

RESOLUTION NO. 99-25

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF TOMBALL, TEXAS, APPROVING AMENDED BYLAWS OF THE TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION; PROVIDING FOR THE EFFECTIVE DATE, AND OTHER RELATED MATTERS.

* * * * *

WHEREAS, the TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION (the "Corporation") functions under the auspices of the City of Tomball, Texas, pursuant to Section 4B of THE DEVELOPMENT CORPORATION ACT OF 1979, as amended (the "Act"); and

WHEREAS, the Corporation has obtained the approval of the City Council and is filing amended, updated and restated Bylaws; and

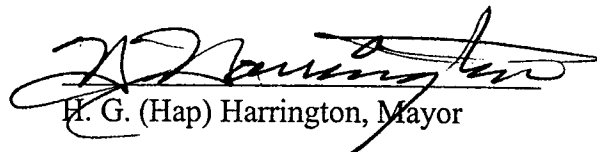
WHEREAS, the City Council, under whose auspices the Corporation was created, desires to approve the amended Bylaws of the Corporation;

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

Section 1. The City Council of the City of Tomball, Texas, hereby approves the amended Bylaws of the Tomball Industrial Development Corporation, the form of which is attached to this Resolution as **Exhibit "A"**.

Section 2. This resolution shall be effective immediately upon its adoption.

PASSED, APPROVED, AND RESOLVED this 18th day of October, 1999.


H. G. (Hap) Harrington, Mayor

ATTEST:


Mary Coker, City Secretary

Exhibit "A"

**AMENDED BYLAWS
OF
TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION**

These Bylaws govern the affairs of TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION (The "Corporation"), a nonprofit corporation organized under Article 5190.6, Texas Civil Statutes, as amended, the Development Corporation Act of 1979 (the "Act"), and governed by Sec. 4B of the Act.

ARTICLE I

PURPOSES

General Purposes

- 1.01. The Corporation acts on behalf of the City of Tomball, Texas, in furtherance of the public purposes of the Act and may engage in any project authorized under Sec. 2(10) or Sec. 4B of the Act.

Powers

- 1.02. The Corporation has all the powers, both express and implied, granted to corporations governed by Sec.4B of the Act.

ARTICLE II

OFFICES

Principal Office

- 2.01. The principal office of the Corporation in the State of Texas is located at 401 W. Market Street, Suite C, in Tomball, Texas. The Governing Body may provide for additional offices or change the location of the office.

Registered Office and Agent

- 2.02. The Corporation shall comply with the requirements of the Act and maintain a registered office and registered agent in Texas. The registered office may, but need not, be identical with the Corporation's principal office in Texas. The Board of Directors may change the registered office and the registered agent as provided.

ARTICLE III

BOARD OF DIRECTORS

Management of the Corporation

- 3.01. The affairs of the Corporation shall be managed by the Board of Directors.

Number, Qualifications and Service of Directors

- 3.02. The Board of Directors shall consist of seven (7) members appointed by the City Council of the City of Tomball, Texas, for two (2) year terms of office which may be staggered, if so provided for by the Governing Body. Each Director must reside within the City of Tomball, Texas.

Vacancies

- 3.03. A vacancy occurring upon the Board of Directors shall be filled by appointment by the Governing Body of the City for the unexpired term.

Annual Meeting

- 3.04. The annual meeting of the Board of Directors shall be held during the month of February of each year. The Board of Directors shall designate the time and location of the annual meeting which shall be held in the principal offices of the corporation.

Regular Meetings

- 3.05. The Board of Directors may provide for regular meetings by resolution stating the time and place of such meetings. The meeting shall be held within the City of Tomball, Texas, and, to the extent practical, at the principal offices of the corporation or at such other location as the Board of directors may designate.

Special Meetings

- 3.06. Special meetings of the Board of Directors may be called at the request of the president or any two Directors. A person or persons calling the meeting shall fix the time and location of the meeting, which meeting shall be conducted within the City of Tomball, Texas, as provided above for regular meetings.

The person or persons calling a special meeting shall notify the secretary of the Corporation of the information required to be included in the notice of the meeting. In addition to the posting of a meeting notice in accordance with these Bylaws, a copy of each such meeting notice shall be delivered to each Director not less than seventy two (72) hours before the time of the meeting. A meeting notice shall be deemed delivered to any Director when delivered to the Director in person or

deposited in the United States mail addressed to the Director at his or her address as it appears on the records of the Corporation. Such additional notice may be waived in writing by a director at any time either before or after the time of the meeting and such additional notice shall be deemed waived by attendance.

Notice of Meetings: Meetings

- 3.07. The Board of Directors shall be considered a "governmental body" within the meaning of Texas Government Code, Sec. 551.001, and notice of each meeting shall be given in accordance with the provisions of Texas Government Code, Chapter 551 (The Texas Open Meetings Act). The Board shall meet in compliance with the Texas Open Meetings Act.

Quorum

- 3.08. Four (4) Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The presence of a Director may not be established by proxy. No business shall be conducted, nor shall any action be taken by the Board of Directors, in the absence of a quorum.

Duties of Directors

- 3.09. Directors shall exercise ordinary business judgment in managing the affairs of the Corporation. In acting in their official capacity as Directors of the Corporation, Directors shall act in good faith and take actions they reasonably believe to be in the best interests of the Corporation or which would be lawful and shall refrain from actions not in the best interest of the Corporation or which would be unlawful. A Director shall not be liable if, in the exercise of ordinary care, the Director acts in good faith relying on written financial and legal statements provided by an accountant or attorney retained by the Corporation.

Actions of Board of Directors: Proxy Voting Prohibited

- 3.10. The vote of a majority of Directors present at a meeting at which a quorum is present shall be sufficient to constitute the act of the Board of Directors. The president shall be entitled to vote on all matters before the Board.

A director may not vote by proxy.

Minutes

- 3.11. The Board will keep minutes of its meetings, which minutes will constitute the record of such meetings.

Removal of Directors

- 3.12. The Board of Directors and each member thereof serves at the pleasure of the City Council of the City of Tomball, Texas, which may remove any Director at any time, either with or without cause.

Committees of Directors

- 3.13. The Board of Directors may by resolution establish one or more special or standing committees of its members. Such committees shall have the powers, duties and responsibilities established by the Board. The committees shall keep regular minutes of their meetings and report the same to the Board of Directors when required. The action of such a committee shall not constitute action by the Board of Directors.

Compensation

- 3.14. Directors shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder. Such expenses shall be paid only upon formal authorization by action of the Board of Directors.

Board of Directors

Ex-Officio Directors

- 3.15. *The Mayor and members of the Tomball City Council who are not members of the Corporation shall be ex-officio directors of the Corporation. The Mayor and the City Council of Tomball may appoint no fewer than four (4) and no more than seven (7) individuals who meet the special qualifications as outlined in Section 3.09, to serve as ex-officio directors of the Corporation. Two of these appointments shall be the President of the Tomball Area Chamber of Commerce and the President of Tomball College. Ex-officio directors shall be given notice of all meetings of the Board, may participate in discussions at Board meetings, but shall not be entitled to vote on matters considered by the Board.*

ARTICLE IV

OFFICERS

Officer Positions

- 4.01. The officers of the Corporation shall be a president, a vice president, a secretary, and a treasurer. The Governing Body may create additional officer positions, define the

authorities and duties of such additional positions and appoint persons to fill such positions. No person may hold more than one such office.

Election and Terms of Officers

- 4.02. The officers of the Corporation shall be elected annually by the Board of the Directors at the regular annual meeting.

Removal of Officers

- 4.03. Any officer may be removed by the Board of Directors at any time, with or without cause. The removal of an officer does not also automatically result in the removal of such person as a Director of the Corporation.

Vacancies

- 4.04. A vacancy in any office may be filled by the Board of Directors for the unexpired portion of the officer's term.

President

- 4.05. The president shall be the chief executive officer of the Corporation. The president shall supervise and control all of the business and affairs of the Corporation. The president shall preside at all meetings of Board of Directors. When the execution of any contract or instrument shall have been authorized by the Board of Directors, the president shall execute same except where such power is expressly delegated to another officer of the Corporation. The president shall perform other duties prescribed by the Board of Directors and all duties incident to the office of president.

Vice President

- 4.06. When the president is absent, is unable to act, or refuses to act, the vice president shall perform the duties of the president. When acting in place of the president, the vice president shall have all the powers and duties as the president and be subject to all of the limitations and restrictions placed upon the president.

Secretary

- 4.07. The Secretary shall:
- (a) Give all notices as provided in the bylaws or as required by law.
 - (b) Take minutes of the meetings of the Board of Directors and keep the minutes as part of the corporate records.

- (c) Maintain custody of the corporate records, authenticate corporate documents and affix the seal of the Corporation as required.
- (d) Keep a register of the mailing address of each Director and officer of the Corporation.
- (e) Perform duties as assigned by the president or Board of Directors.
- (f) Perform all duties incident to the office of secretary.

Treasurer

4.08. The treasurer shall:

- (a) Have charge and custody of and be responsible for all funds and securities of the Corporation.
- (b) Receive and give receipts for moneys due and payable to the Corporation from any source.
- (c) Deposit all moneys in the name of the Corporation in banks, trust companies, or other depositories as provided by these bylaws.
- (d) Write checks and disburse funds to discharge obligations of the Corporation.
- (e) Maintain the financial books and records of the corporation.
- (f) Prepare financial reports at least annually.
- (g) Perform other duties as assigned by the Board of Directors.
- (h) Perform all duties incident to the office of treasurer.

Executive Director And Assistant Officers

4.09. The following executive and assistant officers are created to assist the Board of Directors in the conduct of the affairs of the Corporation. They are the Executive Director, who shall assist the President as necessary, the Assistant Treasurer, and the Assistant Secretary, who shall assist those officers in their respective duties. The Executive Director and Assistant Officers are not required to be residents of the City. The City Manager shall serve as Executive director. The Assistant City Manager and Financial Director shall serve as the Assistant Treasurer, and the City Secretary shall serve as the Assistant Secretary for the Corporation.

Compensation

- 4.10.** Officers shall not receive any salary or compensation for their services, except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder. Such expenses shall be paid only upon formal authorization by action of the Board of Directors.

ARTICLE V

TRANSACTIONS OF THE CORPORATION

Contracts

- 5.01.** The Board of Directors may by formal action or resolution authorize an officer or agent of the Corporation to enter into a contract or execute and deliver any instrument in the name of or on behalf of the Corporation. This authority may be limited to a specific contract or instrument or it may extend to any number and type of contracts and instruments.

Depository

- 5.02.** The Board of Directors of the corporation shall designate a depository bank. All funds of the Corporation shall be deposited with the depository bank.

Potential Conflicts of Interest; Code of Ethics

- 5.03.** The members of the Board of Directors are local public officials within the meaning of Texas Government Code Chapter 171 and shall be governed by the Code of Ethics of the City of Tomball, Texas. If a Director has a substantial interest in a business entity or real property which is the subject of deliberation by the Board of Directors, the Director shall file an affidavit with the secretary of the corporation stating the nature and extent of the interest. Such affidavit shall be filed prior to any vote of decision upon the matter by the Board of Directors, and the interested Director shall abstain from any vote or decision upon the matter.

Transactions of the Corporation

Annual Work Plan and Performance Evaluation

- 5.04.** The Board of Directors shall research, develop, prepare and submit to the City Council for its approval an annual work plan which shall set out goals and objectives of the Corporation, including but not limited to short-term and long-term goals for the economic development of the City; goals and objectives for the utilization of funds to promote the expansion and development of a sound economic base for and

within the City; and any other similar goals and objectives deemed appropriate by the Board and the City Council. The Board shall review and update the plan each year prior to the submission of the annual budget required by other provisions of these Bylaws. In addition, the Board shall accompany each subsequent work plan following the initial work plan with a performance evaluation detailing the Board's achievements of its prior goals and objectives during the course of the previous fiscal year. Reports outlining the activity of the Corporation for that quarter shall be submitted in writing by the Board for review by the City Council as desired by the City Council.

Annual Corporation Budget

- 5.05. The Board shall prepare a proposed annual budget of expected revenues and proposed expenditures for the next ensuing fiscal year. The budget shall contain such classifications and shall be in such form as may be prescribed from time to time by the City Council. The budget shall not be effective until the same has been approved by the City Council. The proposed budget shall be submitted to the City Manager within a time frame to be specified by the City Manager for inclusion in the city's annual budgeting process.

Limitations on Expenditures

- 5.06. Any expenditures of funds not approved by the City Council in the annual budget must be submitted within 30 days to the City Council for consideration.

Staff Support

- 5.07. The Corporation will contract with the City to provide legal and financial services for the Corporation upon terms, conditions and compensation as mutually agreeable.

Gifts

- 5.08. The Board of Directors may accept on behalf of the Corporation any gift or bequest provided for the general purposes of or for any special purpose of the Corporation. Special funds shall include all funds from government contracts and gifts designated by a donor for special purposes. All other funds shall be general funds.

Prohibited Acts

- 5.09. As long as the Corporation is in existence, no director, officer or committee member of the Corporation shall:
- (a) Do any act in violation of the Bylaws or bidding obligation of the Corporation.

- (b) Do any act with the intention of harming the Corporation or any of its operations.
- (c) Do any act that would make it impossible or unnecessarily difficult to carry on the intended or ordinary business of the Corporation.
- (d) Receive an improper personal or business benefit from the operation of the Corporation.
- (e) Use the assets of the Corporation, directly or indirectly, for any purpose other than carrying on the business of the Corporation.
- (f) Wrongfully transfer or dispose of Corporation property, including intangible property such as good will.
- (g) Use the name of the Corporation (or any substantially similar) or any trademark or trade name adopted by the Corporation, except on behalf of the Corporation in the ordinary course of the Corporation's business.
- (h) Disclose any of the Corporation business practices, trade secrets or any other information not generally known to the business community to any person not authorized to receive it.
- (i) Commit Corporation funds without the prior approval of the Board of Directors.

The Corporation shall not have the power to own or operate any project as a business owner except as lessor, seller or lender or pursuant to the requirements of any trust agreement securing the credit transaction. In addition, the user pursuant to any lease, sale or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales and use taxes or any other taxes levied or imposed by the State of Texas or any political subdivision of the State of Texas. The purchase and holding of mortgages, deeds of trust or other security interests and contracting for any services thereof shall not be deemed the operation of a project.

ARTICLE VI

BOOKS AND RECORDS

Required Books and Records

- 6.01.** The Corporation shall keep correct and complete books and records of account. The Corporation's books and records shall include:

- (a) A file endorsed copy of all documents filed with the Texas Secretary of State relating to the Corporation, including, but not limited to, the articles of incorporation, any articles of amendment, restated articles, and statement of change of registered office or agent.
- (b) A copy of the bylaws, and any amended versions or amendments to the bylaws.
- (c) Minutes of the proceedings of the Board of Directors.
- (d) A list of names and addresses of the Directors and officers of the Corporation.
- (e) A financial statement showing the assets, liabilities, and net worth of the Corporation.
- (f) A financial statement showing the income and expenses of the Corporation.
- (g) All rulings, letters, and other documents relating to the Corporation's federal, state and local tax status.
- (h) The Corporation's federal, state and local information or income tax returns for each of the Corporation's tax years.

Records Open to Public

- 6.02.** The corporation shall be considered a "governmental body" within the meaning of Texas Government Code, Sec. 552.003 and all records of the corporation shall be made available to the public for inspection or reproduction in accordance with the requirements of Texas Government Code, Chapter 552, (The Texas Open Records Act).

Audits

- 6.03.** An annual independent audit shall be conducted by the Board of Directors. The City Council of the City of Tomball, Texas may at any time require an independent audit of the Corporation's books to be conducted.

ARTICLE VII

FISCAL YEAR

The fiscal year of the corporation shall begin on the first day of October and end on the last day of September.

ARTICLE VIII

AMENDMENTS TO BYLAWS

The bylaws may be altered, amended, or repealed by the Board of Directors with the consent of the City Council of the City of Tomball, Texas, as evidenced by a resolution with the bylaws attached.

ARTICLE IX

MISCELLANEOUS PROVISIONS

Legal Authorities Governing Construction of Bylaws

- 9.01. The bylaws shall be construed in accordance with the laws of the State of Texas. All references in the bylaws to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time. It is expressly provided that the provisions of the Development Corporation Act of 1979 applicable to corporations governed under Sec. 4B of that Act are incorporated within these bylaws by reference. In the event of any conflict between the applicable provisions of such Act and these bylaws, then the applicable provisions of such Act shall control.

Legal Construction

- 9.02. If any bylaw provision is held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision and the bylaws shall be construed as if the invalid, illegal, or unenforceable provision had not been included in the bylaws.

Headings

- 9.03. The headings used in the bylaws are used for convenience and shall not be considered in construing the terms of the bylaws.

Seal

- 9.04. The Board of Directors may provide for a corporate seal. Such seal would contain the words "Tomball Industrial development Corporation" and "Texas."

Parties Bound

- 9.05. The bylaws shall be binding upon and inure to the benefit of the Directors, officers and agents of the Corporation and their respective heirs, executors, administrators,

legal representatives, successors and assigns except as otherwise provided in the bylaws.

Effective Date

- 9.06. These bylaws, and any subsequent amendments hereto, shall be effective of and from the date upon which approval has been given both by the Board of Directors and the City Council of the City of Tomball, Texas.

Miscellaneous provisions

- 9.07. The Corporation shall indemnify any director or officer or former director or officer of the Corporation for the expenses and costs (including attorney fees) actually and necessarily incurred by said officer or director in connection with any claim asserted against said officer or director by action in court or otherwise by reason of such person being or having been a director or officer, except in relation to matters as to which said person shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

Corporation May Provide Insurance

- 9.08. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation to insure such person against any liability asserted against said person by reason of such person being or having been a director, officer, employee or agent of the Corporation. The premiums for such insurance shall be paid for by the Corporation.

Dissolution of the Corporation

- 9.09. The Corporation is a non-profit corporation. Upon dissolution, all of the Corporation's assets shall be distributed to the City of Tomball.

CERTIFICATE OF SECRETARY

I certify that I am the duly elected and acting secretary of the TOMBALL INDUSTRIAL DEVELOPMENT CORPORATION, and the foregoing Bylaws constitute the Bylaws of the Corporation. These Bylaws were duly adopted at a meeting of the Board of Directors held on the _____ day of _____, 1997, and subsequently approved and ratified by the City Council of the City of Tomball, Texas, at a meeting held on the _____ day of _____, 1999.

Signed this _____ day of _____, 1999.

SECRETARY OF THE CORPORATION