

Each Director shall be a resident of the City of Flatonia, be a resident of Fayette County, or reside at a place that is within ten (10) miles of the City of Flatonia's boundaries and is in a county bordering Fayette County. Any Director may be removed from the office by the City Council at will.

Section 4.02 VACANCIES

In case of a vacancy on the Board, the City Council shall appoint a successor to serve the remainder of the unexpired term. Any Director or officer may at any time resign. Resignations shall be made in writing to the Board President then forwarded to the City Council and shall take effect at the time specified in the resignation, or, if no time be specified, at the time of its receipt by the president of the Board. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

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Section 4.03 BONDS

Board members shall be bonded in the sum of not less than \$25,000 each. The bonds referred 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 procured from a regularly accredited surety company authorized to do business in the State of Texas. The premiums shall be paid by the Corporation. A copy of each director's bond shall be maintained with the City Secretary.

Section 4.04 REGULAR MEETING; PLACE OF MEETING

The Board shall meet on a regular basis, at a specified time, day, and location as approved annually by the Board. Scheduled meeting times will be properly posted for public notification for regular and special called meetings as necessary. The president of the Board may cancel the meeting if there is no business to be conducted.

Section 4.05 SPECIAL MEETINGS

Special meetings of the Board shall be held whenever called by the Board president or upon written request to the secretary of the Board by two Directors.

Section 4.06 NOTICE OF MEETINGS

The secretary shall cause notice of the time and place of holding each meeting of the Board to be given to each Director. The notice may be in writing, in person, in person by telephone, or any electronic means. Notice of each meeting shall also be given to the public in accordance with the provisions of the Texas Open Meetings Act, Chapter 551, Government Code, as amended.

Section 4.07 QUORUM

A majority of the Directors of the Board including vacancies (a total of four Directors) shall constitute a quorum for the transaction of business. A supermajority of the Directors of the Board shall be defined as a majority plus one (a total of five Directors). If there is an insufficient number of Directors present to constitute a quorum, the presiding officer shall not conduct the meeting. Workshop meetings shall not require a quorum.

Section 4.08 ATTENDANCE

Regular attendance of the Board meetings is required of all Directors, and the attendance record of each Director shall be submitted to the Council prior to any reappointment to the Board. The following number of absences may constitute the need for replacement of a Director: three (3) consecutive absences from regularly scheduled meetings, or attendance reflecting absences constituting 50% of the meetings over a 12-month period. In the event replacement is indicated, the President shall give written notice of such fact to the Director and the City Council.

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Section 4.09 AGENDA AND ORDER OF BUSINESS

Any Director or the Board President may place an item on an agenda for future discussion. The order of business shall be determined by the president.

Section 4.10 PRESIDING OFFICER

At all meetings of the Board, the president, or in the president's absence, the vice president, or in the absence of both of these officers, a member of the Board selected by the Directors present shall preside. The secretary of the Corporation shall sit as secretary at all meetings of the Board, and in case of the secretary's absence, the presiding officer shall designate any Director to act as secretary.

Section 4.11 CONFLICT OF INTEREST

In the event that a Director is aware that he or she has a conflict of interest or potential conflict of interest, as defined by Appendix A of these bylaws or the state of Texas conflict of interest statutes with regard to any particular matter or vote coming before the Board, the Director shall bring the same to the attention of the Board and shall abstain from discussion and voting thereof.

If any Director believes that any other Director may have a conflict of interest on a matter before the Board, he/she is obligated to inform the Director of that opinion. It is then the responsibility of the Director with the possible conflict to resolve the situation.

Any questions of possible ethics violations shall be subject to the state conflict of interest statutes and be processed accordingly.

See Appendix A: Flaton Economic Development Corporation's Conflict of Interest Policy.

Section 4.12 BOARD'S RELATIONSHIP WITH THE CITY

In accordance with state law, the Board shall be responsible for the proper discharge of its duties assigned herein. The Board shall determine its policies and directives within the limitations of the duties herein imposed by applicable laws, the Certificate of Formation as amended, these bylaws, contracts entered into with the City, and budget and fiduciary responsibilities. Such policies and directives shall be approved by the City Council. Any request for services made to the departments of the City shall be made by the Board or its designee to the City Manager. The City Manager may approve such requests for assistance from the Board when he or she finds such requested services are available within the City and that the Board has agreed to reimburse the City for the cost of such services so provided.

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Section 4.13 CONTRACTS FOR SERVICES

The Corporation may, with approval of the City Council, 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 the duties herein set forth. An administrative services contract shall be executed between the Board and the City Council, including legal services provided by the Flatonia City Attorney referencing the Corporation's activities.

Contracts for services exceeding \$3,000.00 in value must be forwarded by the Board, attested by the City Secretary and approved by the City Council. The City Council does not have to approve service contracts approved by the Board, and within the authorities afforded the Board, for values less than \$3,000.00. The Corporation's annual budget and projected expenses stipulated in the budget by line items, once approved by the City Council, do not required additional City Council approval prior to execution unless the projected line item exceeds the budget estimate by \$3,000.00 or more.

Subject to the authority of the City Manager under the Code of Ordinances for the City of Flatonia, the Corporation shall have the right to utilize the services of the staff and employees of the City of Flatonia, the City Attorney (per contract), and other employees of the City of Flatonia, provided (i) that the City Manager approves of the utilization of such services, (ii) that the Corporation shall pay, as approved by the City Manager, reasonable compensation to the City of such services, and (iii) the performance of such services does not materially interfere or conflict with the other duties of such personnel of the City. Utilization of the aforesaid city staff, may at the recommendation of the City Attorney, be available by contract approved by the City Council.

Section 4.14 TRAINING REQUIREMENTS

All members of the Board, the General Manager, and the Finance Manager shall be required, at the expense of the Corporation, to comply with any training and educational requirements as required by state legislation, the Texas Governor's Office of Economic Development, or rulings of the Texas Attorney General and the Texas Comptroller, as amended from time to time.

If a Board member fails to comply with these requirements, the City Council shall consider the specific situation and may remove the member from the Board at its discretion.

Section 4.15 MANAGEMENT

The property and business of the Corporation shall be managed by the Board which may exercise all powers of the Corporation.

Adopted January 9, 2018
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ARTICLE V. OFFICERS

Section 5.01 COMPENSATION OF DIRECTORS AND OFFICERS

The Directors and Officers of the Board shall serve without compensation but may be reimbursed for reasonable and necessary expenses as authorized by the Board, in accordance with State Law.

Section 5.02 OFFICERS

The Corporation shall have the following Officers; President, Vice President, Secretary and Treasurer. At the discretion of the Board, the Secretary and Treasurer may be combined and assigned to one Officer. The Treasurer duties may also be assigned to the Financial Manager. The Board shall elect the Officers at each annual meeting, which shall normally occur in September of each year to allow for the establishment of the Officers prior to the start of the fiscal year. The Board may appoint such other officers as it deems necessary, who shall have the authority, and shall perform such duties as from time to time may be prescribed by the Board.

Section 5.03 POWERS AND DUTIES OF THE PRESIDENT

- a. The president shall preside at all meetings of the Board.
- b. The president shall have the right to vote on all matters coming before the Board.
- c. The president shall have the authority, upon notice to the members of the Board, to call special meeting of the Board when in their judgment such meeting is required.
- d. The president shall have the authority to appoint ad hoc committees which may address issues of a temporary nature of concern or which may have a temporary effect on the business of the Board.
- e. He or she shall have the power, with City Council approval, to sign and execute all contracts and instruments of conveyance in the name of the Corporation, to sign checks, drafts, notes and orders for the payment of money, and to appoint and discharge agents and employees, subject to the approval of the Board. He or she shall have general and active management of the business of the Corporation and shall perform all the duties usually incident to the office of president.

Section 5.04 POWERS AND DUTIES OF THE VICE PRESIDENT

In the absence of the President, or in the event of his or her inability to act, the Vice President shall perform the duties of the President. When so acting, the Vice President shall have all power of and be subject to all the same restrictions as upon the President. The Vice President shall also perform other duties as from time to time may be assigned to him or her by the President.

Adopted January 9, 2018
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Section 5.05 POWERS AND DUTIES OF THE SECRETARY

The secretary shall review and finalize the official minutes of the Board prior to approval by Board action, may sign with the President, or a Vice President, in the name of the Corporation, all contracts and instruments of conveyance authorized by the Board, and shall in general perform all the duties incident to the office of secretary, subject to the control of the Board. Official Records of the Corporation shall be maintained and filed in the office of the City Secretary of the City of Flatonia. The Board Secretary shall maintain a file of copies of all Corporation documents as required.

Section 5.06 POWERS AND DUTIES OF THE TREASURER

If the Treasurer's duties are not otherwise assigned to the Financial Manager, as an ex-officio member of the Board (see Article VIII), the Treasurer shall have charge and custody of and be responsible for all funds and securities of the Corporation. The Treasurer shall receive and give receipt for money due and payable to the Corporation from any source whatsoever, and shall deposit all such moneys in the name of the Corporation in such bank, trust corporation, and or/ other depositories as shall be specified in accordance with Article VIII of these bylaws. The Treasurer shall, in general, perform all the duties incident to that office, and such other duties as from time-to-time may be assigned by the President of the Board.

ARTICLE VI. CORPORATION SEAL

Section 6.01. - The Board may obtain a corporate seal which shall be a star with the words Flatonia Economic Development Corporation, but these bylaws shall not be construed to require the use of the corporate seal.

ARTICLE VII. FISCAL YEAR

Section 7.01 The fiscal year of the Corporation is October 1 through September 30.

ARTICLE VIII. FUNCTIONAL CORPORATE DUTIES AND REQUIREMENTS

Section 8.01 GENERAL MANAGER

The City Manager of the City of Flatonia, Texas, shall be the General Manager of the Corporation and be in charge of the properties and affairs of the Corporation, shall administer all work orders, requisitions for payment, purchase orders, contract administration/oversight, and other instruments or activities as prescribed by the Board in the name of the Corporation.

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The General Manager shall employ such full or part-time employees as are needed to carry out the programs of the Board. These employees shall be employees of the City or another city-authorized entity focused on economic development, and they shall perform those duties as are assigned to them. These employees shall be compensated as approved by the City Council in the City of Flatonia's annual budget. The General Manager shall have the authority, and subject to provisions of the Code of Ordinances of the City of Flatonia, to hire, fire, direct, and control the work of such employees.

The General Manager is an ex-officio member of the Board and requires City Council approval prior to Board membership.

Section 8.02 FINANCE MANAGER

The Finance Manager shall be the City Secretary. The Finance Manager shall be the "Treasurer" of the Corporation and shall have the responsibility to see to the handling, custody, and security of all funds and securities of the Corporation. When necessary or proper, the Finance Manager, or their designee, shall endorse and sign, on behalf of the Corporation, for collection or issuance, checks, notes and other obligations drawn upon such bank or banks or depositories as shall be designated by the City Council consistent with these bylaws. The Finance Manager shall see to the entry in the books of the Corporation of full and accurate accounts of all monies received and paid out of an account of the Corporation. The Finance Manager shall, at the expense of the Corporation, give such bond for the faithful discharge of the duties in such form and amount as the City Council shall require, by resolution. The Finance Manager shall also coordinate an annual audit of the Corporation's Financial Statements by an independent outside audit firm approved by the City Council. The Corporation's audit may be part of the City of Flatonia's annual audit.

The Finance Manager shall submit a report to the Board each month, in sufficient detail, of all checks or drafts issued on behalf of the Corporation for the previous month. The Finance Manager shall provide a quarterly financial report to the City Council concerning activities of the Corporation in a format consistent with other financial reports of the City.

The Finance Manager is an ex-officio member of the Board and requires City Council approval prior to Board membership.

Section 8.03 EX-OFFICIO MEMBERS

The City Council may appoint Ex-Officio members to the Board as it deems appropriate. These representatives shall have the right to take part in any discussion in open meetings but shall not have the power to vote in the meetings or the right to attend executive sessions, unless specifically invited to attend by the president.

The City Manager for the City of Flatonia, and the City Secretary are inaugural ex-officio members of the Corporation.

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Section 8.04 PARTICIPATION IN BOARD MEETINGS

The General Manager and Finance Manager shall have the right to take part in any discussion of the Board, Board committees or subcommittees thereof, including attendance in executive sessions (when invited by the president to the executive session), but shall not have the power to vote in any meetings attended.

Section 8.05 DUTIES OF THE BOARD

The Board shall expend, in accordance with State law and subject to City Council approval, the funds received by it for allowable expenditures approved within these bylaws. The Board shall make a semi-annual report to the City Council including, but not limited to the following:

- (1) A review of the accomplishments of the Board in the area of economic development; and
- (2) The activities of the Board for the budget year addressed in the annual financial report, together with any proposed change in the activity as it may relate to economic development.

The Board shall be accountable to the City Council for all activities undertaken by it or on its behalf, and shall report on all activities of the Board, whether discharged directly by the Board or by any person, firm, corporation, agency, association or other entity on behalf of the Board.

Section 8.06 ANNUAL CORPORATE BUDGET

At least thirty (30) days prior to September 1st, the Board shall prepare and adopt a proposed budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The fiscal year of the Corporation shall be the same as the fiscal year of the City of Flatonia. The budget shall be in such form as may be prescribed from time to time by the City Council or directed by the Corporation's Board of Directors. The budget proposed for adoption shall include the projected operating expenses, administrative expenses, debt servicing, cash reserves, contingency funds, and such other budgetary information as shall be required by the City Council for its approval and adoption. The budget shall be considered adopted upon formal approval by the City Council.

In establishing its budget and in responding to unanticipated projects during the year, the Board shall fairly and equally consider projects defined in Article I of these bylaws.

Each approved request from the Board for project funding must be made in the form of a resolution to formally expend and approve projects and accompanied by a specific determination of eligibility of the project for Type B funding under the Act.

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Section 8.07 FISCAL POLICY

The Corporation will adhere to the City's Fiscal & Budgetary Policy as amended annually to guide the overall financial condition and operations of the Corporation. In addition to these policies, the Corporation will:

- a. Balance the Corporation's funding capacity between the various types of opportunities described in this Article, with none of these categories receiving more than 50% of the total bonding capacity in any fiscal year of the Corporation. Exceptions to this rule may be approved by the Board by a supermajority vote of 5 members of the Board. Exceptions shall also be approved by the City Council.
- b. Per Chapter 501, Section 501.158 of the Act, the Corporation may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined in Chapter 501 and 505 of the Act unless the Corporation enters into a performance agreement with the business enterprise.
 - The Performance Agreement must provide a schedule of additional payroll of jobs to be created or retained and/or capital investment to be made as consideration made by the Corporation under the agreement.
 - The Performance Agreement, at a minimum, must specify the terms under which repayment must be made to the City if the business enterprise fails to meet the performance requirements as specified in the agreement.

Section 8.08 FINANCIAL BOOKS, RECORDS, AND AUDITS

The Finance Manager shall keep and properly maintain, in accordance with generally accepted accounting principles, complete financial books, records, accounts, and financial statements pertaining to its corporate funds, activities, and affairs.

The City shall cause the Corporation's financial 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 City Council. Such audit shall be at the expense of the Corporation.

The Board shall, no later than February 1st of each year, submit to the Texas Comptroller a financial report in the form required by the Comptroller, as required by the Act. The report shall contain:

- a. the corporation's economic development objectives,
- b. total revenues and expenditures for the preceding fiscal year,
- c. a breakdown of these expenditures and
- d. a list of the corporation's assets.

The City shall, at all times, have access to the books and records of the Corporation. The Corporation shall be subject to the Public Information Act (Chapter 552, Government Code).

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Section 8.09 DEBT, DEPOSIT AND INVESTMENT OF CORPORATE FUNDS

All proceeds from the issuance of bonds, notes or other debt instruments (the "Bonds") issued by the Corporation shall be deposited and invested as provided in the resolution, order, indenture, or other documents authorizing or relating to their execution or issuance and handled in accordance with the statute governing the Corporation, but no bonds shall be issued, including refunding bonds, by the Corporation without the approval of the City Council.

All 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, as authorized by the City Investment Policy (Code of Ordinances, Section 1.07.007, and the City of Flatonia Annual Audit-Notes to the Financial Statements). The Finance Manager shall designate the accounts and depositories to be created and designated for such purposes, and methods of withdrawal of funds for use by and for the purposes of the Corporation. The accounts, reconciliation, and 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 as prescribed in these bylaws.

Section 8.10 EXPENDITURES OF CORPORATE MONEY

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

1. Expenditures that may be made from a fund created from the proceeds of bonds, and expenditures of monies derived from sources other than the proceeds of bonds 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.
2. All other proposed expenditures shall be made in accordance with and shall be set forth in the annual budget required by these bylaws or in contracts meeting the requirements of the Act.
3. No bonds, including refunding bonds, shall be authorized or sold and delivered by the Corporation unless approved by the City Council.

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Section 8.11 CONTRACTS

As provided herein, the president and secretary, with approval of the City Council, shall enter into any contracts or other instruments which the Board has approved and authorized in the name and on behalf of the Corporation. Such authority may be confined to specific instances or defined in general terms. When appropriate, the Board may grant a specific or general power of attorney to carry out some action on behalf of the Board, provided, however, that no such power of attorney may be granted unless an appropriate resolution of the Board authorizes the same to be done. Once approved by the City Council, all Corporation contracts will then be signed by either the president or secretary.

ARTICLE IX. MISCELLANEOUS

Section 9.01 NOTICES AND WAIVERS

Whenever under the provisions of these bylaws notice is required to be given to any Director or officer, unless otherwise provided, the notice may be given personally, or it may be given in writing by depositing it in the post office or letter box in a postpaid envelope or postal card addressed to the Director or officer, at the address as it appears on the books of the Corporation, and the notice shall be deemed to be given at the time when it is mailed. Whenever any notice to Directors or officers is required to be given by law, or by these bylaws, a waiver in writing signed by the person or persons entitled to the notice, whether before or after the time stated shall be deemed the equivalent of notice. This paragraph does not eliminate the requirement to comply with the Open Meetings Act.

Section 9.02 APPROVAL OF THE CITY COUNCIL

To the extent these bylaws refer to any approval or other action to be taken by the City, that approval or action shall be evidenced by a certified copy of a resolution, ordinance, or motion duly adopted by the City Council.

Section 9.03 ORGANIZATIONAL CONTROL

The City Council at its sole discretion, and at any time, may alter or change the structure, organization or activities of the Corporation (including the termination of the Corporation), subject to any limitation on the impairment of contracts entered into by such Corporation. The foregoing notwithstanding, the City, at all times during which any indebtedness of the Corporation, the interest on which is exempt from federal income taxation, remains outstanding, will maintain a beneficial interest in the Corporation.

Section 9.04 INDEMNIFICATION OF DIRECTORS, OFFICERS AND EMPLOYEES

As provided in the Act and in the Certificate of Formation as restated and amended, 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.

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Amended May 12, 2020

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The Corporation shall indemnify each and every member of the Board, its officers and its employees, and each member of the City Council and each employee or representative of the City, to the fullest extent permitted by law against any and all liability or expense, including attorney's 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. This indemnity shall apply even if one or more of those to be indemnified was negligent or caused or contributed to cause any loss, claim, action or suit. Specifically, it is the intent of these bylaws and the Corporation to require the Corporation to indemnify those named for indemnification, even for the consequences of the negligence of those to be indemnified which caused or contributed to cause any liability.

The Corporation must purchase and maintain insurance on behalf of any Director, officer, employee, or agent of the Corporation, or on behalf of any person serving at the request of the Corporation as a Board member, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against any liability asserted against that person and incurred by that person in any such capacity or arising out of any such status with regard to the Corporation, whether or not the Corporation has the power to indemnify that person against liability for any of those acts.

ARTICLE X. PROVISIONS REGARDING BYLAWS

Section 10.01 These bylaws shall become effective only upon the occurrence of the following events:

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

These bylaws may be amended at any time and from time to time either by majority vote of the Directors then in office with the approval of the City Council or by the City Council itself, at its sole discretion.

These bylaws shall be liberally construed to effectuate their purposes. If any word, phrase, clause, sentence, paragraph, section or other part of these bylaws, or the application thereof to any person or circumstances, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these bylaws to any other person or circumstance shall not be affected thereby.

ARTICLE XI. DISSOLUTION OF CORPORATION

Section 11.01 The City Council is the sole authority with the power to dissolve the Corporation. In the event the Corporation is terminated and dissolved, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be

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distributed to the federal government, or to a state or the City of Flatonia as determined by the City Council, for a public purpose.

I hereby certify that the foregoing Bylaws are the true and correct bylaws of the Corporation as approved and adopted by the City Council on the 9th day of January 2018.

THE CITY OF FLATONIA

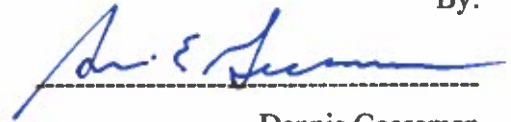
By:



Bryan Milson
Mayor

THE FLATONIA ECONOMIC DEVELOPMENT CORPORATION

By:



Dennis Geesaman
President

ATTEST:



Melissa Brunner, TRMC, CMC
City Secretary

Adopted January 9, 2018
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Appendix A:
Flatonia Economic Development Corporation Conflict of Interest Policy

Article I
Purpose

The purpose of the conflict of interest policy is to protect this tax-exempt organization's (Corporation) interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Corporation's Board of Directors (Board) or might result in a possible excess benefit transaction. This policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations.

Article II
Definitions

1. **Interested Person.**

Any director, principal officer, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined in "Financial Interest," is an interested person.

2. **Financial Interest.**

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

- a. An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement,
- b. A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement, or
- c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

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Article III Procedures

1. Duty to Disclose.

In connection with any actual or possible conflict of interest, an interested person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists.

After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

- a. An interested person may make a presentation at the governing board or committee meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.
- b. The Chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- c. After exercising due diligence, the governing board or committee shall determine whether the Corporation can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Corporation's best interest, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, it shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflict of Interest Policy

- a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

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Article IV
Records of Proceedings

The minutes of the governing board and all committees with board delegated powers shall contain:

1. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board's or committee's decision as to whether a conflict of interest in fact existed.
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

Article V
Compensation

1. A voting member of the governing board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.
2. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.
3. No voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

Article VI
Annual Statements

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

1. Has received a copy of the conflicts of interest policy,
2. Has read and understands the policy,
3. Has agreed to comply with the policy, and understands the Corporation is charitable and in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

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Article VII
Periodic Reviews

To ensure the Corporation operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall at a minimum, include the following subjects:

1. Whether compensation arrangements and benefits are reasonable, based on competent survey information, and the result of arm's length bargaining.
2. Whether partnerships, joint ventures, and arrangements with management organization conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

Article VIII
Use of Outside Experts

When conducting the periodic reviews as provided for in Article VII, the Corporation may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

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