

**BY-LAWS OF  
NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY**

**Adopted on May 12, 2020**

Pursuant to the authority contained in Section 858, Title I of Article 18-A of the General Municipal Law, as set out in Chapter 1030 of the Laws of 1969, as amended, and Section 917 of the General Municipal Law as set out in Chapter 1082 of the Laws of 1974 of the State of New York, as amended (collectively, the “Act”), the New York City Industrial Development Agency (the “Agency”) hereby approves the following by-laws for the management and regulation of its affairs:

**ARTICLE I  
The Agency**

Section 1.1. Description. The New York City Industrial Development Agency is a corporate governmental agency of the State of New York, constituting a body corporate and politic and a public benefit corporation, created by and having the powers and functions set forth in the Act.

Section 1.2. Membership. The membership of the Agency shall consist of fifteen members, who shall constitute the Board of Directors (the “Board”) and shall be selected and shall hold office as provided in the Act.

Section 1.3. Offices. The principal office of the Agency shall be located in the City, County and State of New York. The Agency may also have other offices at such places within the State of New York as it may from time to time designate by resolution.

Section 1.4. Seal. (a) The official seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its creation. Such seal may also include such other insignia as may be approved by the Board.

(b) In the execution on behalf of the Agency of any instrument, document, writing, notice or paper it shall not be necessary to affix the official seal of the Agency thereon, and any such instrument, document, writing, notice or paper when executed without said seal affixed thereon shall be of the same force and effect and as binding on the Agency as if said official seal had been affixed thereon in each instance.

(c) The official seal need not be impressed on any instrument, document, writing, notice or paper, but the same shall be sufficiently sealed if the official seal or a facsimile thereof is engraved, imprinted or otherwise reproduced thereon.

(d) The Secretary or the Executive Director, or in the absence of the Secretary or the Executive Director, the Chairman, may certify as to the official seal or its facsimile as of any date or with respect to any instrument, document, writing, notice or paper and any such

certification shall be conclusive as to the form of said official seal and that any such instrument, document, writing, notice or paper has been duly and properly sealed by the Agency.

Section 1.5. Fiscal Year. The fiscal year of the Agency shall begin on the first day of July in each calendar year and shall end at the close of business on the 30th day of June in the following calendar year.

## **ARTICLE II Officers**

Section 2.1. Appointment. The officers of the Agency shall be a Chairman and a Vice-Chairman, who shall be members, and an Executive Director, Treasurer, Secretary, Assistant Treasurers and such other officers as it may be determined by the Board, who shall have such duties, powers and functions as hereinafter provided, all of whom shall be elected by the Board, except the Chairman, who shall be designated by the Mayor of The City of New York.

Section 2.2. Terms of Office. All officers of the Agency other than the Chairman, shall hold office at the pleasure of the Board. The Chairman shall serve as such at the pleasure of the Mayor of The City of New York as provided in the Act.

Section 2.3. Chairman. The Chairman shall preside at all meetings of the Agency, but, for any particular meeting of the Agency, the Chairman may delegate the responsibility to so preside to any member or officer of the Agency. He or she shall sign by manual or facsimile signature and execute on behalf of the Agency all agreements, deeds, contracts, notes, bonds, trust indentures or other evidences of indebtedness when so authorized by resolution of the Agency, and shall perform such other duties as may be prescribed for him or her by law or by the Agency. The Chairman shall submit to the Board such recommendations and information as he or she may consider proper concerning the business, affairs and polices of the Agency.

Section 2.4. Vice-Chairman. The Vice-Chairman, during the absence or disability of the Chairman, shall have all the powers and perform all the duties of the Chairman. The Vice-Chairman shall also perform such other duties as the Board shall prescribe or designate. In case of the resignation or the death of the Chairman, the Vice-Chairman shall perform such duties as are imposed on the Chairman until such time as the Mayor of The City of New York designates a new Chairman.

Section 2.5. Secretary. The Secretary shall record all the votes and record the minutes of the Agency in a journal to be kept for that purpose; attend to the serving of notices of all meetings when required; shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all papers or other documents as may be required and may certify by manual or facsimile signature to the seal of the Agency or its facsimile; shall perform all duties as the Agency may designate.

Section 2.5(1). Assistant Secretary. Each Assistant Secretary shall exercise such powers and perform such duties as from time to time may be assigned to him or her by the Board. At the request of the Secretary or in his or her absence or disability, an Assistant Secretary shall perform all the duties of the Secretary and when so acting shall have all the powers of and shall be subject to all the restrictions upon the Secretary.

Section 2.6. Treasurer. The Treasurer shall exercise general supervision over the receipt, custody and disbursement of all Agency funds and securities, except as otherwise provided by resolution and shall cause the same to be deposited forthwith in the name of the Agency in such bank or banks as the Board may designate. The Treasurer shall be the chief financial officer of the Agency unless the Board shall have appointed another officer to serve as such.

The Treasurer shall sign all instruments of indebtedness, orders and checks for the payments of moneys by the Agency pursuant to the direction of the Board, unless otherwise authorized by resolution of the Board. Except as otherwise authorized by resolution of the Board, all such instruments of indebtedness, orders and checks shall be countersigned by the Chairman, Vice-Chairman, Executive Director or the Chief Financial Officer.

The Treasurer shall have charge of the treasury and supervision of receipts, deposits and disbursements of all Agency moneys. He or she shall cause to be maintained full and accurate and separate accounts of the various funds and moneys under his or her supervision. The Treasurer shall at a reasonable time exhibit the said books and accounts showing all receipts and expenditures, to any member of the Agency during business hours and he or she shall cause to be rendered an accounting of the current financial condition of the Agency at each regular meeting and a full financial report at each annual meeting covering the Agency's prior fiscal year. He or she shall have such other powers and duties as are conferred upon him by the Board or by any special or general law.

Section 2.7. Assistant Treasurer. The Assistant Treasurer shall exercise such powers and perform such duties as from time to time may be assigned to him or her by the Board. At the request of the Treasurer or in his or her absence or disability, the Assistant Treasurer shall perform all the duties of the Treasurer and when so acting shall have all the powers of and shall be subject to all the restrictions upon the Treasurer.

Section 2.8. Other Officers. All other officers of the Agency shall perform such duties pertaining to their respective offices as may be assigned to them from time to time by the Board or the Chairman. Such other officers who are not members shall receive such compensation as may be authorized by the Board.

Section 2.9. Officers Holding Two or More Offices. Any two or more offices may be held by the same person, except as otherwise provided by law. No officer shall execute or

verify any instrument in more than one capacity if such instrument be required by law or otherwise to be executed or verified by any two or more officers.

Section 2.10. Duties of Officers may be Delegated. In case of the absence or disability of any officer of the Agency, or in the case of a vacancy in any office or for any other reason that the Board or the Chairman may deem sufficient, the Board or the Chairman, except as otherwise provided by law or these By-Laws, may delegate, for the time being, the powers or duties of any officer to any other officer or to any member.

Section 2.11. Executive Director. The Executive Director shall be the chief executive officer and shall be appointed by the Board by a two-thirds vote of the members of the Board then in office and shall be responsible for the administration of its affairs. He or she shall be the general manager of the Agency. He or she shall exercise supervision and control of all administrative functions of the Agency. He or she shall be responsible for the implementation of all resolutions, orders, programs or projects of the Agency. He or she shall act for and in place of any absent officer or employee of the Agency, except the Chairman, Vice-Chairman, Secretary or Treasurer of the Agency. The Executive Director, as well as the Chairman, shall have the power to sign and execute on behalf of the Agency all contracts, notes, bonds or other evidence of indebtedness and to affix and attest to the seal of the Agency when so authorized by resolution of the Agency. He or she shall attend all meetings of the Agency with the right to take part in the discussion and to recommend such measures as he or she may deem necessary or expedient, and shall perform such other duties and have such other powers as may be prescribed for him or her by law or the Board. He or she shall have all necessary incidental powers to perform and exercise any of the duties and functions specified above or lawfully delegated to him or her.

Section 2.11(1). Deputy Executive Director. The Deputy Executive Director shall be appointed by the Board by a majority vote of the members of the Board. At the request of the Executive Director or in his or her absence or disability, the Deputy Executive Director shall perform all the duties of the Executive Director and when so acting shall have the powers of and shall be subject to all the restrictions upon the Executive Director.

Section 2.12. Additional Duties. The Officers of the Agency shall perform such other duties and functions as may, from time to time, be required by the Board, by its By-Laws, or its rules and regulations.

Section 2.13. Additional Personnel. The Board may appoint such other officers and employees as the Agency may require for the performance of its duties, and fix and determine their qualifications, duties and compensation. The Board may also appoint counsel, fixing compensation for services, which, if permitted by law, shall be payable in addition to other official compensation, and may retain and employ private consultants for professional and technical assistance and advice.

Section 2.14. Compensation of Members. Members shall receive no compensation for their services as members. The Board may by resolution provide for reimbursement of all necessary expenses, including travel expenses incurred in the discharge of their duties as members.

Section 2.15. Removal of Officers. Any officer appointed by the Agency shall serve at the pleasure of the Board. The Executive Director may be removed by a two-thirds vote of the members of the Board then in office at a meeting providing notice thereof; all other officers may be removed upon a vote of a majority of the Board then in office at a meeting providing notice thereof.

Section 2.16. General Counsel. The General Counsel shall be appointed by the Board by a majority vote of the members of the Board present at such meeting. The General Counsel shall provide legal representation in connection with all of the Agency's proceedings and activities, and shall perform all the duties as the Agency may designate.

### **ARTICLE III Meetings**

Section 3.1. Regular Meetings. Regular meetings of the Board for the transaction of any lawful business of the Agency shall be held at such time and place as the Board, the Chairman or the Executive Director may from time to time prescribe in a notice to be given to the members of the Board by the Chairman, Vice-Chairman or Executive Director. When any regular meeting of the Board falls upon a day on which New York City public schools are closed due to an emergency, the Chairman or Executive Director shall have discretion to cancel the meeting or to postpone the meeting to an alternate date that he or she deems appropriate. The Chairman or Executive Director shall provide notice of such cancellation or postponement to the members of the Board as soon as practicable after he or she makes such determination. Any regular meeting of the Board may also be dispensed with by appropriate resolution adopted by the members at any prior meeting of the Board, or by an appropriate resolution adopted by the members at a special meeting held in lieu of a regular meeting.

Section 3.2. Special Meetings. The Chairman, may, when he deems it desirable, and shall upon a written request of three members, call or direct the Executive Director to call a special meeting of the Board for the purpose of transacting any business designated in the notice, or a written agenda accompanying the notice. At such special meeting, no business shall be considered other than as designated in the notice, but if all members of the Board are present at a special meeting, with or without notice thereof, and all are agreeable thereto, any and all business may be transacted at such special meeting. When any special meeting of the Board falls upon a day on which New York City public schools are closed due to an emergency, the Chairman or Executive Director shall have discretion to cancel the meeting or to postpone the meeting to an alternate date that he or she deems appropriate. The Chairman or Executive Director shall provide

notice of such cancellation or postponement to the members of the Board as soon as practicable after he or she makes such determination.

Section 3.3. Notice of Meetings; Waivers. Written notice of each meeting of the Board shall be given not less than five (5) days before such meeting by first class mail, postage prepaid, or personal delivery or not less than twenty-four hours before such meeting by facsimile telecommunication or electronic mail. If notice is sent by first class mail or delivered in person it shall be directed to each member of the Board at his/her address as it appears on the record of members of the Board, or if such member shall have filed with the Secretary a written request that notices to him or her be mailed or delivered to some other address, then directed to such member at such other address. If notice is sent by facsimile telecommunication or electronic mail, it shall be directed to the member's fax number or electronic mail address as it appears on the record of members of the Board, or to such fax number or other electronic mail address as has been filed with the Secretary of the Agency. Notice shall not be deemed to have been given by facsimile transmission or electronic mail if: (a) the Agency is unable to deliver two (2) consecutive notices to the member by facsimile telecommunication or electronic mail; or (b) the Agency otherwise becomes aware that notice cannot be delivered to the member by facsimile telecommunication or electronic mail. The notice shall set forth the place, day and hour of the meeting and, except as otherwise provided in Article V, relating to the amendment of these By-laws, Section 2.15, relating to removal of officers, and Section 3.2, relating to special meetings, such notice need not specify the matters to be considered at the meeting.

Notwithstanding the foregoing, notice may be waived, either before or after the meeting, by any member of the Board, in writing or electronically. If in writing, the member may sign a written waiver of notice or cause his or her signature to be affixed to a waiver of notice by any reasonable means, including but not limited to facsimile signature. If electronic, the transmission of the waiver must be sent by electronic mail and set forth, or be submitted with, information from which it can reasonably be determined that the submission was authorized by the member. Notice may also be waived by attending the meeting without protesting, prior thereto or at its commencement, lack of notice to the member.

Section 3.4. Quorum; Presence. A majority of the members of the Board shall constitute a quorum for the transaction of any business or the exercise of any power or function of the Board and, except as otherwise provided in these By-Laws or by any special or general law, any act taken by vote of a majority of those present at any meeting at which a quorum is present shall be the act of the Board. A majority of the members present at any meeting, whether or not constituting a quorum, may adjourn the meeting to another time and place. Any one or more members of the Board or of any committee thereof who is not physically present at a meeting of the Board or a committee may participate by means of electronic video screen communication, which shall constitute presence in person at a meeting as long as all persons participating in the meeting can hear each other at the same time and each member can participate in all matters before the Board or committee, including, without limitation, the ability to propose, object to and vote upon a specific action to be taken by the Board or committee.

Section 3.5. Order of Business; Procedure. The order of business and all other matters of procedure at every meeting of the Board or of a committee shall be determined by the person presiding at the meeting. All resolutions shall be recorded in the journal of the proceedings of the Agency.

Section 3.6. Certification of Instruments. Each officer of the Agency shall have the authority, when necessary or appropriate, to certify the records, proceedings, rules and regulations, and other instruments of the Agency and to affix and attest to the official seal of the Agency on contracts and other instruments of the Agency.

#### **ARTICLE IV Committees**

Section 4.1. Executive Committee. The Board may, by resolution passed by a majority of the entire Board, designate from among its members an Executive Committee which to the extent provided in such resolution shall have all the authority of the Board which may be delegated and shall have and exercise such powers of the Board in the management of the business and affairs of the Agency and may authorize the seal of the Agency to be affixed to all papers which may require it. The Board may establish a chairperson of the Executive Committee with such powers, duties and responsibilities as are imposed pursuant to the resolutions of the Board. The Executive Committee shall keep minutes of all proceedings and report such minutes to the Board when required.

Section 4.2. Audit Committee. The Board shall, by resolution passed by a majority of the entire Board, create a standing audit committee (the "Audit Committee") consisting of three or more members, each of whom is an Independent Committee Member (as defined in Section 4.6). The Audit Committee shall recommend to the Board of Directors the hiring of a certified independent accounting firm of the Agency, establish the compensation to be paid to the accounting firm and provide direct oversight of the performance of the independent audit performed by the accounting firm hired for such purposes. To the extent practicable, members of the Audit Committee should be familiar with corporate financial and accounting practices.

Section 4.3. Governance Committee. The Board shall, by resolution passed by a majority of the entire Board, create a standing governance committee (the "Governance Committee") consisting of three or more members, each of whom is an Independent Committee Member (as defined in Section 4.6), and who shall possess the necessary skills to understand the duties and functions of the Governance Committee. The Governance Committee shall keep the Board informed of current best governance practices, review corporate governance trends, recommend updates to the Agency's governance principles and advise appointing authorities of the skills and experiences required of potential members. In addition, the Governance Committee shall examine ethical and conflicts of interest issues, perform Board self-evaluations and recommend by-laws which include rules and procedures for conduct of Board business.

Section 4.4. Finance Committee. The Board shall, by resolution passed by a majority of the entire Board, create a standing finance committee (the "Finance Committee") consisting of three or more members, each of whom is an Independent Committee Member (as defined in Section 4.6), and who shall possess the necessary skills to understand the duties and functions of the Finance Committee. It shall be the responsibility of the members of the Finance Committee to review proposals for the issuance of debt by the Agency and to make recommendations to the Board.

Section 4.5. Other Committees. The Board may, by resolution passed by a majority of the entire Board, designate other committees of the Board, each to consist of three or more members, which to the extent provided in such resolution shall have the authority of the Board which may be delegated. The Board may by resolution designate members to act as alternative members of any committee to replace absent members at meetings of the committee; provided that any such alternative member of the Audit Committee, Governance Committee or Finance Committee shall be an Independent Committee Member (as defined in Section 4.6). Each committee shall carry out its delegated duties, shall keep minutes of all proceedings and report such minutes to the Board when required.

Section 4.6. Independent Committee Members. An "Independent Committee Member" shall mean a person who:

(a) is not, and in the past two years has not been, employed by the Agency or an affiliate of the Agency in an executive capacity;

(b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$15,000.00 for goods and services provided to the Agency or received any other form of financial assistance valued at more than \$15,000.00 from the Agency;

(c) is not a relative of an executive officer or employee in an executive position of the Agency or an affiliate; and

(d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or other similar actions of the Agency or an affiliate.

An "affiliate" for purposes of the foregoing is any person or corporation or other entity controlled, controlled by or under substantially the same control as the Agency.

## **ARTICLE V**

### **By-Laws**

Section 5.1. Amendments. These By-Laws may be amended, supplemented or repealed by majority vote of the members of the Board then in office at any meeting of the Board if either all the members then in office are present at such meeting or notice of the proposed



amendment, supplement or repeal shall have been included in the notice or waiver of notice of such meeting.

## **ARTICLE VI Policies and Procedures**

Section 6.1. The Agency by resolution may adopt such rules, regulations, policies, and procedures as it may deem necessary and appropriate to the operation so long as the same shall not be contrary to these By-Laws as they may be amended from time to time.

Section 6.2. Audit of Records and Accounts. (a) The Agency shall annually secure a certified audit by accountants designated by the Board of its financial records and accounts in its possession and under its supervision and shall file a copy of such certified audit with the Mayor, and upon request, with the Council of the City of New York, within one-hundred and twenty days after the close of the Agency's fiscal year for its proceedings and its activities during the preceding fiscal year.

(b) The Board may authorize any other operating statement which it may determine is required for its operation.

## **ARTICLE VII Miscellaneous Provisions**

Section 7.1. Indemnification. The Agency shall, to the fullest extent permitted by law, indemnify any person made or threatened to be made, a party to any action or proceeding, other than a criminal action, by reason of the fact that such person, his testator or intestate, was a director or an officer or employee of the Agency or served at the request of the Agency, as a director or an officer or employee of any subsidiary of the Agency, against judgments, fines, amounts paid in settlement and reasonable expenses, including, attorneys' fees, actually and necessarily incurred as a result of such action or proceeding (including any appeal therein), providing (a) such director, officer or employee acted in good faith for a purpose which he reasonably believed to be in the best interests of the Agency and (b) it is not determined in any action or proceeding that such director, officer or employee acted without reasonable cause to believe that this conduct was lawful, and (c) such person, his testator or intestate, shall have first exhausted all the rights and remedies granted, and shall have satisfied all the obligations imposed by subdivision (1) of Section 917 of the General Municipal Law as set out in Chapter 958 of the Laws of 1977 of the State of New York.

Section 7.2. Conflicts of Interest. No member, alternate member or officer shall use his or her relationship with the Agency for private gain. In the event that the Agency proposes to enter into a contract or transaction in which a member, alternate member or officer is interested directly or indirectly (an “Interested Party”), the Board and a committee of the Board that is otherwise authorized to approve the contract or transaction are authorized to vote to approve the contract or transaction. The Interested Party shall forthwith make disclosure to the Board or committee of the Board (whichever will approve the contract or transaction) of the nature and extent of his or her interest and such disclosure shall be entered in writing in the minutes of the meeting called to authorize such contract or transaction. An Interested Party shall not participate in the deliberations or vote on any matter relating to his or her interest, provided that nothing in this Section 7.2 shall prohibit the Board or authorized committee from requesting that an Interested Party present information concerning a transaction in which the Interested Party has an interest at a Board or committee meeting, prior to the commencement of deliberations or voting relating thereto.

It is acknowledged that the members, alternate members and officers of the Agency may hold comparable or other positions with Build NYC Resource Corporation. By reason of the shared public purposes of Build NYC Resource Corporation and the Agency, no member, alternate member or officer of the Agency shall be deemed to have a conflict of interest solely due to such person’s position with Build NYC Resource Corporation.