

**RESOLUTION NO. 20230504-015**

**WHEREAS**, on February 23, 2023, Council approved Resolution No. 20230223-013, authorizing and approving the creation of the Austin Public Facilities Corporation, a Texas nonprofit public facility corporation; and approving the certificate of formation, the purpose and activities, and approving the appointment of the initial board of directors; and

**WHEREAS**, due to an administrative oversight, Exhibit A (the Articles of Incorporation) was not attached to the draft resolution; and

**WHEREAS**, this action seeks to correct the issue and have Council formally adopt the Articles of Incorporation, and there are no other changes to Resolution No. 20230223-013; and **NOW, THEREFORE**,

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

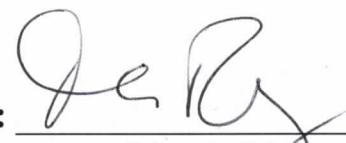
Resolution No. 20230223-013 is amended to provide that Council approves the Austin Public Facilities Corporation's Articles of Incorporation in substantially the form attached as attached Exhibit "A-1" and authorizes the incorporator to file such Articles of Incorporation with the Secretary of State of the State of Texas in the manner provided by law;

**BE IT FURTHER RESOLVED:**

Except as amended herein, Resolution No. 20230223-013 remains in full force and effect.

**ADOPTED:** May 4, 2023

**ATTEST:**



Myrna Rios  
City Clerk

ARTICLES OF INCORPORATION  
OF THE  
AUSTIN PUBLIC FACILITIES CORPORATION  
THE STATE OF TEXAS  
COUNTY OF TRAVIS  
CITY OF AUSTIN

I, THE UNDERSIGNED natural person, who is at least 18 years of age, a citizen of the State of Texas (the *State*), and an employee of the City of Austin, Texas (the *City*), acting as incorporator of a public instrumentality, constituted authority, and nonprofit corporation (the *Corporation*) under the “Public Facility Corporation Act”, codified as Chapter 303, Texas Local Government Code, as amended (and referred to herein as the *Act*), with the approval of the Governing Body, as evidenced by the resolution of the Governing Body adopted on February 23, 2023 (the *Resolution*), which Resolution is attached hereto as Exhibit “A” and made a part of these Articles of Incorporation for all purposes, do hereby adopt the following Articles of Incorporation for the Corporation:

ARTICLE ONE  
NAME

The name of the Corporation is the “City of Austin Public Facilities Corporation”.

ARTICLE TWO  
AUTHORIZATION

The Corporation is a nonprofit public corporation.

ARTICLE THREE  
DURATION

Subject to the provisions of ARTICLE TWELVE hereof, the period of duration of the Corporation is perpetual.

ARTICLE FOUR  
PURPOSE; POWERS AND LIMITATIONS

(a) The purpose of the Corporation, which is a “public purpose” under the Act, is to assist the City in financing, refinancing, or providing “public facilities” (as defined in the Act), or facilities directly related thereto, at the request of the Governing Body, relating to the renovation, expansion, redevelopment, construction, acquisition, provision, conveyance, leasing, owning, operating, and divesting of real property of the City by any and all available means as authorized by or permitted under applicable law.

(b) The Corporation shall have and possess the broadest possible powers available under applicable law to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing, placement in service and conveyance of certain public facilities of the City to further the purpose identified in Subpart (a) of this ARTICLE FOUR, all as under the terms of and in compliance with the Act. The Corporation's ability to exercise these powers to accomplish its purpose shall only be restricted to the extent required by applicable law, including the Act, and these Articles of Incorporation.

(c) The Corporation is authorized to issue "bonds" (as defined and permitted by the Act); provided, however, that no bonds, notes, interim certificates, or other evidence of indebtedness may be issued by the Corporation unless such obligations are first approved by resolution of the Governing Body. Notwithstanding the foregoing, the Corporation may enter into any loan, lease, trust, or other contracts and agreements, and incur such other obligations, as permitted under the Act, without first receiving Governing Body approval.

(d) The Corporation is a public corporation, a constituted authority, and a public instrumentality within the meaning of the regulations of the Act, the United States Treasury Department, the rulings of the Internal Revenue Service prescribed and promulgated pursuant to sections 103 and 141 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.

(e) In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in Subpart (a) of this ARTICLE FOUR, together with all of the other powers granted to corporations that are incorporated under the Act and to the extent not in conflict with the Act, the Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State to nonprofit corporations under the Texas Non-Profit Corporation Act, as amended (now codified at Chapter 22, Texas Business Organizations Code, as amended), or any other applicable laws of the State.

(f) The Corporation shall have the purposes and powers permitted by the Act, but the Corporation does not have, and shall not exercise, the powers of sovereignty of the City, including the power to tax, the power of eminent domain, or the City's police power; however, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code), the Corporation is a governmental unit and its actions are governmental functions.

(g) No bonds or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, other debt instruments, or other obligations or the lending of credit, or a grant of the public money or things of value, of, belonging to, or by the State, the City, or any other political corporation, subdivision or agency of the State (including Travis County), or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, bonds, other debt instruments, and other obligations, contracts and agreements shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.



(h) A substantial portion of the Corporation's funding, including the provision of City-employed personnel to undertake Corporation business, shall be provided by the City for the purposes of day-to-day operations and the majority of the net worth of the Corporation will be attributable to the City. Such funding will not be used to repay the City for debt obligations incurred or for operating funds unassociated with the Corporation. Furthermore, the City will maintain substantial involvement in the activities of the Corporation such that the Corporation will be treated, for the purposes of federal tax law, as an "integral part" of the City, based on the level of control and funding the City has in regard to the Corporation.

(i) The Governing Body, in its sole discretion, may alter the Corporation's structure, organization, programs, or activities in a manner that is consistent with the Act, but subject to limitations provided by law relating to the impairment of contracts entered into from time to time by the Corporation. Additionally, the City may establish rules regarding the operation of the Corporation's activities to ensure such activities meet City standards. In the event the Corporation implements rates or charges for goods or services rendered by the Corporation, the Governing Body must approve such imposition, prior to the rates' effectiveness, and monitor the services provided to avoid duplication of efforts by the Corporation.

#### ARTICLE FIVE NO MEMBERS; NONSTOCK

The Corporation has no members and is a nonstock corporation.

#### ARTICLE SIX AMENDMENT

These Articles of Incorporation may be amended at any time and from time to time by the Board of Directors (the *Board*; each member thereof, a *Director*), with the approval of the Governing Body (as evidenced by resolution passed thereby), subject, to and in accordance with Subpart (i) of ARTICLE FOUR hereof. Any officer of the Corporation (or the designee thereof) shall take (or cause to be taken) said action as may be necessary to cause the effectiveness of any such amendment effectuated in accordance with this ARTICLE SIX.

#### ARTICLE SEVEN ADDRESS

The street address of the initial registered office of the Corporation is 301 W. Second Street, Austin, Texas 78702, and the name of the Corporation's initial registered agent at that address is Jesus Garza, Interim City Manager of the City.

#### ARTICLE EIGHT BOARD OF DIRECTORS; COMMITTEES

(a) The affairs of the Corporation shall be managed by a board of directors (the *Board*) which shall be composed of at least three members. Each Director's term will last three years. Directors shall be appointed by the Governing Body and are removable by the Governing Body. A majority of the entire membership of the Board, including any vacancies, is a quorum. The Board shall conduct all meetings within the boundaries of the City.

(b) The names and street addresses of the persons who are to serve on the initial Board and the date of expiration of their initial terms as Directors (which terms shall commence on the date of these Articles of Incorporation are filed with the Secretary of State's office) are as follows:

<b>Names</b>	<b>Addresses</b>
Veronica Briseno	301 W. Second Street Austin, Texas 78702
Kimberly Olivares	301 W. Second Street Austin, Texas 78702
Darrell Alexander	301 W. Second Street Austin, Texas 78702
Michael Gates	301 W. Second Street Austin, Texas 78702
Mark Dombroski	4815 Mueller Boulevard Austin, Texas 78723
Anna Bryan-Borja	625 E. 10 <sup>th</sup> Street Austin, TX 78701
Jason Alexander	301 W. Second Street Austin, TX 78701

(c) 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.

(d) Meetings of the Board are subject to the Texas Open Meetings Act, Texas Government Code, Chapter 551, and the Corporation is subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

(e) The Board, by resolution or within the Bylaws, may provide for the creation of committees to assist in the management and conduct of the Corporation's business, including creation of a committee with the powers prescribed in Section 303.039(a) of the Act.

#### ARTICLE NINE BYLAWS

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 the Act and these Articles of Incorporation. The power to alter, amend, or repeal the Bylaws shall be vested in the Board of Directors, subject to approval by the Governing Body by resolution.

## ARTICLE TEN INCORPORATORS

The name and street address of the incorporator is:

<b>Names</b>	<b>Addresses</b>
Andrew Moore	301 W. Second Street Austin, Texas 78702

The incorporator is an employee of the City.

## ARTICLE ELEVEN GOVERNING BODY APPROVAL

(a) The City is the Corporation's "sponsor" (as defined in the Act) and has caused this Corporation to be created.

(b) The City, as the Corporation's "sponsor" under the Act, has specifically authorized the Corporation to act on its behalf to further the public purposes set forth in these Articles of Incorporation and has, in the Resolution, approved these Articles of Incorporation.

(c) The City's and the Corporation's principal office address is 301 W. Second Street, Austin, Texas 78701.

## ARTICLE TWELVE DISSOLUTION

(a) The Governing Body, by written resolution, may authorize and direct the dissolution of the Corporation. However, the Corporation shall not be dissolved, 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 evidences of indebtedness then outstanding that provide for certain terms of operation of the facilities owned by the Corporation. .

(b) No action shall be taken pursuant to Subpart (a) of this ARTICLE TWELVE or pursuant to Subpart (b) of ARTICLE FOURTEEN hereof, 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 THIRTEEN NOT A PRIVATE FOUNDATION

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 FOURTEEN MISCELLANEOUS

(a) 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. The Corporation shall not reimburse the City for the cost of its use of City employees to effectuate Corporation business.

(b) If, after the close of any fiscal year, the Corporation's 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 Subpart (a) of ARTICLE FOUR hereof.

(c) 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.

(d) 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 FIFTEEN DIRECTOR LIABILITY; INDEMNIFICATION

(a) 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 as 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.

(b) 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.

*[The remainder of this page intentionally left blank.]*



Name: \_\_\_\_\_  
Andrew Moore

(Signature of Initial Incorporator)

THE STATE OF TEXAS

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COUNTY OF TRAVIS

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Before me, on this day personally appeared Andrew Moore known to me to be the person whose name is subscribed to the foregoing document and, being by me the first duly sworn, declared that the statements therein contained are true and correct.

Given under my hand and official seal of office this \_\_\_\_\_.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public, State of Texas

Printed Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT A

City Resolution