

RESOLUTION NO. 367

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK, TEXAS, APPROVING THE BYLAWS OF NEWARK MUNICIPAL DEVELOPMENT DISTRICT AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City of Newark, Texas (the "City") conducted a special election on May 6, 2017, for the purpose of submitting to the qualified voters the proposition to determine whether the sales and use tax collected for property tax reduction should be abolished and whether a Municipal Development District ("MDD") should be created in the City's corporate limits and ETJ with the imposition of a sales and use tax at the rate of one-half of one percent for the purpose of financing development projects beneficial to the MDD; and

WHEREAS, the returns of such election were canvassed by the City Council of the City of Newark, Texas and a majority of the qualified voters who voted at the election voted to authorize the levy and collection of such sales and use tax; and

WHEREAS, the City, by adoption of this resolution, hereby finds and determines that the bylaws of the Newark Municipal Development District should be approved and authorized.

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

**SECTION 1.** The above recitals are true and correct and are incorporated herein and made a part hereof for all purposes.

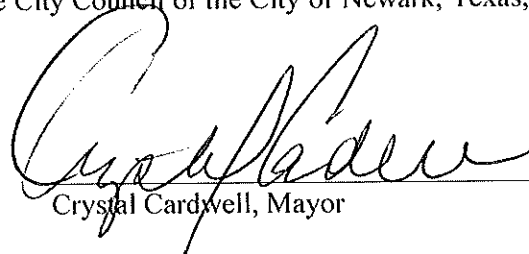
**SECTION 2.** The bylaws of the Newark Municipal Development District are attached hereto as **Exhibit A** and are incorporated herein by reference as a part hereof for all purposes, are hereby approved.

**SECTION 3.** The Mayor and the City Secretary are hereby authorized and directed to assist and cooperate as necessary to implement this resolution.

**SECTION 4.** All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this resolution are hereby repealed to the extent of such conflict, and the provisions of this resolution shall be and remain controlling as to the matters covered herein.

**SECTION 5.** This resolution shall take effect immediately from and after its passage.

PRESENTED AND PASSED by the City Council of the City of Newark, Texas, on this the 18<sup>TH</sup> day of January, 2024.

  
Crystal Cardwell, Mayor

ATTEST:

  
Jenni Moore, City Secretary



## EXHIBIT A

### NEWARK MUNICIPAL DEVELOPMENT DISTRICT BYLAWS

#### Article I. PURPOSE

The Newark Municipal Development District (the "District") is a political subdivision of the State of Texas and the City of Newark, Texas (the "City"), created in accordance with Chapter 377 of the Texas Local Government Code, as amended (the "Act"), and other applicable laws. The District was created for the purpose of developing and financing all development projects as that term is defined in Section 377.001(3) of the Act, as amended (a "Development Project").

#### Article II. BOARD OF DIRECTORS

##### 2.1 Board of Directors

The property and affairs of the District shall be managed and controlled by a Board of Directors subject to the restrictions imposed by law and these bylaws. Each board member is required to attend the Public Information Act and the Open Meetings Act training.

##### 2.2 Appointment, Number, and Term of Office

A Board of Directors (the "Board") has been appointed by the City of Newark City Council (the "Council"). The District shall be governed by a board of directors ("Board") consisting of five (5) persons ("Directors") appointed by the Council to serve staggered two-year terms. The Board is composed of five places referred to as Place 1, Place 2, Place 3, Place 4, and Place 5. One place shall be a member of the City Council. To initiate the staggered terms, Directors appointed to Place 1 and Place 2 shall serve two-year terms and Directors appointed to Place 3, 4, and 5 shall serve for an initial one-year term. After the expiration of said initial terms, the term of service shall be two years. Directors may be reappointed but shall serve no more than three consecutive terms, excluding an initial one year term.

##### 2.3 Qualifications

Each of the Directors must reside within the corporate limits or the ETJ of the City of Newark. An employee, officer, or member of the City Council may serve as a director, but may not have a personal interest in a contract executed by the district other than as an employee, officer, or member of the City Council of the city.

##### 2.4 Vacancy, Resignation, and Removal

A vacancy in any position of Director which occurs by reason of death, resignation, disqualification, removal or otherwise shall be filled by the Council. A Director may resign at any time. Such resignation shall be made in writing, addressed to the Mayor and the City Secretary, with a copy to the Board, and shall take effect at the time specified therein, or if no time is specified, at the time of its receipt by the City Secretary. Any Director may be removed from office by the Council at any time without cause.

##### 2.5 Officers and Term of Office

The Board of Directors shall choose from its members a President, Vice President, and Secretary. The term of office for each officer shall be one (1) year with the term of office expiring on September 30th of each year. Officers may be re-elected.

## **2.6 Compensation**

Directors shall not receive any salary or compensation for their services as Directors. Nothing contained herein shall be construed to preclude any Director from receiving reimbursement for their actual expenses incurred in the performance of their duties as a Director.

## **2.7 Meetings of the Board**

(a) Regular meetings of the Board shall be held in the City at such times as shall be designated, from time to time, by the Executive Director or the President of the Board. Directors may hold their meetings and may have an office and keep the books of the District at Newark City Hall, or such other place or places within the City as the Board may from time to time determine.

(b) Special meetings of the Board shall be held whenever called by the President or Executive Director of the Board, or at the request of a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called.

(c) The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required of a City under Chapter 551 of the Texas Government Code (the "Open Meetings Act").

(d) The District, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552 of the Texas Government Code (the "Public Information Act").

## **2.8 Quorum**

(a) A majority of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the District. The act of a majority of the Directors present and voting 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 or by these bylaws.

(b) A Director who is present at a meeting of the Board at which an action is taken shall be presumed to have assented to such action, unless their dissent shall be entered in the minutes of the meeting or unless they shall file a written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the District immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of the action.

## **2.9 Board's Relationship with City Council**

The Council shall require that the District be responsible to it for the proper discharge of its duties. All policies for development project administration shall be submitted for Council approval, and the Board shall administer said development projects accordingly. The Board shall determine its policies and direction within the limitations of the duties imposed by applicable laws, these bylaws, contracts entered into with the City, and budget and fiduciary responsibilities of the Board.

### **2.10 Board's Relationship with Administrative Departments of the City**

Any request for services made to the administrative departments of the City shall be made by the Board or its designee in writing to the City Secretary. The City Secretary may approve such request for assistance from the Board when such requested services are available within the administrative departments of the City and the Board has agreed to reimburse the administrative department's budget for the costs of such services so provided.

### **2.11 Conflict of Interest**

The members of the Board of Directors shall be considered local public officials within the meaning of Chapter 171 of the Texas Local Government Code. If a Director has a substantial interest, as that term is defined in said Chapter, 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 District stating the nature or extent of the interest. Such affidavit shall be filed prior to any vote or decision upon the matter of the Board of Directors, and if required by said Chapter, the interested Director shall abstain from any vote or decision upon the matter.

## **Article III. OFFICERS**

### **3.1 President.**

The President shall be a member of the Board and shall preside at all meetings of the Board. The President shall be the principal officer of the District and, subject to the Board, shall be in general charge of the properties and affairs of the District. The President shall have such other duties as assigned by the Board. The President may call special and emergency meetings of the Board.

### **3.2 Vice President.**

The Vice President shall be a member of the Board. The Vice President shall perform the duties and exercise the powers of the President upon the President's death, absence, disability, or upon the President's inability to perform the duties of the office. Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken. A Vice President shall have such other powers and duties as may be assigned by the Board or the President.

### **3.3 Secretary.**

The Secretary shall keep or cause to be kept the minutes of all meetings of the Board; shall attend to the giving and serving of all notices; shall have charge of the District's books, records, documents and instruments, except the books of accounting, financial records and securities of which the Executive Director shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the District Secretary subject to the control of the Board. The City Secretary, or designee, will assist the Secretary with the execution of his/her responsibilities.

### **3.4 Executive Director and Treasurer.**

The City Secretary of the City will serve as the Executive Director and Treasurer of the District, provide administrative support services for the District, and perform duties for the Board as

prescribed by the City Council. The Executive Director may participate in Board discussions but shall not vote on matters before the Board. District must reimburse City for use of City Staff resources. District, depending on available funds, may choose to contract for an executive director.

**3.5 Executive Assistant.**

The Assistant City Secretary will serve as the Executive Assistant of the District, provide administrative support services for the district, and perform duties for the Board as prescribed by the Executive Director. The Executive Assistant may participate in Board discussions, but shall not vote on matters before the Board. District must reimburse City for use of City Staff resources. District, depending on available funds, may choose to contract for an executive director.

**3.6 Counsel.**

The district shall contract legal services to provide representation to the Board, which may include the City Attorney, except in the event that the City Attorney has a conflict of interest in a particular matter, in which case the Board may select another attorney to provide legal services related to such particular matter. The City Attorney may refer matters to other duly licensed and qualified attorneys as necessary and appropriate; provided, however, that the City Attorney shall not accept a referral fee or any other compensation for such a referral.

**Article IV. GENERAL POWERS AND DUTIES OF THE DISTRICT**

**4.1 Limitations of District**

In the fulfillment of its purpose, the District shall be governed by the Act, and shall have all of the powers set forth and conferred in the Act, and in other applicable laws, subject to the limitations prescribed therein and, in these bylaws, and to the provisions thereof and hereof.

**4.2 Recommending Body**

The Board is a recommending body to the City Council.

**4.3 District Powers**

(a) Subject to a favorable recommendation of the Board and approval by the City Council, evidenced only by a certified copy of an ordinance, resolution, order or motion duly adopted by the City Council, the District may perform any act necessary to the full exercise of the District's powers, including:

- (1) accepting a grant or loan from a department or agency of the United States; department, agency, or political subdivision of this state; or public or private person;
- (2) acquiring, selling, leasing, conveying, or otherwise disposing of property or an interest in property, including a Development Project, under terms and conditions determined by the District;
- (3) employing necessary personnel;

- (4) adopting rules to govern the operation of the District and its employees and property; and
- (5) contract with a public or private person to plan, acquire, establish, develop, construct, or renovate a Development Project; or perform any other act the District is authorized to perform under the Act.

#### **4.4 Development Plan**

The District shall research and prepare a Development Plan, which shall include proposed methods and the expected costs of implementation.

- (a) The Plan shall include both short-term and long-term goals for the economic development of the City, proposed methods for the elimination of unemployment and under-employment, and the promotion of employment, through the expansion and development of a sound retail, industrial, and manufacturing base for and within the City.
- (b) The Plan shall be complimentary to the goals and objectives of the City Council and any other goals, objectives, or plans of the City.
- (c) Emphasis in the creation and implementation of the Plan shall be given to reaching out to overlapping and adjacent jurisdictions in an effort to negotiate joint approaches to solving development problems and to share in the burden of achieving development outcomes that will benefit the citizens of the region.

### **Article V. FISCAL PROVISIONS**

#### **5.1 Municipal Development Project Fund**

The District shall establish by resolution a fund known as the Municipal Development Project Fund. The District may establish separate accounts within the fund. The District shall deposit the proceeds from any sales and use tax imposed by the District, all revenue from the sale of bonds or other obligations by the District, and any other money required by law to be deposited into the Municipal Development Project Fund.

#### **5.2 Use of Municipal Development Project Fund**

Subject to a favorable recommendation of the Board and approval by the City Council, the District may use money in the Development Project Fund to:

- (1) pay the cost of planning, acquiring, establishing, developing, constructing, or renovating one or more Development Projects in the District;
- (2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the District or to refund bonds or other obligations;
- (3) pay the costs of operating or maintaining one or more Development Projects during the planning, acquisition, establishment, development, construction, or renovation or while

bonds or other obligations for the planning, acquisition, establishment, development, construction, or renovation are outstanding; or

(4) as otherwise permitted by the Act as it exists or may be amended.

### **5.3 Annual Budget**

On or before August 1 of each year, the Board shall prepare and present a proposed budget of expected revenues and proposed expenditure for the next ensuing fiscal year to the City Council. The fiscal year of the District shall commence on October 1 of each year and end on September 30. The District shall expend funds consistent with the Board adopted and Council approved budget. Any proposed expenditure not included in the budget will require approval by the Council.

### **5.4 Bonds and Other Obligations**

Subject to the approval of the City Council, the District may issue bonds, including revenue bonds and refunding bonds, or other obligations to pay the costs of a Development Project. The bonds or other obligations and the proceedings authorizing the bonds or other obligations shall be submitted to the Attorney General for review and approval to the extent required by Chapter 1202, Texas Government Code. The bonds or other obligations must be payable from and secured by the revenues of the District. The bonds or other obligations may mature serially or otherwise not more than 30 years from their date of issuance. The bonds or other obligations are not a debt of and do not create a claim for payment against the revenue or property of the District other than a Development Project for which the bonds are issued.

### **5.5 Finance and Accounting**

The Executive Director shall have custody of all funds and securities of the District and shall maintain all accounts and financial records in accordance with the City's standard accounting procedures. When necessary, the Executive Director shall (i) endorse for collection, on behalf of the District, checks, notes and other obligations and deposit the same to the credit of the District in such bank or banks or depositories as shall be designated by the Board; (ii) sign all receipts and vouchers for payments made to the District, either alone or jointly with such other officer as may be designated by the Board; or (iii) when required by the Board, render a statement of the District's cash account. All purchases and expenditures by the District shall be in accordance with City of Newark purchasing policies and procedures. The Executive Director shall provide the Board a monthly written report of the District's finances and shall provide an annual report within 90 days of the end of each fiscal year.

### **5.6 Auditing Procedures**

The Board shall provide for an annual financial audit to be performed by a competent independent audit firm. Such audit may be performed by the auditing firm retained by the City and performed within the scope of the City's annual financial audit.

## **Article VI. INDEMNIFICATION OF DIRECTORS AND OFFICERS**

### **6.1 Right to Indemnification**

To the fullest extent allowed by law, the District shall indemnify all Directors, officers, and employees of the District against expenses (including attorney's fees and related expenses) and amounts paid in settlement actually and reasonably incurred by a Director, officer, or employee in connection with the defense of any civil, criminal or administrative action, suit or proceeding in which the Director, officer, or employee is made a party or with which the Director or employee is threatened, by reason of being or because of any act as Director, officer or employee within the course and scope of their duties and/or employment if the Director, officer, or employee acted in good faith and in a manner in which the Director, officer or employee reasonably believed to be in or not opposed to the best interest of the District, and with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful.

### **6.2 Limit on Indemnification**

Notwithstanding the foregoing, a Director, officer or employee shall not be entitled to indemnification regarding (i) any matter in which they shall be adjudged by a court of competent jurisdiction to be liable for intentional acts of misconduct or gross negligence in the performance of their duties, or (ii) any matter in which they fail to notify the District of a claim within a reasonable time or fails to cooperate in the defense of such claim, but only to the extent that the defense of such claim is prejudiced by their failure to give notice or to cooperate.

### **6.3 Insurance**

The District may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer or employee of the District against any expense, liability or loss.

## **Article VII. ETHICS**

It is the policy of the District that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that public interest always be considered in conducting District business; and the appearance of impropriety be avoided to ensure and maintain public confidence in the District. Any rules of ethical conduct adopted from time to time by the City shall apply to the District and its Directors.

## **Article VIII. AMENDMENTS**

A proposal to alter, amend, or repeal these bylaws shall be made by the affirmative vote of a majority of the full Board at any meeting. Any proposed change or amendment to the bylaws, however, must be approved by the Council to be effective.



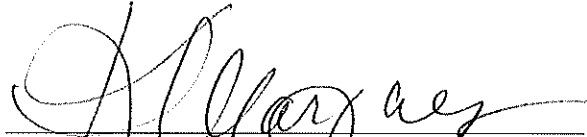
**Article IX. APPROVAL OF THE CITY COUNCIL**

To the extent that these Bylaws refer to any approval by the City or by the City Council, that approval shall be evidenced by a certified copy of an ordinance, resolution, order, or motion duly adopted by the City Council.

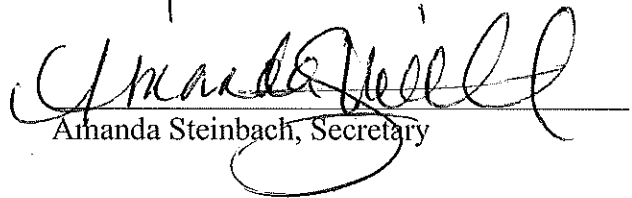
These Bylaws, as amended, were duly adopted by the Board on the 14th day of December, 2023.



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Curtis Cardwell, President



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Kris Marquez, Vice President



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Amanda Steinbach, Secretary