

ORDINANCE AUTHORIZING AND APPROVING THE CREATION OF A
NONPROFIT EDUCATION FACILITIES CORPORATION TO
ACT ON BEHALF OF THE CITY OF ORCHARD, TEXAS

STATE OF TEXAS §
COUNTY OF FORT BEND §
CITY OF ORCHARD §

WHEREAS, the City of Orchard, Texas (the "City") is a duly created municipality and political subdivision of the State of Texas created and established under the Constitution and laws of the State of Texas; and

WHEREAS, the City has received a request for the authorization and approval of the creation of a nonprofit higher education facilities corporation to act on behalf of the City governed by the provisions of Section 53.35(b) of the Higher Education Authority Act (Chapter 53, Texas Education Code), as amended (the "Act"); and

WHEREAS, it is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551, Texas Government Code.

THEREFORE, BE IT ORDERED BY THE CITY COMMISSION OF THE CITY OF ORCHARD, TEXAS:

Section 1. The City Commission of the City has found and determined, and hereby finds and determines, that it is to the best interest of the City and its inhabitants that a nonprofit higher education facilities corporation be authorized and created, with such nonprofit higher education facilities corporation to be known as the "*Orchard Higher Education Finance Corporation*" (the "Corporation").

Section 2. The City Commission of the City hereby approves the Articles of Incorporation and the Bylaws proposed to be used in organizing the Corporation (copies of which are attached to this Ordinance as Exhibit A and Exhibit B, respectively, and made a part hereof for all purposes) and hereby grants authority for the incorporation of the Corporation pursuant to Section 53.35(b) of the Act, and the initial directors named in said Articles of Incorporation shall be deemed to have been appointed, and are hereby appointed, as the initial directors by the governing body of the Corporation for the respective terms described therein.

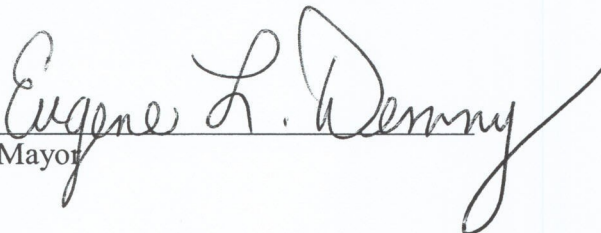
Section 3. The City specifically authorizes the Corporation to act on its behalf to further the public purposes stated in this Ordinance and in the Articles of Incorporation attached hereto. The City further authorizes the Board of Directors of the Corporation to appoint any officers it deems necessary to conduct its business and operation including (in addition to a President and Secretary required to be appointed by the Act) a Vice President, Treasurer and one or more Assistant Secretaries and Assistant Treasurers.

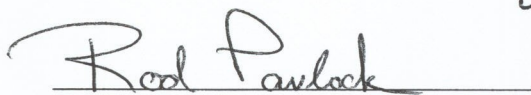
Section 4. The City finds that the statements set forth in the recitals of this Ordinance are true and correct, and the City hereby incorporated such recitals as a part of this Ordinance.

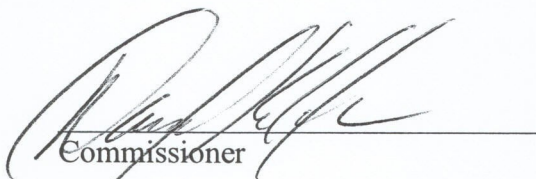
Section 5. This Ordinance shall become effective immediately after its adoption.

PASSED AND APPROVED BY THE CITY COMMISSION OF THE CITY OF ORCHARD, TEXAS ON November 3, 2004.

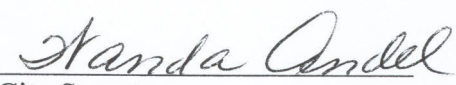
CITY OF ORCHARD, TEXAS


Mayor


Commissioner


Commissioner

ATTEST:


City Secretary

(CITY SEAL)

EXHIBIT A
ARTICLES OF INCORPORATION
OF

ORCHARD HIGHER EDUCATION FINANCE CORPORATION

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

WE, THE UNDERSIGNED natural persons, not less than three in number, each of whom is at least 18 years of age, and each of whom is a citizen of the State of Texas and a qualified elector of the City of Orchard, Texas (which is a duly established municipality under the Texas Constitution), acting as incorporators of a public instrumentality and nonprofit corporation (the "Corporation") under Section 53.35(b) of the Higher Education Authority Act (Chapter 53, Texas Education Code), as amended (the "Act"), with the approval of the governing body of the City of Orchard, Texas (the "City") as evidenced by the Ordinance attached hereto and made a part hereof for all purposes, do hereby adopt the following Articles of Incorporation for the Corporation:

ARTICLE ONE
Name of Corporation

The name of the Corporation is "Orchard Higher Education Finance Corporation."

ARTICLE TWO
Type of Corporation

The Corporation is a nonprofit corporation governed by Section 53.35(b) of the Act and the Texas Non-Profit Corporation Act, as amended.

ARTICLE THREE
Period of Duration

The period of duration of the Corporation is perpetual, subject to dissolution as herein provided.

ARTICLE FOUR
Purpose

The Corporation is organized exclusively for the purposes of benefiting and accomplishing public purposes of, and to act on behalf of, the City pursuant to Section 53.35(b) of the Act. The specific purposes for which the Corporation is organized and may issue bonds on behalf of the City are any purposes permitted by the Act including, but not limited to, the financing or refinancing of "educational facilities" or "housing facilities" (as such terms are defined in the Act) and facilities which are incidental, subordinate, or related thereto or appropriate in connection therewith located in the State of Texas in accordance with and subject to the provisions of the Act, and to be done for or on behalf of the City. The Corporation is a

duly constituted authority and a public instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1986, as amended, and the Corporation is authorized to act on behalf of the City as provided in these Articles of Incorporation. However, the Corporation is not a political subdivision or political corporation of the State of Texas within the meaning of its constitution and laws, including without limitation, Article III, Section 52 of said constitution, and no agreements, bonds, debts or obligations of the Corporation are or shall ever be deemed to be the agreements, bonds, debts or obligations, or the lending of credit, or a grant of public money or thing of value, of or by the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them.

ARTICLE FIVE

Membership

The Corporation has no members and is a non-stock corporation.

ARTICLE SIX

Amendment of Articles

These Articles of Incorporation may at any time and from time to time be amended so as to make any changes therein and add any provisions thereto which might have been included in the Articles of Incorporation in the first instance. Any such amendment shall be effected in either of the following manners: (i) the members of the board of directors of the Corporation shall file with the governing body of the City a written application requesting approval of the amendments to the Articles of Incorporation specifying in such application the amendments proposed to be made, such governing body shall consider such application and, if it shall by appropriate Ordinance or ordinance duly find and determine that it is advisable that the proposed amendments be made and shall approve the form of the proposed amendments, then the board of directors of the Corporation may amend the Articles of Incorporation by adopting such amendments at a meeting of the board of directors and delivering articles of amendment to the Secretary of State, or (ii) the governing body of the City may, at its sole discretion, and at any time, amend these Articles of Incorporation, and alter or change the structure, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of any limitation provided by the constitution and laws of the State of Texas and the United States of America on the impairment of contracts entered into by the Corporation) by written Ordinance adopting the amendment to the Articles of Incorporation of the Corporation or articles of dissolution at a meeting of the governing body of the City and delivering articles of amendment or dissolution to the Secretary of State.

ARTICLE SEVEN

Initial Registered Office and Agent

The street address of the initial registered office of the Corporation is City Hall, Orchard, Texas 77464 and the name of its initial registered agent at such address is 9921 Galveston Street.

ARTICLE EIGHT
Board of Directors

All powers shall be vested in a Board of Directors, each of whom shall be appointed by the City Commission of the City of Orchard, Texas (the "City Commission") in accordance with Section 53.14 of the Act. No officer or employee of the City shall be eligible for appointment as a director. The directors shall serve for two-year terms and, as such, without compensation except that they shall be reimbursed for the actual expenses incurred in the performance of their duties as directors.

The number of directors constituting the initial Board of Directors is seven (7) and the names and addresses of the persons who are to serve as the initial directors are:

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

ARTICLE NINE
Incorporators

The name and street address of each incorporator are:

Name	Address
Mayor Eugene Demny	9921 Galveston Street, Orchard, Texas 77464
City Secretary Wanda Andel	9921 Galveston Street, Orchard, Texas 77464
Commissioner Rodney Pavlock	9921 Galveston Street, Orchard, Texas 77464

ARTICLE TEN

Approval By City

The City has specifically authorized the Corporation by Ordinance to act on its behalf to further the public purposes stated in said Ordinance and these Articles of Incorporation, and the City has by said Ordinance approved these Articles of Incorporation. A copy of said Ordinance is attached to these Articles of Incorporation and made a part hereof for all purposes.

ARTICLE ELEVEN

Dividends and Earnings

No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation or association, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE TWELVE

Remedy Upon Determination of Foundation Status

If the Corporation is determined to be a private foundation within the meaning of Section 5.09(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Corporation:

1. shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Code;
2. shall not engage in any act of self-dealing as defined in Section 4941(d) of the Code;
3. shall not retain any excess business holdings as defined in Section 4943(c) of the Code;
4. shall not make any investments in such manner as to subject it to tax under Section 4944 of the Code; and
5. shall not make any taxable expenditures as defined in Section 4945(d) of the Code.

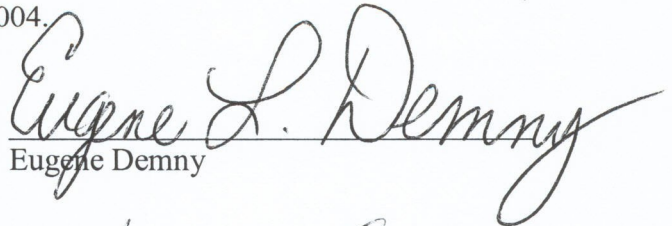
ARTICLE THIRTEEN

Dissolution


If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights

thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction or provision for satisfaction of debts and claims.

EXECUTED THIS 3rd day of November, 2004.


Eugene Demny


Wanda Andel


Rodney Pavlock

INCORPORATORS

EXHIBIT B

ORCHARD HIGHER EDUCATION FINANCE CORPORATION

BYLAWS

ARTICLE I OFFICES

Section 1.1. The principal office of Orchard Higher Education Finance Corporation (the "*Corporation*") shall be at the then existing City Hall of the City of Orchard, Texas (the "*City*").

ARTICLE II DIRECTORS

Section 2.1. The affairs of the Corporation shall be managed by the Board of Directors (the "*Board*") and subject to the restrictions imposed by law, the Articles of Incorporation, and these Bylaws, the Board shall exercise all powers of the Corporation. No officer, employee or member of the governing body of the City is eligible for appointment as a director.

Section 2.2. Vacancies in the Board shall be filled for the unexpired term by the appointment of successor directors by the governing body of the City.

Section 2.3. The property and business of the Corporation shall be managed by the Board which may exercise all powers of the Corporation and do all lawful acts.

Section 2.4. The annual meeting of the Board shall be held at the principal office of the Corporation on the first day of December of each year, if not a legal holiday, and if a legal holiday, then at the next secular day following, at 6 o'clock p.m., or at such time and place as shall be fixed by the consent in writing of all of the directors. All other meetings may be held at the place selected by the Board within the boundaries of the City.

Section 2.5. Regular meetings other than the annual meeting, may be held at such time and places as shall from time to time be determined by Resolution of the Board, a copy of which shall be given to the City Secretary of the City.

Section 2.6. Special meetings of the Board may be called by the President on three days' notice to each director and shall be called by the President or Secretary also on three days' notice to each director on the written request of two directors. Emergency meetings shall be called by the President on two hours notice, but only upon compliance with the public notice requirements as provided in Section 3.1 below.

Section 2.7. At all meetings of the Board the presence of a majority of the directors shall be necessary and sufficient to constitute a quorum for the transaction of business and the act

of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by these Bylaws.

Section 2.8. Directors, as such, shall receive no compensation for services rendered as directors, but shall be reimbursed for all reasonable expenses incurred in performing their duties as directors.

COMMITTEES OF THE BOARD

Section 2.9. The Board may by Resolution or Resolutions adopted by the Board, establish one or more committees, each committee to consist of two or more of the directors of the Corporation. Such committee or committees shall have such name or names, and such powers, as may be determined from time to time by Resolution adopted by the Board.

Section 2.10. The committees shall keep regular minutes of their proceedings and report the same to the Board when required.

ARTICLE III NOTICES

Section 3.1. The Board, all actions of the Board, all meetings of the Board, whether annual, regular, special, or emergency, and all meetings of committees of the Board shall be subject to the public notice requirements of the Texas Open Meetings Act, Chapter 551, Texas Government Code, in the same manner as if the Corporation was an industrial development corporation created pursuant to the provisions of the Development Corporation Act of 1979, as amended, Vernon's Ann. Civ. Stat., Article 5190.6.

Section 3.2. Whenever under the provisions of any statute or these Bylaws, notice is required to be given to any director, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director at such address as appears on the books of the Corporation, and such notice shall be deemed to be given at the time when the same shall be thus mailed.

Section 3.3. Whenever any notice is required to be given to a director under the provisions of any statute or of these Bylaws, a waiver in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

ARTICLE IV OFFICERS

Section 4.1. The offices of the Corporation shall be chosen by the Board. The Board shall choose from its members a President and a Vice President. The Board shall also choose a Secretary and a Treasurer who may or may not be members of the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 4.2. The Board shall choose such officers at its first meeting and at each annual meeting thereafter.

Section 4.3. The officers of the Corporation chosen pursuant to Section 4.2 shall serve until the next annual meeting of the Board thereafter or until their successors are chosen and qualify in their stead.

Section 4.4. The Board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4.5. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the whole Board. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board.

The President

Section 4.6. The President shall preside at all meetings of the directors.

Section 4.7. The President shall be ex-officio member of all standing committees, shall have general supervision of the management of the business of the Corporation, and shall see that all orders and Resolutions of the Board are carried into effect.

Section 4.8. The President shall execute bonds, mortgages and other contracts, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Corporation.

Vice President

Section 4.9. The Vice President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board shall prescribe.

The Secretary

Section 4.10 The Secretary shall attend all sessions of the Board and record all votes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board and shall perform such other duties as may be prescribed by the Board or the President. The Secretary shall keep in safe custody the seal of the Corporation and, when authorized by the Board, affix the same to any instrument requiring it, and, when so affixed, it shall be attested by the Secretary's signature. When the corporate seal is required as to instruments executed in the course of ordinary business, the Secretary shall attest to the signature of the President or Vice President and shall affix the seal thereto. The Board may appoint one or more persons to serve as an Assistant Secretary, which person may, but need not be, a director. The Assistant Secretary may perform any duty granted to the Secretary in these Bylaws and/or in any Resolution or order approved by the Board.

The Treasurer

Section 4.11. To the extent not otherwise provided by the Board, by rules and regulations, in Resolutions relating to the issuance of bonds, or in any financing documents relating to such issuance, the Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in a depository as shall be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, taking proper vouchers for such disbursements and shall render to the President and directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions performed as Treasurer and of the financial condition of the Corporation. The Board may appoint one or more persons to serve as an Assistant Treasurer, which person may, but need not be, a director. The Assistant Treasurer may perform any duty granted to the Treasurer in these Bylaws and/or in any Resolution or order approved by the Board.

Section 4.12. The Board may require the President, Vice President, the Secretary, any Assistant Secretary, the Treasurer, and any Assistant Treasurer to give the Corporation bonds in such sums and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of their office and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation.

Section 4.13. The provisions of the Texas Uniform Facsimile Signature of Public Officials Act shall be applicable to the Corporation, which is a duly constituted instrumentality of the City, a political subdivision of the State of Texas.

ARTICLE V FISCAL PROVISIONS

Section 5.1. No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its directors or officers or any individual, firm, corporation, or association, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the Corporation, then any net earnings of the Corporation thereafter accruing shall be paid to the City. No part of the Corporation's activities shall be carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office.

Section 5.2. The Board shall have prepared for each annual meeting a full and clear statement of the business and condition of the Corporation.

Checks

Section 5.3. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate, provided that in no event shall a check be negotiable until it is signed by at least one officer.

Fiscal Year

Section 5.4. The fiscal year shall be determined by Resolution of the Board.

ARTICLE VI SEAL

Section 6.1. The seal of the Corporation shall be as determined by the Board of Directors.

ARTICLE VII AMENDMENTS

Section 7.1. These Bylaws may be altered, changed, or amended at any meeting of the Board at which a quorum is present, provided notice of the proposed alteration, change, or amendment be contained in the notice of such meeting, by the affirmative vote of a majority of the directors at such meeting and preset thereat. Any such alteration, change or amendment shall be effective upon adoption by the Board and approval by the City Commission of the City of Orchard, Texas (whether such approval be given before or after the adoption of such amendment by the Board of Directors).