

**ARTICLES OF INCORPORATION  
OF  
WALLER CREEK LOCAL GOVERNMENT CORPORATION**

The undersigned natural persons, each of whom is at least eighteen (18) years of age or more, a majority of which are residents and qualified voters of the City of Austin, Texas (the "City") and a citizen of the State of Texas, acting as incorporators of a corporation under the provisions of Subchapter D, Chapter 431, Texas Transportation Code ("Chapter 431"), and the Texas Nonprofit Corporation Law, Chapter 22, Business Organizations Code ("TCNL"), do hereby adopt the following Articles of Incorporation for such corporation:

**ARTICLE I**

The name of the corporation is Waller Creek Local Government Corporation (the "Corporation").

**ARTICLE II**

The Corporation is a public non-profit corporation.

**ARTICLE III**

The period of duration of the Corporation shall be perpetual.

**ARTICLE IV**

The Corporation is organized for the charitable purpose of aiding, assisting, and acting on behalf of the City in the performance of its governmental functions to promote the common good and general welfare of the City, including, without limitation, the financing, design, construction, maintenance, and operation of certain public improvements located within or around the Waller Creek District, as it is more particularly described in Resolution No. 20110428-\_\_\_\_, adopted by the City and approving the form of these Articles of Incorporation.

The Corporation is formed pursuant to the provisions of Chapter 431 as it now or may hereafter be amended, which authorizes the Corporation to assist and act on behalf of the City to accomplish any governmental purpose of the City and to engage in activities in the furtherance of the purposes for its creation.

The Corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to non-profit corporations incorporated under Chapter 431, including, without limitation, the powers granted under the TCNL.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations under the TCNL and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes, or other obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created.

The Corporation is created as a local government corporation pursuant to Chapter 431 and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for purposes of the Texas Tort Claims Act, Section 101.001 *et seq.*, Texas Civil Practice and Remedies Code. The Corporation shall have the power to acquire land in accordance with Chapter 431 as amended from time to time, subject to the approval of the City Council.

## **ARTICLE V**

The Corporation shall have no members and shall have no stock.

## **ARTICLE VI**

All powers of the Corporation shall be vested in a Board consisting of five (5) persons who shall be appointed by the City Council of the City. The initial board members, each of whom resides in the City, are identified in Article IX below and shall serve for the term expiring on the date set forth thereon. Subsequent board members shall be appointed by the City Council of the City; provided, however, that, to the extent permitted by law, at all times the Board shall consist of three (3) representatives of the Waller Creek Conservancy and two (2) representatives of the City. Each subsequent board member shall serve for a term of two (2) years or until his or her successor is appointed by the City Council of the City, unless such board member has been appointed to fill an unexpired term, in which case the term of such board member shall expire on the expiration date of the term of the board member who he or she was appointed to replace.

All other matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with these Articles of Incorporation or the laws of the State of Texas.

## **ARTICLE VII**

The street address of the initial registered office of the Corporation is 301 W. 2<sup>nd</sup> Street, Austin, Texas 78701, which is within the city limits of the City, and the name of its initial registered agent at such address is Karen Kennard, City Attorney.

## **ARTICLE VIII**

The names and street addresses of the incorporators, each of whom resides within the City, are:

NAME	ADDRESS
Leslie Browder	301 W. 2 <sup>nd</sup> Street, 3 <sup>rd</sup> Floor Austin, Texas 78701
Sue Edwards	301 W. 2 <sup>nd</sup> Street, 3 <sup>rd</sup> Floor Austin, Texas 78701
Melba Whatley	2909 West 35 <sup>th</sup> Street Austin, Texas 78703

## **ARTICLE IX**

The Corporation shall be governed by a board of directors consisting of five (5) directors. The names and street addresses of the initial directors, each of whom resides within the City, are:

NAME	ADDRESS
Leslie Browder	301 W. 2nd Street, 3rd Floor Austin Texas 78701
Sue Edwards	301 W. 2nd Street, 3rd Floor Austin Texas 78701
Tom Meredith	248 Addie Roy Road, Suite C200 Austin, Texas 78746
Melba Whatley	2909 West 35 <sup>th</sup> Street Austin, Texas 78703
Melanie Barnes	1706 Windsor Road Austin, Texas 78703

The initial directors shall serve a term that expires December 31, 2016 and shall hold office for the term for which the initial director was appointed and until the director's successor is elected or appointed and has qualified.

## **ARTICLE X**

A resolution approving the form of these Articles of Incorporation has been adopted by the City Council of the City on April 28, 2011.

## **ARTICLE XI**

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 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 statute. Any repeal or amendment of this Article by the Directors 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, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

## **ARTICLE XII**

In accordance with the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), and regardless of any other provisions of these Articles of Incorporation or the laws of the State of Texas, the Corporation: (i) shall not permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes); (ii) shall not direct any of its activities to attempting to influence legislation by propaganda or otherwise; (iii) shall not participate in or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; and (iv) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives. Any income earned by the Corporation after payment of reasonable expenses, debt and such reserves as may be necessary as set forth in the authorizing documents related to the issuance of debt by the Corporation shall accrue to the City.

The City shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. Any income of the Corporation received by the City shall be deposited into such account or fund as determined by the City Council

of the City. No part of the Corporation's income shall insure to the benefit or any private interests.

If the Board of Directors determines by resolution that the purposes for which the Corporation was formed have been substantially met and all bonds issued by and all obligations incurred by the Corporation have been fully paid or provision made for such payment, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Chapter 431, or with applicable law then in existence. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the City for deposit into such account or fund as the City Council shall direct.

### **ARTICLE XIII**

If the Corporation is a private foundation within the meaning of Section 509(a) of the Internal Revenue 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 Internal Revenue Code; (b) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code; and (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

### **ARTICLE XIV**

The City Council may at any time consider and approve an ordinance directing the Board to proceed with the dissolution of the Corporation, at which time the Board shall proceed with the dissolution of the Corporation in accordance with applicable state law. The failure of the Board to proceed with the dissolution of the Corporation in accordance with this Section shall be deemed a cause for the removal from office of any or all of the Directors as permitted by Article VI of these Articles of Incorporation.

### **ARTICLE XV**

These Articles may not be changed or amended unless approved by the City Council of the City.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Leslie Browder, Incorporator

\_\_\_\_\_  
Sue Edwards, Incorporator

\_\_\_\_\_  
Melba Whatley, Incorporator