



# BIG SKY ECONOMIC DEVELOPMENT

EDA • EDC CREATING MONTANA BUSINESS OPPORTUNITIES

## Big Sky EDA/EDC Joint Executive Committee Agenda

**Wednesday, May 3, 2017 -7:30 A.M. to 9:00 A.M.**

**Rosebud Room, 2<sup>nd</sup> Floor – Granite Tower**

**BIG SKY ED Mission Statement:** - Focused on sustaining and growing our region's vibrant economy and outstanding quality of life, Big Sky Economic Development provides leadership and resources for business creation, expansion, retention, new business recruitment and community development.

### Committee Members

**EDC**—David Trost, Eric Simonsen, Mike Nelson, Steve Loveless, Duncan Peete

**EDA**— Sheri Nicholson, Jennifer Smith, Cory Moore, Robin Rude, Kevin Gustainis

**Call to Order** – David Trost, EDC Chair

### Agenda Changes for Today's Meeting:

### Public Comments:

### AGENDA

- I. Approval of EDA/EDC Exec. Comm. Minutes**
  - a. April 5<sup>th</sup> Ex. Committee Meeting (Attachment A) (Action)
  
- II. Approval of EDA/EDC Financials – Jim**
  - a. March 2017 Financials (Attachment B) (Action)
  - b. Review Draft FY 2018 Budgets (Handout) (Info)
  - c. TEDD Infrastructure Master Plan Funding Plan (Info)
  
- III. Executive Director's Report – Steve**
  - a. Board/Staff Planning Session Notes/Next Steps (Handout) (Info)
  - b. Update: Operations Director Position Announcement (Attachment C) (Info)
  - c. Update: Higher Education Investment—MSU Billings Science Building (Info)
  
- VII. Program Directors Updates**
  - a. Business Finance-SBA Merger Application/Bylaws Consideration—Brandon (Attachment D) (Action)
  - b. Business Recruit/Outreach—GE-Zoot Project Update —Allison (Info or Action as Needed)

### Public Comment

### Adjourn

### Next Executive Committee Meeting – June 7, 2017

*Big Sky Economic Development Board of Directors will make reasonable accommodations for known disabilities that may interfere with an individual's ability to participate. Persons requiring such accommodations should make their requests to Big Sky Economic Development as soon as possible before the meeting day. Please call Big Sky Economic Development at 256-6871.*



EDA • EDC CREATING MONTANA BUSINESS OPPORTUNITIES

**Big Sky EDA/EDC Joint Executive Committee Meeting Minutes**  
***Wednesday, April 5, 2017 – 7:30 A.M. – Rosebud Room – Granite Tower***

**BIG SKY ED Mission Statement:** - Focused on sustaining and growing our region's vibrant economy and outstanding quality of life, Big Sky Economic Development provides leadership and resources for business creation, expansion, retention, new business recruitment and community development.

**Committee Members Present:** EDA – Sheri Nicholson, Jennifer Smith, Cory Moore, Kevin Gustainis, Robin Rude  
EDC – Eric Simonsen, Mike Nelson, Duncan Peete, Steve Loveless

**Staff and others Present:** Steve Arveschoug, Jim Tevlin, Dianne Lehm, Karen Baumgart, Melanie Schwarz, Evelyn Pyburn, Mary Lou McMillan (recording secretary)

**Sheri Nicholson, EDA Chair, called the meeting to order at 7:33 A.M.**

**Public Comments: None**

**Changes to the Agenda: None**

➤ **Approval of EDA/EDC Executive Committee Minutes**

### March 1<sup>st</sup> Executive Committee Meeting

**Motion:** Jennifer Smith, to approve and forward to the Board of Directors, the March 2017 Executive Committee Minutes as presented to the Executive Committee.

**Second: Cory Moore**

**Discussion:** None

**Motion Carried**

➤ **Approval of EDA/EDC Financials – Jim Tevlin**

February 2017 Financials

Jim reported there was one item to inform everyone about. We received about two million dollars in grants that came from the US Treasury Department, funneled through the Department of Commerce (State Small Business Credit Initiative—SSBCI), and lent out by BSED. It was considered a grant, but had conditions. The principal portion of the debt service went back into a restricted fund, the interest was unrestricted. The dollars that were restricted were limited to being re-lent out under similar circumstances as the original loans. The good news is the restrictions have lapsed on those funds. Jim reviewed the EDC balance sheet as he explained about the SSBCI Portfolio.

**Motion: Duncan Peete, to approve and forward to the full Board, the February 2017 Financials, as presented to the Executive Committee.**

**Second: Robin Rude**

**Discussion:** None

**Motion Carried**

#### EDC Audit Follow-Up per SBA Issues

About two months ago, our auditors came to us with concerns about their level of independence as required by the code of federal regulations which was updated a couple years ago. In that code of federal regulations are specific requirements related to auditor independence. The issue our auditors are having is in regards to one of the provisions in the code of federal regulations. They are required to have a level of independence and are saying their independence is not in compliance with the code of federal regulations because they prepare the footnotes. The solution would be to engage another accounting firm to reissue the audit. The audit and financial statements will stay the same. Somebody else would be rendering the opinion on the financial statements. Committee members expressed concern over the cost of the re-issued audit, and directed Jim to ask AZ to help cover the cost of this added expense.

Motion: Kevin Gustainis, to approve and forward to the full Board, we have a conversation with original auditors about the cost.

Second: Cory Moore

Discussion: None

Motion carried

#### ➤ Executive Director's Report – Steve

##### GE Agreement Update and Next Steps

Steve mentioned we have executed our settlement agreement with GE last week. There will be a discussion at our April 13<sup>th</sup> Board meeting to consider a proposal from the prospect we've been working on for the potential reuse of the GE facility. We'll have the prospects here to talk directly to us about their plans.

##### Board Planning Session Agenda Review

Steve reviewed the draft agenda for the Board Planning Session being held at the Hilton Garden Inn on April 13<sup>th</sup>.

##### Update: Operations Director Position

Steve updated the Joint Executive Committee on the progress in the hiring of the Director of Operations position with Big Sky Economic Development. Hopefully we'll have a candidate within the next few weeks.

##### Update: Higher Education Investment – MSU Billings Science Building

Steve provided a letter to the Joint Executive Committee he received from Chancellor Ron Larson and Dr. John Cech, Deputy Commissioner of Montana University System. They are getting together a task force to support Chancellor Larson's planning and strategic direction efforts for Montana State University-Billings. They've asked Steve to participate in the task force. This first kick-off meeting will be the week of the 17<sup>th</sup> of April. They'll be helping Ron develop a strategic direction that is to be presented to Dr. Cruzado in December and then to the Board of Regents in January of 2018.

In terms of investing in the MSU Science Building, the legislature is working on a budget bill and this may directly impact what is included in the infrastructure bills. There's a House and Senate bill, both the House and Senate bills contain an additional five million dollars for the Science Building. Potentially, by the end of the week one of those bills will move to the other side and both concepts, at least so far, have the additional five million dollars for the Science Building. Steve spoke to Governor Bullock's office this week and encouraged their support in this provision of the bonding bill. As Steve gets more information on this, he will send it out to the Board.

➤ **Program Directors Updates**

**Business Finance-SBA Application/Bylaws Review as Needed – Brandon/Steve**

Steve mentioned we have not received final word from the SBA on our merger request. It has gone through the state office, the Denver Regional office, and then to DC. We hope by the end of April we have word from the SBA. We have ten days to execute the transition. We have two potential team members from Helena coming in this week. We're going to give them a preliminary orientation and address their questions about benefits and any other questions they have. When we rolled out the information on the merger, included was an amendment to our by-laws which we were being guided by legal council to address. There was a provision Steve added to the by-laws amendment that dealt with board members going from one board to the next. The amendment says that if you move from the EDA Board to the EDC Board, and there's no gap, that new term on the EDC Board would be a three year term.

**BillingsWorks-Update – Karen**

Karen met with the Steering Committee completing the 2017 State of the Workforce report. She will be meeting with Billings Public School tomorrow to solidify the job description for the Career Technical Education Business Liaison Director title.

**TEDD/Infrastructure Master Plan Agreement – Katy/Dianne**

Dianne spoke of the agreement to work on the Infrastructure Master Plan on the TEDD. This is the draft that is going through with the County prior to them signing. They will sign on April 11<sup>th</sup>.

**Meeting Adjourned at 8:20 am**

**Next Meeting – May 3, 2017 – Rosebud Room, Granite Tower**

Respectfully submitted,  
Sheri Nicholson, EDA Chair

When approved, minutes will be filed electronically in the Big Sky EDA office.

## Internal Memorandum

**Date:** April 26, 2017  
**To:** Steve Arveschoug  
**From:** Jim Tevlin  
**Subject:** March 2017 BSEDA Financial Statements

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I have attached income statements for the year-to-date periods ended March 31, 2017 and 2016 and balance sheets as of March 31, 2017 and 2016.

### Balance Sheet Overview:

#### Working Capital (Adjusted)

Presented below is a year-over-year working capital analysis. Note that I have included only those accounts that have an impact on our near-term liquidity. Specifically, I have excluded those accounts that are designated (e.g. Opportunity Fund) or have separate restricted funding sources.

	<b>Mar 31 2017</b>	<b>Mar 31 2016</b>
Current Assets	\$ 1,110,058	\$ 1,202,901
Current Liabilities	<u>119,163</u>	<u>192,655</u>
Working Capital	\$ 990,895	\$ 1,010,246

### GE Transition Reserve

In January 2017, GE Capital agreed to waive Big Sky EDA's annual incentive payments (\$25k per year) for 2016 and 2017 with the stipulation that the funds be placed in a separate bank account and that these funds are to be used to assist with re-marketing and refurbishing the GE Center of Excellence facility.

### Restricted Cash

The American Airlines Revenue Guarantee represents Big Sky EDA's pledge to American Airlines to support the new Billings to Dallas service. These funds, held in escrow with the Billings Chamber of Commerce, were formerly included as part of the Stockman Reserve Funds.

The year-over-year increase in GE Unapplied lease payments is due to a one-time overpayment of GE's monthly lease payments. These funds will be drawn down to service the debt service on the MBOI infrastructure and Stockman participation loans.

**Statements of Operations Overview:**

Big Sky EDA's operating results (Cash-Basis BSEDA only) for the nine months ended March 31 2017 reflects operating income of \$268,864 compared to operating income of \$278,275 for the prior fiscal year.

Note that revenues received via the HUD and the TEDD-CDBG grants offset equal amounts of operating expenses.

# Big Sky EDA

## Balance Sheets

	Mar 31, 2017	Mar 31, 2016
<b>ASSETS</b>		
<b>Current Assets</b>		
<b>Cash &amp; Cash Equivalents</b>		
Opportunity Fund	\$ 516,001.35	\$ 575,409.18
GE Transition Reserve	50,000.00	-
Stockman Reserve Funds	49,547.20	74,441.68
Operating Reserve	53,114.91	106,043.87
Operating Cash	177,496.01	281,700.50
	<u>846,159.47</u>	<u>1,037,595.23</u>
<b>Accounts Receivable</b>		
Trade	17,980.28	26,319.56
Brownfields	26,409.35	50,796.64
VBOC	116,485.72	39,041.82
Department of Defense	127,421.24	136,078.00
Due From EDC	90,423.65	59,664.37
Mill Levy Receivable-Protested Taxes	110,577.91	66,716.29
Mill Levy Receivable	449,686.78	425,378.80
Allowance For Doubtful Accounts	(110,577.91)	(66,716.29)
	<u>828,407.02</u>	<u>737,279.19</u>
<b>Prepaid Expenses</b>	1,493.15	3,435.68
<b>Total Current Assets</b>	1,676,059.64	1,778,310.10
<b>Fixed Assets (net of depreciation)</b>	8,626,099.28	9,099,838.28
<b>Restricted Cash</b>		
Cabelas Conduit	9,667.28	5,000.34
American Airlines Rev. Guarantee	25,000.00	-
Deferred Outflow of Resources	75,433.38	69,589.38
GE Building Reserve	779,086.56	686,092.60
GE Unapplied lease payments	137,805.93	6,343.68
	<u>1,026,993.15</u>	<u>767,026.00</u>
<b>TOTAL ASSETS</b>	<u><u>\$ 11,329,152.07</u></u>	<u><u>\$ 11,645,174.38</u></u>
<b>LIABILITIES &amp; NET ASSETS</b>		
<b>Current Liabilities</b>		
Current Maturities of LTD	\$ 508,070.50	\$ 506,511.65
Deferred GE Maintenance Reimbursement	-	10,000.00
Accounts Payable	89,163.48	167,056.30
Accrued Expenses		
Interest	-	2,004.78
Other	271,621.66	114,279.15
<b>Total Current Liabilities</b>	<u>868,855.64</u>	<u>799,851.88</u>
<b>Long Term Liabilities</b>		
Deferred Inflow of Resources	58,936.97	107,238.97
Pension Liability	443,304.80	414,984.80
Long Term Debt	5,602,810.78	6,133,125.12
Deferred GE Rental Income	75,114.07	75,114.07
	<u>6,180,166.62</u>	<u>6,730,462.96</u>
<b>Total Liabilities</b>	7,049,022.26	7,530,314.84
<b>Net Assets</b>	4,280,129.81	4,114,859.54
<b>TOTAL LIABILITIES &amp; NET ASSETS</b>	<u><u>\$ 11,329,152.07</u></u>	<u><u>\$ 11,645,174.38</u></u>

**Big Sky EDA-BSEDA Only**  
**Statements of Operations (Cash Basis)**  
For the Nine Months Ended March 31,

	2017	2016	Annual Budget
<b>Income</b>			
Department of Defense	\$ 417,876.00	\$ 414,868.00	\$ 599,228.00
Private Billings/Works funding	18,750.00	16,000.00	20,000.00
EPA-Brownfields	91,426.70	131,355.81	197,691.00
VBOC Revenue	287,206.15	172,599.63	350,000.00
HUD Grant	19,701.14	106,418.11	19,701.14
EDA Reserve Funds	-	-	25,000.00
TEDD-CDBG	39,360.38	5,000.00	50,000.00
Grant Administration	3,220.21	323.75	6,844.00
EDC Reimbursement	275,560.86	266,795.19	380,499.44
Mill Levy Revenue	1,155,126.39	1,098,308.91	1,232,176.00
Recovery of Protested Taxes	-	12,118.65	-
Miscellaneous Revenue	2,779.29	17,832.94	1,057.33
SBA/MT Dept of Commerce	85,195.60	82,339.82	108,277.36
SBDC Program Income	2,277.59	-	8,000.00
Opportunity Fund	-	-	25,000.00
Health Levy Revenue	56,495.00	54,463.50	87,300.00
<b>Total Income</b>	<b>2,454,975.31</b>	<b>2,378,424.31</b>	<b>3,110,774.27</b>
<b>Expense</b>			
Advertising	7,614.52	11,198.81	-
Brownfields Expense	66,908.21	131,356.20	194,891.00
BEAR	2,682.73	1,596.35	5,000.00
Protested Taxes	31,604.64	29,482.84	60,912.96
Intern/Contract Support	19,142.31	12,572.50	20,000.00
Sponsorships	11,663.00	1,500.00	3,100.00
Dues and Subscriptions	27,787.10	27,235.14	23,379.00
Employer Contributions	250,087.28	233,760.17	360,146.12
Insurance	12,596.00	11,957.50	13,606.00
Miscellaneous	22,019.41	29,956.31	22,730.00
Office Supplies	19,488.38	27,945.31	25,500.00
Postage and Delivery	3,166.52	766.56	3,300.00
Professional Fees	59,757.36	59,825.50	53,720.00
Professional Fees-HUD	19,701.14	106,013.86	19,701.14
Marketing-Departmental	3,632.64	-	3,700.00
Marketing-Organizational	58,609.18	61,055.92	60,000.00
Opportunity Fund Project	60,000.00	-	25,000.00
Program Event Expense	1,936.37	6,909.16	9,950.00
PTAC Subcenter/Satellite	257,155.77	246,963.14	379,612.00
Recruiting	1,451.00	11,123.00	35,000.00
Rent	87,734.84	86,373.54	119,955.00
Repairs	2,471.43	1,971.96	2,400.00
Salaries/Wages	784,467.17	756,223.74	1,120,911.98
Telecommunication	22,222.20	23,269.04	31,892.00
TEDD Expense	40,825.26	10,987.20	50,000.00
Travel/Training	56,317.31	46,207.01	87,116.50
VBOC Expense	231,612.45	139,193.27	282,258.00
Workforce Development	23,457.29	24,704.88	57,000.00
Reserve	-	-	17,500.00
<b>Total Expense</b>	<b>2,186,111.51</b>	<b>2,100,148.91</b>	<b>3,088,281.70</b>
<b>Operating Income</b>	<b>268,863.80</b>	<b>278,275.40</b>	<b>22,492.57</b>
<b>Other Income/(Expense)</b>			
Interest Expense	-	-	(25,000.00)
Interest Income	1,083.09	863.68	3,000.00
	1,083.09	863.68	(22,000.00)
<b>Net Income</b>	<b>\$ 269,946.89</b>	<b>\$ 279,139.08</b>	<b>\$ 492.57</b>



## Internal Memorandum

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### **Balance Sheet Overview**

#### **Working Capital (Adjusted):**

Presented below is a year-over-year working capital analysis. Note that I have included only those accounts that have an impact on near-term liquidity. Specifically, I have excluded those cash accounts that are restricted (e.g. SSBCI Cash) or designated (e.g. RLF Cash).

	Mar 31, 2017	Mar 31, 2016
Current Assets	\$ 213,266	\$ 109,456
Current Liabilities	<u>97,070</u>	<u>88,005</u>
Working Capital	\$ 116,196	\$ 21,451

In January 2017, GE Capital agreed to waive Big Sky EDC's annual incentive payments (\$25k per year) for 2016 and 2017 with the stipulation that the funds be placed in a separate bank account and that these funds are to be used to assist with re-marketing and refurbishing the GE Center of Excellence facility.

### **Statements of Operations Overview:**

Big Sky EDC's operating results for the year-to-date period ended March 31, 2017 reflect an operating loss of \$26,176 compared to operating income of \$27,877 for the prior year.

The year-over-year variance in operating income is primarily due to the timing of SBA 504 Origination Fees and the receipt of Member-Investor dues.

# Big Sky Economic Development Corporation

## Balance Sheets

	Mar 31 2017	Mar 31 2016
<b>ASSETS</b>		
<b>Current Assets</b>		
First Interstate Bank	\$ 91,887.11	\$ 74,205.63
GE Transition Reserve	50,000.00	-
Operating Reserve	50,000.00	25,000.00
Opportunity Fund	19,200.00	19,200.00
Revolving Loan Funds	194,874.17	377,251.45
Miscellaneous Receivables	21,378.50	10,250.00
SSBCI Portfolio-Current	215,760.44	176,279.38
RLF Loan Portfolio-Current	58,543.34	36,817.09
	<u>701,643.56</u>	<u>719,003.55</u>
<b>Other Assets</b>		
Restricted Cash-SSBCI	1,020,850.51	801,583.17
SSBCI Portfolio	1,062,236.71	1,322,422.23
RLF Loan Portfolio	253,948.37	117,461.88
	<u></u>	<u></u>
<b>TOTAL ASSETS</b>	<u><b>\$ 3,038,679.15</b></u>	<u><b>\$ 2,960,470.83</b></u>
<b>LIABILITIES &amp; EQUITY</b>		
<b>Current Liabilities</b>		
Current Maturities of LTD	\$ -	\$ 20,990.48
A/P & Accrued Expenses	6,645.93	7,350.08
Due to/Due From EDA	90,423.65	59,664.37
	<u>97,069.58</u>	<u>88,004.93</u>
<b>Non-Current Liabilities (GE Annuity)</b>	-	45,834.44
<b>Total Liabilities</b>	97,069.58	133,839.37
<b>Net Assets</b>	2,941,609.57	2,826,631.46
	<u>2,941,609.57</u>	<u>2,826,631.46</u>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><b>\$ 3,038,679.15</b></u>	<u><b>\$ 2,960,470.83</b></u>

**Big Sky Economic Development Corporation**  
**Statements of Operations (Unrestricted - Cash Basis)**  
For the Nine Months Ended March 31,

	<b>2017</b>	<b>2016</b>	<b>Annual Budget</b>
<b>Income</b>			
RLF Business Interest	\$ 15,827.65	\$ 7,491.80	\$ 8,544.00
RLF Loan Fund Interest	377.94	673.46	800.00
Miscellaneous Revenue	7,631.68	6,626.89	5,327.71
Event Revenue-Building Remarkable	37,500.00	-	45,000.00
Event Revenue-Other	22,652.60	40,549.65	21,000.00
Member Investment	83,359.88	98,250.82	182,500.00
Recovery of Bad Debt	2,700.00	2,800.00	3,600.00
SSBCI Interest Income	23,828.54	27,197.96	29,270.00
SBA 504 Origination Fees	43,015.01	99,639.84	116,400.00
SBA 504 Servicing Fees	187,185.20	181,871.15	243,624.00
	<u>424,078.50</u>	<u>465,101.57</u>	<u>656,065.71</u>
<b>Expense</b>			
Business Recruitment	41,878.98	50,436.72	56,000.00
MCFC Merger	2,432.60	-	-
Dues and Subscriptions	6,593.80	4,010.58	5,700.00
EDA Reimbursement	275,560.86	266,795.19	380,499.44
Insurance	9,990.00	10,895.00	10,772.00
Marketing	2,682.63	5,907.74	7,000.00
Membership Development	1,144.70	903.72	4,500.00
Miscellaneous	8,469.61	4,710.38	1,400.00
Office Supplies	385.68	1,863.55	1,000.00
Operating Reserve Contribution	-	-	25,000.00
Postage and Delivery	1,092.93	1,162.20	3,500.00
Professional Fees	21,891.48	14,650.00	20,500.00
SSBCI-MBOI Fee	2,830.13	4,996.72	6,600.00
Event Expense	53,904.22	50,177.93	66,000.00
Workforce Development	-	-	5,000.00
Telecommunication	2,550.00	1,580.00	3,667.00
Travel & Training	16,212.74	17,130.20	23,500.00
Contingency	-	-	10,000.00
	<u>447,620.36</u>	<u>435,219.93</u>	<u>630,638.44</u>
<b>Operating Income/(Loss)</b>	<b>(23,541.86)</b>	<b>29,881.64</b>	<b>25,427.27</b>
<b>Other Expense</b>			
Interest Expense	(2,634.54)	(2,004.78)	(25,000.00)
	<u>(2,634.54)</u>	<u>(2,004.78)</u>	<u>(25,000.00)</u>
<b>Net Income/(Loss)</b>	<b>\$ (26,176.40)</b>	<b>\$ 27,876.86</b>	<b>\$ 427.27</b>

*Boarding Planning Notes*  
*April 13<sup>th</sup>, 2017*  
*Hilton Garden Inn*

**Topic #1 Economic Pulse**

Key Takeaways

- Can the Healthcare and Education measurements be separated?
- Keep EP as a community education piece. Not external.
- We are number 7 in percent of college educated individuals
- Find ways to increase median household income
- Aging Workforce and issue (x2)
- Aging Workforce not an issue
- Citizens' aversion to taxes = stagnation (x2)
- Recreation and amenities
- Schools, Parks, Trails etc.
- Key investments lead to talent attraction
- Increase quality of life
- Focus on specific goals
- Increase emphasis on lifestyle

**Topic #2 A Unique Opportunity**

Key Takeaways

- Incubation is exciting and innovative
- What's the financial model? Feasibility? (x2)
- Market demand
- Workforce development collaboration
- Stronger starting foundation (Billings Growth Services)
- Define feasibility and mission
- Rental expense
- Is Billings ready? Right Demographic?
- Tool to retain talent
- Important to won the space (x4)
- Consider standalone building
- Parking?

## ***Staff Planning Notes***

***(April 7, 2017)***

### **Capacity and Storage**

- Lack of Storage and meeting space
- Branded space, cohesive areas
- Configuration of space doesn't coincide with collaboration
- No adequate event or meeting space
- Communications infrastructure lacks
- No room for Board Meetings
- VBOC is separated
- Lack of storage, lack of additional office space

### **Talent Retention**

- Constant engagement with our mission – Feedback, positive reinforcement, recognition of contributions, YOU make a difference
- Compensation/Benefits – Value and Consider at the beginning of the budget process
- Flexible Schedule – Department collaboration to cover each other and make scheduling flexibility more feasible

### **Administration**

- Continued support of the internship program – Stagger the rotation so that an experienced intern is always present.

### **Financial Growth and Sustainability**

- Increase Member Investor numbers
- Diversify loan program
- Own the facility – BSED has its own HQ, Develop land or a building (job creation), Example of innovation
- Cost management and systems accountability
- Tools: SSBCI, Opportunity Fund

**BYLAWS**  
**OF**  
**BIG SKY ECONOMIC DEVELOPMENT CORPORATION**  
**(a Montana Nonprofit Public Benefit Corporation)**

\*\*\*\*\*

These Bylaws adopted \_\_\_\_\_, 2017, ~~September 8, 2016~~, by the Board of Directors of Big Sky Economic Development Corporation (the "Corporation") supersede all Bylaws previously adopted or ratified by Board of Directors.

**1. CORPORATION NAME, PURPOSES, POWERS AND OFFICES.**

**1.1 Name and Location.**

This Corporation shall be known as Big Sky Economic Development Corporation. Offices of the Corporation shall be located in the City of Billings, Montana, and in such other localities as may be determined by the Board of Directors. Additionally, the Corporation shall operate as a Certified Development Company (CDC) as accredited by the U.S. Small Business Administration (SBA), pursuant to the SBA 504 Loan Program.

**1.2 Authority.**

This Corporation is incorporated under, and shall be operated according to the Montana Nonprofit Corporation Act (the "Act").

**1.3 Purposes.**

As stated in the Corporation's Articles of Incorporation, the Corporation is organized and shall be operated exclusively for charitable, scientific, social welfare and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 as it now exists or as it may hereafter be amended. The Corporation is dedicated to attracting, retaining and growing jobs and business throughout Yellowstone County, Montana and, for purposes of the SBA 504 Loan Program, the Corporation's "Area of Operations" is the entire State of Montana.

#### **1.4 Powers.**

The Corporation shall have those specific powers enumerated in the Articles of Incorporation and shall exercise all rights and powers conferred on non-profit public benefit organizations under Section 35-2-118 of the Act; provided, however, that the Corporation shall not engage in any activities or exercise any powers that are not in furtherance of the primary purposes of the Corporation.

#### **1.5 Registered Office.**

The registered office of this Corporation required by the Act to be maintained in the State of Montana may be, but need not be, identical with the principal office in the State of Montana, and the address of the registered office and registered agent may be changed from time to time by resolution of the Board of Directors.

### **2. REGULATION OF CORPORATE ACTIVITIES AND DISTRIBUTIONS**

#### **2.1 Restricted Activities.**

No substantial part of the Corporation's activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene (including the publishing or distribution of statements) in any political campaign on behalf of or in opposition to any candidate for public office.

#### **2.2 Exempt Activities.**

Notwithstanding any other provision of these Bylaws, no Director, officer, employee, or representative of this Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be taken or carried on by an organization exempt under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended, or an organization contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.

#### **2.3 Prohibited Distributions.**

No part of the net earnings, properties or assets of this Corporation, on dissolution or otherwise, shall inure to the benefit of, or be distributable to, its ~~M~~members, Directors, officers or other private persons or individuals, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 1.3.

### **3. MEMBERS**

#### **3.1 Classes of Members.**

There shall ~~only be two~~ (2) one-classes of Membership in the Corporation:

A. Class A Members: Class A Members will only have the right to vote for the election of Directors to the Board of Directors as specifically authorized by these Bylaws. Class A Members will pay dues. The rate of the dues and the time for remittance of such dues shall be determined by the Board of Directors from time to time. All Class A Members will be notified of such determinations. Dues, once paid, shall not be refunded unless requested in writing by the Class A Member and approved by the Board of Directors.

B. Class B Members: Class B Members shall not have any voting rights and shall not pay any dues.

### **3.2 Requirements for All Members**

Members must be responsible for actively supporting economic development in the Area of Operations and must, at a minimum, have background and expertise in one or more of the following areas: (1) internal controls, (2) financial risk management, (3), commercial lending, (4) legal issues related to commercial lending, (5) corporate governance, and (6) economic, community or workforce development.

All Members must live or work in the Area of Operations.

The number of ~~M~~members shall be at least twenty-five (25)~~25 members~~.

### **3.2 Rights of Members.**

~~Members shall only have the right to vote for the election of members to the Board of Directors as specifically authorized by these Bylaws.~~

### **3.3 Applications.**

All applications for membership shall be submitted on forms furnished by the Corporation and filed with the Secretary/Treasurer of the Corporation and shall be subject to the review and approval of the Executive Committee and/or its designee. By execution and submission of the application for membership, the applicant shall be deemed to have agreed to accept and comply with the Bylaws and mission of the Corporation, as the same may from time to time be adopted or amended.

### **3.4 Termination of Membership.**

A. The Board of Directors may terminate the membership of any ~~M~~member, after taking into consideration, all relevant facts and circumstances, if such ~~M~~member:

(1) Is a Class A Member and in arrears in the payment of dues for a period of three (3) months, or

(2) Does not comply with the Corporation Bylaws or applicable SBA statutes, regulations or operating procedures.



Notice of such termination shall be given in writing addressed to the Mmember and sent by first-class or certified United States mail with postage prepaid to the last address of the Mmember shown on the Corporation's records, and shall take effect at the time specified in the notice.

B. The membership of any Mmember shall automatically terminate if and upon the date that such a Mmember becomes ineligible for membership.

C. The membership of any Mmember shall automatically terminate upon such Mmember's written resignation delivered to the Executive Director personally or by United States mail with postage prepaid.

### **3.5 — Dues.**

~~The rate of the dues and the time for remittance of such dues shall be determined by the Board of Directors from time to time. All members shall be notified of such determinations. Dues, once paid, shall not be refunded unless requested in writing by the member and approved by the Board of Directors.~~

## **4. POWERS, AUTHORITY AND RESPONSIBILITY**

### **4.1 Governing Body, Powers and Responsibilities.**

The governing body of the Corporation shall be the Board of Directors. The Board of Directors shall have supervision, control and direction of the affairs of the Corporation, shall actively promote and pursue the Corporation's objectives, and shall supervise the disbursement of the Corporation's funds. The Board of Directors may adopt such rules and regulations for the conduct of its business as shall be deemed advisable, and may, in the execution of the powers granted, delegate certain of its authority and responsibility to one or more Committees.

Specifically, the Board of Directors is responsible for the following:

- (1) Ensuring the structure and operation of the Corporation complies with the SBA's Loan Program Requirements;
- (2) Approving the mission and the policies of the Corporation;
- (3) Hiring, firing, supervising and annually evaluating the Executive Director;
- (4) Setting the salary for the Executive Director and reviewing all salaries of other employees as set in accordance with the Corporation's salary administration guidelines;
- (5) Establishing, at its discretion, and being responsible for Committees including any Executive Committee and Loan Committee;
- (6) Ensuring that the Corporation's expenses are reasonable and customary;
- (7) Hiring directly an independent auditor to provide financial statements in accordance with the SBA's Loan Program requirements;
- (8) Monitoring the Corporation's portfolio performance on a regular basis;

- (9) Reviewing a semiannual report on portfolio performance from the Executive Director, which includes, but is not limited to, asset quality and industry concentrations;
- (10) Ensuring that the Corporation establishes and maintains adequate reserves for operations;
- (11) Ensuring that the Corporation invests in economic development in its SBA-approved Area of Operations in which it has a portfolio, approving each investment separately or by approval of the Corporation's budget if the budget includes such investments, and having a written report in the Corporation's Annual Report to SBA on investments in economic development in each State in which the Corporation has an outstanding 504 Loan;
- (12) Establishing a policy in these Bylaws prohibiting any actual conflict of interest or the appearance of same, including with respect to any actions of the Board of Directors, and enforcing the policy;
- (13) Retaining accountability for all actions of the Corporation;
- (14) Establishing written internal control policies as required by SBA regulations;
- (15) Establishing commercially reasonable loan approval policies, procedures and standards;
- (16) Approving all SBA loans greater than \$2,000,000.00 prior to submission of loan applications to SBA, and ratifying all approvals by the Loan Committee, as set forth in Section 5.3 of this Bylaws, of SBA loans of \$1,000,000.00 to \$2,000,000.00 prior to Debenture closing;
- (17) Maintaining Directors' and Officers' Liability and Errors and Omissions insurance in the amounts established by the SBA; and
- (18) Having all Directors ~~members~~ of the Board of Directors annually certify in writing that they have read and understand 13 C.F.R. § 120.823, and copies of the certifications being included in the Corporation's Annual Report to SBA.

#### **4.2 Qualifications of Board of Directors.**

The Board of Directors shall consist of no less than nine (9) nor more than twenty-five (25) Directors as shall be fixed from time to time by resolution of the Board of Directors, but no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Directors shall be elected by the Membership in accordance with Section 4.3.

A. At any time that the Corporation is operating as a Certified Development Company (CDC) pursuant to the SBA 504 Loan Program, the Board of Directors shall ensure that the Board of Directors is comprised of Directors meeting at least the following qualifications:

- (1) The Board of Directors shall be representative of the Corporation's Area of Operations and must be actively involved in encouraging economic development in the Corporation's Area of Operations.

- (2) At a minimum, the Board of Directors must have Directors with background and expertise in internal controls, financial risk management, commercial lending, legal issues related to commercial lending, and corporate governance.
- (3) At least two (2) Directors must possess commercial lending experience satisfactory to the SBA, but Directors from the commercial lending field must comprise less than 50% of the directors on the Board of Directors.
- (4) At least one (1) Director must represent the economic, community or workforce development fields.
- (5) No more than one (1) Director may be employed by or serve on the board of directors of any other single entity (including such entity's affiliates) unless that entity is an affiliate of the Corporation or a civic, charitable, or comparable organization that is not involved in financial services or economic development activities.
- (6) No Director may serve on the board of directors of another SBA 504 certified development company.
- (7) Directors may be currently employed or retired.
- (8) No Corporation staff other than the Executive Director who is the CDC Manager, may serve as Directors.
- (9) No Contractors (as defined by 13 C.F.R. § 120.824) or their affiliates may serve as Directors.
- (10) Directors must either be Class A Members or serve as employees or representatives of a Class A Member in good standing of the Corporation, and there shall be only one (1) Director at a given time employed by or representing a Class A Member organization.

B. Notwithstanding the foregoing, action taken by the Board of Directors which is otherwise valid shall not be deemed invalid due to failure to comply with the Board composition requirements, provided diligent effort has been made and is being made to ensure that all representative criteria are met.

#### **4.3 Election of Directors.**

Directors shall be elected by the Class A Membership as follows:

A. At least thirty (30) days before the Annual Meeting of the Membership, the Secretary/Treasurer shall send the slate of nominees for all open positions on the Board of Directors as proposed by the Nominating Committee to the Class A

Membership together with an electronic ballot/proxy to vote for Directors. Class A Members must return their ballot/proxies to the Secretary/Treasurer within fourteen (14) days for the vote by ballot/proxy to count. The results of the election are announced at the Annual Meeting of the Membership.

B. If a special election is held to fill vacancies on the Board of Directors, the Secretary/Treasurer shall send the slate of nominees for all vacant positions on the Board of Directors as proposed by the Nominating Committee to the Class A Membership together with an electronic ballot/proxy to vote for Directors. Class A Members must return their ballot/proxies to the Secretary/Treasurer within fourteen (14) days for the vote by ballot/proxy to count. The results of the election are announced to the Membership via electronic mail.

#### **4.4 Terms of Directors.**

A. A Director shall serve an initial term of five (5) years and, if re-elected, a second term of three (3) years. If the Board of Directors increases the number of Directors, then the Class A Membership shall elect the Directors to fill the new positions using the same procedure for electronic voting set forth in Section 4.3. Unless a Director dies, resigns or is removed, each Director shall serve his/her full term beginning upon election and until his/her successor is duly elected and qualified. A Director may be re-elected; however, no Director shall serve longer than two (2) successive terms (an initial term of five years and a second term of three years) without at least a one (1) year absence from the Board of Directors before being re-elected.

B. Any former Director of Big Sky Economic Development Authority ("BSEDA") may be elected to a single, three (3) year term as a Director of the Corporation; if elected to the Corporation's Board of Directors immediately following the end of such person's term on the Board of Directors of BSEDA. If, but if such person, however, has had - However, upon at least a one (1) year absence from the Board of Directors of BSEDA prior to election to the Corporation's Board of Directors, then such person Big Sky Economic Development Authority Board of Directors, such former Director may serve an initial term of five (5) years and, if re-elected to the Corporation's Board of Directors, a second term of three (3) years as a Director of the Corporation be elected to a full term on the Board of Directors.

#### **4.5 Removal of Directors.**

Any Director may be removed, with or without cause, by the vote of the majority of the remaining Directors excluding the Director proposed for removal. Written notice of removal shall be given to the affected Director, and shall take effect at the time specified in the notice. In addition, a Director may be removed for three (3) consecutive unexcused absences from meetings of the Board of Directors.

#### **4.6     Resignation of Directors.**

A Director may resign at any time by delivering written notice to the Board of Directors, the Chair of the Board, the Executive Director, or the Secretary/Treasurer of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board of Directors or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

#### **4.7     Vacancies on Board of Directors.**

A.     If between July 1 and August 31 of any year, a vacancy occurs in the Board of Directors because of the death, removal, resignation, disqualification or otherwise of a Director or an increase in the number of Directors occurs, the vacancy shall be filled by election by the Class A Membership as set forth in Section 4.3A.

B.     If between September 1 and June 30 of any year, a vacancy occurs in the Board of Directors because of the death, removal, resignation, disqualification or otherwise of a Director or an increase in the number of Directors occurs, the Secretary/Treasurer shall cause a special election to be held by the Class A Membership to fill the vacancy as set forth in Section 4.3B.

C.     A Director elected to fill a vacancy that occurs because of the death, removal, resignation, disqualification, or otherwise of a Director shall be elected for the unexpired term of his/her predecessor in office.

D.     A vacancy that will occur at a specific later date may be filled before the vacancy occurs, but the new Director may not take office until the vacancy occurs.

#### **4.8     Regular Meetings.**

The Board of Directors shall hold regular meetings at least quarterly at the time, date and place, inside or outside of the State of Montana, established by the Board of Directors. If it appears that a quorum of the Board of Directors will be unable to attend a regular meeting, the regular meeting may be rescheduled.

#### **4.9     Special Meetings.**

Special meetings may be called at any time by the Chair of the Board, the Executive Director, or upon the written request of any two (2) Directors, and shall be held at any time, date and place designated by person or persons calling the meeting.

#### **4.10    Meetings by Remote Communication.**

Any or all Directors may attend a meeting of the Board of Directors by means conference telephone or the use of any means of communication by which all Directors participating in the meeting may hear each other simultaneously during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting. The Board of Directors may determine that one or more meetings of the Board

of Directors shall be held solely by means of remote communication. Such authorization may be general or confined to specific instances. If voting takes place at such a meeting where some or all Directors are voting at the meeting by means of remote communication, reasonable means to verify that every person voting is sufficiently identified must be implemented and a record of any vote or other action taken must be kept.

#### **4.11 Notice of Meetings.**

Written notice of every Annual, regular and special meeting of the Board of Directors, stating the date, time, place and purpose of the meeting must be given to each Director not less than two (2) days prior to the date of the meeting. Regardless of whether the meeting is a regular meeting or a special meeting, if a purpose of the meeting is to consider (1) an amendment to the Articles of Incorporation, (2) a plan of merger, (3) the sale, lease, exchange, or disposition of all or substantially all of the Corporation's property, or (4) the dissolution of the Corporation, then a notice must be given to each Director at least seven (7) days before the meeting stating the purpose, and the notice must be accompanied by a copy of or summary, if applicable, of the proposed amendment to the Articles of Incorporation, the proposed plan of merger, the transaction for the disposition of the Corporation's property, or the proposed plan of dissolution.

A. Effective Date. Notice of any meeting shall be deemed to be effective at the earlier of (i) five (5) days after being deposited in the United States mail, addressed to the Director's business office, with postage prepaid, if sent by regular mail, (ii) the date shown on the return receipt if sent by registered or certified mail, return receipt requested, to the Director's business office and the receipt is signed by or on behalf of the Director, (iii) the date when sent if e-mailed to the Director's e-mail address on record with the Corporation, or (iv) the date delivered if hand-delivered.

B. Waiver of Notice. Whenever any notice is required to be given to a Director, a waiver thereof in writing, signed by the Director entitled to the notice, regardless of whether the waiver is signed before or after the time of the meeting, is equivalent to the giving of the notice. If a Director entitled to notice of a meeting participates or attends the meeting, the Director's participation or attendance constitutes a waiver of notice of the meeting, unless the Director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with the Montana Nonprofit Corporations Act, the Articles of Incorporation, or the Bylaws, objects to lack of notice and does not vote for or assent to that action.

#### **4.12 Quorum and Voting.**

A quorum shall be at least a majority of the Directors on the Board of Directors. A quorum must be present to transact business. There shall be no proxy voting by the Board of Directors. Unless otherwise stated in these Bylaws or required by the laws of the State of Montana, all issues to be voted on shall pass by the affirmative vote of a majority of those Directors present at the meeting at which a quorum is present and in which the vote takes place. Any action of the Board of Directors with regard to SBA

loan approval or servicing actions shall require the presence of at least two (2) Directors with commercial lending experience, other than the Executive Director, who must vote on such matter.

#### **4.13 Actions Without Meeting.**

Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken and signed by at least a majority of the Directors on the Board of Directors. Action under this Section 4.13 is effective when the last Director whose vote is needed to approve the action signs the consent unless the consent specifies a different effective date. Prompt notice of the approval of the action by less than unanimous written consent of all Directors shall be given to each Director who did not consent in writing to the action. A written consent will be considered a signed writing if transmitted electronically if the transmission contains or is accompanied by information from which it can be determined that the electronic transmission was made by the Director and the date on which the Director transmitted the electronic transmission. Written consents shall be filed with the minutes of the Board of Directors and have the effect of a meeting vote.

#### **4.14 Presumption of Assent.**

A Director who is present at a meeting of the Board of Directors at which action on any matter is taken shall be presumed to have assented to the action taken unless the Director's dissent is entered in the minutes of the meeting or unless a written dissent to such action is filed with the person acting as the secretary of the meeting before the adjournment thereof, or unless such dissent is forwarded by registered mail to the Secretary/Treasurer of the Corporation immediately after the adjournment of the meeting. The right to dissent shall not apply to a Director who voted in favor of such action.

#### **4.15 Compensation of Directors.**

No Director shall receive any compensation from the Corporation for services rendered as a Director. Directors may be reimbursed for any reasonable expenses incurred by them in the execution of their official duties, including travel expenses. Nothing contained herein shall be construed to preclude any Director from serving the Corporation in any other capacity and receiving reasonable compensation for personal services rendered to the Corporation that are reasonable and necessary to carry out one or more of the tax-exempt purposes of the Corporation.

#### **4.16 General Standard of Conduct of Directors.**

A Director shall discharge his/her duties as a Director or Committee member in good faith, with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner that the Director reasonably believes to be in the best interest of the Corporation, and may act in reliance on the written opinion of any attorney for the Corporation. In discharging duties, a Director is

entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the Corporation whom the Director reasonably believes to be reliable and competent in the matters presented;
- (2) Attorneys, public accountants, or other persons with regard to matters that the Director reasonably believes are within the person's professional or expert competence; or
- (3) A committee of the Board of Directors of which the Director is not a member, as to matters within the Committee's jurisdiction, if the Director reasonably believes the Committee merits confidence.

A Director is not acting in good faith if the Director has knowledge concerning the matter in question that makes reliance otherwise permitted unwarranted. A Director is not liable to the Corporation or any other person for any action taken or not taken as a Director if the Director acted in compliance with this Section.

## **5. COMMITTEES OF THE BOARD**

### **5.1 Executive Committee.**

The Executive Committee shall consist of the Chair of the Board, Vice Chair of the Board, Secretary/Treasurer, Past Chair of the Board and at least one (1) additional Director chosen by the Board of Directors to serve as an Executive Committee Member at Large. The Chair of the Board shall serve as the chair of the Executive Committee. In order to provide the Executive Committee with the necessary operational information concerning the Corporation, the Executive Director shall be an *ex officio* non-voting member of the Executive Committee. As such, the Executive Director shall receive notice of all Executive Committee meetings and shall participate in the discussion of all issues presented for consideration of the Executive Committee, but shall not be entitled to vote on any matter related to the Executive Director's performance or compensation. The foregoing delegation of authority to the Executive Committee does not relieve the Board of Directors of its responsibility imposed by law or SBA Loan Program Requirements. All actions of the Executive Committee shall be approved by the Board of Directors.

### **5.2 Nominating Committee.**

The Nominating Committee consisting of at least three (3) Directors appointed by the Chair of the Board. The Nominating Committee shall provide nominations for all open Board of Directors positions whenever needed.

### **5.3 Loan Committee.**

One or more Loan Committees may be established by the Board of Directors and, if the Corporation is approved by SBA as a multi-state CDC for purposes of the 504 Loan Program, then there shall be a Loan Committee for each state in which the Corporation provides 504 Loans. The function of each Loan Committee shall be, prior to submission of loan applications to SBA, to approve 504 loans up to \$2,000,000.00, but 504 loans of \$1,000,000.00 to \$2,000,000.00 must be ratified by the Board of Directors or Executive



Committee if delegated approval authority prior to Debenture funding, and to approve credit decisions for 504 Loan servicing actions. Each Loan Committee shall be composed of at least five (5) Class A and/or Class B Mmembers and/or Directors appointed by the Board of Directors, one (1) of whom shall serve as the Chairperson of the Loan Committee. All members of the Loan Committee must live or work within the Corporation's Area of Operations where the 504 Loan Project on which they are voting is located unless the Project falls under one of the exceptions for 504 Loans outside the Corporation's Area of Operations. The presence at any meeting of the Loan Committee of no less than five (5) Loan Committee members authorized to vote shall constitute a quorum, and a quorum must be present to transact business at the meeting. A majority vote of the Loan Committee members present at a meeting of the Loan Committee shall be sufficient to transact business. Any action of the Loan Committee with regard to 504 Loan approval or servicing actions shall require the presence of at least two (2) Loan Committee members with commercial lending experience satisfactory to SBA who must vote on such matter. No employees of the Corporation, including the Executive Director, shall serve on the Loan Committee. The Loan Committee must have no actual or apparent conflict of interest; for example, a Loan Committee member participating in deliberations on a 504 Loan for which the participating Third Party Lender is the Loan Committee member's employer or with which the Loan Committee member is otherwise associated must abstain from the Loan Committee vote on that SBA loan. The Loan Committee shall make recommendations to the Board regarding lending policies and procedures. The foregoing delegation of authority to the Loan Committee does not relieve the Board of Directors of its responsibility imposed by law or SBA Loan Program Requirements.

#### **5.4 Other Committees.**

The Board of Directors may create additional committees. Except as otherwise provided in this Section 5, Committees may include Class A and/or Class B Mmembers who are not also Directors, but such Committees shall include no less than two (2) Directors as members. The members of any Committees shall serve at the pleasure of the Board of Directors. Committees shall have such authority and exercise such powers as may be designated by the Board of Directors, but no Committee may (1) approve the dissolution or merger of the Corporation, or the sale, pledge, or transfer of all or substantially all the Corporation's assets; (2) elect, appoint, or remove Directors or fill vacancies on the Board of Directors or any Committees; or (3) adopt, amend, or repeal the Articles of Incorporation or Bylaws. All actions of any other Committee must either be approved or ratified by the Board of Directors.

### **5.5     Resignation of Committee Member.**

Any Committee member may resign at any time by giving written notice to the Board of Directors, the Chair of the Board, the Committee Chairperson or the Secretary/Treasurer of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board of Directors, the Chair of the Board, the Committee Chairperson or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

### **5.6     Removal of Committee Member.**

Any Committee member may be removed, with or without cause, by a vote of a majority of the Board of Directors excluding any Director serving as a Committee member proposed for removal. Written notice of removal shall be given to the affected Committee member, and shall take effect at the time specified in the notice.

### **5.7     Vacancy of Committee Member.**

In the event a vacancy occurs in a Committee member position due to death, resignation, or removal, the vacancy shall be filled in the same manner as members are appointed to that Committee. A vacancy that will occur at a specific later date may be filled before the vacancy occurs, but the new Committee member may not take office until the vacancy occurs. A Committee member elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office.

### **5.8     Committee Meetings.**

Sections 4.10, 4.11, 4.12, 4.13 and 4.14 which govern meetings by remote communication, notice and waiver of notice, quorum and voting requirements, action without meetings, and presumption of assent apply to Committees and their members. In addition, Committees shall keep regular minutes of their proceedings and report the same to the Board of Directors.

### **5.9     General Standard of Conduct of Committee Members.**

Section 4.15 which governs the general standard of conduct of Directors applies to Committees and their members.

## **6.     OFFICERS**

### **6.1     Number and Qualifications of Officers.**

The elected officers of the Corporation shall be a Chair of the Board, Vice Chair of the Board, and Secretary/Treasurer. The Board of Directors may elect other officers and assistant officers if the Board of Directors deems it necessary or desirable to do so. The Board of Directors is required to elect the primary officers listed above. However, if

the Board of Directors specifically authorizes an officer to appoint one (1) or more assistant officers, the officer may do so. Any two (2) offices except the offices of Chair of the Board and Secretary/Treasurer may be held by the same individual at the same time. In addition to the elected officers, the Board of Directors shall employ an Executive Director as provided in Section 6.8.

## **6.2 Election and Term of Office.**

The Board of Directors shall elect officers of the Corporation for a term of one (1) calendar year. Each officer shall hold office until a successor is duly elected and qualified or until the officer resigns, dies or is removed as provided in Section 6.3.

## **6.3 Removal of Officer.**

The Board of Directors may remove any officer at any time, with or without cause. The removal shall be without prejudice to the contract rights, if any, of the person removed. The election or appointment of any officer by the Board of Directors shall not of itself create contract rights.

**6.4 Resignation of Officer.** An officer may resign at any time by giving written notice to the Board of Directors, the Chair of the Board, or the Secretary/Treasurer of the Corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the Board of Directors, Chair of the Board, or Secretary/Treasurer, and the acceptance of the resignation shall not be necessary to make it effective.

## **6.5 Vacancy of Officer.**

Unless otherwise provided for above, all vacancies and newly created offices shall be filled by the Board of Directors at any meeting of the Board of Directors.

## **6.6 Duties of the Officers.**

The duties and powers of the officers of the Corporation shall be as follows or as hereafter set forth in a resolution of the Board of Directors:

A. **Chair of the Board.** The Chair of the Board shall preside at all meetings of the Board of Directors and Membership. The Chair shall appoint Committee chairpersons and advisors and shall coordinate the work of Committee chairpersons and officers in order that the purposes of the Corporation be promoted.

B. **Vice Chair of the Board.** The Vice Chair of the Board shall assist the Chair of the Board and shall preside at meetings in the absence of the Chair of the Board.

C. **Secretary/Treasurer.** The Secretary/Treasurer, through the Executive Director or designee, shall be responsible to see that accurate and complete financial records are maintained. The Secretary/Treasurer shall also be responsible for the proper care of the minutes of the meetings of the Board of Directors, see that all notices are fully

given in accordance with the provisions of these Bylaws or as required by law, and be the custodian of the corporate records.

#### **6.7 Compensation of Officers.**

Officers may receive reasonable salary or compensation as may be fixed by the Board of Directors.

#### **6.8 Executive Director.**

The Board of Directors shall employ an Executive Director, upon such terms and conditions as the Board of Directors deems proper, who shall be responsible for the day-to-day management of the Corporation, subject only to policies enacted by the Board of Directors. The Executive Director shall serve as an *ex officio* non-voting member of the Board of Directors and shall attend all Board of Directors meetings. The Executive Director shall act as the duly authorized representative of the Board of Directors in all matters except those in which the Board of Directors has formally designated another individual or group to act. The Executive Director shall be responsible for hiring and firing employees of the Corporation based upon the general guidelines prescribed by the Board of Directors. The Executive Director is directly accountable to the Board of Directors. ~~In addition, the Executive Director may appoint an employee of the Corporation as an Assistant Executive Director who shall, in the absence or disability of the Executive Director, perform the duties and exercise the powers of the Executive Director with respect to the SBA 504 Loan Program, and perform such other duties as may, from time to time, be assigned to the Assistant Executive Director by the Executive Director or, in the absence of the Executive Director, by the Board of Directors.~~ In addition, the Executive Director may appoint one or more employees of the Corporation as Vice Executive Directors, who shall have the title of Vice Executive Director and perform the duties and exercise the powers of the Executive Director with respect to the SBA 504 Loan Program as specified in such employee's appointment, and perform such other duties as may, from time to time, be assigned to that Vice Executive Director by the Executive Director or, in the absence of the Executive Director, by the Board of Directors.

#### **6.9 General Standard of Conduct of Officers.**

An officer with discretionary authority shall discharge his or her duties in good faith, with the care that an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner that the officer reasonably believes to be in the best interest of the Corporation. In discharging duties, an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (1) One or more officers or employees of the Corporation whom the officer reasonably believes to be reliable and competent in the matters presented;
- or

- (2) Attorneys, public accountants, or other persons as to matters that the officer reasonably believes are within the person's professional or expert competence.

An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted unwarranted. An officer is not liable to the Corporation or any other person for any action taken or not taken as an officer if the officer acted in compliance with this Section.

## **7. CONTRACTS, LOANS, CHECKS AND DEPOSITS; SPECIAL CORPORATE ACTS**

### **7.1 Contracts.**

The Board of Directors may authorize any officer or officers or agent or agents to enter into any contract or execute or deliver any instruments in the name of and on behalf of the Corporation and such authorization may be general or confined to specific instruments.

### **7.2 Loans.**

The Corporation shall not allow anyone to contract on behalf of it for indebtedness for borrowed money unless the Board of Directors authorizes such a contract by resolution. The Corporation shall not allow anyone to issue evidence of the Corporation's indebtedness unless the Board of Directors authorizes the issuance by resolution. The authorization may be general or specific. The Corporation shall make no loans to any Directors, Committee members, officers or employees.

### **7.3 Checks, Drafts, etc.**

All bank accounts and deposit accounts shall be in the name of the Corporation, and, unless specifically directed by the Board of Directors, such depositories may be designated by the Executive Director of the Corporation. The Board of Directors shall authorize by resolution which officers or agents may sign and issue all Corporation checks, drafts or other orders for payment.

### **7.4 Investments.**

The Corporation shall have the right to retain all or any part of any securities or property acquired by it in whatever manner, and to invest and reinvest any funds held by it, according to the judgment of the Board of Directors, without being restricted to the class of investments which the Board of Directors is or may hereafter be permitted by law to make or any similar restriction; provided, however, that no action shall be taken by or on behalf of the Corporation if such action would result in the denial of the tax exemption under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended. The Board of Directors may delegate to the Treasurer the day-to-day management of such investments as the Board of Directors may authorize.

## **8. INDEMNIFICATION AND ADVANCE FOR EXPENSES**

### **8.1 Mandatory Indemnification.**

The Corporation shall indemnify a Director or former Director, who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which he or she was a party because he or she is or was a Director of the Corporation against reasonable expenses incurred by him or her in connection with the proceedings.

### **8.2 Permissible Indemnification.**

The Corporation shall indemnify a Director or former Director made a party to a proceeding because he or she is or was a Director of the Corporation against liability incurred in the proceeding, if the determination to indemnify him or her has been made in the manner prescribed by the Act and payment has been authorized in the manner prescribed by the Act.

### **8.3 Advance for Expenses.**

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of (a) a written affirmation from the Director, officer, employee or agent of his or her good faith belief that he or she is entitled to indemnification as authorized in this Section 8, and (b) an undertaking by or on behalf of the Director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he or she is entitled to be indemnified by the Corporation as authorized in this Section 8.

### **8.4 Indemnification of Officers, Agents and Employees.**

An officer of the Corporation who is not a Director is entitled to mandatory indemnification under this Section 8 to the same extent as a Director. The Corporation may also indemnify and advance expenses to an employee or agent of the Corporation who is not a Director to the same extent as a Director or to any extent consistent with the Act and public policy that may be provided by the general or specific action of the Board of Directors or by contract.

### **8.5 Insurance.**

The Corporation shall purchase and maintain insurance (a) to insure itself with respect to the indemnification payments it is authorized or obligated to make pursuant to this Section 8, and (b) on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise to insure against any liability asserted against person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would

have the power to indemnify the person against such liability under the provisions of this Section 8.

**9. CONFLICT OF INTEREST.**

**9.1 Conflict of Interest.**

A Director shall disclose to the Board of Directors any material interest which the Director directly or indirectly has in any person or entity which is a party to a transaction under consideration by the Board of Directors in accordance with the Corporation's Rules of Conduct Conflict of Interest Policy attached as an Exhibit to these Bylaws. The interested Director shall abstain from voting on the transaction; provided, however, that the Director's presence may be counted in determining whether a quorum is present for purposes of Section 4.12 of these Bylaws.

**9.2 Approval of Conflict of Interest Transactions.**

A transaction in which a Director has a conflict of interest may be approved:

A. In advance by the vote of the Board of Directors or a Committee if: (i) the material facts of the transaction are disclosed or known to the Board of Directors or Committee and (ii) the Directors or Committee members approving the transaction in good faith reasonably believe that the transaction is fair to the Corporation; or

B. Before or after the transaction is consummated by obtaining approval of: (i) the attorney general of Montana; or (ii) a state district court in any action in which the attorney general is joined as a party.

**10. MEETINGS OF THE MEMBERSHIP.**

**10.1 Annual Meeting of the Membership.**

The Annual Meeting of the Membership shall be held between September 1 and October 31 of each year. The time, date and place of the Annual Meeting of the Membership will be designated by the Board of Directors. At the Annual Meeting, the Executive Director and chief financial officer shall report to the Membership on the activities and financial condition of the Corporation and the results of the Board of Directors election.

**10.2 Special Meetings.**

The Corporation may hold special meetings of the Membership at such place, date and time as designated by the Board of Directors.

**10.3 Notice of Meetings.**

Notice of Membership meetings shall be given to each Member by electronic mail sent to the Member's e-mail address on record with the Corporation by the

Secretary/Treasurer not less than thirty (30) days or more than sixty (60) days in advance of the meeting date, stating the place, date, time and purpose of the meeting. Notice of a special meeting of the Membership shall include a description of the matter or matters from which the meeting is called.

A Mmember may waive notice of a Mmembership meeting before or after the date and time stated in the notice. The waiver must be in writing, be signed by the Mmember entitled to the notice, and be delivered to the Corporation for inclusion in the minutes or filing with the corporate records. A Mmember's attendance at a Mmembership meeting (a) waives objection to lack of notice or defective notice of the meeting unless the Mmember, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting, and (b) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice unless the Mmember objects to considering the matter when it is presented.

#### **10.4 Quorum.**

A quorum shall consist of fifty-one percent (51%) of the Class A Members current on the payment of dues and in good standing, present at the meeting in person or by electronic ballot/proxy, and the quorum must be present to transact business at the meeting.

#### **10.5 Majority Vote.**

Class A Members shall only have the right to vote for the election of Directors ~~members~~ to the Board of Directors. An affirmative vote of the majority of the votes cast in person or by electronic ballot/proxy shall be required for the election of Directors ~~members~~ to the Board of Directors. In the event of a tie vote, the Executive Director will cast the deciding vote.

### **11. MISCELLANEOUS**

#### **11.1 Books and Records.**

The Corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of the Board of Directors and committees having any of the authority of the Board of Directors. All books and records of the Corporation may be inspected by any Director, or his or her agent or attorney, for any proper purpose at any reasonable time at the main office of the Corporation.

#### **11.2 Fiscal Year.**

The fiscal year shall begin July 1 and end on June 30 each year, unless otherwise established by the Board of Directors.



### **11.3 Amending Bylaws.**

The Bylaws of the Corporation may be amended or repealed by majority vote of the entire Board of Directors as is necessary or appropriate to carry out the purposes of the Corporation to the fullest extent permitted by law. No such amendment or repeal shall in any way conflict with the purposes of the Corporation as stated in its Articles of Incorporation or otherwise cause the Corporation to lose its qualification as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended from time to time.

## **12. DISSOLUTION**

### **12.1 Dissolution.**

Upon dissolution of the Corporation, the Board of Directors shall, after paying or providing for payment of all the liabilities of the Corporation, distribute all the remaining assets of the Corporation exclusively for the purposes of the Corporation and the purposes set forth in Section 501(c)(3) of the Internal Revenue Code, as the same may be amended from time to time. Any assets not so distributed by the Board of Directors shall be transferred to the Big Sky Economic Development Authority exclusively for public purposes unless it is no longer an exempt political subdivision of the State of Montana, in which case all remaining assets shall be disposed of by the District Court of the county in which the principal office of the Corporation is then located, exclusively for the Corporation's purposes or to an organization or organizations organized and operated for the purposes as the Court shall determine.

## CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned hereby certifies that the above Bylaws of Big Sky Economic Development Corporation were duly adopted by unanimous vote of the Board of Directors during the meeting on \_\_\_\_\_, ~~2017~~~~September 8, 2016~~, and now constitute the Bylaws of the Corporation.

DATED: \_\_\_\_\_, ~~2017~~~~September 8, 2016~~.

\_\_\_\_\_  
Secretary/Treasurer