

RESOLUTION NO. 20110428-014

WHEREAS, the City Council of the City of Austin finds it reasonable and necessary to redevelop the Waller Creek District, generally described as the area bounded on the west by Trinity Street from 15th Street south to 11th Street, then east along 11th Street to Red River Street, then south along Red River Street to 4th Street, then west along 4th Street to Trinity Street, then south along Trinity Street to Town Lake; on the south by Town Lake from Trinity Street east to Cumming Street, then east along Cummings Street to East Avenue; on the east by East Avenue from Cummings Street north to the south bound access road of IH-35 to 15th Street; and on the north by 15th Street between the south bound access road of IH-35 and Trinity Street; (the "District"); and

WHEREAS, the City Council has approved the award of a construction contract for a flood control tunnel, which, upon completion in 2014, will remove 28 acres of property in the District from the 100-year flood plain; and

WHEREAS, on or about the date hereof the City Council has adopted a resolution entering into a Memorandum of Understanding with the Waller Creek Conservancy (the "Conservancy") for the purpose of implementing

the financing, design, construction, maintenance, and operation of certain public improvements located within or around the District (the "Waller Creek Redevelopment Project"); and

WHEREAS, the City Council finds that the creation of a local government corporation under Texas Transportation Code Chapter 431 is necessary and convenient to assist with the implementation of the Memorandum of Understanding and the Waller Creek Redevelopment Project;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

1. The City Council hereby authorizes the creation and incorporation of the Waller Creek Local Government Corporation (the "Corporation") pursuant to Chapter 431, Texas Transportation Code.
2. The Corporation shall be governed by the articles of incorporation attached hereto as **Exhibit A**, and the bylaws attached hereto as **Exhibit B**, both of which the City Council hereby approves.

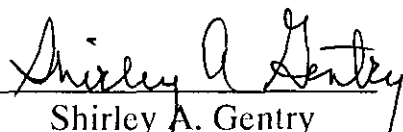
3. The City Council affirms the appointment of the following initial directors of the Corporation, who are named as initial directors in the articles of incorporation:

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

4. The City Council authorizes and directs the City Manager and all other City officials and employees to perform all such acts as may be necessary or desirable in order to carry out the terms and provisions of this Resolution.

ADOPTED: April 28, 2011

ATTEST:


Shirley A. Gentry
City Clerk



**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. 2nd 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 nd Street, 3 rd Floor Austin, Texas 78701
Sue Edwards	301 W. 2 nd Street, 3 rd Floor Austin, Texas 78701
Melba Whatley	2909 West 35 th 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. 2 nd Street, 3 rd Floor Austin Texas 78701
Sue Edwards	301 W. 2 nd Street, 3 rd Floor Austin Texas 78701
Tom Meredith	248 Addie Roy Road, Suite C200 Austin, Texas 78746
Melba Whatley	2909 West 35 th 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



BYLAWS
OF
WALLER CREEK LOCAL GOVERNMENT CORPORATION

ARTICLE I. PURPOSES

Waller Creek Local Government Corporation (the "Corporation") is organized for the purpose of aiding, assisting, and acting on behalf of the City of Austin (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 Bylaws.

The Corporation is formed pursuant to the provisions of Subchapter D, Chapter 431, of the Texas Transportation Code ("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 Texas Nonprofit Corporation Law, Chapter 22, Business Organizations Code ("TNCL").

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to non-profit corporations in Texas 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 governmental corporation pursuant to Chapter 431 and shall be a governmental unit within the meaning of Subdivision (2), Section 101.001, Vernon's Texas Codes Annotated, 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., Vernon's Texas Codes Annotated, 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.

ARTICLE II. BOARD OF DIRECTORS

Section 1. Appointment, Powers, Number, and Term of Office. All powers of the Corporation shall be vested in the Board of Directors (the "Board"). The Board shall initially

consist of five (5) persons who shall be appointed by the City Council of the City, as evidenced by the approval of the Articles of Incorporation by the City Council; 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 initial Director shall serve for the term expiring on the date set forth in the Articles of Incorporation. Subsequent Directors shall be appointed by the City Council of the City. Each subsequent Director 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 Director has been appointed to fill an unexpired term, in which case the term of such Director shall expire on the expiration date of the term of the Director who he or she was appointed to replace.

Section 2. Meetings of Directors. The Directors may hold their meetings and may have an office and keep the books of the Corporation at the City Hall, or such other place or places within the City as the Board may from time to time determine; provided, however, in the absence of any such determination, the City Hall shall be the registered office of the Corporation in the State of Texas.

The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required of a City under Chapter 551, Texas Government Code (the "Open Meetings Act").

The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

Section 3. Annual Meetings. The annual meeting of the Board shall be held at the time and at the location in the City designated by the resolution of the Board for the purposes of transacting such business as may be brought before the meeting.

Section 4. Regular Meetings. Regular meetings of the Board shall be held at such times and places as shall be designated, from time to time, by resolution of the Board.

Section 5. Special and Emergency Meetings. Special and emergency meetings of the Board shall be held whenever called by the President of the Board or by a majority of the Directors who are serving duly appointed terms of office at the time the meeting is called.

The Secretary shall give notice of each special meeting in person, by telephone, electronic transmission (e.g., facsimile transmission or electronic mail) or mail at least three (3) days before the meeting to each Director. Notice of each emergency meeting shall also be given in the manner required of the City under the Open Meetings Act. Unless otherwise indicated in the notice thereof, any and all matters pertaining to the purposes of the Corporation may be considered and acted upon at a special or emergency meeting.

Section 6. Quorum. A majority of the Board shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. If at any meeting of the Board there is less than a quorum present, a majority of those present may adjourn the meeting from time to time. The act of a majority of the Directors present and voting at a meeting at which

a quorum is in attendance shall constitute the act of the Board, unless the act of a greater number is required by law, by the Articles of Incorporation, or by these Bylaws.

A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action, unless his or her dissent shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of the action.

Section 7. Conduct of Business. At the meetings of the Board, matters pertaining to the purposes of the Corporation shall be considered in such order as from time to time the Board may determine.

At all meetings of the Board, the President shall preside, and in the absence of the President, the Vice President shall preside. In the absence of the President and the Vice President, an acting presiding officer shall be chosen by the Board from among the Directors present.

The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence of the Secretary, the presiding officer may appoint any person to act as secretary of the meeting.

Section 8. Executive Committee, Other Committees. The Board may, by resolution passed by a majority of the Directors, designate three (3) or more Directors to constitute an executive committee or other type of committee. To the extent provided in the authorizing resolution, a committee shall have and may exercise all of the authority of the Board in the management of the Corporation, except where action of the Board is specified by statute. A committee shall act in the manner provided in the authorizing resolution. Each committee so designated shall keep regular minutes of the transactions of its meetings and shall cause such minutes to be recorded in books kept for that purpose in the office of the Corporation, and shall report the same to the Board from time to time. Committees authorized to exercise the powers of the Board shall give notice of any meeting in the manner required for a meeting of the Board.

Section 9. Compensation of Directors. Directors, as such, shall not receive any salary or compensation for their services as Directors; provided, however, that nothing contained herein shall be construed to preclude any Director from receiving compensation which is not excessive and which is at commercially reasonable rates for personal services (rendered in other than a "Director" capacity) which are reasonable and necessary in carrying out the Corporation's purposes.

Section 10. Director's Reliance on Consultant Information. A Director shall not be liable if while acting in good faith and with ordinary care, the Director relies on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation;
- (b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or
- (c) a committee of the Board of which the Director is not a member.

ARTICLE III. OFFICERS

Section 1. Titles and Term of Office. The officers of the Corporation shall be the President, the Vice President, a secretary, a treasurer, and such other officers as the Board may from time to time elect or appoint. One person may hold more than one office, except that one person shall not concurrently hold the offices of President and Secretary. The term of office for each officer shall be two (2) years commencing with the date of the annual meeting of the Board at which each such officer is elected. Officers may be re-elected.

Section 2. Powers and Duties of the President. The President shall be a member of the Board and shall preside at all meetings of the Board. The President shall be the principal executive officer of the Corporation and, subject to the Board, he or she shall be in general charge of the properties and affairs of the Corporation. In furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, the President or any Vice President may sign and execute all bonds, notes, deeds, conveyances, franchises, assignments, mortgages, notes, contracts and other obligations in the name of the Corporation. The President shall have such other duties as are assigned by the Board. The President may call special and emergency meetings of the Board. The President may call special and emergency meetings of the Board as provided in these Bylaws.

Section 3. Powers and Duties of the Vice President. The Vice President shall be a member of the Board. The Vice President shall perform the duties and exercise the powers of the President upon the President's death, absence, disability, or resignation, or upon the President's inability to perform the duties of his or her office. Any action taken by the Vice President in the performance of the duties of the President shall be conclusive evidence of the absence or inability to act of the President at the time such action was taken. A Vice President shall have such other powers and duties as may be assigned to him or her by the Board or the President.

Section 4. Treasurer. The Treasurer shall have custody of all the funds and securities of the Corporation which come into his or her hands. When necessary or proper, he or she may endorse, on behalf of the Corporation, for collection, checks, notes and other obligations and shall deposit the same to the credit of the Corporation in such bank or banks or depositories as shall be designated in the manner prescribed by the Board; he or she may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board; whenever required by the Board, he or she shall render a statement of his or her cash account; he or she shall enter or cause to be entered regularly in the books of the Corporation to be kept by him or her for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation; he or she shall perform all acts incident to

the position of Treasurer subject to the control of the Board; and he or she shall, if required by the Board, give such bond for the faithful discharge of his or her duties in such form as the Board may require. The Treasurer need not be a member of the Board.

Section 5. Secretary. The Secretary shall keep or cause to be kept the minutes of all meetings of the Board in books provided for that purpose; he or she shall attend to the giving and serving of all notices; in furtherance of the purposes of the Corporation and subject to the limitations contained in the Articles of Incorporation, he or she may sign with the President in the name of the Corporation and/or attest the signatures thereof, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation; he or she shall have charge of the Corporation's books, records, documents and instruments, except the books of account and financial records and securities of which the Treasurer shall have custody and charge, and such other books and papers as the Board may direct, all of which shall at all reasonable times be open to the inspection of any Director upon application at the office of the Corporation during business hours; and, he or she shall in general perform all duties incident to the office of Secretary subject to the control of the Board. The Secretary need not be a member of the Board.

Section 6. Compensation. Officers may be entitled to receive such salary or compensation for personal services which are necessary and reasonable in carrying out the Corporation's purposes as the Board may from time to time determine, provided, that in no event shall the salary or compensation be excessive. Board members, even if officers, are not entitled to compensation except as otherwise provided in Article II, Section 9.

Section 7. Officer's Reliance on Consultant Information. In the discharge of a duty imposed or power conferred on an officer of the Corporation, the officer may in good faith and with ordinary care rely on information, opinions, reports, or statements, including financial statements and other financial data, concerning the Corporation or another person, that were prepared or presented by:

- (a) one or more other officers or employees of the Corporation, including members of the Board; or
- (b) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

ARTICLE IV. MISCELLANEOUS PROVISIONS

Section 1. Fiscal Year. The fiscal year of the Corporation shall be the same as the City, or such other consecutive twelve-month period determined by the Corporation and approved by the City.

Section 2. Seal. The seal of the Corporation shall be such as from time to time may be approved by the Board.

Section 3. Notice and Waiver of Notice. Whenever any notice whatever is required to be given under the provisions of these Bylaws, such notice shall be deemed to be sufficient if given by depositing the same in a post office box in a sealed postpaid wrapper addressed to the person entitled thereto at his or her post office address, as it appears on the books of the Corporation, and such notice shall be deemed to have been given on the day of such mailing. A waiver of notice, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

Section 4. Resignations. Any Director or officer may resign at any time. Such resignations shall be made in writing and shall take effect at the time specified therein, or, if no time be specified, at the time of its receipt by the President or Secretary. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation.

Section 5. Gender. References herein to the masculine gender shall also refer to the feminine in all appropriate cases, and vice versa.

Section 6. Appropriations and Grants. The Corporation shall have the power to request and accept any appropriation, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

ARTICLE V. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 1. Right to Indemnification. Subject to the limitations and conditions as provided in this Article V and the Articles of Incorporation, each person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitratve or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a Director or officer of the Corporation or while a Director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise shall be indemnified by the Corporation to the fullest extent permitted by the Texas Non-Profit Corporation Act, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article V shall continue as to a person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article V shall be deemed contract rights, and no amendment, modification or repeal of this Article V shall have the effect of limiting or denying any such rights with respect to action taken or proceedings arising prior to any such amendment,

modification or repeal. It is expressly acknowledged that the indemnification provided in this Article V could involve indemnification for negligence or under theories of strict liability.

Section 2. Advance Payment. The right to indemnification conferred in this Article V shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 1 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article V and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article V or otherwise.

Section 3. Indemnification of Employees and Agents. The Corporation, by adoption of a resolution of the Board, may indemnify and advance expenses to an employee or agent of the Corporation to the same extent and subject to the same conditions under which it may indemnify and advance expenses to Directors and officers under this Article V; and the Corporation may indemnify and advance expenses to persons who are not or were not Directors, officers, employees or agents of the Corporation but who are or were serving at the request of the Corporation as a Director, officer, partner, venture proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any liability asserted against him or her and incurred by him or her in such a capacity or arising out of his or her status as such a person to the same extent that it may indemnify and advance expenses to Directors under this Article V.

Section 4. Appearance as a Witness. Notwithstanding any other provision of this Article V, the Corporation may pay or reimburse expenses incurred by a Director or officer in connection with his or her appearance as a witness or other participation in a proceeding involving the Corporation or its business at a time when he or she is not a named defendant or respondent in the proceeding.

Section 5. Non-exclusivity of Rights. The right to indemnification and the advancement and payment of expenses conferred in this Article V shall not be exclusive of any other right which a Director or officer or other person indemnified pursuant to Section 3 of this Article V may have or hereafter acquire under any law (common or statutory), provision of the Articles of Incorporation of the Corporation or these Bylaws, agreement, vote of disinterested Directors or otherwise.

Section 6. Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another

foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article V.

Section 7. Notification. Any indemnification of or advance of expenses to a Director or officer in accordance with this Article V shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

Section 8. Savings Clause. If this Article V or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article V as to costs, charges and expenses (including attorneys' fees), judgments, fines and in amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article V that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VI. CODE OF ETHICS

Section 1. Policy and Purposes.

- (a) It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.
- (b) This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

Section 2. Conflicts of Interest.

- (a) Except as provided in subsection (c), a Director or officer is prohibited from participating in a vote, decision, or award of a contract involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefitted by the action. A person has a substantial interest in a business (i) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of \$15,000 or more of the fair market value of the business entity, or (ii) if the business entity provides more than ten percent of the person's gross income. A person has a substantial interest in real property if

the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. An interest of a person related in the second degree by affinity (marriage relationship) or the third degree by consanguinity (blood relationship) to a Director or officer is considered a substantial interest.

- (b) If a Director or a person related to a Director in the first or second degree by affinity or the first, second, or third degree by consanguinity has a substantial interest in a business entity or real property that would be pecuniarily affected by any official action taken by the Board, such Director, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest. The affidavit shall be filed with the Secretary of the Board.
- (c) A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the City will receive a similar pecuniary benefit.
- (d) An employee of a public entity may serve on the Board.

Section 3. Acceptance of Gifts. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, a benefit does not include:

- (a) a fee prescribed by law to be received by a Director or officer or any other benefit to which the Director or officer is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a Director or officer,
- (b) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer; or
- (c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:
 - (1) not more than one honorarium is received from the same person in a calendar year;
 - (2) not more than one honorarium is received for the same service; and
 - (3) the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services;

- (d) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest if reported as may be required by law.

Section 4. Bribery. A Director or officer shall not intentionally or knowingly offer, confer or agree to confer on another, or solicit, accept, or agree to accept from another:

- (a) any benefit as consideration for the Director's or officer's decision, opinion, recommendation, vote, or other exercise of discretion as a Director or officer;
- (b) any benefit as consideration for the Director or officer's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or
- (c) any benefit as consideration for a violation of duty imposed by law on the Director or officer.

Section 5. Nepotism. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE VII. AMENDMENTS

A proposal to alter, amend, or repeal these Bylaws shall be made by the affirmative vote of a majority of the full Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by the City Council of the City to be effective.