

**CERTIFICATE OF FORMATION FOR  
CITY OF DALLAS ECONOMIC DEVELOPMENT CORPORATION**

We, the undersigned natural persons, each of whom is at least eighteen (18) years of age or more and a resident of the City of Dallas (“City”) and the State of Texas (“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 (“TLGC”) and Chapter 22, Texas Business Organizations Code (the “TBOC”), pursuant to Resolution No. 21-\_\_\_\_\_ adopted by the City Council of the City (“City Council”) on December 8, 2021, do hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I**

The name of the corporation is The City of Dallas Economic Development Corporation (the “Corporation”). The Corporation may also adopt a separate business name (e.g. a “doing business as” name or DBA).

**ARTICLE II**

The Corporation is a public nonprofit local government corporation.

**ARTICLE III**

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 the Act and to accomplish any governmental purpose of the City, limited to charitable purposes within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”). The Corporation must not be organized or operated for the benefit of private interests, and no part of the organization’s net earnings may inure to the benefit of any private shareholder or individual. No substantial part of the activities of the Corporation shall include carrying on propaganda, or otherwise attempting to influence legislation or participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for public office.

The Corporation is formed pursuant to the provisions of the Act and TLGC as they now or may hereafter be amended, which authorize 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 furtherance of the purposes for its creation.

The Corporation shall have and exercise all the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to local government corporations incorporated under the Act and under the TBOC, subject to any limitations described in the Bylaws. The City may limit the Corporation's activities by amending this Certificate or the Corporation’s bylaws by a three-fourths vote of City Council.

The Corporation shall have all powers which are available to nonprofit and local government corporations in Texas under the laws of the State of 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 debt obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created, subject to any limitations described in the Bylaws.

Nothing in this Certificate of Formation shall be construed as creating a debt of the City, as neither the full faith and credit or the general revenues of the City shall be available for the payment of any obligation of the Corporation. Additionally, the Corporation shall issue and deliver any bonds, notes, credit agreements or any other debt instruments or obligations only if the final terms of which including the principal amount, note amount, interest rate or rates, redemption provisions, and other terms and conditions relating to such issuance have been approved by the City Council.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Chapter 101, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental, and not proprietary, functions. 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 shall have no stock.

## **ARTICLE VI**

The City Council by resolution authorized the creation of the Corporation as a local government corporation and approved the form of this Certificate of Formation. The Corporation is not a city board for the purposes of Dallas City Code Chapter 8: Boards and Commissions.

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 the general laws of the State of Texas to nonprofit corporation incorporated under the Texas Nonprofit Corporation Law which are consistent with the provisions of the Act, together with all powers incidental thereto or necessary therefor, subject to any limitations in the Bylaws. Additionally, in the exercise of the powers of the Corporation, the Corporation may enter into any sale, loan, lease, trust, operating, or other agreements authorized by the Act (including but not limited to agreements concerning the Corporation's acceptance of financial support from the City or any other 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, subject to any limitations in the Bylaws.

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 this Certification of Formation. However, the Corporation is not a political subdivision or political corporation of the State of Texas within the meaning of the State

of Texas constitution and laws, including, without limitation, Article III, Section 52 of the State of Texas Constitution and no agreements, bonds, debts, or obligations of the Corporation are or shall ever be deemed to be agreements, bonds, debts, or obligations, of the lending of credit or a grant of public money or things of value, by or of the City or any other political corporation, subdivision, or agency of the State of Texas, or a pledge of the faith and credit of any of them.

## **ARTICLE VII**

The affairs of the Corporation shall be managed by a board (the “Board”) consisting of three interim Directors or fifteen Directors who shall be appointed as prescribed in the Bylaws (the “Directors”). A majority of the non-vacant Director seats shall be required to hold meetings.

The directors identified in Article VIII below shall serve as the initial three Directors. Directors shall serve until his or her successor is appointed as prescribed in the Bylaws. Directors shall be eligible for reappointment. A Director serves without compensation but shall be entitled to reimbursement for actual expenses incurred in performing services as a director. Any vacancy in the Board shall be filled in the manner prescribed in the Bylaws. Any Director may be removed from office at any time, with or without cause, by resolution of the City Council or by a three-fourths vote of the Directors.

The initial Directors shall hold an organizational meeting to adopt the Bylaws as approved by the City Council of the City of Dallas and consider any other items the Directors deem necessary.

## **ARTICLE VIII**

The name and street address of each incorporator is:

Eric Johnson	1500 Marilla, Dallas, Texas 75201
T.C. Broadnax	1500 Marilla, Dallas, Texas 75201
Tennell Atkins	1500 Marilla, Dallas, Texas 75201
Dr. Eric Anthony Johnson	1500 Marilla, Dallas, Texas 75201

The street address of the initial registered office of the Corporation is 1500 Marilla, Dallas, Texas 75201, which is within the city limits of the City, and the name of its initial registered agent at such address is T.C. Broadnax, City Manager.

The names and street addresses of the initial Directors of the corporation are:

Elizabeth Reich, President	1500 Marilla, Dallas, Texas 75201
Robert Perez, Vice President	1500 Marilla, Dallas, Texas 75201
Elizabeth Saab, Secretary and Treasurer	1500 Marilla, Dallas, Texas 75201

## **ARTICLE IX**

The Bylaws of the Corporation were approved by the City Council on December 8, 2021 in Resolution No. \_\_\_\_\_. These Bylaws shall be adopted by the Board and shall, together with this Certificate of Formation, govern the affairs of the Corporation until and unless amended in accordance with Article XV of this Certificate of Formation or in the Bylaws. Where the language of the Bylaws and of this Certificate conflict, this Certificate shall control.

## **ARTICLE X**

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, regardless of 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 State law. 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 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 XI**

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.

## **ARTICLE XII**

The Corporation: (a) 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); (b) shall not direct any of its activities to attempting to influence legislation by propaganda or otherwise; (c) shall not participate in or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office; and (d) 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 necessary expenses, debt, and such reserves as may be required by a lender in the authorizing documents related to the issuance of debt shall be used to fund future operating expenses of the Corporation. No part of the Corporation's income shall inure to the benefit of any private interests.

### **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 with by a three-fourths vote a resolution directing the Board to proceed with the dissolution of the Corporation, subject to any limitation on the impairment of contracts or other obligations entered into by 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 this Certificate of Formation.

In the event of the dissolution of the Corporation, after the payment or satisfaction of all debts, liabilities, and obligations, all assets will be turned over to the City, unless the City 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 the time of such dissolution qualify as an organization exempt from federal taxation under Section 501(a) of the Code or as an organization or organizations described in section 501(c)(3) of the Code. The Corporation shall not be dissolved or liquidated, and its business shall not be terminated, by act of the City Council 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 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 XV**

This Certificate of Formation may be changed or amended by (1) a two-thirds (2/3) vote of the Directors and approval of the changes by resolution of the City Council, or (2) approval by resolution of the City Council alone. Any such amendment must be filed with the Office of the Texas Secretary of State to be effective.

### **ARTICLE XVI**

The Corporation is a constituted authority and a public or governmental 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 Internal Revenue Code. Although the Corporation is authorized to act on behalf of one or more governmental entities as provided in this Certificate, the Corporation is not a political subdivision or political authority of the

State within the meaning of the Constitution and laws of the State, including, without limitation, Article III, Section 52 of the Texas Constitution, and no agreement, bond, debt, or obligation of the Corporation shall be deemed to be the agreement, bond, debt, or obligation, or the lending of credit, or a grant of public money or thing of value, of or by the City or any other political subdivision or authority or agency of the State, or a pledge of the faith and credit of any of them. No action of the Corporation shall be an action of the City or its agents or employees, and neither this Certificate nor any action by the Board or the City Council shall create a joint enterprise.

## **ARTICLE XVII**

This Certificate of Formation shall be effective when fully executed and filed with the Office of the Texas Secretary of State. Each of the undersigned executes this instrument subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that he and she is authorized to execute this instrument.

IN WITNESS WHEREOF, we have hereunto set our hand this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

I, the undersigned, a Notary Public of the State of Texas, certify that on this \_\_\_\_ day of \_\_\_\_\_, 2021, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, each being by me first duly sworn, severally declared on his or her oath that they are the persons who signed the foregoing document as incorporators.

Given under my hand and seal of office on the date and year above written.

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