

ARTICLES OF INCORPORATION
OF THE
AUSTIN ECONOMIC DEVELOPMENT CORPORATION

We, the undersigned natural persons, each of whom is at least 18 years of age or more, a resident of the City of Austin, Texas (the *City*) and a citizen of the State of Texas (the *State*), acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code, as amended (the *Act*), and to the extent required by the Act, Chapter 394, Texas Local Government Code, as amended (*Chapter 394*, and together with Chapter 431, the *Statutory Authority*), pursuant to a resolution (the *Resolution*) adopted by the City Council of the City (the *Governing Body*) on _____, 2020, adopt the following articles of incorporation for such corporation (the *Articles of Incorporation*):

ARTICLE I

The name of the corporation is “AUSTIN ECONOMIC DEVELOPMENT CORPORATION” (the *Corporation*).

ARTICLE II

The Corporation is a public, nonprofit corporation.

ARTICLE III

Subject to the provisions of Article XV, the period of duration of the Corporation shall be perpetual.

ARTICLE IV

The Corporation is organized and shall be operated solely to carry out the purposes of Chapter 431 and to accomplish any governmental purpose of the City (the *Project*), including one or more charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the *Code*). In addition, the Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the City for the (i) development, construction, acquisition, ownership and operation of community development projects; (ii) promotion, development, encouragement and maintenance of employment, commerce and economic development in the City; (iii) promotion, development, construction, acquisition, ownership and operation of affordable housing projects, (iv) promotion, development, encouragement and maintenance of for profit and not-for-profit creative and cultural venues within the City, and (v) performance of any and all lawful activities which may be necessary, useful or desirable for the furtherance, accomplishment, fostering, or attainment of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such as corporations, firms, associations, trusts, institutions, foundations, or governmental bureaus or departments of agencies. The foregoing have been determined and declared by the Texas

Legislature to lessen the burdens of government and to be public purposes and functions and the Corporation is authorized to carry out these public purposes and functions on behalf of the City.

The Corporation is formed pursuant to the provisions of the Act, which Act authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purpose for its creation. The City may establish rules regarding the operation of the Corporation's activities.

To the extent necessary to carry out its authorized purposes, the Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State to corporations incorporated under the Act, and to the extent applicable, Chapter 394, including, without limitation, all powers not in conflict with the Act granted to domestic nonprofit corporations by the Texas Nonprofit Corporation Law, as defined by Section 1.008 of the Texas Business Organizations Code, as amended, and shall have all other powers of a like or different nature not prohibited by law which are necessary or useful to enable the Corporation to perform the authorized purposes for which it is created.

The Corporation is created as a local government corporation pursuant to Statutory Authority and shall be a governmental unit within the meaning of Section 101.001, Texas Civil Practice and Remedies Code, as amended. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Chapter 101, as amended, Texas Civil Practice and Remedies Code. The Corporation shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain power, or police power.

ARTICLE V

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

ARTICLE VI

The Governing Body, by the Resolution, authorized the creation of the Corporation as a local government corporation and approved the form of these Articles of Incorporation pursuant to Statutory Authority.

To the extent necessary to carry out its authorized purposes, the Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given under the Act and under the general laws of the State to nonprofit corporations incorporated under the Texas Nonprofit Corporation Law which are consistent with the provisions of the Act with respect to the development and operation of the Project together with all powers incidental thereto or necessary therefor. Notwithstanding the foregoing, before the consummation of the sale and delivery of any bonds or notes, the Corporation shall obtain approval from the Governing Body, as evidenced by the adoption of a written resolution of the Governing Body. Additionally, in the exercise of the powers of the Corporation, the Corporation may enter into any sale, loan, lease, trust, operating, or other agreement as authorized by the Act (including, but not limited to, agreements concerning the Corporation's acceptance of financial support from the City for any source, whether public or private, and receipt of donations by gift or devise and grants from any

source) that are necessary and appropriate to the fulfillment of the authorized purposes of the Corporation as set forth in Article IV hereof.

The Corporation is a 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 Code, 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 within the meaning of the State constitution and laws, including, without limitation, Article III, Section 52 of the State 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, except as provided by State law, or any other political corporation, subdivision, or agency of the State, or a pledge of the faith and credit of any of them.

Initially, a substantial portion of the Corporation's funding shall be provided by the City for the purposes of day to day operations and will not be used to repay the City for debt obligations incurred or for operating fund unassociated with the Corporation.

ARTICLE VII

These Articles of Incorporation may at any time and from time to time be amended as provided in Statutory Authority so as to make any changes herein and add any provisions hereto permitted by law. Any such amendment not prohibited above shall be effected in either of the following manners: (i) the members of the Board of Directors of the Corporation (the *Board*) shall file with the City a written application requesting permission to amend the Articles of Incorporation, specifying in such application the amendments proposed to be made, and the City may consider such application and, if it shall by appropriate resolution duly find and determine that it is wise, expedient, necessary, or advisable that the proposed amendments be made and shall approve the form of the proposed amendments, then the Board may amend the Articles of Incorporation by adopting such amendments at a meeting of the Board and delivering the articles of amendment to the Secretary of State for the State, or (ii) the Governing Body may, in its sole discretion, and at any time, amend these Articles of Incorporation, and change the structure, organization, programs, or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of Statutory Authority and any limitation provided by the State Constitution and laws of the State and the United States of America on the impairment of contracts entered into by the Corporation), by written resolution adopting the amendment to the Articles of Incorporation of the Corporation or articles of dissolution at a meeting of the Governing Body and delivering articles of amendment or dissolution to the Secretary of State for the State, as provided in Statutory Authority. Restated Articles of Incorporation may be filed with the Secretary of State for the State as provided in Statutory Authority.

ARTICLE VIII

The meetings of the Corporation shall be subject to the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Board is subject to the Texas Public Information

Act, Chapter 552, Texas Government Code, as amended, in the same manner as if the Corporation were a political subdivision.

ARTICLE IX

The initial bylaws of the Corporation shall be adopted by the Board and shall, together with these Articles of Incorporation, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of Statutory Authority and these Articles of Incorporation. The bylaws and each amendment and repeal of the bylaws must be approved by the Governing Body by resolution.

ARTICLE X

The street address of the initial registered office of the Corporation is 301 W. 2nd Street, Austin, Texas 78701, which is located in the City, and the name of the initial registered agent at such address is Jannette S. Goodall, City Clerk.

ARTICLE XI

The affairs of the Corporation shall be managed by a Board, consisting of not less than three nor more than 21 members, or such greater or lesser number (if then permitted by Statutory Authority). The Board shall be composed in its entirety of persons who are appointed by resolution of the Governing Body of the City pursuant to the terms of the Corporation's Bylaws. A director shall hold office for the term to which the director is qualified and until a successor is qualified. A director serves without compensation but shall be entitled to reimbursement for actual expenses incurred in performing services as a Board member. Any vacancy in the Board shall be filled in the manner prescribed by the Bylaws. The Governing Body retains the ability to remove (with or without cause) Board members, as needed.

ARTICLE XII

The number of directors of the Corporation (the *Directors*) initially constituting the Board is four. The names and addresses of the four initial Directors are:

<u>Names</u>	<u>Addresses</u>
[Ms./Mr.] _____	[Address] Austin, Texas [78__]
[Ms./Mr.] _____	[Address] Austin, Texas [78__]
[Ms./Mr.] _____	[Address] Austin, Texas [78__]
[Ms./Mr.] _____	[Address] Austin, Texas [78__]

All of the initial Directors are residents of one of the ten Council districts that make up the City. Pursuant to Section 431.102(c) of the Act, a majority of the Board will reside within one of the ten Council districts that make up the City. The Corporation's officers shall include a

president, vice president, secretary, treasurer, and any other officers that the Corporation considers necessary or desirable, as more specifically provided in, and as identified and named pursuant to the provisions of the Corporation's Bylaws. A change in the number of Directors may be made by an amendment to the Bylaws.

ARTICLE XIII

The names and street addresses of the incorporators, each of whom resides within one of the ten Council districts that make up the City, are:

<u>Names</u>	<u>Addresses</u>
[Ms./Mr.] _____	[Address] Austin, Texas [78____]
[Ms./Mr.] _____	[Address] Austin, Texas [78____]
[Ms./Mr.] _____	[Address] Austin, Texas [78____]
[Ms./Mr.] _____	[Address] Austin, Texas [78____]

ARTICLE XIV

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director's capacity as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director received an improper benefit, whether or not the benefit resulted from an act taken within the scope of the Director's office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by State law. Any repeal or amendment of this Article by the Board shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences and the bylaws, a Director shall not be liable to the fullest extent permitted by any amendment to the State law hereafter enacted that further limits the liability of a Director.

ARTICLE XV

If the Board, or the Governing Body, determines by resolution that the purposes for which the Corporation was formed have been substantially fulfilled and all bonds or notes issued by and all other obligations incurred by the Corporation have been fully paid, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Section 394.026, Local Government Code, as amended, or with applicable law then in existence. In the event of dissolution of the Corporation, after the payment or satisfaction of all debts, liabilities and obligations, all assets will be turned over to the City, or its successor, unless the Governing Body shall otherwise direct; provided, however, any such disposition shall only be for tax-exempt purposes in such a

manner and to such organization (or organizations) which shall at such time of dissolution qualify as an organization exempt from federal income taxation under section 501(a) of Code or as an organization (or organizations) described in section 501(c)(3) of the Code. The Governing Body, by written resolution, may authorize and direct the dissolution of the Corporation. However, the Corporation shall not be dissolved or liquidated, and its business shall not be terminated, by act of the Governing Body or otherwise, so long as the Corporation shall be obligated to pay any bonds, notes, or other obligations.

No action shall be taken pursuant to the first paragraph of this Article, in any manner or at any time that would impair any contract, lease, right, or other obligation theretofore executed, granted, or incurred by the Corporation.

ARTICLE XVI

If the Corporation is ever 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:

- (a) 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;
- (b) shall not engage in any act of self-dealing as defined in section 4941(d) of the Code;
- (c) shall not retain any excess business holdings as defined in section 4943(c) of the Code;
- (d) shall not make any investments in such manner as to subject it to tax under section 4944 of the Code; and
- (e) shall not make any taxable expenditures as defined in section 4945(d) of the Code.

ARTICLE XVII

All properties owned by the Corporation shall be held for the use and benefit of the public on a nondiscriminatory basis. No dividends shall ever be paid by the Corporation and no part of its net earnings remaining after payment of its expenses and other obligations shall be distributed to or inure to the benefit of its Directors or officers, or any individual, private firm, or private corporation or association, except in reasonable amounts for services rendered.

If, after the close of any fiscal year, the Board shall determine that sufficient provision has been made for the full payment of all current expenses, together with all amounts payable on the contracts, agreements, bonds, notes, and other obligations of the Corporation, and that all of the terms, provisions, and covenants therein have been met, then any net earnings derived from lawfully permitted sources thereafter accruing shall be used solely for the purposes permitted by the Act and Article Four hereof.

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 of debts and claims.

No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign of or in opposition to any candidate or measure (as such terms are defined in Chapter 251, Texas Election Code, as amended).

ARTICLE XVIII

To the fullest extent permitted by State law, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitations than permitted prior to such amendment), a member of the Board of the Corporation shall not be liable, or shall be liable only to the extent provided in these Articles of Incorporation, to the Corporation for monetary damages for an act or omission in the Director's capacity a Director. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director of the Corporation existing at the time of such repeal or amendment.

The Corporation may indemnify any Director, officer, employee or agent or former Director, officer, employee or agent of the Corporation for expenses and costs, including attorney's fees, actually or necessarily incurred by the person in connection with any claim asserted against the person, by action in court or other forum, by reason of such person having been a Director, officer, employee or other agent, except that the Corporation may not provide indemnity in a matter if the Director, officer, employee, or agent is guilty of negligence or misconduct in relation to the matter.

* * *

IN WITNESS WHEREOF, we have hereunto set our hands this the ____ day of _____, 2020.

[Name], Incorporator

[Name], Incorporator

[Name], Incorporator

THE STATE OF TEXAS

COUNTY OF TRAVIS

I, the undersigned, a Notary Public of the State of Texas, certify that on this the ____ day of _____, 2020, [Name], [Name], and [Name], who each being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the date and year above written.

NOTARY PUBLIC IN AND FOR
THE STATE OF TEXAS

(SEAL)

My Commission Expires:

EXHIBIT A

Resolution

DRAFT