# City of Hutto

## Agenda

## Hutto Economic Development Corp. Type A and Hutto Economic Development Corp.Type B Board of Directors Meeting Monday, August 1, 2022 at 6:30 PM City Council Chambers

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at huttotx.gov

1. **CALL SESSION TO ORDER**

2. **ROLL CALL**

   2.1. Mike Arismendez, Chairman
   Don Carlson, Vice Chairman
   Cheney Gamboa, Secretary
   Shawn Lucas, Treasurer
   Mike Snyder, Board Member
   Randal Clark, Board Member
   Erin Clancy, Board Member

3. **PLEDGE OF ALLEGIANCE**

4. **PUBLIC COMMENT**

   Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the Hutto Economic Development Corporation Type A and the Hutto Economic Development Corporation Type B on agenda issues and on agenda issues (i.e., Corporation policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4913 during business hours. Each person providing public comment will be limited to 3 minutes. (Note: The Texas Open Meetings Act, Texas Government Code, Chapter 551, prohibits governing bodies from a full discussion, debating, or considering subjects for which public notice has not been given on the agenda. Issues that cannot be referred to the Corporation Staff for action may be placed on the agenda of a future meeting.)

5. **CONSENT AGENDA**

   5.1. Consideration and possible action on approval of the June 13, 2022, June 22, 2022, and July 11, 2022 Economic Development Corporation Type A and the Hutto Economic Development Corporation Type B Board of Directors meeting minutes.

6. **AGENDA ITEMS**

   6.1. Discuss and consider action on Hutto Economic Development Corporation Type B Resolution No. R-2022-071, in support of Project E's request for a Chapter 380 sales tax incentive agreement with the City of Hutto, Texas.

6.2. Discuss and consider action on Hutto Economic Development Corporation, (Type A) Resolution No. R-2022-069, amending the Bylaws of the Hutto Economic Development Corporation (Type A).

6.3. Discuss and consider action on Hutto Economic Development Corporation, (Type B) Resolution No. R-2022-070, amending the Bylaws of the Hutto Economic Development Corporation (Type B).

6.4. Discuss standard workgroup updates by Board subcommittees.

## 7. EXECUTIVE SESSION

7.1. The Board will now recess the open session meeting and reconvene in executive session, pursuant to Texas Government Code Section 551.087 (economic development) Scout, Project EHQ, and Project D (retail), and Section 551.072 (Real Property), to deliberate and seek the advice of its legal counsel regarding Project Mark 4/Acropolis, Project E, Project R2D2, Project Megasite - Titan, update of offers to purchase land negotiations; the City of Hutto's request for the easement(s) on Corporate owned property.

7.2. Pursuant to Texas Government Code Section 551.071 (Consult with Attorney), deliberate and seek the advice of its legal counsel regarding an update on settlement negotiations in Hutto Economic Development Corporation Type B vs. BCL of Texas, Cause Number 22-0128-C425, In the 425th Judicial District Court of Williamson County, Texas, and meeting minutes.

## 8. ACTION RELATIVE TO EXECUTIVE SESSION

8.1. The Board may recall any item posted for Executive Session above for discussion and possible action.

8.2. Discuss and consider action to direct legal counsel to cooperate with and coordinate the necessary agreements in the area of the Megasite on corporate property and to authorize the Board Chair to execute any right of entry documents approved by General Counsel as to form and present any necessary possession and use agreements or easement agreements to the Board for final approval once finalized.

## 9. ADJOURNMENT

## 10. CERTIFICATION

THE CITY OF HUTTO INCORPORATED 1911

**Angela Walton**

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at City.Secretary@huttox.gov or call (512) 759-4033 for assistance.

**HUTTO ECONOMIC DEVELOPMENT CORPORATION**
**RESOLUTION NO. R-2022-069**

**A RESOLUTION OF THE HUTTO ECONOMIC DEVELOPMENT CORPORATION AMENDING THE BYLAWS OF THE HUTTO ECONOMIC DEVELOPMENT CORPORATION; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT.**

**WHEREAS,** pursuant to Texas Local Government Code Chapters 501, 502, and 504, the City of Hutto created the Hutto Economic Development Corporation (Type A) (the "Corporation"); and

**WHEREAS,** the Board of Directors of the Corporation (the "Board") is appointed by the City of Hutto City Council; and

**WHEREAS,** the Board has determined that it is in the best interest of the Corporation to amend the Corporation's Bylaws for more efficient operation of the Corporation; and

**WHEREAS,** the Board requests the City Council to consent to the proposed changes, as provided by law.

**NOW, THEREFORE, BE IT RESOLVED** by the Hutto Economic Development Corporation Board of Directors that:

1. The facts and recitations set forth above are hereby found to be true and correct and are adopted herein for all purposes.
2. The Board hereby adopts, subject to City Council approval, the Second Amended and Restated Bylaws of the Hutto Economic Development Corporation attached hereto as Exhibit "A" and incorporated herein for all purposes.
3. This Resolution shall be and is hereby cumulative of all other resolutions of the Corporation, and this Resolution shall not operate to amend, change, supplement or repeal any such other resolutions, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Resolution, in which event such conflicting provisions, if any, in such other resolutions are hereby repealed.
4. Should any portion or part of this Resolution be held for any reason invalid or unenforceable by a court of competent jurisdiction, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.

5. The Board hereby declares that written notice of the date, hour and place of the meeting at which this Resolution was adopted, was posted and that such meeting was open to the public as required by law at all times when this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

6. These Second Amended and Restated Bylaws of the Hutto Economic Development Corporation shall become effective upon the consent of the City Council of the City of Hutto, Texas.

**PASSED AND ADOPTED** by the Board of Directors of the Hutto Economic Development Corporation on this the 1st day of August, 2022.

APPROVED

______________________________
Mike Arismendez, Chairman

ATTEST:

______________________________
Cheney Gamboa, Secretary

**EXHIBIT "A"**

# SECOND AMENDED AND RESTATED BYLAWS OF THE HUTTO ECONOMIC DEVELOPMENT CORPORATION

**Effective August 4, 2022**

## Article I: Powers and Purposes.

**Section 1.1: Corporate Identity, Principal Office, Registered Office and Registered Agent.** The name of the corporation is the Hutto Economic Development Corporation (Type A) (the "Corporation"). The principal office of the Corporation shall be located at 500 W. Live Oak Street, Hutto, TX 78634. The Corporation may relocate such principal office and have such other offices as the Board shall determine necessary. In compliance with Sections 501.351 and 504.055 of the Development Corporation Act, the Corporation shall continuously maintain a registered office and registered agent. The registered agent must be a resident of Texas. The registered office must be located within the boundaries of the City of Hutto, Texas. The Corporation's registered office may, but is not required to be, the same as the Corporation's principal office.

**Section 1.2: Powers.** In order to implement the purposes for which the Corporation was formed as set forth in its Certificate of Formation, the Corporation shall have and shall exercise all powers and rights which are authorized or permitted by the Development Corporation Act, Subtitle C1, Title 12 of the Texas Local Government Code, as amended. The Corporation shall have and shall exercise all powers and rights of a nonprofit corporation authorized or permitted by the Texas Nonprofit Corporation Law, Chapter 1, 20 and 22, as applicable, of the Texas Business Organization Code, as amended, except to the extent such powers are in conflict or inconsistent with the Development Corporation Act. The Corporation shall have the power and authority to undertake any lawful action not inconsistent with the Development Corporation Act and the Nonprofit Corporation Law. The Corporation shall promote economic development benefitting the City of Hutto, Texas (the "City"), including without limitation the promotion of industrial, manufacturing, commercial, retail, parks and residential development, the encouragement of employment and the support of the public welfare, both within the City limits and the extraterritorial jurisdiction of the City. The powers of the Corporation shall include the authority to contract and be contracted; to purchase, lease, sell and mortgage real estate and to issue obligations for or otherwise finance all or part of the cost of one or more "Projects" as defined by the Development Corporation Act.

**Section 1.3: Annual Corporate Budget.** At least sixty (60) days prior to the commencement of each fiscal year of the Corporation, the Board shall adopt a proposed budget of anticipated revenues and proposed expenditures for the following fiscal year. The budget shall contain such classifications and shall be in such format as may be prescribed from time to time by the Board. Classifications of expenditures within the budget that are designated as routine

("R") (e.g., salaries, multi-year contractual obligations, debt service payments, and routine business expenses) are authorized for expenditure by the City Council when approving the budget in accordance with Texas Local Government Code Section 501.073(a). Classifications of expenditures within the budget that are designated as discretionary ("D") (e.g., allocations of unencumbered funds for use in future incentive, performance or funding agreements) are appropriated when approving the budget but any expenditure of such funds must be subsequently approved by the City Council in connection with the specifically identified use or expenditure in accordance with Section 501.073(a). The Corporation's fiscal year shall start on October 1 and end on September 30th of the following calendar year and may be changed or amended by action of the Board with approval by the City Council.

**Section 1.4: Books and Records: Review of Financial Statements**. The Corporation shall keep correct and complete books and records of all accounts and shall keep minutes of the proceedings of its Board. All books and records of the Corporation may be inspected by a Director, a Director's agent, an attorney representing the Corporation, a City Council member, the City Manager and the City Manager's designee, at a mutually reasonable time for the parties involved. The books, records, accounts and financial statements may be maintained for the Corporation by the staff of the City, subject to approval by the Board and City Council and the payment of reasonable compensation for such services pursuant to an agreement between the parties.

**Section 1.5: Powers in General.** The Corporation may exercise all powers granted under the Development Corporation Act and the Nonprofit Corporation Law consistent with the Corporation's Certificate of Formation, these Bylaws and applicable resolutions and ordinances of the City Council.

## ARTICLE II: Board of Directors.

**Section 2.1: Appointment, Powers. Number and Term.** The Board shall exercise all of the powers of the Corporation, subject to the restrictions imposed by law, the Certificate of Formation, and these Bylaws. In accordance with Section 504.051 of the Development Corporation Act, the Board shall consist of seven (7) Directors, each appointed by the City Council for a two (2) year term. At least three (3) Directors shall be persons who are not employees or officers of the City or members of the City Council. No more than two (2) of the seven (7) Directors may be City Council members. All Directors must be residents of the City.

Any Director, or all Directors, may be removed at any time by majority vote of the City Council, for cause or at will. Any vacancy occurring on the Board shall be filled by appointment by majority vote of the City Council. Those filling vacancies shall serve out the term of the seat they are filling. In the event any Director's term expires, such Director shall continue serving in the position until a replacement is appointed or removed by action of the City Council.

Any Director found to violate confidentiality provisions set forth in Article V of these Bylaws shall be ineligible to serve on the Board for five (5) subsequent years.

**Section 2.2: Meetings of the Directors in General.** The Board shall meet at least once each month and any Director may request that an item be placed on the agenda by providing same in writing to the Chairperson no later than ten (10) days prior to the date of the Board meeting. In accordance with section 504.054 of the Development Corporation Act, the Board shall conduct all meetings within the boundaries of the City of Hutto, Texas. In the absence of any particularized determination by the Board, all meetings shall be held at the principal office of the Corporation or at the City Council Chambers of the City. The Board shall conduct its meetings in accordance with all applicable law.

**Section 2.3: Regular Meetings.** In compliance with Section 501.068(a) of the Development Corporation Act, regular meetings of the Board shall be held on the second Monday of the month except in cases of observed holidays falling on the second Monday (e.g., Labor Day, etc.) and at Hutto City Hall unless otherwise noted and designated on the posted agenda. Notice of each regular meeting shall be given by email to each Director at least seventy-two (72) hours prior to each regular meeting. Public notice of each regular meeting shall be given in the manner prescribed by law.

**Section 2.4: Special Meetings.** In compliance with Section 501.068(b) of the Development Corporation Act, special meetings of the Board shall be held when called by the Chairperson or by the Secretary, when called during a properly noticed meeting by a majority of the Directors, upon advice of the Corporation's General Counsel or as requested by the City Council.

The Chairperson or the Chairperson's designee shall give or cause public notice to be given of each special meeting. Notice of each special meeting shall be given by email to each Director at least seventy-two (72) hours prior to each nonemergency special meeting and at least one (1) hour prior to each emergency special meeting. Public notice of each meeting shall be given in the manner prescribed by law. Except as otherwise provided by law or 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.

**Section 2.5: Quorum.** In compliance with Section 501.054 and Section 504.053 of the Development Corporation Act, a majority of the entire membership of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. In compliance with Section 501.070(b) of the Development Corporation Act, 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, unless the act of a greater number is required by law. Any Director may request a record vote on any matter to come before the Directors and that record vote will become a part of the minutes.

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

**Section 2.7:** **Compensation of Directors**. In accordance with Section 501.062(b) of the Development Corporation Act, Directors shall not receive any compensation for their services as Directors except that they may, upon request, be reimbursed for their actual expenses incurred in the performance of their official duties.

**Section 2.8:** **Advisory Board.** The Board may appoint an advisory board or boards to assist the Board and perform such other duties as the Board may from time to time assign to the advisory board. An advisory board shall be made up of no more than seven (7) individuals. At the time the Board creates an advisory board, the Board shall adopt rules and regulations regarding membership of the advisory board. The advisory board may make recommendations to the Board, but all final, official actions of the Corporation shall be exercised only by the Board.

**Section 2.9:** **Texas Open Meetings Act and Texas Public Information Act.**

In accordance with Section 501.072 of the Development Corporation Act, meetings of the Board are subject to the Texas Open Meetings Act, Texas Government Code Chapter 551, and the Corporation is subject to the Texas Public Information Act, Texas Government Code Chapter 552.

## Article III: Officers.

**Section 3.1:** **Titles and Terms of Officers.** In compliance with Sections 501.065 and 504.052 of the Development Corporation Act, the Officers of the Corporation shall be a President/Chairperson, a Vice President/Vice Chairperson, a Secretary, and a Treasurer. Officers may hold more than one office, except that the same person may not hold the offices of President and Secretary. Each Officer shall be appointed by a majority vote of the Directors and shall hold office for a term of two (2) years or until such Officer's successor is appointed. In June of each year, each Officer shall affirm the commitment to continue serving in office in to evidence the Officer's desire to continue in office.

No City Council member serving on the Board may also serve as an Officer of the Corporation nor have signature authority on behalf of the Corporation.

A vacancy in any office shall be filled by appointment by a majority of the Board.

**Section 3.2:** **President, also referred to as Chairperson.** The Chairperson shall be the Chief Executive Officer of the Corporation, and, subject to the control of the Board, the Chairperson generally shall be charge of the properties and affairs of the Corporation. The Chairperson shall preside at all meetings of the Board in furtherance of the purposes of the Corporation. The Chairperson may sign and execute all contracts, conveyances, resolutions, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

The Chairperson shall have the authority to appoint standing committees to assist the Board in its business undertakings or matters incidental to the operation and functions of the Board. The Chairperson shall have the authority to appoint ad-hoc committees which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.

**Section 3.3: <u>Vice President, also referred to as Chairperson.</u>** The Vice Chairperson shall have such powers and duties as may be assigned by the Board and shall exercise the powers of the Chairperson during the Chairperson's absence or inability to act. Any action taken by the Vice Chairperson in the performance of the duties of the Corporation shall be with conclusive evidence of the absence or inability of the Chairperson to act at the time such action was taken.

**Section 3.4: <u>Secretary.</u>** The Secretary shall attest or sign with the Chairperson in the Corporation's name all contracts, conveyances, resolutions, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments of the Corporation.

In the absence of the Secretary, the Chairperson may appoint any other Director as Secretary during such absence.

**Section 3.5: <u>Treasurer.</u>** The Treasurer is the Director responsible for the financial oversight of the Corporation. The Treasurer shall perform all acts incident to the position of the Treasurer subject to the control of the Board. The Treasurer shall maintain the books of the Corporation. Whenever required by the Board, the Treasurer shall enter or cause to entered regularly in the books full and accurate amounts all monies paid and received by the Corporation. The above-referenced duties of the Treasurer may be delegated to the City as determined by the Board, and if so delegated, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.

The Treasurer, if required by the Board, shall give such bond for the faithful discharge of the Treasurer's duties in such form as the Board may require.

**Section 3.6: <u>Compensation.</u>** Officers shall not receive any compensation for their services as Officers except that they may be reimbursed for their actual expenses incurred in the performance of their official duties.

**Section 3.7: <u>Signature Authority</u>.** Signature authority for the Corporation rests with the Chairperson, the Vice Chairperson and the Treasurer. The signatures of two (2) individuals are required to endorse payment of checks, notes and other obligations. Funds received to the credit of the Corporation shall be deposited in such bank or banks or depositories as shall be designated by the Board. Signature authority may be delegated to certain City staff as determined by the Board, and if so delegated, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.

**Article IV: Provisions Regarding Bylaws.**

**Section 4.1: Effective Date**. These Second Amended and Restated Bylaws shall become effective only upon the occurrence of the following events:

the adoption of these Bylaws by the Board of the Corporation; and,

the approval of these Bylaws by the City Council.

**Section 4.2: Amendment of Bylaws.** In accordance with Section 501.064 of the Development Corporation Act, these Second Amended and Restated Bylaws may be amended at any time, if consistent with state law and the Certificate of Formation, by majority vote of the Directors, subject to approval by resolution of the City Council.

**Section 4.3: Interpretation of Bylaws.** These Second Amended and Restated Bylaws shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Second Amended and Restated Bylaws, or the application thereof to a person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Second Amended and Restated Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Second Amended and Restated Bylaws to any other person or circumstance shall not be affected thereby.

**Article V: Confidentiality.**

**Section 5.1: Confidential Information**. Confidential Information is defined as all non-public information or materials entrusted to or obtained by Directors or staff of the Corporation, by reason of their positions with the Corporation. It includes, but is not limited to, material non-public information that might be harmful to the Corporation's purpose, projects or prospects if disclosed, such as company names, operations, proprietary technology, personnel data or other highly sensitive information.

**Section 5.2: General policy.** Unless otherwise required by law or authorized by the Board, Directors and staff of the Corporation may not disclose confidential information.

**Section 5.3: Nondisclosure Agreements.** All Directors and staff of the Corporation must sign any non-disclosure agreement ("NDA") provided by prospective companies, subject to the review and approval of the Corporation's General Counsel prior to execution. Failure of a company to provide an NDA does not remove a Director's or a staff member's duty of confidentiality.

**Section 5.4: Remedies**. The Board shall recommend to City Council the removal of any Director found violating the duty of confidentiality. The Board may terminate any Corporation staff member found violating the duty of confidentiality. The Board may also elect to pursue any and all other available remedies under the law, including declaratory relief, injunction, attorneys' fees and damages.

**Article VI: General Provisions.**

**Section 6.1: Seal.** The seal of the Corporation shall be as determined by the Board and in accordance with Section 501.059 of the Development Corporation Act. The Board may determine the Corporation will have no seal.

**Section 6.2: Resignations.** Any Director or Officer may resign at any time. Any resignation should be made in writing and shall take effect at the time specified therein, or, if no time is specified, at the time of its receipt by the Chairperson or the City Secretary. A resigning Director shall serve until such time as such Director's successor takes office.

**Section 6.3: Notice and Waiver of Notice.** Notice shall be provided in accordance with Sections 2.3 and 2.4 of these Second Amended and Restated Bylaws. In accordance with Section 501.068(c) of the Development Corporation Act, a Director's attendance at a Board meeting constitutes a waiver of notice of the meeting, unless the Director attends the meeting for the express purpose of objecting to the transaction of any business at the meeting because the meeting has not been lawfully called or convened. In accordance with Section 501.068(d) of the Development Corporation Act, notice or waiver of notice of a Board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting.

**Section 6.4: Organizational Control.** In accordance with Section 501.401 of the Development Corporation Act, the City, by resolution of the City Council, may alter the Corporation's structure, organization, programs, or activities or terminate the existence of the Corporation. In accordance with Section 501.401(b) of the Development Corporation Act, the authority of the City under this section is limited only by the law of this state on the impairment of contracts entered into by the Corporation. In accordance with Section 504.351 of the Development Corporation Act, the City Council shall order an election on the termination of the Corporation on receipt of a petition requesting the election that is signed by at least ten (10) percent of the registered voters of the City.

**Section 6.5: Dissolution of the Corporation.** In accordance with Section 501.406 of the Development Corporation Act, upon dissolution of the Corporation, title to or other interest in all funds and real and personal property then owned by the Corporation shall vest in the City except and unless otherwise expressly authorized by the City Council.

**Section 6.6: Staff and Organizational Management.** The Board, in its sole discretion, may hire and terminate employees of the Corporation. Pursuant to an administrative and professional services agreement between the Corporation and the City, the City may provide staffing and support to the Corporation, and pursuant to such an agreement, the Corporation shall reimburse the City for costs and expenses reasonably necessary for such support.

**Section 6.7: Indemnification.** In accordance with Chapter 8 of the Texas Business Organization Code, except to the extent such provisions are in conflict or inconsistent with the Development Corporation Act, and in accordance with Section 501.066 of the Development Corporation Act, the Corporation shall indemnify and defend its Directors, Officers, employees and agents to the fullest extent allowed by law.

**Section 6.8: Insurance and Benefits.** In accordance with Section 501.067 of the Development Corporation Act, the Corporation may at the discretion of the Board purchase and maintain insurance on behalf of the Corporation and any person whom it has the power to insure pursuant to law, the Certificate of Formation and the Second Amended and Restated Bylaws or otherwise, including without limitation Directors' and Officers' liability insurance.

[The rest of this page is intentionally left blank.]

These Second Amended and Restated Bylaws of the Hutto Economic Development Corporation were adopted at a duly called meeting of the Board of Directors of the Corporation. These Second Amended and Restated Bylaws shall become effective upon the date of their approval by resolution of the City Council of the City of Hutto, Texas.

**Approved by the Board of Directors on the 1st day of August, 2022:**

By: ______________________________
Mike Arismendez, President/Chairperson
Hutto Economic Development Corporation

ATTEST:

______________________________
Cheney Gamboa, Secretary
Hutto Economic Development Corporation

**Approved by the City Council by Resolution on the 4th day of August, 2022:**

By: ______________________________
Mike Snyder, Mayor
City of Hutto, Texas

ATTEST:

______________________________
Angela Walton, City Secretary
City of Hutto

**HUTTO ECONOMIC DEVELOPMENT CORPORATION, TYPE B**
**RESOLUTION NO. R-2022-070**

**A RESOLUTION OF THE HUTTO ECONOMIC DEVELOPMENT CORPORATION, TYPE B AMENDING THE BYLAWS OF THE HUTTO ECONOMIC DEVELOPMENT CORPORATION, TYPE B; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE AND CONTAINING OTHER PROVISIONS RELATED TO THE SUBJECT.**

**WHEREAS,** pursuant to Texas Local Government Code Chapters 501, 502, and 505, the City of Hutto created the Hutto Economic Development Corporation, Type B (the "Corporation"); and

**WHEREAS,** the Board of Directors of the Corporation (the "Board") is appointed by the City of Hutto City Council; and

**WHEREAS,** the Corporation's Bylaws have been adopted and subsequently amended since the formation of the Corporation; and

**WHEREAS,** on or around February 14, 2022, the Board proposed amendments to the Bylaws, but these amendments were never presented to the City Council for approval; and

**WHEREAS,** accordingly, the Board has been operating under the previously adopted Bylaws; and

**WHEREAS,** the Board now desires to amend the Bylaws and seek City Council approval of same; and

**WHEREAS,** the Board has determined that it is in the best interest of the Corporation to amend the Corporation's Bylaws for more efficient operation of the Corporation; and

**WHEREAS,** the Board requests the City Council to consent to the proposed changes, as provided by law.

**NOW, THEREFORE, BE IT RESOLVED** by the Hutto Economic Development Corporation, Type B Board of Directors that:

1. The facts and recitations set forth above are hereby found to be true and correct and are adopted herein for all purposes.

2. The Board hereby adopts, subject to City Council approval, the Fifth Amended and Restated Bylaws of the Hutto Economic Development Corporation, Type B, attached hereto as Exhibit "A" and incorporated herein for all purposes.

3. This Resolution shall be and is hereby cumulative of all other resolutions of the Corporation, and this Resolution shall not operate to amend, change, supplement or repeal any such other resolutions, except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this Resolution, in which event such conflicting provisions, if any, in such other resolutions are hereby repealed.

4. Should any portion or part of this Resolution be held for any reason invalid or unenforceable by a court of competent jurisdiction, the same shall not be construed to affect any other valid portion hereof, but all valid portions hereof shall remain in full force and effect.

5. The Board hereby declares that written notice of the date, hour and place of the meeting at which this Resolution was adopted, was posted and that such meeting was open to the public as required by law at all times when this Resolution and the subject matter hereof were discussed, considered, and formally acted upon, all as required by the Open Meetings Act, Chapter 551, Texas Government Code, as amended.

6. These Fifth Amended and Restated Bylaws of the Hutto Economic Development Corporation, Type B shall become effective upon the consent of the City Council of the City of Hutto, Texas.

**PASSED AND ADOPTED** by the Board of Directors of the Hutto Economic Development Corporation, Type B on this the 1st day of August, 2022.

APPROVED

______________________________
Mike Arismendez, Chairman

ATTEST:

______________________________
Cheney Gamboa, Secretary

**EXHIBIT "A"**

# ~~THIRD~~FIFTH AMENDED AND RESTATED BYLAWS OF

# THE HUTTO ECONOMIC DEVELOPMENT CORPORATION, TYPE B

**~~dba HUTTO COMMUNITY DEVELOPMENT CORPORATION~~**
**Effective ~~July __, 2021~~August 4, 2022**

## Article I: Powers and Purposes.

**Section 1.1: Corporate Identity~~: Offices.~~, Principal Office, Registered Office and Registered Agent.** The name of the corporation is the Hutto Economic Development Corporation, Type B ~~dba Hutto Community Development Corporation~~ (the "Corporation"). The principal office of the Corporation shall be located at 500 W. Live Oak Street, Hutto, TX 78634. The Corporation may relocate such principal office and have such other offices as the Board ~~of Directors (the "Board") may~~ shall determine necessary. In compliance with Sections 501.351 and 505.056 of the Development Corporation Act, the Corporation shall continuously maintain a registered office and registered agent. The registered agent must be a resident of Texas. The registered office must be located within the boundaries of the City of Hutto, Texas. The Corporation's registered office may, but is not required to be, the same as the Corporation's principal office.

**Section 1.2: Powers.** In order to implement the purposes for which the Corporation was formed~~,~~ as set forth in its ~~Articles~~Certificate of ~~Inc~~For~~por~~mation, the Corporation shall have and shall exercise all ~~the authority and~~ powers ~~of every nature and kind whatsoever, both expressed and implied,~~and rights which are authorized or permitted by the ~~terms of the~~ Development Corporation Act~~ of 1979, Chapter 501~~, Subtitle C1, Title 12 of the Texas Local Government Code, as amended~~ (the "Act").~~. The Corporation shall have and ~~may~~shall exercise ~~each power~~all powers and ~~authority enumerated in~~ rights of a nonprofit corporation authorized or permitted by the ~~Act as if such power and authority were specifically set forth herein; provided the~~Texas Nonprofit Corporation ~~shall be governed by~~ Law, Chapter ~~505 of the Local Government Code and any other term or provision~~1, 20 and 22, as applicable, of the ~~Act, Chapter 505 of the Local Government Code shall govern and prevail.~~ Texas Business Organization Code, as amended, except to the extent such powers are in conflict or inconsistent with the Development Corporation Act. The Corporation shall have the power and authority to undertake any lawful action not inconsistent with the ~~Act and it~~Development Corporation Act and the Nonprofit Corporation Law. The Corporation shall promote economic development benefitting the City of Hutto, Texas (the ~~"~~"City~~"),~~"), including without limitation ~~promoting~~the promotion of industrial, manufacturing, commercial, retail, parks and residential development~~ to encourage~~, the encouragement of employment and the support of the public welfare, both within the City limits and ~~areas outside of the City limits which contribute to the economic welfare~~the extraterritorial jurisdiction of the City. The powers of the Corporation shall include the authority to contract and be contracted~~ with, and absent a conflict with Chapter 505 of the Local Government~~

~~Code, the power~~; to purchase, lease, sell and mortgage real estate~~,~~ and to issue obligations for or otherwise finance all or part of the cost of one or more ~~"~~"Projects~~"~~" as defined by the Development Corporation Act.

**Section 1.3: Annual Corporate Budget.** At least sixty (60) days prior to the commencement of each fiscal year of the Corporation, the Board shall adopt a proposed budget of anticipated revenues and proposed expenditures for the ~~next ensuing~~following fiscal year. The budget shall contain such classifications ~~as~~and shall be in such format as may be prescribed from time to time by the Board~~ of Directors of the Corporation~~. Classifications of expenditures within the budget that are designated as routine ~~("~~("R~~")~~ ~~(i.")~~ (e~~., items such as~~.g., salaries, multi-year contractual obligations, debt service payments, and routine business expenses~~,~~ ~~etc.)~~) are authorized for expenditure by the City Council when approving the budget in accordance with Texas Local Government Code Section 501.073(a). Classifications of expenditures within the budget that are designated as discretionary ~~(~~("D~~)~~ ~~(i.")~~ (e.~~ items such as~~g., allocations of unencumbered funds for use in future incentive, performance or funding agreements) are appropriated ~~by the City Council~~when approving the budget but any expenditure of such funds must be subsequently approved by the City Council in connection with the specifically identified use or expenditure~~. The Corporation's~~ in accordance with Section 501.073(a). The Corporation's fiscal year shall start on October 1 and end on September 30th of the following calendar year and may be changed or amended by action of the Board with approval by the City Council.

**Section 1.4: Books and Records: Review of Financial Statements**. The Corporation shall keep correct and complete books and records of all accounts and shall keep minutes of the proceedings of its Board~~ and committees having any of the authority of the Board.~~. All books and records of the Corporation may be inspected by ~~any director, or his or her~~a Director, a Director's agent, an~~y~~ attorney representing the Corporation, ~~any member of the~~a City Council~~, and~~ member, the City Manager~~, or such~~ and the City Manager's designee~~ as the City Manager so designates~~, at a mutually reasonable time for the parties involved. The books, records, accounts and financial statements may be maintained for the Corporation by the staff of the City, subject to approval by the Board and City Council~~,~~ and ~~if so,~~ the ~~Corporation shall pay the City~~payment of reasonable compensation for such services pursuant to an agreement between the parties.

**Section 1.5: Powers in General.** The Corporation may exercise all powers granted under the ~~Act~~Development Corporation Act and the Nonprofit Corporation Law consistent with ~~its~~the Corporation's Certificate of Formation, these ~~amended bylaws~~Bylaws and ~~the~~applicable resolutions and ordinances of the City Council.

## ARTICLE II: Board of Directors.

**Section 2.1: Appointment, Powers~~,~~, Number and Term~~ of Office.~~ .** The Board shall exercise all of the powers of the Corporation, subject to the restrictions imposed by law, the

Certificate of Formation, and these Bylaws. ~~The~~ In accordance with Section 505.051 of the Development Corporation Act, the Board shall consist of seven (7) ~~members~~Directors, each appointed by the City Council for a two (2) year term. ~~At~~In compliance with Section 505.052(c) of the Development Corporation Act, at least three (3) ~~d~~Directors shall be persons who are not employees~~,~~ or officers~~,~~ of the City or members of the City Council ~~of the City.~~. No more than ~~four (4~~two (2) of the seven (7) ~~d~~Directors may be City ~~employees or City~~ Council members. ~~All directors~~In accordance with Section 505.052(a) of the Development Corporation Act, all Directors must be residents of the City ~~or its extraterritorial jurisdiction ("ETJ") to ensure City residents have the opportunity to sit on and participate in the activities of the Corporation.~~.

~~Any director~~In accordance with Section 505.051(c) of the Development Corporation Act, any Director, or all ~~d~~Directors, may be removed ~~from office~~ at any time by majority vote of the City Council, for cause or at will. Any vacancy occurring on the Board shall be filled by appointment by majority vote of the City Council. Those filling vacancies shall serve out the term of the seat they are filling. In the event any ~~member of the Board's~~Director's term expires, ~~but is not yet replaced,~~ such ~~member~~Director shall continue serving in the position until a replacement ~~it~~is appointed or removed by action of the City Council.

Any Director found to violate confidentiality provisions set forth in Article V of these Bylaws shall be ineligible to serve on the Board for five (5) subsequent years.

**Section 2.2: Meetings of the Directors in General.** The Board shall meet at least once each month and any ~~member of the Board~~ Director may request that an item be placed on the agenda by providing same in writing~~,~~ to the Chair~~ma~~person no later than ten (10) days prior to the date of the Board meeting. ~~The Board may hold its meeting at any place authorized by~~ In accordance with section 505.055 of the Development Corporation Act ~~and as~~, the Board ~~may from time to time determine; provided that in~~shall conduct all meetings within the boundaries of the City of Hutto, Texas. In the absence of any ~~such~~particularized determination by the Board, ~~the meeting~~all meetings shall be held at the principal office of the Corporation or at the City Council Chambers of the City. The Board shall conduct its meetings in accordance with all applicable ~~Texas~~ law.

**Section 2.3: Regular Meetings.** ~~Regular~~In compliance with Section 501.068(a) of the Development Corporation Act, regular meetings of the Board shall be held on the ~~first~~second Monday of the month except in cases of observed holidays falling on the ~~first~~second Monday (e.g., Labor Day, etc.) and at Hutto City Hall unless otherwise noted and designated~~, from time to time,~~ on the posted agenda. Notice of each regular ~~meetings need not~~meeting shall be given by email to each Director~~, but public~~ at least seventy-two (72) hours prior to each regular meeting. Public notice of each regular meeting shall be given in the manner prescribed by law.

**Section 2.4: Special Meetings.** ~~Special~~In compliance with Section 501.068(b) of the Development Corporation Act, special meetings of the Board shall be held when~~ever~~ called by the Chairperson~~,~~ or by the Secretary ~~or by~~ , when called during a properly noticed meeting by a majority of the Directors ~~then in office~~, upon advice of the Corporation''s General Counsel or as requested by ~~request of~~ the City Council.

The Chairperson or ~~his/her~~the Chairperson's designee shall give or cause public notice to be given of each special meeting. ~~Special notice~~Notice of each special meeting shall ~~also~~ be given ~~to each Director either~~ by ~~mail, telephone, electronically or in person at least two (2) hours before the meeting. Notice required by law~~email to ~~be given~~each Director at least seventy-two (72) hours prior to ~~any other person or entity~~each nonemergency special meeting and at least one (1) hour prior to each emergency special meeting. Public notice of each meeting shall be given in the manner prescribed by law. Except as otherwise provided by law or 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 is present, even though without any notice, any matter pertaining to the purposes of the Corporation may be considered and acted upon, except as otherwise provided by law.~~

**Section 2.5: Quorum.** ~~A~~In compliance with Section 501.054 of the Development Corporation Act, a majority of the ~~Directors fixed by these Bylaws~~entire membership of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. ~~The~~In compliance with Section 501.070(b) of the Development Corporation Act, 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, unless the act of a greater number is required by law. Any ~~member of the Board~~Director may request a record vote on any matter to come before the Directors and that record vote will become a part of the minutes.

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

**Section 2.7: Compensation of Directors.** In accordance with Section 501.062(b) of the Development Corporation Act, Directors shall not receive any compensation for their services as Directors except that they may, upon request, be reimbursed for their actual expenses incurred in the performance of their official duties.

**Section 2.8** ~~**Board Committees.** The Board may designate two (2) or more directors to constitute an official committee of the Board to exercise such authority as is delegated and approved by resolution of the Board. It is provided, however, that all final, official actions of the Corporation may be exercised only by a majority of the full Board. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the principal office of the Corporation.~~

~~Section 2.9:~~ : **Advisory Board.** The Board may appoint an advisory board or boards to assist the Board and perform such other duties as the Board may from time to time assign to the advisory board. An advisory board shall be made up of no more than seven (7) individuals. At the time the Board creates an advisory board, the Board shall adopt rules and regulations regarding membership of the advisory board. The advisory board may make recommendations to the Board, but all final, official actions of the Corporation shall be exercised only by the Board. ~~The Board shall create a small business, convention and tourism advisory board which may include board members of the Hutto Chamber of Commerce, in addition to such other advisory boards desired by the Board.~~

**Section 2.~~10:~~ 9: Texas Open Meetings Act and Texas Public Information Act.** ~~Meetings~~

In accordance with Section 501.072 of the Development Corporation Act, meetings of the Board are subject to the Texas Open Meetings Act, Texas Government Code Chapter 551, and the Corporation is subject to the Texas Public Information Act, Texas Government Code Chapter 552.

## Article III: Officers.

**Section 3.1: Titles and Terms of ~~Office.~~** ~~The~~**Officers.** In compliance with Sections 501.065 and 505.053 of the Development Corporation Act, the Officers of the Corporation shall be a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer~~, and such person~~. Officers may hold more than one office, except that the ~~Chairperson shall~~ same person may not ~~also~~ hold the offices of President and Secretary. ~~The Chairperson and each other officer of the Corporation~~Each Officer shall be appointed by a majority vote of the ~~directors of the Board then in office~~ Directors and shall hold office for a term of two (2) years or until ~~his/her~~such Officer's successor is ~~elected or~~ appointed. ~~Each officer~~In June of each year, each Officer shall affirm ~~their office and~~ the commitment to continue serving in ~~their office~~office in to evidence the Officer's desire to continue in ~~June of every year~~office.

No City Council member serving on the Board may also serve as an ~~o~~Officer of the ~~c~~Corporation nor have signature authority on behalf of the ~~c~~Corporation.

~~All officers shall be subject to removal from office with or without cause at any time by a majority vote of the City Council members then in office.~~ A vacancy in any office shall be filled by appointment by a majority of the Board.

**Section 3.2: President, also referred to as Chairperson.** The Chairperson shall be the Chief Executive Officer of the Corporation, and, subject to the control of the Board, the Chairperson generally shall be ~~in general~~ charge of the properties and affairs of the Corporation. The Chairperson shall preside at all meetings of the Board in furtherance of the purposes of the Corporation~~;~~. ~~t~~The Chairperson may sign and execute all contracts, conveyances, resolutions, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

The Chairperson shall have the authority to appoint standing committees to ~~aid and~~ assist the Board in its business undertakings or matters incidental to the operation and functions of the Board. The Chairperson shall have the authority to appoint ad-hoc committees which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.

~~The Chairperson shall have charge of the corporate books, records, and all records of the securities of which the Treasurer shall have custody, and such other books and papers as the Board may direct, all of which shall during business hours be open to inspection at the principal office of the Corporation.~~

**Section 3.3: Vice- President, also referred to as Chairperson.** The Vice Chairperson shall have such powers and duties as may be assigned by the Board and shall exercise the powers of the Chairperson during the Chairperson's absence or inability to act. Any action taken by the Vice Chairperson in the performance of the duties of the Corporation shall be with conclusive evidence of the absence or inability of the Chairperson to act at the time such action was taken.

**Section 3.4: Secretary.** The Secretary shall attest or sign with the Chairperson in the Corporation's name all contracts, conveyances, resolutions, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments of the Corporation.

In the absence of the Secretary, the Chairperson may appoint any other ~~Board member~~Director as Secretary during such absence.

**Section 3.5: Treasurer.** The Treasurer ~~shall have custody of all funds and securities~~is the Director responsible for the financial oversight of the Corporation ~~that come in to his/her hands.~~

~~a. When necessary, or proper, signature authority for the corporation rests with the Chairman, the Vice-Chair and the Treasurer, any two (2) of whom (so long as 2 different individuals) shall be required to sign or endorse, on behalf of the Corporation for collection or payment of checks, notes and other obligations and shall deposit any funds received to the credit of the Corporation in such bank or banks or depositories as shall be designated by the Board.~~

~~b. Whenever required by the Board, the Treasurer shall enter or cause to entered regularly in the books of the Corporation to be kept by the Treasurer for that purpose full and accurate amounts all monies received and paid out on account of the Corporation.~~

~~c.~~ . The Treasurer shall perform all acts incident to the position of the Treasurer subject to the control of the Board. The Treasurer shall maintain the books of the Corporation. Whenever required by the Board, the Treasurer shall enter or cause to entered regularly in the books full and accurate amounts all monies paid and received by the Corporation. The above-referenced duties of the Treasurer may be delegated to the City as determined by the

Board, and if so delegated, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.

~~d.~~ The Treasurer, if required by the Board, shall give such bond for the faithful discharge of ~~his/her~~the Treasurer's duties in such form as the Board may require.

~~Financial accounting for Corporate funds may be delegated to the City as determined by the Board and if so, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.~~

**Section 3.6: Compensation.** Officers ~~of the Board~~ shall not receive any compensation for their services as Officers except that they may be reimbursed for their actual expenses incurred in the performance of their official duties.

**Section 3.7: Signature Authority.** Signature authority for the Corporation rests with the Chairperson, the Vice Chairperson and the Treasurer. The signatures of two (2) individuals are required to endorse payment of checks, notes and other obligations. Funds received to the credit of the Corporation shall be deposited in such bank or banks or depositories as shall be designated by the Board. Signature authority may be delegated to certain City staff as determined by the Board, and if so delegated, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.

## Article IV: Provisions Regarding Bylaws.

**Section 4.1: Effective Date**. These ~~Third~~Fifth Amended and Restated Bylaws shall become effective only upon the occurrence of the following events:

~~(1)~~ the adoption of these Bylaws by the Board of the Corporation; and,

~~(2)~~ the approval of these Bylaws by the City Council.

**Section 4.2: Amendment of Bylaws.** ~~These Third~~In accordance with Section 501.064 of the Development Corporation Act, these Fifth Amended and Restated Bylaws may be amended at any time ~~and from time to time~~, if consistent with state law and the Certificate of Formation, by majority vote of the ~~Board then in office, but only with the~~Directors, subject to approval by resolution of the City Council.

**Section 4.3: Interpretation of Bylaws.** These ~~Third~~Fifth Amended and Restated Bylaws shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these ~~Third~~Fifth Amended and Restated Bylaws, or the application thereof to a person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these ~~Third~~Fifth Amended and Restated Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these ~~Third~~Fifth Amended and Restated Bylaws to any other person or circumstance shall not be affected thereby.

**Article V:** ~~General Provisions~~ Confidentiality.

~~**Section 5.1 Principal Office.** The current principal office of the Corporation is at 500 W. Live Oak Street, Hutto, Texas 78634. The Corporation may relocate such principal office and have such other offices as the Board shall determine necessary.~~

~~**Section 5.2: Seal.**~~ **Section 5.1: Confidential Information**. Confidential Information is defined as all non-public information or materials entrusted to or obtained by Directors or staff of the Corporation, by reason of their positions with the Corporation. It includes, but is not limited to, material non-public information that might be harmful to the Corporation's purpose, projects or prospects if disclosed, such as company names, operations, proprietary technology, personnel data or other highly sensitive information.

**Section 5.2: General policy.** Unless otherwise required by law or authorized by the Board, Directors and staff of the Corporation may not disclose confidential information.

**Section 5.3: Nondisclosure Agreements.** All Directors and staff of the Corporation must sign any non-disclosure agreement ("NDA") provided by prospective companies, subject to the review and approval of the Corporation's General Counsel prior to execution. Failure of a company to provide an NDA does not remove a Director's or a staff member's duty of confidentiality.

**Section 5.4: Remedies**. The Board shall recommend to City Council the removal of any Director found violating the duty of confidentiality. The Board may terminate any Corporation staff member found violating the duty of confidentiality. The Board may also elect to pursue any and all other available remedies under the law, including declaratory relief, injunction, attorneys' fees and damages.

**Article VI: General Provisions.**

**Section 6.1: Seal.** The seal of the Corporation shall be as determined by the Board~~.~~ and in accordance with Section 501.059 of the Development Corporation Act. The Board may determine the Corporation will have no seal.

~~**Section 5.3: Notice and Waiver of Notice.** Whenever any notice whatsoever is required to be given to the Board under the Act, the Certificate of Formation or these Third Amended and Restate Bylaws, such notices shall be deemed to be sufficient if given by depositing it for mailing in a post office box, by electronic mail or with a private courier in a sealed postpaid wrapper addressed to the person entitled thereto at his/her address, as it appears on the books of the Corporation, and such notice shall be deemed given on the day of such mailing or courier receipt.~~

~~Attendance of a member of the Board at a meeting shall constitute waiver of notice of such meeting except where a director attends a meeting for the sole purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called or convened. A written waiver of notice, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of~~

~~such notice.~~

~~Neither the business to be transacted nor the purpose of any regular or special meeting of the Board need be set forth in any notice to a director of such meeting unless required by the Board. Any notice whatsoever that may be required to be given to the public by law, shall be given in the manner prescribed by law.~~

~~Section 5.4:~~ Section 6.2: **Resignations.** Any ~~d~~Director or Officer may resign at any time. Any ~~such~~ resignation sha~~ou~~l~~l~~d be made in writing and shall take effect at the time specified therein, or, if no time is specified, at the time of its receipt by the Chairperson~~. Absent a written notice of the resignation,~~ or the City ~~Council of the City shall cause a notice of the resignation to be provided. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Notwithstanding the effective date, a~~Secretary. A resigning ~~d~~Director shall serve until such time as ~~his/her~~such Director's successor takes office.

**Section ~~5.~~6~~:~~ .3: Notice and Waiver of Notice.** Notice shall be provided in accordance with Sections 2.3 and 2.4 of these Fifth Amended and Restated Bylaws. In accordance with Section 501.068(c) of the Development Corporation Act, a Director's attendance at a Board meeting constitutes a waiver of notice of the meeting, unless the Director attends the meeting for the express purpose of objecting to the transaction of any business at the meeting because the meeting has not been lawfully called or convened. In accordance with Section 501.068(d) of the Development Corporation Act, notice or waiver of notice of a Board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting.

**Section 6.4: Organizational Control.** ~~The Board may~~In accordance with Section 501.401 of the Development Corporation Act, the City, by ~~majority vote and in its sole discretion and at any time,~~resolution of the City Council, may alter ~~or change~~ the Corporation's structure, organization, programs, or activities ~~of the Corporation (including~~or terminate the existence of the Corporation. In accordance with Section 501.401(b) of the Development Corporation Act, the authority of the City under this section is limited only by the law of this state on the impairment of contracts entered into by the Corporation. In accordance with Section 505.352 of the Development Corporation Act, the City Council shall order an election on the termination of the Corporation~~), subject to the Act, any limitation~~ on ~~the impairment~~receipt of ~~contracts and the approval~~a petition requested the election that is signed by at least ten (10) percent of the registered voters of the City ~~Council~~.

**Section 6.5~~.7:~~: Dissolution of the Corporation.** ~~Upon~~In accordance with Section 501.406 of the Development Corporation Act, upon dissolution of the Corporation, title to or other interest in ~~any~~all funds and real ~~or~~and personal property then owned by the Corporation shall vest in the City except and unless otherwise expressly authorized by the City Council.

**Section ~~5.8:~~ 6.6: Staff and Organizational Management.** The Board, in its sole discretion, may hire and terminate employees of the Corporation. Pursuant to an administrative and professional services agreement between the Corporation and the City, the City may provide

~~some~~ staffing and support to the Corporation, and pursuant to such an agreement, the Corporation shall reimburse the City for costs and expenses reasonably necessary for such support.

~~**Section 5.9: Indemnification.** The Corporation shall indemnify any current or former members of the Board, Officer, or employee of the Corporation, or any other person who may serve at the Corporation's request as a director, officer, or employee of another corporation or entity in which it owns shares of stock or other ownership interest or of which it is a creditor, against expenses actually and necessarily incurred by such person and any amount paid in satisfaction of judgments in connection with any action, suit, or proceeding, whether civil, criminal, arbitrative, or investigative in nature, in which such person was, is, or is threatened to be made a named defendant or respondent by reason of being or having been such a director, officer, or employee (whether or not the person is or was such at the time the costs or expenses are incurred by or imposed upon such person) as is required by Section 8.051 of the Texas Business Organizations Code ("TOBC"). The Corporation may indemnify any such person against and for any such expenses or costs and may advance expenses to any such person as is permitted by and according to the terms of Section 8.101 of the TBOC.~~

~~**Section 5.10: Insurance.** The~~**Section 6.7: Indemnification.** In accordance with Chapter 8 of the Texas Business Organization Code, except to the extent such provisions are in conflict or inconsistent with the Development Corporation Act, and in accordance with Section 501.066 of the Development Corporation Act, the Corporation shall indemnify and defend its Directors, Officers, employees and agents to the fullest extent allowed by law.

**Section 6.8: Insurance and Benefits.** In accordance with Section 501.067 of the Development Corporation Act, the Corporation may at the discretion of the Board purchase and maintain insurance on behalf of the Corporation and any person whom it has the power to ~~indemnify~~insure pursuant to law, the Certificate of Formation and ~~Third~~the Fifth Amended and Restated Bylaws or otherwise, including without limitation ~~d~~Directors' and ~~o~~Officer~~'~~s' liability insurance.

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These ~~Third~~Fifth Amended and Restated Bylaws of the Hutto Economic Development Corporation, Type B ~~dba Hutto Community Development Corporation~~ were adopted at a duly called meeting of the Board of Directors of the Corporation~~, held on November ___, 2020.~~. These ~~Third~~Fifth Amended and Restated Bylaws shall become effective upon the date of their approval by resolution of the City Council of the City of Hutto, Texas.

**Approved by the Board of Directors on the 1st day of August, 2022:**

By: __________________________________
Mike Arismendez,
~~Chairman~~President/Chairperson
Hutto ~~Community~~Economic Development
Corporation,
Type B

ATTEST:

__________________________________
Cheney Gamboa, Secretary
Hutto Economic Development Corporation,
Type B

**Approved by the City Council by Resolution on the 4th day of August, 2022:**

By: __________________________________
Mike Snyder, Mayor
~~,~~City of Hutto, Texas

ATTEST:

__________________________________
Angela Walton, City Secretary
City of Hutto, Texas

# FIFTH AMENDED AND RESTATED BYLAWS OF

# THE HUTTO ECONOMIC DEVELOPMENT CORPORATION, TYPE B

**Effective August 4, 2022**

## Article I: Powers and Purposes.

**Section 1.1: Corporate Identity, Principal Office, Registered Office and Registered Agent.** The name of the corporation is the Hutto Economic Development Corporation, Type B (the "Corporation"). The principal office of the Corporation shall be located at 500 W. Live Oak Street, Hutto, TX 78634. The Corporation may relocate such principal office and have such other offices as the Board shall determine necessary. In compliance with Sections 501.351 and 505.056 of the Development Corporation Act, the Corporation shall continuously maintain a registered office and registered agent. The registered agent must be a resident of Texas. The registered office must be located within the boundaries of the City of Hutto, Texas. The Corporation's registered office may, but is not required to be, the same as the Corporation's principal office.

**Section 1.2: Powers.** In order to implement the purposes for which the Corporation was formed as set forth in its Certificate of Formation, the Corporation shall have and shall exercise all powers and rights which are authorized or permitted by the Development Corporation Act, Subtitle C1, Title 12 of the Texas Local Government Code, as amended. The Corporation shall have and shall exercise all powers and rights of a nonprofit corporation authorized or permitted by the Texas Nonprofit Corporation Law, Chapter 1, 20 and 22, as applicable, of the Texas Business Organization Code, as amended, except to the extent such powers are in conflict or inconsistent with the Development Corporation Act. The Corporation shall have the power and authority to undertake any lawful action not inconsistent with the Development Corporation Act and the Nonprofit Corporation Law. The Corporation shall promote economic development benefitting the City of Hutto, Texas (the "City"), including without limitation the promotion of industrial, manufacturing, commercial, retail, parks and residential development, the encouragement of employment and the support of the public welfare, both within the City limits and the extraterritorial jurisdiction of the City. The powers of the Corporation shall include the authority to contract and be contracted; to purchase, lease, sell and mortgage real estate and to issue obligations for or otherwise finance all or part of the cost of one or more "Projects" as defined by the Development Corporation Act.

**Section 1.3: Annual Corporate Budget.** At least sixty (60) days prior to the commencement of each fiscal year of the Corporation, the Board shall adopt a proposed budget of anticipated revenues and proposed expenditures for the following fiscal year. The budget shall contain such classifications and shall be in such format as may be prescribed from time to time by the Board. Classifications of expenditures within the budget that are designated as routine

("R") (e.g., salaries, multi-year contractual obligations, debt service payments, and routine business expenses) are authorized for expenditure by the City Council when approving the budget in accordance with Texas Local Government Code Section 501.073(a). Classifications of expenditures within the budget that are designated as discretionary ("D") (e.g., allocations of unencumbered funds for use in future incentive, performance or funding agreements) are appropriated when approving the budget but any expenditure of such funds must be subsequently approved by the City Council in connection with the specifically identified use or expenditure in accordance with Section 501.073(a). The Corporation's fiscal year shall start on October 1 and end on September 30th of the following calendar year and may be changed or amended by action of the Board with approval by the City Council.

**Section 1.4:** **<u>Books and Records: Review of Financial Statements</u>**. The Corporation shall keep correct and complete books and records of all accounts and shall keep minutes of the proceedings of its Board. All books and records of the Corporation may be inspected by a Director, a Director's agent, an attorney representing the Corporation, a City Council member, the City Manager and the City Manager's designee, at a mutually reasonable time for the parties involved. The books, records, accounts and financial statements may be maintained for the Corporation by the staff of the City, subject to approval by the Board and City Council and the payment of reasonable compensation for such services pursuant to an agreement between the parties.

**Section 1.5:** **<u>Powers in General.</u>** The Corporation may exercise all powers granted under the Development Corporation Act and the Nonprofit Corporation Law consistent with the Corporation's Certificate of Formation, these Bylaws and applicable resolutions and ordinances of the City Council.

**ARTICLE II:** **<u>Board of Directors</u>.**

**Section 2.1:** **<u>Appointment, Powers, Number and Term.</u>** The Board shall exercise all of the powers of the Corporation, subject to the restrictions imposed by law, the Certificate of Formation, and these Bylaws. In accordance with Section 505.051 of the Development Corporation Act, the Board shall consist of seven (7) Directors, each appointed by the City Council for a two (2) year term. In compliance with Section 505.052(c) of the Development Corporation Act, at least three (3) Directors shall be persons who are not employees or officers of the City or members of the City Council. No more than two (2) of the seven (7) Directors may be City Council members. In accordance with Section 505.052(a) of the Development Corporation Act, all Directors must be residents of the City.

In accordance with Section 505.051(c) of the Development Corporation Act, any Director, or all Directors, may be removed at any time by majority vote of the City Council, for cause or at will. Any vacancy occurring on the Board shall be filled by appointment by majority vote of the City Council. Those filling vacancies shall serve out the term of the seat they are filling.

In the event any Director's term expires, such Director shall continue serving in the position until a replacement is appointed or removed by action of the City Council.

Any Director found to violate confidentiality provisions set forth in Article V of these Bylaws shall be ineligible to serve on the Board for five (5) subsequent years.

**Section 2.2: Meetings of the Directors in General.** The Board shall meet at least once each month and any Director may request that an item be placed on the agenda by providing same in writing to the Chairperson no later than ten (10) days prior to the date of the Board meeting. In accordance with section 505.055 of the Development Corporation Act, the Board shall conduct all meetings within the boundaries of the City of Hutto, Texas. In the absence of any particularized determination by the Board, all meetings shall be held at the principal office of the Corporation or at the City Council Chambers of the City. The Board shall conduct its meetings in accordance with all applicable law.

**Section 2.3: Regular Meetings.** In compliance with Section 501.068(a) of the Development Corporation Act, regular meetings of the Board shall be held on the second Monday of the month except in cases of observed holidays falling on the second Monday (e.g., Labor Day, etc.) and at Hutto City Hall unless otherwise noted and designated on the posted agenda. Notice of each regular meeting shall be given by email to each Director at least seventy-two (72) hours prior to each regular meeting. Public notice of each regular meeting shall be given in the manner prescribed by law.

**Section 2.4: Special Meetings.** In compliance with Section 501.068(b) of the Development Corporation Act, special meetings of the Board shall be held when called by the Chairperson or by the Secretary, when called during a properly noticed meeting by a majority of the Directors, upon advice of the Corporation's General Counsel or as requested by the City Council.

The Chairperson or the Chairperson's designee shall give or cause public notice to be given of each special meeting. Notice of each special meeting shall be given by email to each Director at least seventy-two (72) hours prior to each nonemergency special meeting and at least one (1) hour prior to each emergency special meeting. Public notice of each meeting shall be given in the manner prescribed by law. Except as otherwise provided by law or 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.

**Section 2.5: Quorum.** In compliance with Section 501.054 of the Development Corporation Act, a majority of the entire membership of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. In compliance with Section 501.070(b) of the Development Corporation Act, 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, unless the act of a greater number is required by law. Any Director may request a record vote on any matter to come before the Directors and that record vote will become a part of the minutes.

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

**Section 2.7: Compensation of Directors**. In accordance with Section 501.062(b) of the Development Corporation Act, Directors shall not receive any compensation for their services as Directors except that they may, upon request, be reimbursed for their actual expenses incurred in the performance of their official duties.

**Section 2.8: Advisory Board.** The Board may appoint an advisory board or boards to assist the Board and perform such other duties as the Board may from time to time assign to the advisory board. An advisory board shall be made up of no more than seven (7) individuals. At the time the Board creates an advisory board, the Board shall adopt rules and regulations regarding membership of the advisory board. The advisory board may make recommendations to the Board, but all final, official actions of the Corporation shall be exercised only by the Board.

**Section 2.9: Texas Open Meetings Act and Texas Public Information Act.**

In accordance with Section 501.072 of the Development Corporation Act, meetings of the Board are subject to the Texas Open Meetings Act, Texas Government Code Chapter 551, and the Corporation is subject to the Texas Public Information Act, Texas Government Code Chapter 552.

## Article III: Officers.

**Section 3.1: Titles and Terms of Officers.** In compliance with Sections 501.065 and 505.053 of the Development Corporation Act, the Officers of the Corporation shall be a Chairperson, a Vice Chairperson, a Secretary, and a Treasurer. Officers may hold more than one office, except that the same person may not hold the offices of President and Secretary. Each Officer shall be appointed by a majority vote of the Directors and shall hold office for a term of two (2) years or until such Officer's successor is appointed. In June of each year, each Officer shall affirm the commitment to continue serving in office in to evidence the Officer's desire to continue in office.

No City Council member serving on the Board may also serve as an Officer of the Corporation nor have signature authority on behalf of the Corporation.

A vacancy in any office shall be filled by appointment by a majority of the Board.

**Section 3.2: President, also referred to as Chairperson.** The Chairperson shall be the Chief Executive Officer of the Corporation, and, subject to the control of the Board, the Chairperson generally shall be charge of the properties and affairs of the Corporation. The

Chairperson shall preside at all meetings of the Board in furtherance of the purposes of the Corporation. The Chairperson may sign and execute all contracts, conveyances, resolutions, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation.

The Chairperson shall have the authority to appoint standing committees to assist the Board in its business undertakings or matters incidental to the operation and functions of the Board. The Chairperson shall have the authority to appoint ad-hoc committees which may address issues of a temporary nature of concern or which have a temporary effect on the business of the Board.

**Section 3.3: <u>Vice President, also referred to as Chairperson.</u>** The Vice Chairperson shall have such powers and duties as may be assigned by the Board and shall exercise the powers of the Chairperson during the Chairperson's absence or inability to act. Any action taken by the Vice Chairperson in the performance of the duties of the Corporation shall be with conclusive evidence of the absence or inability of the Chairperson to act at the time such action was taken.

**Section 3.4: <u>Secretary.</u>** The Secretary shall attest or sign with the Chairperson in the Corporation's name all contracts, conveyances, resolutions, franchises, bonds, deeds, assignments, mortgages, notes, and other instruments of the Corporation.

In the absence of the Secretary, the Chairperson may appoint any other Director as Secretary during such absence.

**Section 3.5: <u>Treasurer.</u>** The Treasurer is the Director responsible for the financial oversight of the Corporation. The Treasurer shall perform all acts incident to the position of the Treasurer subject to the control of the Board. The Treasurer shall maintain the books of the Corporation. Whenever required by the Board, the Treasurer shall enter or cause to entered regularly in the books full and accurate amounts all monies paid and received by the Corporation. The above-referenced duties of the Treasurer may be delegated to the City as determined by the Board, and if so delegated, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.

The Treasurer, if required by the Board, shall give such bond for the faithful discharge of the Treasurer's duties in such form as the Board may require.

**Section 3.6: <u>Compensation.</u>** Officers shall not receive any compensation for their services as Officers except that they may be reimbursed for their actual expenses incurred in the performance of their official duties.

**Section 3.7: <u>Signature Authority</u>.** Signature authority for the Corporation rests with the Chairperson, the Vice Chairperson and the Treasurer. The signatures of two (2) individuals are required to endorse payment of checks, notes and other obligations. Funds received to the credit of the Corporation shall be deposited in such bank or banks or depositories as shall be designated by the Board. Signature authority may be delegated to certain City staff as determined by the Board, and if so delegated, the Corporation shall pay the City reasonable compensation for such services pursuant to an agreement between the parties.

## Article IV: Provisions Regarding Bylaws.

**Section 4.1: Effective Date**. These Fifth Amended and Restated Bylaws shall become effective only upon the occurrence of the following events:

the adoption of these Bylaws by the Board of the Corporation; and,

the approval of these Bylaws by the City Council.

**Section 4.2: Amendment of Bylaws.** In accordance with Section 501.064 of the Development Corporation Act, these Fifth Amended and Restated Bylaws may be amended at any time, if consistent with state law and the Certificate of Formation, by majority vote of the Directors, subject to approval by resolution of the City Council.

**Section 4.3: Interpretation of Bylaws.** These Fifth Amended and Restated Bylaws shall be liberally construed to effectuate the purposes set forth herein. If any word, phrase, clause, sentence, paragraph, section or other part of these Fifth Amended and Restated Bylaws, or the application thereof to a person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, the remainder of these Fifth Amended and Restated Bylaws and the application of such word, phrase, clause, sentence, paragraph, section or other part of these Fifth Amended and Restated Bylaws to any other person or circumstance shall not be affected thereby.

## Article V: Confidentiality.

**Section 5.1: Confidential Information**. Confidential Information is defined as all non-public information or materials entrusted to or obtained by Directors or staff of the Corporation, by reason of their positions with the Corporation. It includes, but is not limited to, material non-public information that might be harmful to the Corporation's purpose, projects or prospects if disclosed, such as company names, operations, proprietary technology, personnel data or other highly sensitive information.

**Section 5.2: General policy**. Unless otherwise required by law or authorized by the Board, Directors and staff of the Corporation may not disclose confidential information.

**Section 5.3: Nondisclosure Agreements.** All Directors and staff of the Corporation must sign any non-disclosure agreement ("NDA") provided by prospective companies, subject to the review and approval of the Corporation's General Counsel prior to execution. Failure of a company to provide an NDA does not remove a Director's or a staff member's duty of confidentiality.

**Section 5.4: Remedies**. The Board shall recommend to City Council the removal of any Director found violating the duty of confidentiality. The Board may terminate any Corporation staff member found violating the duty of confidentiality. The Board may also elect to pursue any and all other available remedies under the law, including declaratory relief, injunction, attorneys' fees and damages.

**Article VI: General Provisions.**

**Section 6.1: Seal.** The seal of the Corporation shall be as determined by the Board and in accordance with Section 501.059 of the Development Corporation Act. The Board may determine the Corporation will have no seal.

**Section 6.2: Resignations.** Any Director or Officer may resign at any time. Any resignation should be made in writing and shall take effect at the time specified therein, or, if no time is specified, at the time of its receipt by the Chairperson or the City Secretary. A resigning Director shall serve until such time as such Director's successor takes office.

**Section 6.3: Notice and Waiver of Notice.** Notice shall be provided in accordance with Sections 2.3 and 2.4 of these Fifth Amended and Restated Bylaws. In accordance with Section 501.068(c) of the Development Corporation Act, a Director's attendance at a Board meeting constitutes a waiver of notice of the meeting, unless the Director attends the meeting for the express purpose of objecting to the transaction of any business at the meeting because the meeting has not been lawfully called or convened. In accordance with Section 501.068(d) of the Development Corporation Act, notice or waiver of notice of a Board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting.

**Section 6.4: Organizational Control.** In accordance with Section 501.401 of the Development Corporation Act, the City, by resolution of the City Council, may alter the Corporation's structure, organization, programs, or activities or terminate the existence of the Corporation. In accordance with Section 501.401(b) of the Development Corporation Act, the authority of the City under this section is limited only by the law of this state on the impairment of contracts entered into by the Corporation. In accordance with Section 505.352 of the Development Corporation Act, the City Council shall order an election on the termination of the Corporation on receipt of a petition requested the election that is signed by at least ten (10) percent of the registered voters of the City.

**Section 6.5: Dissolution of the Corporation.** In accordance with Section 501.406 of the Development Corporation Act, upon dissolution of the Corporation, title to or other interest in all funds and real and personal property then owned by the Corporation shall vest in the City except and unless otherwise expressly authorized by the City Council.

**Section 6.6: Staff and Organizational Management.** The Board, in its sole discretion, may hire and terminate employees of the Corporation. Pursuant to an administrative and professional services agreement between the Corporation and the City, the City may provide staffing and support to the Corporation, and pursuant to such an agreement, the Corporation shall reimburse the City for costs and expenses reasonably necessary for such support.

**Section 6.7: Indemnification.** In accordance with Chapter 8 of the Texas Business Organization Code, except to the extent such provisions are in conflict or inconsistent with the Development Corporation Act, and in accordance with Section 501.066 of the Development Corporation Act, the Corporation shall indemnify and defend its Directors, Officers, employees and agents to the fullest extent allowed by law.

**Section 6.8: Insurance and Benefits.** In accordance with Section 501.067 of the Development Corporation Act, the Corporation may at the discretion of the Board purchase and maintain insurance on behalf of the Corporation and any person whom it has the power to insure pursuant to law, the Certificate of Formation and the Fifth Amended and Restated Bylaws or otherwise, including without limitation Directors' and Officers' liability insurance.

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These Fifth Amended and Restated Bylaws of the Hutto Economic Development Corporation, Type B were adopted at a duly called meeting of the Board of Directors of the Corporation. These Fifth Amended and Restated Bylaws shall become effective upon the date of their approval by resolution of the City Council of the City of Hutto, Texas.

**Approved by the Board of Directors on the 1st day of August, 2022:**

By: ______________________________

Mike Arismendez, President/Chairperson
Hutto Economic Development Corporation,
Type B

ATTEST:

______________________________

Cheney Gamboa, Secretary
Hutto Economic Development Corporation,
Type B

**Approved by the City Council by Resolution on the 4th day of August, 2022:**

By: ______________________________

Mike Snyder, Mayor
City of Hutto, Texas

ATTEST:

______________________________

Angela Walton, City Secretary
City of Hutto, Texas