

**RESOLUTION NO. 2019-R-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BUDA, TEXAS CONCERNING ACTIONS OF THE CITY OF BUDA 4B CORPORATION'S BOARD OF DIRECTORS CONSTITUTED AS OF APRIL 15, 2019; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council finds that in 2001, the voters of the City of Buda (the "City") approved the formation of the City of Buda 4B Corporation, also known as the Buda Economic Development Corporation (the "BEDC"); and

**WHEREAS**, the Board of Directors of the BEDC are not elected by the voters of the City of Buda, but instead are appointed by the City Council of the City of Buda; and

**WHEREAS**, as the only elected officials accountable to the public for the actions of the BEDC, the City Council must take action when the Board of Directors of the BEDC fails to act in the best interests of the Corporation or citizens of the City of Buda; and

**WHEREAS**, the City Council is obligated to review and approve all programs and expenditures of a corporation as a matter of Texas law. Tex. Loc. Gov't. Code § 501.073(a); and

**WHEREAS**, the City Council is entitled to access to the corporation's books and records at all times. Tex. Loc. Gov't. Code § 501.073(b); and

**WHEREAS**, the BEDC's powers with respect to an economic development project, are subject to the control of the City Council. Tex. Loc. Gov't. Code § 501.054(b); and

**WHEREAS**, the City Council, in its sole discretion, may alter the BEDC's structure, organization, programs, or activities, as a matter of Texas law. Tex. Loc. Gov't. Code § 501.401(a); and

**WHEREAS**, the City Council does find based on the information illustrated below, improper Board Member conduct warrants the immediate removal of President Jose Montoya, Board Member Tia Pair, Board Member Jeremy De Alcala and Board Member Eileen Altmiller; and

**WHEREAS**, on April 23, 2019, the President of the Board of Directors of the BEDC notified the Mayor of the City of Buda that an investigative report had been issued on March 14, 2019, and that the BEDC adopted Resolution 2019-0415-2 Regarding the Employment of the Executive Director of the Buda Economic Development Corporation on April 15, 2019; and

**WHEREAS**, the City Council adopts this Resolution to detail the facts and circumstances surrounding the stated investigation, the adopted Resolution, and to document its actions in

oversight of the BEDC as provided by law and to notify and reveal the true conduct of the BEDC Board of Directors, all in response to such Resolution and in response to certain actions by the BEDC Board, its President and Vice President; and

**WHEREAS**, an investigation conducted by Sheila Gladstone, a hired attorney-investigator by BEDC, has brought to light inconsistencies or irregularities in the manner in which the BEDC notices and conducts its meetings, the following circumstances being several examples but not an exhaustive list of same; and

**WHEREAS**, BEDC Investigator Gladstone disclosed in her investigative report that the BEDC Board met in executive session on December 5, 2018, regarding personnel concerns brought up by Mayor Pro Tem Hopkins and came up with a “course of action”; and

**WHEREAS**, the December 5, 2018, BEDC Board Minutes reflect one executive session item entitled “economic development negotiations with other prospects” and reflect no agenda items related to personnel matters and further reflect no vote regarding any “course of action”; and

**WHEREAS**, on January 11, 2019, the Buda City Attorney at the direction of the City Council, issued a letter raising concerns regarding the workplace conduct of the Executive Director, and informed the BEDC President of requested action to be taken, and offered to attend any meeting of the Board to discuss the matter as the representative of the City and to address any response to the Buda City Attorney; and

**WHEREAS**, the BEDC refused to accept the offer made by the Buda City Attorney; instead, based on BEDC Investigator Gladstone investigative report, the BEDC Board had approved on January 17, 2019, the hiring of an outside law firm to conduct an investigation; and

**WHEREAS**, BEDC President Montoya states in a letter dated January 23, 2019, that the BEDC Board voted on January 17, 2019, to engage the services of an investigator; and

**WHEREAS**, the January 17, 2019, BEDC Board Minutes reflect no such item on the agenda, and no such vote or approval; and

**WHEREAS**, the entirety of the Board of Directors of the BEDC signed a letter dated February 15, 2019 and addressed to the Mayor and City Council concerning BEDC Business; and

**WHEREAS**, there is no record of a BEDC Board meeting on February 15, 2019; and

**WHEREAS**, there is no record of any authorization for such letter on any BEDC Board minutes; and

**WHEREAS**, on February 19, 2019, Ann Miller advises Assistant City Manager Grau that the BEDC Board on February 6, 2019, established a new practice requiring Special Projects, Sponsorships and Event items which have already been approved on their budget to come back

to the Board for a proposal to be presented to the Board, and action to approve the expenditure, and further indicating never before raised conditions to funding, including the BEDC to be granted naming rights, and further conditions which appears in conflict with the public-private-partnership which had been publicly known to be under negotiation for several months; and

**WHEREAS**, the February 6, 2019, BEDC Board Minutes reflect no item, discussion or vote on such a policy or process; and

**WHEREAS**, on March 5, 2019, various City Councilmembers report various BEDC Board member attempts to schedule one or more private meetings with City Councilmembers to discuss the BEDC Executive Staff Concerns raised on January 11, 2019; and

**WHEREAS**, on April 12, 2019, BEDC Operations & Finance Administrator Mandy Shaw requested City Clerk Alicia Ramirez to post on the City E-Board a Notice for a BEDC Board Meeting after the beginning of the 72-hour time period required by law for the posting; and

**WHEREAS**, City Clerk Ramirez advised BEDC Administrator Shaw that if Ms. Shaw would change the time of the meeting to allow for the posting to be before the 72-hour requirement Ms. Ramirez would post the Notice; and

**WHEREAS**, BEDC Administrator Shaw did not change the time of the meeting and instead, at 5:46 p.m. on April 12, taped the Notice of the Agenda on a window at City Hall with less than 72 hours remaining prior to the start of such meeting; and

**WHEREAS**, the April 15, 2019, BEDC meeting took place out of compliance with the Texas Open Meetings Act and minutes provided by BEDC Attorney Akers provide that the BEDC Board went into executive session to discuss Personnel Matters including the entire BEDC Staff, which is out of compliance with the Texas Open Meetings Act; and the minutes further reflect that the Board approved a "Resolution regarding Personnel Matters" "Personnel Matters Resolution" at that same meeting based on information shared in the non-compliant executive session on personnel matters; and

**WHEREAS**, said Personnel Matters Resolution authorized the BEDC President to take personnel actions including termination and payment of severance to the BEDC Staff; and

**WHEREAS**, on April 16, 2019, the BEDC President and Vice President terminated three of the four BEDC employees; and

**WHEREAS**, state law requires the notices of agendas for public meeting must be posted for at least 72 hours prior to the meeting; and

**WHEREAS**, state law requires that meetings of a quorum of a governmental body in which the body discusses public business must be noticed and open, unless an exception allowing an executive session applies; and

**WHEREAS**, state law requires that, prior to conducting an executive session, at least 72-hours' notice of such executive session must be provided, the presiding officer of the governmental body must announce publicly that a closed meeting will be held and the presiding officer must disclose under what provision of the Open Meetings Act such executive session is being held; and

**WHEREAS**, state law allows for the executive session deliberations regarding only an individual officer or employee; and

**WHEREAS**, state law requires that discussions about a class or group of employees be held in open session; and

**WHEREAS**, the above-described findings of BEDC Investigator Gladstone, the actions of BEDC Administrator Shaw, and the Agenda and the corresponding minutes of the April 15, 2019 meeting and executive session of the BEDC regarding personnel matters does not appear to have been conducted consistent with the Texas Open Meetings Act; and

**WHEREAS**, Project Pink Sunshine, as proposed by the BEDC, involves the purchase of one tract of property broken into two segments for purchase with the intent for its development as Class A Office Space; and

**WHEREAS**, BEDC records reflect on March 4, 2019, a fully-executed agreement to purchase a portion of a tract of property was delivered to Independence Title Company, such agreement being between William E. And Tammy B. Gray and Site Solutions Inc. and containing a provision that the contract was void if not accepted by March 1, 2019; and

**WHEREAS**, BEDC records reflect on March 4, 2019, a fully-executed agreement to purchase the remainder of said tract of property was delivered to Independence Title Company, such agreement being between William E. And Tammy B. Gray and Site Solutions Inc. and containing a provision that the contract was void if not accepted by March 1, 2019; and

**WHEREAS**, the two contracts for the purchase of a single tract of property reflect an agreed sales price of over \$2,000,000; and

**WHEREAS**, on March 4, 2019, without City Council approval of any appropriations to cover the purchase of the property and without consent of the City Council to enter into a contract for the purchase of the property in connection with Project Pink Sunshine, and without City Council approval of any expenditure to purchase the property, the BEDC Board by a 6-0-1 vote, with Director Hatch abstaining, nevertheless authorized BEDC Executive Director Ann Miller to negotiate and execute agreements regarding Project Pink Sunshine; and

**WHEREAS**, on March 5, 2019, without City Council authorization for Project Pink Sunshine, BEDC Executive Director Miller executed an Assignment Agreement with Site Solutions Inc. on behalf of BEDC for Site Solutions Inc. to secure contracts to purchase the two portions of

the one tract of property (the "sales contracts"), despite such contracts had previously been executed and submitted to a title company; and

**WHEREAS**, the Assignment Agreement referenced a prior agreement between the BEDC, and Site Solutions Inc. entitled "Exclusive Representation Agreement" in which Site Solutions Inc. agreed to act as the agent of the BEDC for the negotiation and acquisition of commercial property; and

**WHEREAS**, the Assignment Agreement required Site Solutions Inc. to assign both sales contracts to the BEDC within one business day of Site Solutions Inc.'s receipt of such contracts; and

**WHEREAS**, on the same day of the execution of the Assignment Agreement, March 5, 2019, Site Solutions Inc. assigned both sales contracts to BEDC, stating that Site Solutions Inc. had entered into such sales contracts on March 4, 2019, despite language in the sales contracts that the sales contracts were null and void if not accepted by March 1, 2019; and

**WHEREAS**, on March 26, 2019, the City Council was requested to approve a BEDC budget amendment to appropriate funds to purchase the property involved in Project Pink Sunshine and was briefed about Project Pink Sunshine, but did not approve the requested budget amendment to fund Project Pink Sunshine; and

**WHEREAS**, on March 28, 2019 at or about 2:04 p.m. the City Manager of the City of Buda reemphasized to BEDC Board President Jose Montoya and Executive Director Miller that the City Council did not support the purchase of the property identified in Project Pink Sunshine, evidenced by its decision not to approve the requested budget amendment for its purchase; and

**WHEREAS**, the March 28, 2019, minutes of the BEDC Board of Directors Meeting reflect that despite the notification to the Board President and the Executive Director of City Council's non-support for the project, the BEDC acknowledged awareness that it had entered into two agreements to purchase property and that the Board of the BEDC still somehow needed "to verify that Project Pink Sunshine is not going to be approved by the City Council in order that [the BEDC] may withdraw from the two Sales Contracts"; and

**WHEREAS**, the April 15, 2019, minutes of the BEDC Board of Directors Meeting reflect that the Board by a 6-0-0 vote, with Board Member Joy Hart not present, adopted "the Resolution as presented in Executive Session regarding Real Property associated with Project Pink Sunshine"; and

**WHEREAS**, despite requests, a copy of such BEDC Resolution was not accessible to the City until 2:17 p.m. on April 30, 2019, when provided to the City Attorney less than four (4) hours before the meeting considering this resolution; and

**WHEREAS**, BEDC Resolution 2019-41503 directed a copy of the resolution regarding Pink Sunshine to be delivered to the Mayor, each Councilmember and the City Manager; although no delivery occurred to those stated parties; and

**WHEREAS**, the BEDC failed to timely inform the city regarding the status of the various contracts and commitments of the BEDC in regard to Project Pink Sunshine; and

**WHEREAS**, BEDC fiscal records show the BEDC expended a total of \$23,538 in the course of Project Pink Sunshine and executed contracts obligating over \$2,000,000; and

**WHEREAS**, the City Council declares that it never authorized the undertaking nor approved any expenditures for Project Pink Sunshine; and

**WHEREAS**, the City Council reconfirms it does not desire to move forward with Project Pink Sunshine; and

**WHEREAS**, the City received a letter dated April 29, 2019 issued by Site Solutions on behalf of the BEDC, canceling the real property sales contracts related to Project Pink Sunshine, but allowing the "Independent Consideration" to be retained despite no authority to expend funds granted by the City Council; and

**WHEREAS**, the April 29, 2019 letter seeks to recover \$19,000 of the \$23,538 expended without authority by the BEDC in the course of Project Pink Sunshine; and

**WHEREAS**, the BEDC has refused to timely inform the City regarding the status of the various contracts and commitments of the BEDC in regard to Project Pink Sunshine; and

**WHEREAS**, the City Council declares that it never authorized the undertaking of Project Pink Sunshine; and

**WHEREAS**, the City Council reconfirms it does not desire to move forward with Project Pink Sunshine; and

**WHEREAS**, Section 505.158(a) of the Texas Local Government Code defines a "project" to include land found by the board of directors to promote new or expanded business development; and

**WHEREAS**, Section 505.158(b) of the Texas Local Government Code prohibits the BEDC from expending more than \$10,000 on Project Pink Sunshine until the governing body of the corporation's authorizing municipality adopts a resolution authorizing the project after giving the resolution at least two separate readings; and

**WHEREAS**, Section 505.159(a) of the Texas Local Government Code requires BEDC to hold at least one public hearing on a proposed project before spending money to undertake the project; and

**WHEREAS**, Section 501.073(a) of the Texas Local Government Code provides in part that as the BEDC's authorizing unit, the City Council will approve all programs and expenditures of a corporation; and

**WHEREAS**, the City Council of the City of Buda, Texas, does not approve of Project Pink Sunshine and does not approve any expenditures relating to the project; and

**WHEREAS**, without statutory compliance, the BEDC entered into sales contracts for the purchase of property as part of a project in an amount in excess of \$10,000 and, in fact, in excess of \$2,000,000, without record of a public hearing, without securing City Council authorization by appropriate Resolution, without City Council appropriation of such funds and without obtaining City Council approval for the expenditure of such funds for this purpose or property; and

**WHEREAS**, Section 501.054(b)(2) of the Texas Local Government Code provides that with respect to a project, the exercise of the powers of an economic development corporation is subject to the control of the corporation's authorizing unit; and

**WHEREAS**, the City Council of the City of Buda, Texas, desires to exert control over the BEDC's Project Pink Sunshine as provided by Texas Local Government Code Section 501.054(b)(2) based on the circumstances; and

**WHEREAS**, the City Council of the City of Buda, Texas, does not approve of Project Pink Sunshine and does not approve any expenditures relating to the project; and

**WHEREAS**, the City Council of the City of Buda, Texas, being the BEDC's authorizing unit, does not approve this project or any expenditure of tax dollars for the project and desires to cancel and declare Project Pink Sunshine void exercising its authority provided by Section 501.054(b)(2) and Section 501.073(a) of the Texas Local Government Code; and

**WHEREAS**, the City Council of the City of Buda, Texas finds the Project Pink Sunshine contracts entered into by the BEDC to expend over \$2,000,000 without City Council approval provide a deadline of May 3, 2019 to cancel said agreements and find that such contracts must be cancelled and declared void; and

**WHEREAS**, on April 15, 2019, the Board of Directors of the BEDC adopted a resolution publicly suggesting the City Council, City Officials and City Staff engaged in activities contrary to the purpose of the BEDC and to state law; and

**WHEREAS**, BEDC Resolution 2019-0415-2 misrepresents the consistent City Council desire over various years for the City and the BEDC to collaborate and use all economic development

tools available to both organizations in the development of expanding business development;  
and

**WHEREAS**, in 2016, the BEDC and the City adopted a joint incentive policy and created an Incentive Task Force (ITF) comprised of the City Manager, BEDC Executive Director and EDC Board President and project specific additional staff to “streamline the process of evaluating projects”;  
and

**WHEREAS**, the policy stated that the Incentive Task Force will evaluate each project for the City of Buda and the BEDC; and

**WHEREAS**, the policy stated that City Chapter 380 agreements would be the preferred tool for incentive agreements; and

**WHEREAS**, the BEDC, without formal policy change, abandoned the Incentive Task Force process in practice beginning in October 2018, instead taking independent action on projects without City collaboration; and

**WHEREAS**, City Administration was contacted on multiple projects, including a water infrastructure project in support of the Hays Consolidated Independent School District (HCISD) to provide a water main along Old San Antonio Road to support redundant water supplies between IH-35 and Old San Antonio Road, which would reasonably be found to improve and expand necessary infrastructure to promote and develop the area for new and expanded business enterprises; and

**WHEREAS**, the HCISD complained to City Administration months after submitting their mid-October revised application for grant funds for the needed infrastructure was not considered or acted upon because the BEDC had not called an ITF committee meeting since its submittal;  
and

**WHEREAS**, BEDC Resolution 2019-0415-2 misrepresents the scope of BEDC permissible projects, which specifically includes expenditures that are found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises involving streets and roads, rail spurs, water and sewer utilities, electric utilities, or gas utilities, drainage, site improvements, and related improvements as provided by Texas Local Government Code § 501.103; and

**WHEREAS**, BEDC’s current Policies and Procedures Manual, adopted in April 2011 states on page 3, Section II. The Organization, in pertinent part: “...The corporation was created to: Improve the tax base and provide for a stable economic environment; To enhance existing businesses to reach maximum potential...Improve infrastructure.”; and

**WHEREAS**, BEDC Resolution 2019-0415-2 misrepresents the scope of BEDC permissible projects, specifically any land, buildings, equipment, facilities, expenditures, targeted



infrastructure, and improvements found by the corporation's board of directors to promote new or expanded business development as provided by Texas Local Government Code § 505.158, after public hearing and city council approval; and

**WHEREAS**, BEDC Resolution 2019-0415-2 misrepresents the circumstances surrounding the HCISD incentive application; and

**WHEREAS**, the Personnel Matters Resolution states that "Buda City Manager and City Attorney George Hyde first approved but then removed a BEDC agenda Items [sic] for the March 5, 2019 City Council meeting whereby approval for Project Pink Sunshine could be considered and granted", suggesting such actions were improper; and

**WHEREAS**, Project Pink Sunshine, along with another BEDC economic development project, were removed in part from the March 5, 2019 City Council agenda because the BEDC failed to provide city staff with substantive information regarding the project and failed to provide city staff with any timing considerations regarding the project; and

**WHEREAS**, Project Pink Sunshine, was also removed in part from the March 5, 2019 City Council agenda because the BEDC failed to provide sufficient information to city staff regarding what the project involved, what legal compliance was required, and what timing needs were associated with the project. The consideration of this project appeared unprepared and rushed to City Council without cause, and the City Council's consideration of pressing and fully prepared items on that agenda was already significantly consumed; and

**WHEREAS**, the Personnel Matters Resolution provides that on November 16, 2018, then Assistant City Manager, Chance Sparks, contacted Miller while she was on vacation to ask about BEDC funding and that BEDC Board of Directors, rather than its staff, votes and makes decisions regarding the expenditure of BEDC funds; and

**WHEREAS**, a reasonable interpretation of these provisions suggests the BEDC finds it was improper for Mr. Sparks to ask Miller a question concerning funding and further such question was improper because Miller was on vacation; and

**WHEREAS**, prior to the adoption of said Resolution, City Staff and BEDC regularly communicated with each other about economic development and incentives including the expenditure of BEDC funds; and

**WHEREAS**, Miller's employment contract states in part: "...Miller is expected to engage in the hours of work that are necessary to fulfill the obligations of the Executive Director position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the EDC." "Miller acknowledges the proper performance of the duties of the Executive Director of the EDC will ... often require the performance of necessary services outside of normal business hours." "Miller agrees to devote such additional time as is necessary for the full and proper performance of Miller's duties..."; and

**WHEREAS**, any prohibition of communication between BEDC staff and City Staff regarding economic development and incentives including the expenditure of BEDC funds would severely compromise the effectiveness and efficiency of City and BEDC activities and is outside the realm of typical functionality of the staff of cities and economic development entities; and

**WHEREAS**, the City Council finds that by raising such issue in a Resolution, the BEDC Board of Directors suggests Miller was severely compromised or harmed by such contact by Mr. Sparks; and

**WHEREAS**, it is common, normal and expected that professionals who are paid on a salary basis conduct business after hours, on weekends and while on vacation to ensure the efficient and effective operation of the entities for whom they work; and

**WHEREAS**, the City Council finds the actions of Mr. Sparks were not taken for the purpose of harassing the Executive Director but for furthering the interests of the City; and

**WHEREAS**, the City Attorney, as charged by the City Council, asked the Board of Directors of the BEDC to address behavioral problems of BEDC Executive Director Miller which were adversely affecting City employees and were reflecting negatively upon the City; and

**WHEREAS**, these concerns related to Miller's increasingly frequent combative, argumentative and erratic behavior; and

**WHEREAS**, the request did not accuse Executive Director Miller of not being recognized for, and skilled at, economic development tasks; and

**WHEREAS**, neither the City Council, City Manager or City Attorney request, seek, even suggest that Miller be suspended or terminated; and

**WHEREAS**, BEDC Resolution 2019-0415-2 discloses in part that Miller's compensation was set in 2017 "to dissuade future BEDC Board's from terminating her employment"; and

**WHEREAS**, BEDC Resolution 2019-0415-2 states Miller's 2017 amended employment contract was approved by the City, although no City Council Meeting Agenda reflects such consideration or approval by the City Council; and

**WHEREAS**, BEDC Resolution 2019-0415-2, without basis or support, declares arbitrarily, and without investigation or inquiry, that Mayor Pro-Tem Hopkins' November 15, 2018 complaint regarding Miller's combative, argumentative and erratic behavior was unfounded; and

**WHEREAS**, BEDC Resolution 2019-0415-2, reveals that BEDC's response to Mayor Pro-Tem Hopkins' complaint was not the subject of an attorney-investigator investigation, nor does

it show the BEDC conducted any investigation at all, but nevertheless was able to find the allegations unfounded in only 19 days; and

**WHEREAS**, BEDC Resolution 2019-0415-2, omits the BEDC Board's failure to communicate its December 5, 2018 determination that Mayor Pro-Tem Hopkins' complaint was unfounded to Mayor Pro-Tem Hopkins, to the City or to the City Council; and

**WHEREAS**, the BEDC failed to inform the City Council prior to January 11, 2019 that it had already determined that the only appropriate response to a good faith allegation of misconduct by the Mayor Pro-Tem was to take affirmative steps to protect Miller; and

**WHEREAS**, the City Council charged the City Attorney as its representative to act on its behalf, in accordance with the Texas Open Meetings Act, and to again raise its complaints regarding Miller to the BEDC Board; and

**WHEREAS**, the City Attorney prepared a written complaint on January 11, 2019 and offered to meet with the BEDC Board to discuss the matter; however, the BEDC Board refused to do so and instead elected to engage an attorney-investigator to conduct a workplace investigation of the City to further protect Miller, rather than investigate the allegations; and

**WHEREAS**, when BEDC Investigator Gladstone contacted the City to begin her "investigation", it became evident that her investigation was not intended to examine the complaints of conduct of Miller, but was carefully crafted as a disguised fishing expedition only to defend Miller's conduct by the BEDC Board, to provide acclaim for Miller and to attack the City, its employees and officials and City Council for requiring accountability of Miller and the Board; and

**WHEREAS**, indeed, the entire first page of the BEDC Resolution 2019-0415-2 and the central finding of BEDC Investigator Gladstone's report, supported by pages of self-aggrandizing records produced by Miller, states that "[i]t is undisputed that Miller is recognized for and skilled at economic development tasks" which is a fact completely irrelevant to the scope of the complaint, which was whether she conducts herself with others in the workplace in a combative, argumentative and erratic manner; and

**WHEREAS**, the BEDC Board accepts a report that makes determinative findings regarding City workplace behavior while at the same time the attorney-investigator admits that the findings are based only on the testimony and documents of non-City employees and those that infrequent the work areas of City Hall; and

**WHEREAS**, the BEDC investigator's report acknowledges Miller's departure as an ex-officio position on the Chamber Board, which is consistent with the allegation of conflict made in the City Council complaint; and

**WHEREAS**, the BEDC investigator's report characterizes Miller's behavior using terms such as: "direct, sometimes blunt, and very intent on doing things properly, which could "ruffle the feathers" or frustrate..." and "made people feel put on the spot" and defends her irritable behavior by justifications as a "rule follower"; and

**WHEREAS**, the BEDC investigator's report reveals witness accounts of her being "unreasonably frustrating", "making insensitive comments", being openly critical of the new City Hall site, making other offensive comments, questioned whether "she was improperly influencing the BEDC Board's position on issues and conflicts" and concern that her actions appeared as if others were "out to get her"; and

**WHEREAS**, the BEDC investigator's report further reveals former board members comments included that Miller "didn't go out of her way to be overly nice..." and "she had to be careful about tact..."; and

**WHEREAS**, the BEDC investigator's report failed to note that regarding the Facebook "quote" posting concern, the alarm regarding her well-being was not only supported by the post, but that she manipulated the quote discussing choosing to die by substituting her own personal characteristics into the words, which resulted in real concerns for her safety; however, the investigator's report nevertheless noted that "[t]he post could have caused some concern to someone viewing it" and documents a "lapse in judgment..."; and

**WHEREAS**, the BEDC investigator's report reveals Miller is the only witness contacted about the allegation of recording city meetings, and evidence is developed that Miller recorded meetings with City employees, installed motion-detector security video cameras in both the BEDC office and another in her individual office, and recorded already audio and video recorded City Council meetings, but denies secretly recording others; and from this sole basis makes a no evidence finding that secret recording was not conducted, yet does not report as to the oddity of the behavior and instead defends the practice as not being a criminal offense; and

**WHEREAS**, the BEDC investigator's report fails to acknowledge that the installation of video cameras supports the veracity of the Sparks' interview, while using the courtesy call to a former employee, now consultant, that an interview may be requested is noted to discredit Sparks as a witness; and

**WHEREAS**, the BEDC investigator's report again characterizes Miller's behavior as "defensive" but not "confrontational" or "combative" in connection with her July 2017 Greater San Marcos Partnership (GSMP) email and uses the history of conflict between the two agencies to lessen the weight of the evidence in the investigation to favor Miller; and

**WHEREAS**, the BEDC investigator finds the complaint against Miller related to the treatment of the holiday decoration vendor initially as unfounded and after repeated statements from multiple City witnesses are produced and despite the investigation report, discloses that Miller was "disappointed but not angry" and that a retired employee confirms her voice was

“slightly elevated, but not extreme” the investigator did not upgrade the finding more than merely inconclusive; and

**WHEREAS**, the BEDC investigator found in the report that “some City staff have reported observing [Miller exhibiting] anger, defensiveness, rudeness, and/or offensive behavior...” but again defends Miller by asserting that the statement does not include an assertion that it interfered with their duties or cause confusion, so the finding remained unchanged; and

**WHEREAS**, the BEDC investigator took, after receiving three written statements from three professional employees, the Purchasing Manager, the Main Street Director and the City Clerk, all detailing Miller’s misconduct, the investigator discounted the statements by selectively judging the statements made and again only upgrading her finding to “inconclusive”; and

**WHEREAS**, in evidence of continued combative, argumentative and erratic behavior by Miller, on March 28, 2019, Miller entered the Buda Police Department where her conduct observed was documented by Ms. Forti – Records Clerk and Ms. Tate – Executive Assistant to the Police Chief; and

**WHEREAS**, Ms. Forti reported Miller’s demeanor as “very rude demanding”; that she conducted herself in a “very rude manner” and described her conduct as “[v]ery rude” and described her upsettingly shoving a paper against the glass, which is provided to provide a safe work environment to police employees at the reception area; and

**WHEREAS**, Ms. Tate supervised the interaction between Miller and Ms. Forti by video cameras in the police department lobby and also observed Miller shove the paper against the glass, and reported Miller’s conduct aggressive in nature to the extent she needed to attempt to intervene; and

**WHEREAS**, during Miller’s interaction with Forti, she questioned why the person’s name, who reported her odd posting on Facebook was redacted; however, Miller already knew that the “informer’s privilege” allows the City to redact names of persons who make reports to the police department and she herself has demanded that her own name be redacted in connection to prior reports she has made when making complaints against businesses operating in violation of City regulations so she could go unnamed; and

**WHEREAS**, a close examination of the facts in the BEDC investigation report illustrates that BEDC failed to commission a legitimate investigation regarding the behavioral concerns of BEDC Executive Director Miller; and

**WHEREAS**, the City Council finds the scope of the investigation was not intended to address the concerns raised by the City Council but was designed to manipulate and distort facts and to be used and to unjustly attack the City Council and its appointed officials and employees; and

**WHEREAS**, On April 22, 2019, the City received a letter dated April 16, 2019, from BEDC Board President Jose Montoya notifying Human Resources Director Fuchs that Executive Director Miller and Planner Collins were to be no longer employed by the BEDC, providing no explanation regarding the nature or reasoning for the separation; and

**WHEREAS**, on April 22, 2019, a letter was issued by BEDC President Jose Montoya on BEDC letterhead addressed to: "To Whom it may concern." stating the President and the Vice President of the BEDC, on authorization by the Board, terminated three BEDC employees; and

**WHEREAS**, the BEDC President's "to whom it may concern" letter attempts to justify his action to terminate three of the BEDC employees by asserting it is the only thing he could do because of the BEDC's misguided and unfounded determination that it failed to provide a non-hostile work environment for its employees; and

**WHEREAS**, the letter does not reference any illegal protected-class basis regarding such alleged hostile work environment; and

**WHEREAS**, BEDC President Montoya's letter states the BEDC failed to provide a non-hostile work environment, that the BEDC was unable to provide a non-hostile work environment, that he terminated three female employees (including Miller) to separate them from the hostile work environment, but nevertheless retained the last female employee remaining to continue working this purported incurable hostile work environment; and

**WHEREAS**, the City Council finds the public statements made, the Resolutions passed and the termination of these three employees by BEDC President Montoya, with the Board's authorization, may be a publicized stunt to retaliate for unwanted but emphatically-needed City Council oversight over BEDC Board activities; and

**WHEREAS**, these actions have left the BEDC without staff to execute the functions of the BEDC; and

**WHEREAS**, the BEDC has taken insufficient actions to ensure the ongoing operations of the BEDC; and

**WHEREAS**, the City administers the benefits of the BEDC employees pursuant to a Memorandum of Understanding; and

**WHEREAS**, the Human Resources Director has been directed by BEDC President to issue certain compensation to certain terminated BEDC employees for certain accruals; and

**WHEREAS**, in order to ensure the payment of correct compensation to the terminated BEDC employees and to avoid an unconstitutional gift of tax dollars, the City requested personnel, financial and budgetary information including but not limited to the ambiguity of Miller's contractual status, salary, applicability of a 12-month severance provision in Miller's

contract extension and the applicability and entitlement to certain compensatory time credit as a vested benefit at separation for all employees; and

**WHEREAS**, the BEDC has further failed to make its books and records available to the City at all times, as required by Texas law; and

**WHEREAS**, such compensation terms announced by BEDC President Montoya have not been budgeted nor approved as an expenditure by the City Council; and

**WHEREAS**, the City Council finds questions are present regarding the validity and legality of Board Action to authorize BEDC President Montoya to terminate the employment of any employees; such questions are supported by prima facie evidence of improperly conducted board meetings and executive sessions in connection with the action; public statements by BEDC President Montoya to the press that Miller was “let out of her contract”, and the lack of severance payments to employees being approved budget items or approved expenditure items of the Board; and

**WHEREAS**, the BEDC Board, possibly with its own staff’s assistance, has intentionally manufactured an emergency circumstance without supplying necessary and legally-required documentation to ensure the appropriate and legally-compliant payments to the terminated BEDC employees; and

**WHEREAS**, each individual board member holds a legal duty to act in good faith, with ordinance care, and in a manner reasonably believed to be in the best interest of the corporation pursuant to Texas Business Organizations Code Section 22.221.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BUDA, HAYS COUNTY, TEXAS THAT:**

**Section 1:** The facts and recitations set forth in the preamble of this resolution are hereby found to be true and correct.

**Section 2:** The City Council of the City of Buda, Texas hereby censures and reprimands the individual Board of Directors of the Buda Economic Development Corporation for failing to act in good faith, with ordinary care and in a matter reasonably believed to be in the best interest of corporation, City and the citizens of the City of Buda.

**Section 3:** Jose Montoya, Tia Pair, Eileen Altmiller and Jeremy De Alcala are removed from the BEDC Board of Directors effective immediately.

**Section 4:** The City Council finds the facts identified in the BEDC attorney-investigator’s report and as identified herein support and sustain the City Council’s complaint.

**Section 5:** The City Council urges the new BEDC Board to work with the City Manager and City Attorney to clarify the employment status and relationship of the BEDC Employees and in order to reduce conflict and discord, and recommends that such employees be reinstated effective retroactively to the date of termination and such action should be carried out in all due haste to save them from the inappropriate separation from employment conducted by the former Board of Directors and without loss of employment to the employees.

**Section 6:** To the extent not cancelled and declared void, by the BEDC, the City Council of the City of Buda, Texas hereby declares all contracts related to Project Pink Sunshine not only cancelled but void.

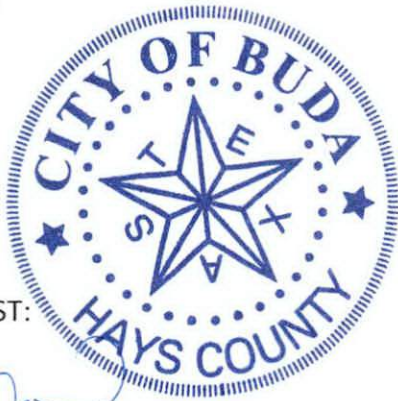
**Section 7:** The City Council hereby requests the BEDC to seek full reimbursement of all unauthorized tax dollars expended related to Project Pink Sunshine.

**Section 8:** *Severability.* If any clause or provision of this resolution shall be deemed to be unenforceable for any reason, such unenforceable clause or provision shall be severed from the remaining portion of the resolution, which shall continue to have full force and effect.

**Section 9:** *Repeal.* All resolutions or parts of resolutions in conflict herewith are expressly repealed.

**Section 10:** *Effective Date.* This resolution shall be effective upon passage by the City Council.

**PASSED AND APPROVED** by the City Council of the City of Buda, Texas this 30<sup>th</sup> day of April, 2019.



ATTEST:

  
Alicia Ramirez, City Clerk

CITY OF BUDA, TEXAS:

  
George Haehn, Mayor