

CERTIFICATE FOR RESOLUTION #11-14-2011

**STATE OF TEXAS
COUNTY OF LLANO**

We, the undersigned officers and members of the Board of Directors of the Llano Economic Development Corporation (the "Corporation"), hereby certify as follows:

1. The Board of Directors of the Corporation convened in CALLED MEETING ON THE 7TH DAY OF NOVEMBER, 2011 (the "Meeting"), and the roll was called of the duly constituted officers and members of the Board of Directors, to-wit:

Jim Thomas	President
Diana Firestone	Vice President
Stan Venable	Secretary/Treasurer
Fred Smith	
Doris Messer	
Roger Pinckney	
Josh Rode	
Jerry Don Moss	Ex-Officio

and all of the persons were present, except the following absentees:

_____ ,
thus constituting a quorum. Whereupon, among other business, the following was transacted at the Meeting: a written

RESOLUTION APPROVING THE BORROWING BY THE LLANO ECONOMIC DEVELOPMENT CORPORATION OF UP TO \$2,000,000 FROM FIRST STATE BANK CENTRAL TEXAS TO FINANCE A COMMUNITY FACILITY PROJECT INCLUDING A COVERED ARENA AND ADJOINING SOCCER FIELDS

was duly introduced for the consideration of the Board of Directors. It was then duly moved and seconded that the Resolution be passed; and, after due discussion, said motion carrying with it the passage of the Resolution, prevailed and carried by the following vote:

AYES: _____

NOES: _____

2. A true, full and correct copy of the Resolution passed at the Meeting described in the above and foregoing paragraph is attached to and follows this Bond; that the Resolution has been duly recorded in the Board of Director's minutes of the Meeting; that the above and foregoing paragraph is a true, full and correct excerpt from the Board of Director's minutes of the Meeting pertaining to the passage of the Resolution; that the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of the Board of Directors as indicated therein; that each of the officers and members of the Board of Directors was duly and sufficiently notified officially

and personally, in advance, of the time, place and purpose of the Meeting, and that the Resolution would be introduced and considered for passage at the Meeting, and each of the officers and members consented, in advance, to the holding of the Meeting for such purpose, and that the Meeting was open to the public and public notice of the time, place and purpose of the meeting was given, all as required by Chapter 551, *Texas Government Code*.

3. The President of the Board of Directors has approved and hereby approves the Resolution; that the President and the Secretary of the Board of Directors have duly signed the Resolution; and that the President and the Secretary of the Board of Directors hereby declare that their signing of this Certificate shall constitute the signing of the attached and following copy of the Resolution for all purposes.

SIGNED to be effective as of the 14th day of November, 2011.

Stan Venable, Secretary
Llano Economic Development
Corporation

Jim Thomas, President
Llano Economic Development
Corporation

RESOLUTION #11-14-2011

APPROVING THE BORROWING BY THE LLANO ECONOMIC DEVELOPMENT CORPORATION OF UP TO \$2,000,000 FROM FIRST STATE BANK CENTRAL TEXAS TO FINANCE A COMMUNITY FACILITY PROJECT INCLUDING A COVERED ARENA AND ADJOINING SOCCER FIELDS

STATE OF TEXAS COUNTY OF LLANO

WHEREAS, the Llano Economic Development Corporation (the "Corporation") has been created pursuant to the provisions of Article 5190.6, Section 4B, Tex. Rev. Civ. Stat. (now recodified as Chapter 505 of the *Texas Local Government Code*, the "Act"); and

WHEREAS, in accordance with the provisions of Section 4(B)(a-1) (now Section 505.160 of the *Texas Local Government Code*) of the Act, the Corporation published notice of a community facility project including a covered arena and adjoining soccer fields (the "Project"), more than 60 days prior to the date the Note referred to herein will be funded; and

WHEREAS, in connection with the creation of the Corporation at an election held on May 6, 1995, the citizens of the City authorized the adoption of a one-half percent sales and use tax for all purposes authorized by the Act, including but not limited to ball fields, youth center, and park and recreation centers, which such purposes include the Project, such election having been held in accordance with applicable law; and

WHEREAS, the Corporation has all powers set forth in the Act including the power to issue bonds, notes and other evidence of indebtedness, payable from the one-half percent sales tax to provide for payment of the costs of the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE LLANO ECONOMIC DEVELOPMENT CORPORATION:

Section 1. RECITALS, AMOUNT AND PURPOSE OF THE NOTE. The recitals set forth in the preamble hereof are incorporated herein and shall have the same force and effect as if set forth in this section. The Note of the Corporation is hereby authorized and approved to be issued and delivered in the aggregate principal amount of \$2,000,000, for the purpose of providing funds to pay the "Costs" (as defined in Section 501.152 of the *Texas Local Government Code*) of the Project. The project is further declared to be a community facility project including a covered arena and adjoining soccer fields.

The Board of Directors of the Corporation hereby expressly finds that the Project is required and suitable for all of the following purposes, as set forth in various sections of the *Texas Local Government Code*, referred to as follows:

to provide facilities required or suitable for use for professional and amateur sports, including children's sports, athletic, entertainment, tourist convention and

public park purposes and events (as provided in Section 505.152(a), *Texas Local Government Code*).

Section 2. DEFINITIONS.

(a) The term “Loan Documents” means this Resolution, the Note, and the Security Agreement.

(b) The term “Note” means the Llano Economic Development Corporation Note authorized to be issued hereunder.

(c) The term “Sales Taxes” means the sales and use tax for economic development levied by the City pursuant to the Act and paid over to the Corporation.

(d) The term "Project" shall mean the construction of a community facility project including a covered arena and adjoining soccer fields, all as allowed by the Act.

Section 3. FORM OF NOTE.

The Form of Note is attached hereto as Exhibit A. The Note is hereby approved by the Board of Directors of the Corporation. The President and Secretary of the Corporation are hereby authorized to execute the Note on behalf of the Corporation and to deliver it to First State Bank Central Texas (sometimes referred to as the “Holder” of the Note).

Section 4. RESTRICTION ON USE OF NOTE PROCEEDS.

The Corporation hereby warrants that it will not use the Note proceeds except for an expense which is a proper “Cost” of the “Project” (as such terms are defined in the Act), and for which all approvals have been given as required under the Act.

Section 5. PLEDGE OF TAXES.

(a) In order to secure and provide a source of payment for the Note, the Corporation hereby pledges and grants to the Holder of the Note an irrevocable lien on all sales and use taxes (levied at the rate of one-half percent) collected by the City and delivered to the Corporation (“Pledged Taxes”).

(b) In order to further evidence the lien granted on the Pledged Taxes the Corporation hereby approves and authorizes the execution and delivery of a Security Agreement to secure payment of the Note, the terms of which are hereby approved by the Corporation. The President and Secretary of the Corporation be and are hereby authorized to execute and deliver the Security Agreement.

(c) The Corporation may first use the proceeds of the Pledged Taxes to pay (i) its operating expenses determined in accordance with general accepted accounting principles applicable to the Corporation, and/or (ii) other ordinary expenses of the Corporation including financial contributions to encourage business development or other purposes permitted by the Act.

Section 6. [deleted]

Section 7. ADDITIONAL FINANCIAL TRANSACTIONS. The Corporation shall have the right to use the sales and use taxes collected for economic development (i) to make grants, (ii) incur additional indebtedness, or (iii) otherwise to undertake lawful purposes of the Corporation (with all such items being an “Additional Transaction”) so long as prior to entering an Additional Transaction the Corporation furnishes to the Holder a projection, prepared in good faith by the Corporation, that its reasonably anticipated sales and use tax collections for the 12 month period after such Additional Transaction is entered will be sufficient to pay (a) all operating expenses of the Corporation, (b) all outstanding indebtedness of the Corporation (including but not limited to the Note) coming due in that same 12 month period, and (c) the amount due or to be paid on the proposed Additional Transaction for the same 12 month period.

Such projection shall be furnished to the Holder at least 14 days prior to the time any such Additional Transaction is entered by the Corporation.

Section 8. SALE OF NOTE. The Note is hereby sold and shall be delivered to First State Bank Central Texas. The Note shall be in the amount of \$2,000,000. It is hereby officially found, determined, and declared that the terms of this sale are the most advantageous reasonably obtainable.

Section 9. ANNUAL AUDIT. The Corporation shall provide or cause the City to provide not later than 180 days after the end of each fiscal year, audited financial statements of the City and the Corporation, prepared by a certified public accountant in a manner and form acceptable to the Holder. The Corporation also shall provide unaudited quarterly statements of its operations to the Holder, within 45 days of the end of each calendar quarter.

Section 10. NO REDUCTION OF TAX. The Corporation shall take no action while the Note is outstanding to reduce the amount of sales and use tax to be paid to the Corporation by the City.

Section 11. REMEDIES IN EVENT OF DEFAULT. In addition to all the rights and remedies provided by the laws of the State of Texas, the Corporation covenants and agrees particularly that in the event the Corporation (a) defaults in the payments of the Note, or (b) defaults in the observance or performance of any other of the covenants, conditions or obligations set forth in this Resolution, the Note, or the Security Agreement (together the “Loan Documents”), the Holder of the Note shall be entitled to a writ of mandamus issued by a court of proper jurisdiction compelling and requiring the governing body of the Corporation and other officers of the Corporation (provided, no person shall be individually liable for the obligations of the Corporation hereunder) to observe and perform any covenant, condition or obligation prescribed in the Loan Documents, including the obligation to pay the Note.

No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default or

acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. The specific remedies herein provided shall be cumulative of all other existing remedies and the specification of such remedies shall not be deemed to be exclusive.

Section 12. SPECIAL COVENANTS. That the Corporation hereby further covenants as follows:

(a) That it has the lawful power to pledge the Pledged Taxes, to pay the Note, and to perform its obligations under the Loan Documents, and has lawfully exercised said powers under the Constitution and laws of the State of Texas.

(b) That other than for the payment of the Note, and the payment of a debt to the City, the Pledged Taxes have not in any manner been pledged to the payment of any debt or obligation of the Corporation.

Section 13. SEVERABILITY. The provisions of this Resolution are severable; and in case any one or more of the provisions of this Resolution or the application thereof to any person or circumstance should be held to be invalid, unconstitutional, or ineffective as to any person or circumstance, the remainder of this Resolution nevertheless shall be valid, and the application of any such invalid provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

Section 14. ARBITRATION.

a) Arbitration. The Corporation hereby agrees, upon demand by either the Corporation or the holder of the Note (with the Corporation and the holder of the Note being referred to herein as the “parties”), to submit to binding arbitration all claims, disputes and controversies between or among them (and their respective employees, officers, directors, attorneys, and other agents), whether in tort, contract or otherwise arising out of or relating to in any way (i) the Note and related Loan Documents which are the subject of this Resolution and their negotiation, execution, collateralization, administration, repayment, modification, extension, substitution, formation, inducement, enforcement, default or termination; or (ii) requests for additional credit.

(b) Governing Rules. Any arbitration proceeding will (i) proceed in a location in Llano, Texas selected by the American Arbitration Association (“AAA”); (ii) be governed by the Federal Arbitration Act (Title 9 of the United States Code), notwithstanding any conflicting choice of law provision in any of the documents between the parties; and (iii) be conducted by the AAA, or such other administrator as the parties shall mutually agree upon, in accordance with the AAA’s commercial dispute resolution procedures, unless the claim or counterclaim is at least \$2,000,000.00 exclusive of claimed interest, arbitration fees and costs in which case the arbitration shall be conducted in accordance with the AAA’s optional procedures for large, complex commercial disputes (the commercial dispute resolution procedures or the optional procedures for large, complex commercial disputes to be referred to, as applicable, as the “Rules”). If there is any inconsistency between the terms hereof and the Rules, the terms and procedures set forth herein shall control. Any party who fails or refuses to submit to arbitration following a demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of

any dispute. Nothing contained herein shall be deemed to be a waiver by any party that is a bank of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

(c) No Waiver of Provisional Remedies, Self-Help and Foreclosure. The arbitration requirement does not limit the right of any party to (i) foreclose against real or personal property collateral; (ii) exercise self-help remedies relating to collateral or proceeds of collateral such as setoff or repossession; or (iii) obtain provisional or ancillary remedies such as replevin, injunctive relief, attachment or the appointment of a receiver, before during or after the pendency of any arbitration proceeding. This exclusion does not constitute a waiver of the right or obligation of any party to submit any dispute to arbitration or reference hereunder, including those arising from the exercise of the actions detailed in sections (i), (ii) and (iii) of this paragraph.

(d) Arbitrator Qualifications and Powers. Any arbitration proceeding in which the amount in controversy is \$5,000,000.00 or less will be decided by a single arbitrator selected according to the Rules, and who shall not render an award of greater than \$5,000,000.00. Any dispute in which the amount in controversy exceeds \$5,000,000.00 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. The arbitrator will be a neutral retired judge of the State of Texas or federal judiciary within Texas, in either case with a minimum of ten years experience in the substantive law applicable to the subject matter of the dispute to be arbitrated. The arbitrator will determine whether or not an issue is arbitratable and will give effect to the statutes of limitation in determining any claim. In any arbitration proceeding the arbitrator will decide (by documents only or with a hearing at the arbitrator's discretion) any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication. The arbitrator shall resolve all disputes in accordance with the substantive law of the State of Texas and may grant any remedy or relief that a court of such state could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award. The arbitrator shall also have the power to award recovery of all costs and fees, to impose sanctions and to take such other action as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Texas Rules of Civil Procedure or other applicable law. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The institution and maintenance of an action for judicial relief or pursuit of a provisional or ancillary remedy shall not constitute a waiver of the right of any party, including the plaintiff, to submit the controversy or claim to arbitration if any other party contests such action for judicial relief.

(e) Discovery. In any arbitration proceeding discovery will be permitted in accordance with the Rules. All discovery shall be expressly limited to matters directly relevant to the dispute being arbitrated and must be completed no later than 20 days before the hearing date and within 180 days of the filing of the dispute with the AAA. Any requests for an extension of the discovery periods, or any discovery disputes, will be subject to final determination by the arbitrator upon a showing that the request for discovery is essential for the party's presentation and that no alternative means for obtaining information is available.

(f) Class Proceedings and Consolidations. The resolution of any dispute arising pursuant to the terms of this Agreement shall be determined by a separate arbitration proceeding and such dispute shall not be consolidated with other disputes or included in any class proceeding.

Section 15. CONSTRUCTION AND SALE OF PROJECT. The Corporation will finance and construct the Project. Upon completion of construction the Corporation shall transfer title to the Project to the City of Llano, which shall own and maintain the Project.

Section 16. FUNDING DATE. The Note shall not be delivered and funded until at least sixty (60) days after notice regarding the Project was published on October 5, 2011. Reference is made to Section 505.160 of the *Texas Local Government Code*.

Section 17. RESOLUTION AND LOAN DOCUMENTS TO CONSTITUTE A CONTRACT. This Resolution and the Loan Documents shall constitute a contract between the Corporation and the Purchaser of the Note. The Corporation may not and shall not amend, rescind, or otherwise modify this Resolution or any of the Loan Documents in any manner whatsoever so long as the Note is outstanding without the express prior written consent of the Purchaser.

READ, PASSED, ADOPTED, AND EFFECTIVE this 14th day of November, 2011.

LLANO ECONOMIC DEVELOPMENT CORPORATION

By: _____
Jim Thomas, President

ATTEST:

By: _____
Stan Venable, Secretary