

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21

WHEREAS, Subchapter D of Chapter 431, Texas Transportation Code, as amended (*Chapter 431*), authorizes the creation and organization of a public, nonprofit government corporation to act as a duly constituted authority of a city to aid and on behalf of a city in the performance of one or more of a city's governmental functions; and

WHEREAS, Chapter 431 requires a local government corporation to be created pursuant to the provisions of Chapter 394, Texas Local Government Code, as amended (*Chapter 394*), and requires a local government corporation's articles of incorporation be in the form and be executed, approved, and filed in the manner prescribed by Chapter 394; and

22 **WHEREAS**, a local government corporation may have and exercise all of the
23 powers prescribed by Chapter 431, Chapter 394, and the Texas Non-Profit Corporation
24 Act (formerly Article 1396, Vernon’s Texas Civil Statutes, as amended), now codified
25 in the Texas Business Organizations Code as the Texas Nonprofit Corporation Law, as
26 defined in Section 1.008 of the Texas Business Organizations Code, as amended
27 (Chapter 431, Chapter 394, and the Texas Nonprofit Corporation Law are collectively
28 referred to as the *Acts*); and

29 **WHEREAS**, Chapter 394 requires as condition to the creation of a local
30 government corporation that at least three residents of the City and the State of Texas
31 (the *State*) who are at least 18 years of age submit a written application for the
32 incorporation of the local government corporation; and

33 **WHEREAS**, there has been presented to and filed with the City Clerk of the City,
34 an application executed by three residents of the City who meet the requirements of
35 Chapter 394 requesting the incorporation of the Austin Economic Development
36 Corporation (the *Corporation*); and

37 **WHEREAS**, the Corporation will be organized for the purpose of aiding and
38 acting on behalf of the City in the performance of the City’s governmental functions to
39 accomplish any governmental purpose of the City (the *Project*) and paying all of the
40 costs of such Project (the *Project Costs*), and in so acting on behalf of the City, such

Corporation will assist the City in the performance of the City's governmental functions as described in this Resolution and as contemplated by the Acts; and

WHEREAS, the City Council of Austin (the *Council*), as the governing body of Austin, has reviewed and approved the proposed form of the Articles of Incorporation attached as Exhibit A, and the Bylaws attached as Exhibit B, has determined to authorize and approve the creation of a local government corporation, a nonprofit entity, as its constituted authority and instrumentality to accomplish the purposes set forth in Article IV of the Articles of Incorporation pursuant to the provisions of Chapter 431; and

WHEREAS, the Council finds and determines that the adoption of this Resolution is in the best interests of the residents of the City; **NOW THEREFORE**,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

SECTION 1. The Council finds that the application for the incorporation of the Corporation was executed and filed in the manner required by Chapter 394, and the Council therefore has authority to consider and act on the application for incorporation of the Corporation.

SECTION 2. The Council determines that the formation of the Corporation is wise, expedient, necessary, and advisable, as required by Chapter 431 and, to the extent required by Chapter 431, the provisions of Chapter 394, as a duly constituted authority of the City, and the Corporation is authorized to aid and act on behalf of the City in the performance of its governmental functions, and to perform the other purposes described in the Articles of Incorporation.

SECTION 3. The Corporation may aid and act on behalf of the City to further the public purposes set forth in Article IV of the Articles of Incorporation, as the same may be amended from time to time. In furtherance of those public purposes, the Corporation may cause and arrange for the design, development, construction, implementation, financing and operation of the Project, pursuant to the provisions of

69 State law, and may take all lawful actions necessary or useful in furthering such public
70 purposes.
71

72 SECTION 4. The Corporation is designated as the duly constituted authority
73 and instrumentality of the City (within the meaning of those terms in the regulations of
74 the Treasury and the rulings of the Internal Revenue Service prescribed and promulgated
75 pursuant to section 103 of the Internal Revenue Code of 1986, as amended) and shall be
76 authorized to act on behalf of the City for the public purposes set forth in Section 3 of
77 this Resolution; but the Corporation is not intended to be and shall not be a political
78 subdivision or a political corporation within the meaning of the Constitution and the
79 general laws of the State, including without limitation Article III, Section 52 of the Texas
80 Constitution, and the City does not delegate to the Corporation any of its attributes of
81 sovereignty, including the power to tax, the power of eminent domain, or its police
82 power.
83

84 SECTION 5. This Resolution is adopted for the purpose of satisfying the
85 conditions and requirements of the Acts and of section 103 of the Internal Revenue Code
86 of 1986, as amended, and the regulations prescribed thereunder from time to time and
87 for the benefit of the Corporation, the City, the owners or holders from time to time of
88 the bonds or notes of the Corporation, and all other interested persons.
89

90 SECTION 6. The Council approves and adopts the Articles of Incorporation
91 of the Corporation and the Bylaws in substantially the form attached as Exhibit A and
92 Exhibit B, respectively, which are each incorporated by reference as a part of this
93 Resolution for all purposes, and authorizes the incorporators of the Corporation to file
94 such Articles of Incorporation and Bylaws with the Texas Secretary of State in the
95 manner provided by law. The Council authorizes City staff and consultants to undertake
96 all matters necessary and incidental to the completion of the Articles of Incorporation
97 and Bylaws.
98

99 SECTION 7. The Council hereby appoints the directors listed in the Articles
100 of Incorporation attached to the initial board of directors for the Corporation.
101 Subsequent Directors shall be appointed as provided in the Bylaws.
102

103 SECTION 8. The Corporation may, under the conditions set forth in the
104 Acts and in this Resolution, issue, or provide for the issuance of, bonds or notes, acquire,
105 lease, sell or convey certain properties, and enter into purchase agreements, lease
106 agreements, credit agreements, operating agreements and all other agreements necessary
107 or useful in connection with the Project, including donation, gift, or other agreements
108 pursuant to which the Corporation accepts by gift or devise something of value; provided

109 that the Corporation shall not issue bonds or notes without the consent of the Council.
110 Furthermore, bonds or notes issued by the Corporation shall be deemed not to constitute
111 a debt of the State, the City, or of any other political corporation, subdivision, or agency
112 of the State or a pledge of the faith and credit or taxing power of any of them, but such
113 bonds or notes shall be payable solely from the revenues pledged to the payment of such
114 bonds or notes. In no event shall the Corporation be authorized to levy ad valorem taxes.
115

116 SECTION 9. The Council finds that any notes, bonds, loans, debts or other
117 obligations of the Corporation shall not be deemed an indebtedness, liability, general or
118 moral obligation or pledge of the faith or credit of the State, the City or any other political
119 subdivision or governmental unit, nor shall any such notes, bonds, loans, debts or other
120 obligations constitute an indebtedness within the meaning of any constitutional or
121 statutory debt limitation or restriction or any agreement, obligation or indebtedness of
122 the City or of the State within the meaning of any constitutional or statutory provision
123 whatsoever.
124

125 SECTION 10. The Council finds that it is the purpose, intent and desire of the
126 City, in approving the creation of the Corporation and its Articles of Incorporation, that
127 such actions and the Corporation are authorized to comply with the requirements of the
128 Internal Revenue Code 1986, as amended, and the Treasury Regulations and Internal
129 Revenue Service rulings promulgated thereunder and the rulings issued pursuant thereto,
130 such that the Corporation shall be deemed to be a constituted authority acting on behalf
131 of the City pursuant to the provisions of the Chapter 431.
132

133 SECTION 11. Upon dissolution of the Corporation, the City may accept title
134 to or other interest in any real or personal property owned by the Corporation at such
135 time.
136

137 SECTION 12. The recitals contained in the preamble of this Resolution are
138 found to be true, and such recitals are incorporated by reference and are made a part of
139 this Resolution for all purposes and are adopted as a part of the judgment and findings
140 of the Council.
141

142 SECTION 13. This Resolution shall be construed and enforced in accordance
143 with the laws of the State and the United States of America.
144

145 SECTION 14. If any provision of this Resolution or the application to any
146 person or circumstance shall be held to be invalid, the remainder of this Resolution and
147 the application of such provision to other persons and circumstances shall nevertheless

148 be valid, and the Council declares that this Resolution would have been enacted without
149 such invalid provision.
150

151 SECTION 15. Council finds that the meeting at which this Resolution is
152 adopted was open to the public and public notice of the time, place, and subject matter
153 of the public business to be considered at such meeting, including this Resolution, was
154 given, all as required by Chapter 551, Texas Government Code, as amended.
155
156
157

158 **ADOPTED:** _____, 2020

ATTEST: _____

Jannette S. Goodall
City Clerk