



MEMORANDUM

TO: Mayor and Council

FROM: Sylnovia Holt-Rabb, Acting Director 
Economic Development Department

DATE: July 31, 2020

SUBJECT: Recommendations for Creating the Austin Economic Development Corporation

Through resolutions [20141211-122](#) and [20170216-040](#) the Austin City Council directed the City Manager to “deliver a feasibility study” and “bring forward...specific proposals” related to the creation of an economic development entity with the capacity to “create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City.” As staff began working with an external consultant to prepare recommendations and working documents for the creation of an entity, Council provided additional direction to align the development of the economic development entity with the intent and creation of an “Austin Cultural Trust” through resolutions [20180215-082](#) and [20190808-072](#). In May of this year, Council further directed the City Manager to expedite a review of existing entities and resources that could be centralized to support the timely execution of recovery efforts that could secure or retain creative culture and community benefits in resolutions [20200521-095](#) and [20200521-096](#).

Attached is a report containing recommendations for the creation of the Austin Economic Development Corporation (AEDC). The recommendations include a proposed strategy for utilizing the AEDC, proposed funding and staffing options, as well as the recommended governance model. Staff is prepared to provide an overview of the recommendations at the August 25th Council Work Session. The work session will provide Council the opportunity to provide feedback which would then be incorporated into an Interlocal Agreement between the City and AEDC as well as the Articles of Incorporation and Bylaws.

Following the August 25th work session, staff envisions bringing forward action items to create the AEDC and to implement the strategy to utilize the AEDC. Those items would include an Interlocal Agreement between the City and AEDC as well as the Articles of Incorporation and Bylaws. Should you have any questions, please contact myself or David Colligan at 512-974-6381 or david.colligan@austintexas.gov.

CC: Spencer Cronk, City Manager
J. Rodney Gonzales, Assistant City Manager of Economic Opportunity and Affordability
Veronica Briseno, Chief Economic Recovery Officer

Attachment: Report



July 26, 2020

TO: **City of Austin**
Spencer Cronk, City Manager
Rodney Gonzales, Assistant City Manager
Veronica Briseño, Director, Economic Development Department
Sylvonia Holt Robb, Deputy Director, Economic Development Department
David A. Colligan, Acting Assistant Director, Economic Development Department

SUBJECT: Next Steps to Create Austin Economic Development Corporation

Background

QBL Partners (“QBL”) was hired by the City of Austin Economic Development Department (“EDD”) in response to City of Austin Council direction to “initiate the necessary processes to authorize creation of an economic development entity, identify potential funding sources, solicit stakeholder feedback on the entity’s governance and operational structure...[and] to bring forward a recommendation for funding needs to implement this direction for consideration during the Fiscal Year 2020 budget deliberations.” QBL and EDD agreed on a scope divided into four tasks:

- Task 1: Engagement Kick-off and Team Formation
- Task 2: Research and Benchmarking
- Task 3: Initial Proposal to Staff, Stakeholders and Leadership
- Task 4: Presentation and Recommendations

Task 1 Summary: Engagement Kick-Off and Team Formation

Task 1 began with the City of Austin (“COA”) delivering previous documents, reports and policy proposals relevant to the project. QBL formed a Dropbox folder and reviewed those documents, as well as adding additional documents, studies and project work provided by COA, EDD and other stakeholders. These documents are available upon request to QBL or EDD. After reviewing all of these precedent documents, QBL scheduled a first trip to Austin from December 8th to 11th, 2019. This trip included an EDD kick-off meeting as well as meetings with staff to discuss the previous work done on strategy for the new entity, the structure of the engagement, the stakeholders’ interests and the composition of the comprehensive list of stakeholders. During this trip QBL and EDD participated in over 40 stakeholder interviews. Those interviewees that were unable to be scheduled during this time were interviewed via phone meetings in December 2019 and January 2020. The list of stakeholders included:



- **City of Austin Elected Officials and/or Policy Staff:** CM Tovo, CM Alter, CM Pool, CM Kitchen, CM Flannigan, CM Casar, CM Harper-Madison, Mayor Pro Tem Garza, Mayor Adler
- **City of Austin Department Staff:** City Manager, Assistant City Manager, Economic Development Department: Cultural Arts Division, Redevelopment Division, Strategy & International, Music & Entertainment, Planning and Project Groups; COA Planning; Neighborhood Housing and Community Development (AHCD) and Austin Housing Finance Corporation; Real Estate; Finance; Law
- **Inter-Governmental:** County Commissioner Travillion, Office of the Judge of Travis County, County Commissioner Shea, University of Texas, Capital Metro, CAMPO, Austin Community College, Austin Independent School District, State Senator Watson, Texas Council on Economic Development, City of San Antonio
- **Stakeholders and Anchors:** Capital City Innovation, Downtown Austin Alliance, Red River Cultural District, Austin Cultural Alliance, Greater Austin Chamber of Commerce, Urban Land Institute, Perkins+Will, Austin Community Foundation, Affordable Central Texas, Housing Authority of the City of Austin (“HACA”) with HACA, AAHC, NHCD, AHFC

These meetings were used to conduct a needs assessment from stakeholders. QBL asked the opinions of stakeholders as to what functions a new economic development entity (or an existing entity either inside or outside the City) could serve to help with Austin’s fulfillment of a vision of inclusive growth. The interviews all began with a description of the planned project scope and background, introductions of QBL, and introductions of each interviewee as well as the context of their current projects and why EDD felt they were a relevant stakeholder. The topics of discussion then included exploration of opinions around different aspects of the proposed Economic Development Organization (“EDO”): structure, governance, funding, powers, projects and examples from other cities.

Stakeholders generally agreed with Council’s direction to explore a new Economic Development Organization (“EDO”), with a focus on **inclusive growth** policies. The words inclusive growth were used by QBL to describe a particular type of economic development that is increasingly being used to combat gentrification across the US. Inclusive growth has as its goal to ensure that ordinary people (an inclusive spectrum encompassing the diversity of the COA), local businesses and the features of a City that make it unique are not lost due to unmanaged growth. It was agreed that no additional support was needed to do incentive deals that attract companies to Austin; instead, the focus should be on affordability, equal access to opportunity, and preserving what makes Austin loved by its citizens and constituent businesses. In order to pursue those policies, the City should have tight control over the entity as well as discretionary approvals for certain significant actions such as bond financing.

The critical features identified for the EDO to be effective include the ability to accept philanthropic donations, do revenue bond financing, manage private investments, and fulfil the role of a public developer—managing public real estate and public/private partnerships on behalf of the City in order to achieve policies of inclusive growth. Each of these features provides a potential revenue stream for the organization to avoid reliance on sales tax as a funding mechanism. Exploration of existing entities in Austin revealed the existence of the Austin Industrial Development Corporation, which could provide the necessary bond financing powers for the EDO.

For more details, see Appendix 1: Task One Memo.



Task 2 Summary: Contextual Analysis of Precedent Work

During the January 21st, 2020, Austin City Council (“Council”) Work Session, QBL presented an update on progress to create an EDO. The presentation was entitled “Presentation Regarding an Economic Development Entity: Task 2 Benchmarking Through Research” (See Appendix 6). In this Council work session, QBL reviewed:

- The background and genesis of QBL’s contract with the City of Austin (“COA”).
- The full scope of work of the contract, along with the timeline to completion.
- A summary of the stakeholders interviewed in Task 1.
- A summary of the topics and conclusions upon which those interviewed agreed.
- National benchmarking research on similar economic development entities.
- Specifics of Texas laws and limitations around organizational structures, funding streams, and the powers allowed to a theoretical EDO.
- Research on what types of entities exist in other Texas cities.
- Focused research on what other entities exist in the top 4 Texas cities, by population.
- A discussion on possible governance structure, with Q&A from Council live in the room.
- Next steps to complete the scope of work.

The presentation was entered into the public record and was made available to each member of Council as a follow-up. Meetings were then requested for March to review an initial proposal for the EDO, in line with Task 3 of the contract scope.

Based on the work performed to date, at this point QBL had a fairly comprehensive view of the need for an EDO in Austin, and the work validated the opinion of the significant majority of those interviewed that the entity would be useful to advance a policy of inclusive growth in the City of Austin.¹

National Benchmarks

QBL then reviewed national examples of economic development entities in other cities. This work built upon the Peer Cities Conference in NYC in 2017 (see inset). In nearly all cases, economic development functions of mature cities were centralized in an umbrella entity that managed multiple special purpose entities as a part of its work. While in some cities, this “entity” was a department, in most cities that

	Population (2018)	Lead Agency	Single Entity v. Family of Orgs	Fees for contract services to City	Fees from Public Developer Role	Fees from bonding	Inclusive Growth Programs (including finance)
NYC	8,398,748	NYCEDC	Family	Yes	Yes	Yes (NYCIDA)	Yes
SF	883,305	City Department	--	--	Yes*	--	Yes
LA	3,990,456	City Department (+LAEDC)	Family	--	Yes	Yes (MICLA & IDA)	Yes
Philadelphia	1,584,138	PIDC	Family	Yes	Yes	Yes (PIDA)	Yes
Miami	470,914	City Department	Family	--	Yes	Yes (MDIDA & DDA)	Yes* (Beacon Council)
Chicago	2,705,994	City Department	City: 2FM & DPD	--	Yes*	Yes*	Yes* (CRGC)
Boston	694,583	City Department	Family (EDIC/BRA)	--	Yes*	Yes (BIDFA)	Yes

¹ Please refer to Memo 1 for the definition of inclusive growth, which is quoted here: “The words inclusive growth were used by QBL to describe a particular type of economic development that is increasingly being used to combat gentrification across the US. Inclusive growth has as its goal to insure that ordinary people, local businesses and the features of a City that make it unique are not lost due to unmanaged growth. It was agreed that no additional support was needed to do incentive deals that attract companies to Austin; instead, the focus should be on affordability, equal access to opportunity, and preserving what makes Austin loved by its citizens and constituent businesses.”



pursued a real estate approach to funding, the entity existed separately from city departments, but was contracted to report to those departments to ensure appropriate city oversight. In such cases we call the economic development entity a “family” of entities to represent the multiple legal structures used to carry out the public purpose.

From the national examples, QBL picked three cities to profile more specifically: New York City, Philadelphia and Atlanta. In each of these cities, we looked at structure, governance, funding, real estate powers and types of projects with which the entities were engaged (see chart right). While state regulations and law varied across these three examples, upon analysis these three were more similar than different. Each had been created as a separate entity with governance that mixed public oversight with outside directors. All generated monies from real estate, supplementing the General Fund budgets of their respective cities by turning assets more productive. Due to their particular formation status, each also could issue bonds, contract for government services, generate real estate revenues, obtain third party and government grants, and manage private funds or projects for fee.

Deep Dive Summary	NYCEDC	PIDC	Invest Atlanta
Separate Entity	Yes	Yes	Yes
Board	Mixed	Mixed	Mixed
Funding			
General Fund	Pass through	Pass through	Yes*
Dedicated Tax to support operations	No	No	No
Bonds	Yes	Yes	Yes
Contract for Services to government	Yes	Yes	Yes
Real Estate Sales, Lease Revenues, Transaction Fees, AM	Yes	Yes	Yes
Non-Local Government Grants and/or donations	Yes	Yes	Yes*
Fees for Managing Private Funds	Yes	Yes	No
Real Estate Powers and Special Relationship	Yes	Yes	Yes
Projects			
Corporate Attraction & Retention	Yes	Yes	Yes
Industry development	Yes	Yes	Yes
Inclusive Growth (Affordability, Workforce, and/or MWBE)	Yes	Yes	Yes
Affordable Housing and/or Affordable Commercial	Yes	Yes*	Yes
Cultural Trust or cultural affordability program	Yes	No*	Yes*

Texas-Specific Benchmarks

In addition to the national benchmarks, QBL reviewed Texas specific solutions. In particular, QBL looked at Houston, Dallas, San Antonio and Ft. Worth. We found that while many

Texas Case Studies Summary	Houston	Dallas	San Antonio	Fort Worth
Structure: Separate Entity, Family, City Department	Houston First	EDD	EDD/SAEDC / IDA/SAEDF	EDD*
Board: All Officials, Some Officials, No Officials	Some	--	Some	Some (FWIA)
Funding				
General Fund	TBD	--	--	
Dedicated Tax	HOT	--	--	HOT
Bonds	No	Yes	--	Yes
Contract for Services to government	Yes	--	Yes	--
Real Estate Sales, Lease Revenues, Transaction Fees, AM	Yes	--	--	--
Non-Local Government Grants and/or donations	Yes	--	SAEDF	--
Fees for Managing Private Funds	No	No	SAEDC	--
Real Estate Powers	Yes	--	--	Yes
Projects				
Corporate Attraction & Retention	Some	Yes	SAEDF	--
Industry development	Some	Yes	SAEDC	Yes
Inclusive Growth (Affordability, Workforce, and/or MWBE)	No	Workforce	Workforce	No
Affordable Housing and/or Affordable Commercial	No	No	No	No
Cultural Trust or cultural affordability program	No	No	No	No

entities existed in Texas, there was not a direct analog to the types of activities and funding that QBL was directed by Council to explore (see chart). However, upon examination of relevant Texas government code, there did not seem to be any prohibition from replicating a similar structure as those found in national case studies. These conclusions were later validated by outside counsel (See Appendix 18). Many Texas cities pursued a Texas EDC Type A or B (population dictates what type is available to



each local government)—but the major funding for such entity types is Sales Tax. This is problematic in Austin, where the sales tax is already allocated to other projects, and the state puts a cap on increases. Therefore, the funding mechanism for a new EDO in Austin must be pulled from other sources than sales tax. The Texas Government Code provides some options in the form of bond issuance, revenue projects managed by a Local Government Corporation (LGC), local property tax incentives (chapter 311-313), real property revenues, and interlocal agreements.

In QBL’s estimate, the organizational chart and budget are integrally linked with the project list—in fact, the staffing list and budget are predominantly determined by what projects are selected for the EDO. Based on the work in Task 1 and Task 2, QBL has a rough idea of the projects that stakeholders believe are important.² Balancing the funding streams available in those projects with the overall policy objectives and the staff and budget required to accomplish the projects is critical to a successful start-up of the EDO.³

Proposed Structure of Austin Entity

By the end of Task 2, QBL had a general understanding of the funding streams that were proposed to be associated with each Major Project and Ongoing City Project. We then validated these funding streams in Task 3 by looking at examples of previous COA projects that utilized the same streams. It was clear by Task 2 that the new EDO is likely to actually be a family of organizations under an umbrella management structure. Such a family would include: a Local Government Corporation, the existing Austin Industrial Development Corporation, and a 501(c)3 Cultural Trust – this last could be an existing entity, could be integrated as a part of an LGC with 501c3 status, could be a new entity, or could be a program of an existing entity such as Austin’s Community Foundation.

This structure of a “family” of entities going under a single common name is a best practice noted in all national examples that had the same scale and scope as what is suggested here. *The critical step is having the new entity a step removed from the local government that creates it, while still subjecting it to oversight and control.* Examples of this practice included NYC Economic Development Corporation (“NYCEDC”), Philadelphia Industrial Development Corporation (“PIDC”) and InvestAtlanta.⁴ NYCEDC serves as a non-profit umbrella management structure for its NYC-based family of organizations that include: (i) a local development corporation (also called NYCEDC) which functions as the real estate arm; (ii) an Industrial Development Authority that focuses on incentives and revenue bonds; (iii) a financing conduit for construction of infrastructure (BuildNYC); and a cultural trust that focuses on exempt issuances.⁵ Philadelphia has a non-profit umbrella organization called PIDC with a subsidiary conduit financing entity called Philadelphia Authority for Industrial Development (PAID), a 501c3 CDFI called PIDC Community Capital,⁶ and an EB-5 based investment fund called the PIDC Regional Center. Atlanta has Invest Atlanta, which is a government authority composed of the Urban Residential Finance Authority, the

² See slide 12 of the Council Work Session presentation referred to above.

³ This will be described at length in the “Start-up and Transition Narrative” at the end of Task 3.

⁴ Moreover, this structure was also found in San Antonio, Chicago, Miami and Los Angeles.

⁵ NYCEDC also creates subsidiary development corporations for large projects, such as the Brooklyn Navy Yard Development Corporation and the Hudson Yards Development Corporation.

⁶ A CDFI is a Community Development Financing Institution which is a particular type of economic development finance entity focused on inclusive growth and equitable access to financial resources.



Downtown Development Authority, the Atlanta Economic Renaissance Corporation, and the Creative Industries Loan Fund.

All of the above information is detailed in the January 21st Council Briefing appendix. While dense in context, it is cited here to remind those reading that what is proposed is far from a radical idea—it is, in fact, the norm. In each case, a single name—NYCEDC, InvestAtlanta and PIDC—is used to refer to what actually is a family of organizations.

In Austin, QBL believes that the EDO should have as its umbrella management organization a new Local Development Corporation that achieves 501(c)3 status with the Service. By electing federal exempt status, the LGC will qualify to take advantage of Local Government code Chapter 253, section 011 which allows for transfer of public property to the LGC provided there is a contractual public benefits agreement (See Appendix 2: Local Government Code 253) and a reversionary right of the City if such benefits are not achieved. There had been some ambiguity in the past about the applicability to LGCs created under Chapter 431 (Subchapter D) of various state statutes regarding procurement, open meetings and public information (See Appendix 3a). In 2001, the Texas Office of the Attorney General issued an opinion indicating the flexibility of a 431-LGC to function both as an independent nonprofit under the supervision of a governmental entity as well as a typical transportation-focused entity – “a local government corporation may exercise powers in addition to the powers expressly stated in the Transportation Code provisions.” (See Appendix 3b). While this opinion was later modified in law, QBL obtained outside legal advising which confirmed that the proposal herein remains compliant (See Appendix 18).

This LGC should integrate the already existing Austin Industrial Development Corporation (“AIDC”)—which currently serves as a bond financing entity only. By “integrate”, we mean that the AIDC should be staffed by an AEDC employee, and share administrative overhead, limiting the expenditure of dollars for administration alone and allowing most dollars to go toward program. Created by and through the Development Corporation Act of 1979 (See Appendix 4), the AIDC is permitted to issue revenue bond financing that follows the strict guidelines of the Act in providing for public benefit, as stated in Article (3)(a)(6):

...communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare is hereby declared to be in the public interest and a public purpose.

AIDC has no full-time staff and its Board is established by its formation documents as the Council itself (See Appendix 21). With the LGC managing, and an AIDC financing arm controlled by Council, we still need to determine if the cultural trust needs to be its own standalone entity. This will be highly dependent on what specific projects are to be undertaken.

Legal Review

The City of Austin Legal Department reviewed the Task 4 Memo and raised some critical questions concerning the legal interpretation and structure put forward. Since QBL does not have an attorney on staff, we sought outside counsel to validate our legal analysis. QBL has an existing relationship with Greenberg-Traurig, a well-established legal firm founded in 1967 with over 2200



attorneys on staff in 41 state offices. QBL approached the Texas office to seek an attorney familiar with economic development, Texas law and the City of Austin. Greenberg recommended hiring Karen Kennard, who has worked previously for the City of Austin. Karen provided a legal brief of the QBL's legal conclusions which is attached here as Appendix 18. This memo validates the legality of moving forward in the manner described below. Texas law allows for the formulation described herein—although an example of another city using these statutory tools to maximum effect has not been found in Texas. The closest is in San Antonio, in which an entity with the requisite powers was created, but that entity has not yet been utilized to its full potential. The bylaws and articles for the relevant San Antonio entities was provided and is available upon request.

Structure Conclusions

QBL's recommendation is to create the minimum number of entities required to get the policy objective dictated by Council accomplished. Any addition of entities could cause an increase in administrative costs and this should be avoided as much as possible. These monies could be better spent on policy priorities related to inclusive growth. For example, every dollar spent on administration, even for a cultural trust, is a dollar not spent on affordability for music and arts venues—see Cultural Trust section below for further discussion.

The critical features identified for the organization previously to be effective include: the ability to: accept philanthropic donations,⁷ issue revenue bond financing, manage private investments, and fulfil the role of a public developer—managing public real estate and public/private partnerships on behalf of the City in order to achieve inclusive growth policies. Each of these features provides a potential revenue stream for the organization to avoid reliance on sales tax as a funding mechanism. The family of entities including the LGC and the AIDC is sufficient to capture the needed function and powers described in earlier phases. However, there could be additional fundraising power for the Cultural Trust (presumably a 501(c)3) if the EDO sought a partnership with an existing viable foundation that shared the mission goal.

For more details, see Appendix 5: Task Two Memo.

Task 3: Initial Findings Report to Staff -- Process

In order to move from the Initial Proposal to Deliverable 4: Presentation on Organizational Development Plan, QBL followed up in a series of meetings throughout February, March and April to obtain further explanation, discussion and information as follows:

- Feedback in small group sessions from each Council member and/or their staff.
- Brainstorms with Director Briseño and her leadership team about the initial org chart.
- Meetings with some key project teams from the Major Projects to flesh out any gaps in understanding of those projects. In particular with Huston-Tillotson University, South Central Waterfront, the Cultural Trust, the COA team behind the Project Connect financing, and affordable housing personnel from COA.

⁷ In particular, the need to accept philanthropic donations is in order to facilitate the creation of the Cultural Trust, support for iconic Austin businesses (that may not be able to be recipients of public funds easily), and to support homelessness.



The meetings undertaken included:

- Elected Officials and/or their policy staff: CM Alter, CM Kitchen, CM Pool, CM Flannigan, Mayor Adler, CM Tovo, CM Casar, MPT Garza, CM Harper-Madison (March 2-5th in Austin)
- Additional Stakeholders suggested by other interviewees: Ben Barnes (March), Rebecca Reynolds (Austin Music Venue Alliance), Seattle Cultural Districts Office (Matt Richter)
- City Staff: EDD Leadership Team (multiple meetings Feb-May), City Manager Cronk (March, July), Assistant City Manager Gonzales (April 16th, April 30th, May 15th, and several meetings in June and July), City Team: Rodney, Greg, Leela, Elaine, Veronica (May 30th, June, July).
- Project-Related Meetings
 - Redevelopment Division: PIDs/Districts (Feb 11th), Mueller with Catellus (Feb 11th), St. John's Site/Home Depot (Feb 12th), Souly Districts (March 13th, April 10th), Review District Overlays (April 16th)
 - Transportation & Infrastructure: COA Staff and CapMetro Staff (Feb 11th)
 - South Central Waterfront: SCWAB (Feb 11th), ECONorthwest Consultants Abe Farkas, Ian Carlton (March), South Central Tour with EDD, Facilities, NHCD, Capital construction, planning (March 5th), SCWAB Executive Team (April 20th), SCWAB Public Meetings (April 20th, April 24th)
 - Cultural Trust: John Riedie and Cody Cowan (1/28), Cultural Trust with EDD and John Riedie (2/11), Red River – Waterloo Greenway (2/11), Cody Cowan and Nick Shuley – Austin Music Movement (5/30).
 - Huston-Tillotson: Discussion with President (2/12), Tour and meetings on March 4th

Task 3: Initial Findings Report to Staff -- Organizational Structure

The question of organizational structure is answered in two distinct ways: first, what type of entity (or entities) is most appropriate to the tasks at hand; and second, how will the Board of the organization be constituted? During Task 2, QBL learned that the critical features identified for the organization previously to be effective include:

- The ability to accept philanthropic donations⁸
- Ability to do revenue bond financing
- Ability to manage private investments
- Fulfil the role of a public developer—managing public real estate and public/private partnerships on behalf of the City in order to achieve inclusive growth policies.⁹

⁸ See note 7.

⁹ As noted elsewhere in this Memo, this public developer must exist and operate outside of the normative City structure in order to achieve the results desired by Council. However, the entity will be governed by contract with EDD and have the proper controls in place to ensure work program alignment with the values and objectives of the City of Austin.



Each of these features provides a potential revenue stream for the organization to avoid reliance on sales tax as a funding mechanism.

During Task 2, we concluded that the new Austin Economic Development Corporation (“AEDC”), if formed, should follow the model of our national case studies and form a family of entities in order to achieve all of the necessary powers desired while managing an efficient structure. In other words, having a single staff overseeing multiple entities is a best practice, allowing that staff to utilize all of the special powers of each of those entities without creating a bloated administrative burden (multiple offices, multiple administrators, multiple HR departments, etc). In the case of AEDC, we determined that including the LGC and the AIDC is sufficient to capture the needed function and powers described in earlier phases. However, there could be additional fundraising power for the Cultural Trust (presumably a 501(c)3) if the EDO sought a partnership with an existing viable foundation that shared the mission goal.

As an LGC with federally exempt status, AEDC would already have the ability to solicit philanthropic donations, including contributions that are targeted at supporting specific initiatives such as the Cultural Trust or homelessness. However, AEDC would have no pre-existing donor base and no initial track record for philanthropic projects. As such, it would be better to partner with an existing foundation for credibility and to shorten the learning curve. More fundraising power would result from an existing network of donors, managed by a trusted existing organization – this would not be the case if another new 501c3 were just created. However, raising of the funds, while essential, is only one small part of achieving the goals of a cultural trust. Also necessary are sophisticated real estate transaction, development and asset management skills. Indeed, we see in examples from Seattle, NY and San Francisco that policies are not enough to achieve large scale results. In fact, when an EDC turns its attention to creating affordable cultural space, it can be much more efficient at provisioning the space due to its real estate prowess. For those reasons, QBL recommends the creation of the Cultural Trust as a program of AEDC and not a separate organization. This is further discussed in the Cultural Trust narrative section below.

Task 3: Initial Findings Report to Staff -- Does Austin Need A New Entity?

In Task 3, we revisited the question: why create a new entity at all? When reviewing the national benchmarks (Appendix 6: Slides 14, 15 and appendix slides) and the Texas case studies (Appendix 6: Slides 16-19 and appendix slides), as well as the consultations with other cities reported from the Peer Cities Conference in NYC in 2017, a common pattern emerges. When cities grow to scale, some create an entity that acts as a developer in the public interest (“public developer” hereinafter). The creation of this public developer has enabled cities to use land (owned by the public) as a capital resource—deriving new revenues from that land through public/private partnerships. Those new revenues allow for more government resources without additional taxes being levied. The creation of the public developer also has several other advantages, many of which were noted as desirable by stakeholders in Austin:

- Responding to deals at the “pace of the market”
- Speeding approvals for certain targeted public initiatives chosen by the City
- Reducing the burden of government with new funding sources
- Owning and operating real estate to generate cash for operations



- Blending the best of public and private deal-making
- Accepting private investment dollars
- Accepting charitable donations

Of the 17 cities that participated in the Peer Cities Conference in 2017, 100% agreed that the most successful strategy to date was the “NY Model” of creating an EDC with the real estate powers to advance projects more quickly and flexibly than a pure municipal structure would allow. A critical basis for success in these cases was the ability to provide sufficient publicly owned land directly to the entity to manage (or in a direct transfer of property as fee owner) without competitive bidding—but requiring through contract the achievements of the public purpose contemplated by the City in engaging with these projects.

Whether control of property is via direct ownership of the AEDC or through an ILA dictating lease administration powers on behalf of the City, it cannot be emphasized enough that a vital component for the success of the model to be used in Austin that the new entity is able to obtain control of City-owned property without competitive bidding. The new entity requires either complete ownership, or a pre-negotiated ILA allowing access and authority to negotiate transactions utilizing property. The transfer of City-owned property can be on a project-by-project basis and in all cases will require a public benefits contract in line with the City’s goals.

The question naturally arises whether the City would need to create a new entity, or if there are already existing entities within the City that could be used for the AEDC function and that have this specific feature of direct public land disposition to achieve public ends. Texas Economic Development Corporations have this feature – but are required to be funded through sales tax which is not available in Austin. Local Government Corporations also have the ability to receive direct public land disposition provided they have 501c3 federal status and a governing public purpose contract.

After meeting with City of Austin staff in Task 3, QBL was provided with a list of current COA Local Government Corporations and asked to analyze which of these, if any, was either duplicative with AEDC or could be subsumed within the new AEDC family of organizations. This list is provided in the appendix (Appendix 7). The list provided encompasses 12 entities identified by COA staff. None were viewed as duplicative to the proposed AEDC by QBL. These entities fall into three broad categories:

1. Conduit entities created primarily to create project financing or meet legal guidelines: Most of these have no day-to-day operations or staffing but rather work as a “captive” of the COA. These entities could be encompassed under a new AEDC if COA staff desires to offload management burden or achieve new synergies in projects by co-locating management within AEDC.
2. Special purpose entities with domain expertise: In any size city, these entities are likely to be standalone due to their targeted expertise and/or purpose – these are partners to a new AEDC.



3. Entities resulting from limited scale: These are generally entities created to run functions that a fully scaled AEDC could manage within a larger portfolio, but without such an infrastructure, a new entity would need to be created for each initiative.

In Appendix 8, we provide a listing of all of the entities and then divide the entities into these three categories described above. From category 1, we see the integration of the Austin Regeneration Fund (or another NMTC vehicle) and the Austin Industrial Development Corporation (AIDC) into AEDC. Category 2, by its nature, are standalone LGC's that should not be integrated into AEDC but can be incubated and then supported by AEDC to reduce administrative costs to the overall COA. Of those listed in Category 3, it is recommended that the South Central Waterfront Advisory Board ("SCWAB") be integrated into AEDC.

Task 3: Initial Findings Report to Staff -- Organizational Structure, Board of Directors

The second question of organizational structure is: how should the Board be constituted? The broad consensus of those interviewed was that the Board of AEDC should be chosen by and report to the City Council, but not be constituted of City Council members themselves. The primary reason for this was a general agreement on two issues: (1) that involvement of the Council directly on the Board could increasingly politicize deal-making—an acknowledgement that there was a desire here to de-politicize deal-making as much as feasible; and (2) involvement of the Council directly on the Board could slow down deal flow—when the desire here is to set up an EDC to speed up deal flow. The secondary reason for not having Council serve directly on the Board was to create a Board of subject-matter experts and values-aligned overseers.

Given the consensus and alignment found in the stakeholder and environmental analysis of Task 1, QBL recommends the AEDC board consist of 15 members, or "places". Each place should be described by (i) a subject matter area; and (ii) a nominating body. The nominating body will be given a description of the subject matter area and then be asked to nominate no less than three candidates to the City Council. For each place, the City Council will then confirm a single selected candidate by majority vote. City Staff and City Council should convene a working group to evaluate which entities in Austin could serve as a nominating body.

As an example only, if Place 7 is reserved for an expert in Industry (subject matter area) to be nominated by the Board of the Greater Austin Chamber of Commerce (nominating body), then the Chamber would nominate at least three potential candidates for the Place 7 board seat and submit them to Council. Council would then vote on a single member for Place 7, selected from those submitted by the Greater Austin Chamber of Commerce.

The following are the proposed places for the entire Board of AEDC, with the name of the nominating body yet to be determined, but the subject matter expertise noted for each place:

- Place 1 MWBE Business
- Place 2 Workforce Development
- Place 3 Equity
- Place 4 Public/Private Partnerships
- Place 5 Affordable Housing & Homelessness
- Place 6 Public Finance
- Place 7 Industry
- Place 8 Urban/Regional Planning



- Place 9 Real Estate Development and Construction
- Place 10 Infrastructure and Transportation
- Place 11 Cultural Arts
- Place 12 Music and Nightlife
- Place 13 K-12 Education
- Place 14 Higher Education & Vocational Education/Workforce Development
- Place 15 Continuum of Care Consortium (Resolution 20190808-077)

This method of selecting Board members for AEDC has a dual benefit of increasing accountability to the community stakeholders while further de-politicizing each individual appointment to achieve the initial vision laid out by Council for a collaborative body to focus on a holistic economic development mission for Austin that unites the various public benefit goals toward a unified plan for inclusive growth.

In addition to the Board of AEDC, there is a board of the Austin Industrial Development Corporation (“AIDC”), the already existing development corporation that we have recommended be included as a part of the “family” of organizations of AEDC. The president of AIDC should be a high-ranking officer in AEDC – it is recommended that this either be the CFO of AEDC, the COO of AEDC or the Infrastructure Investment Fund Manager of AEDC. The Board of AIDC, however, is the City Council – this is how the AIDC was initially organized and QBL recommends keeping the governance of AIDC the same unless needs for efficiency arise or new needs beyond those described by Council present themselves in the future (See Appendix 21 for AIDC formation documents).

AIDC is a conduit financing entity. This means it has the statutory ability to issue bonds (in this case, revenue-backed bonds). While these bonds are not supposed to convey the public credit, the fact of their issuance by a municipal body has the potential to suggest the implicit backing of the municipality. Any such issuance should first be approved by the City Council. Due to this structure, it will often be the case that for larger public/private partnerships involving bond issuance (infrastructure, cultural trust) there will be up to three discretionary approvals:

1. Contract or resolution of Council directing AEDC to pursue the project and the basic terms of approval (including in some cases planning and zoning pre-approvals);
2. Board item to AEDC Board, requesting approval of the particular deal;
3. Board item to AIDC Board, requesting approval of financing

Some projects may not need financing, and therefore would not go to the AIDC Board for vote. But as any given project obtains more complexity, more discretionary approvals would automatically be required for forward movement. The critical element listed above is that the AEDC could obtain pre-approval from Council for some actions to be taken – this would significantly speed the pace at which deal-making could occur.

It is important to note that this recommended organizational structure is a draft only, as created by QBL with advising from outside counsel. We expect the organization to move forward in substantially the form described herein. However, should COA City Council approve moving forward, an additional review by COA General Counsel will be required by City policy. That review should also include verifying the inclusion of directives of City Council with reference to City Council Resolution 20190808-077.



Task 4: Proposed Project List

The list of projects of AEDC will be reviewed annually by the City of Austin. This process can be most simply done through an annual contracting process with the City. Since AEDC is a “captive” entity of the City (meaning it is fully controlled by the City), the City must have a means each year of insuring that the public benefit goals for which AEDC is to be set up are achieved. Without this mechanism, the ability to dispose of public land to AEDC will be voided. However, given the difficulties that can arise in negotiation, it is important that each year’s contract has a “holdover” provision that allows for continued operation as any contract details are worked out. While the governing Texas statutes will ensure that any property not following the guidelines will revert to the City (See Appendix 18), it is a best practice to establish the public benefit control outside of this statutory mechanism to ensure full public disclosures and community engagement.

The initial list of projects recommended below represents the balancing of three factors: (i) what projects will achieve the Council’s directives around inclusive growth; (ii) what projects speak to the particular strengths of the newly created AEDC and can be successfully completed under its nascent status; (iii) what projects, when put together, create a coherent set of work for a fixed amount of staff; (iv) what projects can generate self-sustaining forms of funding outside a direct government transfer from the budget.

An initial list was created by QBL based on City Council Resolution 20190808-072, which also referred to: the South Central Waterfront Vision Framework Plan¹⁰; the Development Corporation Act of 1979 (Appendix 4); and City Council Resolutions 20141211-122, 20170216-040, 20180215-082 and 20180808-72 (See Appendices 9-13). QBL combed through all of these documents to create an initial list of possible projects and then ran that combined list past the 40+ interviewees in Task 1 (described above), seeking refinement as well as detail on the project list. That Task 1 list was then brought to the Council Work Session as a part of the Task 2 briefing deck (Appendix 6, slide 12). During Task 3, QBL refined this list to create a specific projects proposal and presented it to stakeholders, individual Council members, and City staff (as detailed in the **Task 3 Process** section above). That list was then further refined based on feedback during Task 4 (of CMO, EDD and stakeholders) to come up with the following list of proposed projects:

- **Major Projects**

- South Central Waterfront: Serve as the designated LGC to work on the suggestions of the SCW Vision and Framework Plan, including proposing to Council the passing of the regulating plan for SCW, proposing to the City for approval, financing tools, such as a TIRZ district, managing the district, assisting with public/private deal negotiations, assisting and/or managing the issuance of any relevant RFPs in SCW, as needed, and coordinating infrastructure improvements as needed and requested including street grid, flood mitigation measures and recreation areas – if those are not being managed by another City agency.

¹⁰ The latest version of the framework plan:

ftp://ftp.ci.austin.tx.us/npzd/Austingo/SCW_Vision_Plan_LatestEdition.pdf



- Huston-Tillotson District Planning: Work with HTU on master planning, coordinate with NHCD on the Homestead Preservation District plans, issue and negotiate RFPs on behalf of HTU on HTU-owned sites. Assist in the creation of inclusive growth policies that promote equity and inclusion in this historic district.
- Cultural Trust: Create a cultural trust program, including issuance of RFPs, management of transaction negotiations, coordination of fundraising, development supervision, and asset management for affordable cultural and music spaces.
- International Investment Fund: Partner with the Chamber to meet with international prospects and seek international investment into infrastructure in Austin that would be financed and transaction-managed by the AEDC (via bonds issued by AIDC and approved by Council).
- **Ongoing City-Wide Projects**
 - Transaction support for COA on P3 Projects and Redevelopment Projects: Including Colony Park, Home Depot, health South, Justin TOD and other projects as directed by EDD and Council. Support the City’s Action Plan to End Homelessness and satisfy the directives of City Council Resolution 20190808-077
 - Publicly Owned Sites Pipeline:
 - Working with COA Strategic Facilities group to identify any publicly owned sites by COA that could be used to support inclusive growth, TOD, affordable housing, or generate more money for COA.
 - Working with CapMetro, ACC, AISD, Travis County, UT and the State to identify any potential for issuing joint RFPs to support inclusive growth outcomes.
- **Other Priority Projects as Directed by Council**

This list of projects will be subject to continued discussion and evaluation by City Council and City of Austin staff. The list will be finalized each year in the annual contracting process with the City (see immediately following section).

Task 4: Annual Reporting Process and City Contracting Process

It is contemplated that AEDC will provide an annual report of its activities every year to EDD. The annual report will include:

- A list of all real property currently managed by AEDC on behalf of the City. For each such property, AEDC will provide:
 - An operating budget showing two years of history and five years of projection
 - A capital budget including sources and uses, with notation as to any sources of public funding, and a progress report on capital work
 - A narrative description of the public purpose contemplated by the City of Austin when disposing of the property (or the management of such property) to AEDC. A report indicating progress toward achieving the public purpose contemplated, including any relevant quantitative metrics such as job creation/retention, sustainability, commercial affordability, residential affordability, transportation access, cultural preservation, small business and music preservation, and Diversity Inclusion & Equity.



- A budget for AEDC including:
 - A two year historical and five year projection Income Statement
 - A balance sheet for the first day and last day of the previous fiscal year
 - Any requests for additional monies in the coming year
- A report of any programs undertaken by AEDC on behalf of the City of Austin. The Report should include:
 - A description of services contracted for by the COA
 - A budget indicating all sources and uses of funds for the program
 - A description of any variances of program or budget
 - A narrative describing the impact of ending the program
 - A narrative describing the potential for expanding the program
- An inclusive growth report on the City of Austin, and how the AEDC has contributed to improvements in economic growth, social equity (including DI&E), cultural vitality and environmental sustainability.

It is also contemplated that AEDC will execute a contract with the City of Austin every year. In order to ensure the new entity has equal if not greater successes than best practice models explored in Task 2, the AEDC will need nearly complete autonomy in its work with limited restrictions. Unlike the community benefit requirements embedded in current City programs such as Chapter 380, procurement requirements above State law requirements, minimum wage requirements and others, the AEDC requirements for each property will be agreed upon in the annual contracting process with the City. In some cases, the AEDC will not have the identical requirements of other COA projects due to the nature of its contracts. This will allow the nimbleness and flexibility found in best practice models will be present for the AEDC. In all cases the AEDC will comply with Texas law, but those laws vary depending on the specific projects and the fee ownership associated with them – as such, the annual contracting process will obtain appropriate approvals and legal validation for its set of proposals annually. Beyond what is legally required, the AEDC can certainly make reasonable attempts to achieve various community benefit goals beyond the requirements; however, mandates for the entity to exactly parallel all COA policies would pose risks and challenges to fully utilizing the benefits of creating a separate economic development entity.

While most of the contract may remain substantially the same each year, there will be appendices that lay out the following:

- Real Property:
 - **Lease Administrator List:** a list of all properties that remain owned by the City but are managed on behalf of the City by AEDC. AEDC will propose a lease administration fee for each property, commensurate with the work. Such fee would be paid out of the receipts of the property. Any necessary licenses from Texas will be obtained and kept current.
 - **Transaction Management List:** a list of all properties that will remain owned by the City but will be disposed of by AEDC on behalf of the City and following City disposal and procurement laws. For these properties, AEDC will be paid a transaction management fee which would be composed of a fixed fee commensurate with the amount of work required



and a variable fee that provides proper incentives to maximize value for the City. Such fee would be paid out of payments made by a third party to the City. The AEDC will be required to obtain any necessary licenses and certifications, including but not limited to a Texas Real Estate Broker's License.

- **Public Developer List:** a list of properties to be disposed of to AEDC fee ownership. For each such property, AEDC will include a proposed public benefit contract which would allow for such disposal. AEDC must comply with using the property for a contracted public benefit **or the City of Austin may revert the property back to City ownership.** Any further leasing or sale of the property done to achieve this purpose must comply with the disposal and procurement rules of the City. AEDC will provide a double-bottom line analysis which will indicate for each such property:
 - The market value of the property (“Value”)
 - The cost of the public benefit to be achieved (“Public Purpose Value”)
 - The residual land value of the property (“RLV”)
 - $RLV = (Value) - (Public Purpose Value)$
 - A proposal by AEDC of what portion of RLV should be paid by AEDC and by what mechanism. For instance, RLV could be an offset to other monies that would be owed from COA to AEDC, thereby avoiding any spending of General Funds on AEDC.
- **Contract for Services:** For certain target areas, COA may contract with AEDC to provide services to reduce the burdens of government. These services can be paid for directly via contract, or can be paid for as offsets to RLV or other payments due from AEDC to COA. For each target area, the contract will indicate what services are to be provided by AEDC, what public benefit is to be achieved, who the City contract-manager is for the particular contract, and what funding (if any) is being requested by AEDC to perform the scope. Examples of such contracts may include:
 - Cultural Trust
 - Homelessness Services
 - Public Pipeline management
 - District management (including TIRZ management, if applicable)
 - Transaction Services (beyond those indicated in real property portion of contract)
 - Planning services

Based on the actions undertaken by AEDC, different approval processes are required. For most activities, it is anticipated that approvals will occur during the annual contracting process. For the financing of any projects as “conduit” instruments that implicitly utilize the City’s credit, the AIDC process shall be used, and a direct vote of the AIDC Board (currently the City Council) will be required.

Task 4: Proposed Funding Sources and Budget

The proposed baseline budget for AEDC is included as Appendix 14. Since the creation of AEDC is new ground for the City, the budget is likely to be amended as the organization begins



operations and encounters new directives from Council and the changing economic climate. **It is important for the organization to be flexible.**

The guiding principle of the budget is to use already allocated budget and unused fund balances to support the creation of AEDC and the hiring of initial staff in order to keep the EDO proposal budget neutral. That staff will then pursue the projects listed above, many of which have opportunities for generating new money. The main source of existing funds is the existing EDD budget for personnel – since hiring is currently frozen, there is an allocation of funds that could be transferred to the AEDC and utilized to start up the organization. Once the organization is self-financing through new projects (3-4 years) the transfer can be reduced and then eliminated. It is contemplated that over time, the AEDC could contribute money back to the COA General Budget, should the Board and Council agree that adequate reserves are in place and dollars returning to the City budget are more beneficial than building the asset base within the entity on the City’s behalf. Since funds initially expended are already allocated, the creation of the AEDC will be budget neutral. The main sources of income for AEDC noted in the budget are:

- Existing Budget and Fund Lines: EDD and AIDC
- Contract for Services with COA
 - Administrative fee associated with managing TIRZ District
 - Services related to creation of the Cultural Trust
 - Success fees for creating more income out of public property
- Contributed Income
 - Management fees associated with managing CARES and other Federal monies. Specifically, this can be related to the Commercial Loans for Economic Assistance and Recovery; as well as the Austin Nonprofit & Civic Health Organizations Relief Fund. These are specific examples, but QBL expects additional programs and funding to be announced as we move into recovery (including the Main Street loan programs expected from the Federal Reserve).
 - Foundation Capacity Building Grant: A three-year “start-up” grant that can be applied for and obtained from a major foundation such as Kresge, Ford, Rockefeller, Doris Duke, Dell, or others.
 - Philanthropic Donations: Targeted donations to support the creation of affordable cultural and music facilities, including “matching” funds for equity contributions to owned affordable real estate.
- Real Estate Revenues
 - Transaction fees for assisting with closing negotiations around public/private real estate transactions associated with HTU and SCW.
 - Real estate rents from tenants and asset management fees from landlords, including around any publicly owned land and buildings put into AEDC’s management.
- Financing
 - AIDC: Trustee fees for managing conduit financings as a percentage of issuance amount.



- AEDC: Project-based financing and debt backed by the credit of the project and not of the City of Austin.

All of the project financing budgets above are subject to the appropriate approvals of those projects by City staff, the City Council and governing state law (including AG review of any bond issuances). The budget also includes monies in major categories to support the overhead of the organization:

- General and Administrative: Necessary items for running the administration of the organization, inclusive of office equipment & supplies, professional services, and insurance.
- Facilities: The cost of office space, either paid directly as cash or as offsets to rents that would otherwise be obtained in City-owned buildings. It is contemplated that AEDC personnel will office within the City's existing footprint until 2022.
- Personnel: Described in the next section
- Public Affairs, Marketing and Outreach: A communications firm or consultant will be kept on retainer to keep the general public informed of the actions of AEDC.
- Special Line Items:
 - Directors' & Officers' Insurance: COA staff highlighted the importance of Directors' and Officers' insurance, which protects Board Members and Officers of the AEDC from personal liability. This is especially important if COA Staff members will be serving interim roles in the start-up of the organization. QBL contacted Lockton Insurance (<http://global.lockton.com>), the world's largest independent insurance brokerage, to obtain an indicative quote for the budget. Lockton has a global footprint of over 100 offices and 52,000 clients.
 - Legal Formation: As advised by COA Legal, QBL added a line item for outside counsel to perform initial start-up and create final formation documentation for the organization, based upon Council feedback of document drafts provided by QBL.
 - Outside Counsel: AEDC will hire a full time General Counsel to advise the organization. However, this will not happen in the first year, so additional budget is allocated to support outside counsel for any anticipated transactions. QBL recommends hiring Greenberg-Traurig, but other legal firms with similar extensive background in the City of Austin, the State of Texas and more broadly in the country should also be considered.
 - Bond Counsel: Any bond issuance will require outside bond counsel to be hired on a per-project basis. This counsel will be compensated through the economics of the bond issuance and so do not appear as direct expense of the organizational budget. However, additional legal support leading up to these contemplated issuances is included in the budget.

Task 4: Proposed Organizational Chart



The recommended organizational chart is attached as Appendix 15. This chart represents a stabilized version of the staffing that is expected to be achieved by 2022, given the budget allocated. If AEDC is able to advance projects more quickly that drive additional revenue, AEDC will speed up the hiring of personnel to support those projects as necessary. AEDC will need an interim President/CEO to allow for immediate launching of the entity, and this interim CEO will provide leadership during the transition time needed to conduct a search and hire the long-term candidate to fill the role. QBL recommends that this **interim** President should be the current Director of EDD. By choosing this existing COA employee who runs the department that the AEDC contracts with, we will ease the transition for COA staff, elected officials, and AEDC as we start this “captive” entity.

The hiring begins with the Chief Operating Officer and the Transactions Manager. These two are chosen based on expertise that they will have in structuring transactions (such as those for HTU, SCW, the Cultural Trust, and any other RFPs) as well as in government process in proposing resolutions to Council and getting those passed (such as the SCW Regulating Plan, the SCW TIRZ

Staffing Worksheet				
Austin Economic Development Corporation				
5/25/20 by MK				
	2020	2021	2022	2023
Chief Operating Officer	0.5	1	1.05	1.1025
Transactions Manager	0.5	1	1.05	1.1025
IIF Manager (Executive Director, AIDC)		0.5	1.05	1.1025
President / CEO		0.5	1	1.05
Executive Assistant			0.5	1
Chief Financial Officer			0.5	1
Chief of Staff			0.5	1
Asset Management Head			0.5	1
Financial Analyst			0.5	1
Associate, Transactions				0.25
Associate, Asset Management				0.25
Planning Manager				0.25
General Counsel				0.25
Press Agent / PR				0.25
Associate, Government & Community Relations				0.75
Total Positions	2	4	9	15
Total FTEs	1	3	7	11

district and related district issues). QBL recommends that the COA consider hiring a Chief Operating Officer that is a current high level COA staff member, most likely in the EDD, and with experience in redevelopment. The Transactions Manager should be someone already proficient in the types of transactions anticipated to be undertaken by AEDC – this is likely a person outside the COA. Prime candidates should be evaluated from current and former employees of the national benchmarks with particular focus on Atlanta, NYC, Philadelphia and Boston. By 2021, the organization scales to include infrastructure financing expertise as well as a permanent President and CEO, relieving the interim CEO to pursue her normal duties as head of EDD. By 2022, AEDC is able to hire in the full complement of needed employees to execute upon the tasks chosen. The scaling of staff occurs as shown in the chart.

As stated earlier, the initial transfer of unused personnel monies at EDD will be done via an ILA that includes a public benefit-based contract of work established between EDD and AEDC. The relationship between EDD and AEDC is that AEDC **reports to** EDD. This is an adaptation of what we found in other cities (Appendix 16).

Task 4: Start-Up Narrative

The Director of EDD will be put in place as interim President, and high-level personnel from the Finance Department of COA (CFO, Deputy CFO or similar) will be put in place as interim and/or permanent CFO. General Counsel will be retained from an outside specialty law firm. The COO will be hired immediately from an existing or former COA staff member proficient in



redevelopment and public/private negotiations. If such a person is not available, an interim COO will be hired under contract as a consultant. The interim Chief of Staff will be selected from current Council staff. The team will initially validate the staffing positions to be hired and establish and post job descriptions.

As a part of the first year's contracting process between AEDC and COA, the President and CFO will request the necessary funding from Council as described in the budget, which includes a three-year seed funding transfer from EDD. In addition, they will request funding from AIDC to be made available to hire the permanent COO and Transactions Manager.

The President, CFO and interim COO will petition COA for a contract to immediately pursue approval of relevant plans for South Central Waterfront, with AEDC fulfilling the roles contemplated by the SCWAB for the LGC. The COO will work with current COA staff on negotiations surrounding the Statesman site, and any other transactions, if applicable. It is recommended that this contract be included in the initial annual contract between AEDC and COA, and not be a separate action of Council. This recommendation was developed in concert with the South Central Waterfront Advisory Board and is further discussed in the July 23, 2020 Memo to Mayor and Council concerning SCW (Appendix 23). In particular, the memo recommends:

- Developing opt-in zoning regulations (i.e. *Regulating Plan*).
- Establishing innovative financing tools - most importantly, Tax Increment Financing (TIF).
- Creating an Economic Development Entity.

The President and COO will meet with HTU to determine a work plan and establish a contract around managing Master Planning and then transaction RFPs for HTU. These will provide fees to AEDC following successful transactions. AEDC will request NHCD and then Council designate AEDC as the administrator of the Homestead Preservation District.

The CFO (and COO, once hired) in consultation with General Counsel and the President will immediately work together to seek infrastructure improvement investments that can be deployed in the City of Austin to help increase employment and resiliency.

Task 4: Proposed Cultural Trust

The Cultural Trust is a program that has been recommended by QBL for the City of Austin since 2010. During that time period, QBL has had experiences working with several cities on pursuing cultural affordability. In particular:

- Seattle: Matthew Kwatinetz, Managing Partner of QBL, was one of the instigators of the Cultural Overlay District program in Seattle, Washington. Following that program Matthew was invited by the DAA to the City of Austin to explain how this might apply to the City of Austin. Matthew presented national benchmarks and information to COA, and also hosted a series of master classes for cultural workers, city staff and developers. Over the last few years, the Cultural District program in Seattle has continued to thrive and expand. As a part of the scope for AEDC, Matthew reconnected with the City of Seattle's cultural districts manager, Matt Richter, and reviewed successes and challenges of the program, and used that review to inform this recommendation.



- Augusta, GA: QBL was hired to create the Augusta Regional Collaboration Corporation (“ARCC”) for the City of Augusta Georgia in 2012. In addition to inclusive growth, affordability and economic development activities, ARCC was tasked with the creation of cultural programs, an artist residency program, the management of a cultural building and art gallery, and the creation of a plan for large scale funding of cultural facilities via sales tax recapture (“SPLOST”).
- New York, NY: Matthew Kwatinetz, in his role as Executive Vice President of NYC Economic Development Corporation, was the designated liaison to both the Mayor’s Office of Cultural Affairs and the Mayor’s Office of Film and Music. As a part of his work he was the lead for creating and managing affordable cultural, creative and entertainment spaces across the City including the 42nd Street Development Project (and the New 42nd Street non-profit studios liaison and Board member); conceiving of the new Made In NY campus for film, music and fashion at Bush Terminal; and the stewardship of affordable cultural space inside city-owned facilities. Matthew was also the point of contact for Spaceworks, a non-profit created by the City of NY to create and manage cultural space – this non-profit eventually failed and was replaced by EDC management. In addition, Matthew was one of the leads for the Mayor’s Affordable Real Estate for Artists’ Task Force (“AREA”). As a part of AREA, NYCEDC surveyed cultural affordability programs across the nation and looked at failures and successes, investigated specific project budgets and operations, and eventually rolled out the largest cultural affordability program in the US which included over 500 affordable units of artist workspace.

Based on this experience and the extensive stakeholder interviews and feasibility investigations detailed above in this Memo 4, QBL recommends that the Cultural Trust be a program of AEDC. The key elements of preserving cultural affordability are centered around real estate concerns as a first step. The AEDC will be a public developer, skilled in all the aspects of real estate necessary to facilitate cultural affordability and music preservation. In particular, the AEDC will have expertise in Public/Private Partnerships advising, real estate brokerage (along with requisite Texas licensing) and facility operations—these are the critical elements noted in the July 2020 EDD memo on the Creative Space Bond (“July 2020 EDD Memo” See Appendix 20).

QBL believes that the critical step for a successful Cultural Trust program is to create permanent infrastructure in the built environment that forever preserves some number of cultural and music spaces spread across the City, as well as preserving certain areas that form clusters of economic activity. Clusters allow like uses to support one another in a mutual economy, providing more tools such as collective purchasing (such as that contemplated by the newly forming Cultural Consortium of the City of Austin), mutual property management (which can be performed by AEDC), and workforce development including job sharing (in which one artist or musician can piece together enough part time work to create full time equivalent job security). The acquisition, asset management and facilities management functions are typical Land Trust areas of focus (as well as those of a larger EDO). By making the Cultural Trust a part of AEDC, the City will continue to attain the economies of scale and control presented by consolidating the functions in the EDO instead of hiring multiple additional consultants who will require both management and additional expense.



For purposes of example, typical commercial brokerage fees in the City of Austin range from 2%-6% (see chart insert).¹¹ If the City hires a third party broker to acquire a \$20M property, that broker's commission is likely to be \$400k-\$600k for that one transaction. If 3-4 transactions are contemplated as a part of the Cultural Trust this could add up easily to close to \$2M in brokerage fees just to acquire the properties. However, the corresponding salary of the

Commercial Broker Fees for the Sale of Improved Properties

Here is a breakdown of typical fee percentages in Austin, Texas for improved properties, such as existing office, retail and industrial buildings:

Sale Price	Normal Commission Percentage
\$1 – 3 million	4 – 6%
\$3 – 7 million	3 – 4% (or even slightly lower)
\$7+ million	2 – 3%

AEDC personnel working on behalf of the City is far less than that amount (See Appendix 14). While a brokerage commission will still be owed legally to AEDC, the City may negotiate via contract for this commission to be lower, and/or also to include other services such as Public/Private Partnership advising and structuring as a part of the fee. These can serve as offsets to other payments owed by the COA to the AEDC, thereby reducing the cost and burdens of government. It is strongly recommended to take advantage of this economy of scale in order to save the taxpayers of Austin money in the implementation of this important program.

As part and parcel of the work done by QBL for this contract, we spent time discussing cultural affordability and music preservation (and preservation of iconic Austin businesses) with all stakeholders mentioned in earlier sections. But in particular, we reviewed case studies with the Red River Cultural District, the Urban Land Institute's panel on cultural and music affordability, James Russell, John Riede and the Austin Creative Alliance, the Long Center (and its proposal for a Cultural Consortium), and Rebecca Reynolds and the Austin Music Alliance. The situation in the City of Austin is dire, and a survey conducted by the University of Houston as commissioned by the Austin Chamber of Commerce (and the City of Austin) revealed up to 90 percent of the live music venues in Austin could close forever if they are not reopened for business by the fall.¹² Immediate action is strongly recommended to preserve affordability through the purchase of multiple venues and cultural arts locations.

Given the extreme current pressure on culture and music uses, we recommend that upon formation of AEDC, an immediate call be put out to form a Cultural Trust Advisory Board. A Donor Advised Fund will be created at a partner foundation to accept restricted donations.

AEDC can issue an RFP in 2020 that calls for respondents that have identified specific sites available for purchase by the City of Austin to maintain as permanently affordable cultural spaces. As a part of its initial annual contract, AEDC will propose a public benefits contract with the City of Austin to serve as the transaction broker (inclusive of public/private advising) and the long-term lease administrator and asset manager of permanently affordable cultural space owned by the City. Depending on the qualifications of respondents, asset management may only involve oversight of payments, capital work and public benefits; or it may include facilities management and other necessary property skills not resident in a particular organization.

¹¹ Accessed July 2020 from <https://aquilacommercial.com/learning-center/cost-commercial-broker-sell-buy-property/>
¹² <https://www.austinmonitor.com/stories/2020/07/survey-predicts-90-percent-of-austin-live-music-venues-to-close-by-halloween/#.Xxx41IZSoIE.twitter>



Respondents will need to meet the criteria of an established music or cultural venue¹³ and be prepared to show their capacity to raise half of the down-payment money. Alternatively, this process can be expedited as noted in the July 2020 EDD Memo (See Appendix 20). A Request for Information (“RFI”) can be issued immediately to obtain qualified interest from various organizations both cultural and music focused. It is recommended that the AEDC review and comment upon the RFI to be sure it requests all of the necessary information for the later RFP to be successful—including letting potential respondents to the RFI (and, if applicable, the later RFP) know what precise information will be needed for a successful award.

It is recommended that the RFI request specific information about venue economics (property financials, venue operator financials, capital maintenance schedules, annual operating expenses), the availability for ownership (or commercial condo ownership on top of a 30+ year lease), the capability of the respondent to raise the necessary equity match (see below), and the willingness of the organization to fulfill the public benefits required by the City in order to satisfy the purposes of the Creative Space Bond. Based on responses from the RFI, COA and AEDC would then have a list of acquisition targets, pricing, operating economics, citizens served, public benefits provided and the credit worthiness of the revenue streams which will be required to fund debt (whether that is bond-based or commercial lending via a bank).

From this RFI information, AEDC can then issue a short-duration RFP – or, simply continue negotiations with RFI Respondents, if approved by the City of Austin Legal Department. It will be critical to answer this question prior to releasing any RFI in order to minimize the burden on respondents and shorten the time frame to award. Following the RFI (and RFP, if applicable) responses, AEDC will negotiate purchase contracts with private owners on behalf of the City of Austin (and governed by an appropriate public benefit ILA). These purchase contracts can then be used to seek debt to support acquisitions. It is anticipated that debt will cover up to 80% of the acquisition costs and be backed by affordable rental payments from the operator of each venue. The down-payment required (“Equity”) will be paid partially by the City and partially by the awarded respondents to the RFI/RFP. For avoidance of doubt, if an award is given to a music operator to purchase a their venue for \$20M, then \$16M will be funded via debt (Bond or bank) and \$4M will be funded from Equity -- \$2M raised by the music operator and \$2M provided via the Creative Space Bond proceeds.

As per the City Law Department’s 2018 guidance for Use of Voter Approved Bond Funds for Creative Spaces (Appendix 21), a “Contract with the Voters” has been made as to the use of the bond funds, and the Attorney General must approve that use being in line with the Contract. In particular:

“The bonds must be used for capital projects. This means that they can be used to plan, design, acquire, construct, renovate, improve, and equip cultural arts facilities and museums which include creative spaces dedicated to the creation, exhibition, or preservation o[f] art and creative expression. This includes acquiring land and interest in land and property for these purposes. These funds cannot be used to provide economic development grants for rent for creative spaces, nor can they be used to make improvements in rented space that the City will not have a property interest in over the life of the bonds.”

¹³ These criteria will be established as a part of the public benefits required by the City for the expenditure of bond monies to support affordable creative facilities.



Based on this guidance, several items follow in our structuring of the use of the Creative Space Bond Proceeds as equity for the Cultural Trust acquisitions:

1. The bond proceeds may be used for the acquisition of facilities.
2. These facilities must be owned by the City of Austin¹⁴
3. The bond proceeds may not be used to pay rent
4. The facilities purchased must provide a public purpose (and not for economic development) that is roughly equivalent to the City funds being expended.

As mentioned earlier in this section, AEDC complies with all of the above requirements. The structure recommended is for AEDC to be under an ILA with the City of Austin, contracted to run the RFP process, negotiate and close on particular property acquisitions (for which the City of Austin will be fee owner), serve as the asset manager on behalf of the City, issue leases with the successful respondents, and then manage those leases on behalf of the City to insure public benefits are met and that the assets remain in a state of good repair as well as in service to the stated public benefits requested by the City.

How would this work? Half of the Equity will be paid by the cultural/music/creative entity and half will be paid from the \$12M bond proceeds in the first RFP series. If we assume an 80% debt financing (by bank debt or bond), \$12M can be leveraged into up to \$120M of purchasing power.¹⁵ Purchase prices must satisfy some reasonable criteria to ensure the City is not over-paying for any particular facility. This may be added as one of the selection criteria in evaluating successful awardees, with a hard cap added as to a maximum price to pay as related to appraised value. It is suggested that it be a requirement of the RFP that purchase prices be no higher than 10% of appraised market value (but may be less). In a competitive RFP, those facilities that offer a lower purchase price (as relates to market value) will be more competitive to receive the award. This will provide respondents leverage in initial negotiations with property owners. The City of Austin will be the long-term owner of the site and contract with AEDC to manage the project and offer affordable rents, City pricing on utility costs and a PILOT payment for property tax – this will lower the cost of tenancy. The properties will be deed restricted to be affordable in perpetuity. Since the property will be owned by the City of Austin, there is no conception of a reversion right – but instead the lease with the awardee can include provisions of default or termination if public benefits are not achieved. In the case of such termination, the property should be released to another creative organization to continue to fulfill the public purpose.

AEDC will work with the Cultural Trust Advisory Board to select the first set of projects, which should be distributed geographically, by discipline and equitably chosen. The projects selected will then come to Council for approval. If approved, the projects can be funded based upon the revenue paid in rent from the awardees – such a financing can be done directly by a bank or as a bond issuance. A bond issuance may be done by the City if approved by Council and the City Law Department, or it may be done in a form of private debt backed by the creative organizations. A

¹⁴Potentially, a 30+ year lease on property could qualify for bond funding or debt funding. However, there should be a strong preference for ownership as this insures the perpetuity of affordable cultural infrastructure.

¹⁵ We say “up to” because the amount of leverage possible (“LTV”) will be highly dependent on the then current economic conditions and the credit of the borrower. The 80% is a best case.



back-up list will be created for each site in the event of default by the tenant. Given the strong demand for affordable cultural space, it is recommended that the AEDC keep a running list of organizations seeking space and continue to support this cohort of operators through training, capacity building and fundraising.



List of Appendices

- Appendix 1: Task 1 Memo
- Appendix 2: Local Government Code Chapter 253
- Appendix 3a: Transportation Code 431
- Appendix 3b: Texas AG Opinion on LGCs-JC-0335
- Appendix 4: Development Corporation Act of 1979
- Appendix 5: Task 2 Memo
- Appendix 6: 2020-01-21-Task 2 Council Briefing v12-Final
- Appendix 7: COA Local Government Corporations Chart (Draft 3/5/20)
- Appendix 8: Why A New LGC?
- Appendix 9: COA Resolution 20190808-072
- Appendix 10: COA Resolution 20141211-122
- Appendix 11: COA Resolution 20170216-040
- Appendix 12: COA Resolution 20180215-082
- Appendix 13: COA Resolution 20180808-072
- Appendix 14: AEDC Proposed Budget
- Appendix 15: AEDC Organizational Chart
- Appendix 16: How Does AEDC Relate to EDD
- Appendix 17: “Response to City Council resolutions regarding an Economic Development Entity.” June 12, 2020. EDD Memo.
- Appendix 18: “Creation of an Economic Development Entity for the City of Austin.” Legal Brief. Karen Kennard, Greenberg Traurig LLP.
- Appendix 19: COA resolution 20190808-077
- Appendix 20: July 2020 EDD Memo on Creative Space Bond
- Appendix 21: 2018 Guidance for Use of Voter Approved Bond Funds for Creative Spaces
- Appendix 22: Formation Documents of Austin Industrial Development Corporation
- Appendix 23: July 2020 Memo to Mayor and Council regarding SCW



APPENDIX 1

QBL Task One Memo



February 14, 2020

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Acting Assistant Director
Economic Development Department
City of Austin

SUBJECT: Task 1 Memo on Next Steps

Background

QBL Partners (“QBL”) was hired by the City of Austin Economic Development Division (“EDD”) in response to City of Austin Council direction to “initiate the necessary processes to authorize creation of an economic development entity, identify potential funding sources, solicit stakeholder feedback on the entity’s governance and operational structure...[and] to bring forward a recommendation for funding needs to implement this direction for consideration during the Fiscal Year 2020 budget deliberations.” QBL and EDD agreed on a scope divided into four tasks:

- Task 1: Engagement Kick-off and Team Formation
- Task 2: Research and Benchmarking
- Task 3: Initial Proposal to Staff, Stakeholders and Leadership
- Task 4: Presentation and Recommendations

Task 1 Scope

Task 1 began with the City of Austin (“COA”) delivering previous documents, reports and policy proposals relevant to the project. QBL formed a Dropbox folder and reviewed those documents, as well as adding additional documents, studies and project work provided by COA, EDD and other stakeholders. After reviewing all of these precedent documents, QBL scheduled a first trip to Austin from December 8th to 11th, 2019. This trip included an EDD kick-off meeting as well as meetings with staff to discuss the previous work done on strategy for the new entity, the structure of the engagement, the stakeholders’ interests and the composition of the comprehensive list of stakeholders. During this trip QBL and EDD participated in over 40 stakeholder interviews. Those interviewees that were unable to be scheduled during this time were interviewed via phone meetings in December 2019 and January 2020. The list of stakeholders included:

- **City of Austin Elected Officials and/or Policy Staff:** CM Tovo, CM Alter, CM Pool, CM Kitchen, CM Flannigan, CM Casar, CM Harper-Madison, Mayor Pro Tem Garza, Mayor Adler
- **City of Austin Department Staff:** City Manager, Assistant City Manager, Economic Development Department: Cultural Arts Division, Redevelopment Division, Strategy & International, Music & Entertainment, Planning and Project Groups; COA Planning;



Neighborhood Housing and Community Development (AHCD) and Austin Housing Finance Corporation; Real Estate; Finance; Law

- **Inter-Governmental:** County Commissioner Travillion, Office of the Judge of Travis County, County Commissioner Shea, University of Texas, Capital Metro, CAMPO, Austin Community College, Austin Independent School District, State Senator Watson, Texas Council on Economic Development, City of San Antonio
- **Stakeholders and Anchors:** Capital City Innovation, Downtown Austin Alliance, Red River Cultural District, Austin Cultural Alliance, Greater Austin Chamber of Commerce, Urban Land Institute, Perkins+Will, Austin Community Foundation, Affordable Central Texas, Housing Authority of the City of Austin (“HACA”) with HACA, AAHC, NHCD, AHFC

These meetings were used to conduct a needs assessment from stakeholders. QBL asked the opinions of stakeholders as to what functions a new economic development entity (or an existing entity either inside or outside the City) could serve to help with Austin’s fulfillment of a vision of inclusive growth. The interviews all began with a description of the planned project scope and background, introductions of QBL, and introductions of each interviewee as well as the context of their current projects and why EDD felt they were a relevant stakeholder. The topics of discussion then included exploration of opinions around different aspects of the proposed Economic Development Organization (“EDO”): structure, governance, funding, powers, projects and examples from other cities.

Summary of Interview Responses: Places of Agreement

While the diversity of groups interviewed caused the discussion to range through a very broad set of topics and recommendations, there were significant places of agreement across the entire cohort. These are summarized below, by topic.

Structure & Governance. Respondents nearly unanimously agreed that an outside entity could be helpful to advance inclusive growth across the City and help stalled projects move forward more efficiently. Most agreed that the Board of the EDO should be controlled by Council, but that the Board should not be entirely composed of Council members – in that case, the question was raised as to how useful an “outside” entity could be, if it were composed entirely of the Council. However, there was unanimous agreement that the EDO should have strong accountability to Council or it would not be able to do its work. Thoughts were split on whether other taxing entities (for example: CapMetro, Austin Community College, Austin Independent School District, Travis County) should be included on the Board or established as strategic partners without specific Board inclusion. It was determined to bring that to Council and let them direct us as appropriate.

Funding. There was a general recognition that initial funding for the organization would be challenging. The EDCs in smaller Texas cities are usually funded with sales tax, but Austin’s current sales tax collections are already fully committed, and there are limits on increasing receipts from sales tax due to State caps. Requesting monies from the general fund of the City, however, offers some of the same challenges for an “outside entity” as does having the Board completely composed of City Council – would the EDO then truly be able to be independent, or act nimbly?



For those reasons, it was recommended to explore a “fee for contract services” model as an alternative to expanded hiring of full time COA staff. In a fee for services model, COA could allocate specific tasks to the EDO by contract, and not provide general operating dollars to the EDO. The City could find more flexibility in utilizing an EDO for specific and funded projects; in the meantime, the EDO would receive some early monies that would allow it to hire dedicated staff. That staff would begin work on the “fee contracts” and then also seek other funding sources for long term overhead. Other suggestions, such as having the EDO provide direct services on behalf of COA to specific funded projects such as South Central Waterfront or district management, could be a pathway forward during start-up. Beyond these COA direct sources of funding, four additional streams were suggested:

- **Real Estate Fees:** The EDO could be used to procure, structure and manage real estate leases and sales on public property, and be able to both leverage those properties to provide more (non-tax) funding to the government while also providing some payment for direct services to the EDO through private funds associated with the real estate: development fees, structuring fees, management fees, administration fees, lease revenues and sales revenues. In all cases, the net payments to the government should exceed what they are today—meaning that COA would receive more money than it does today—or this model does not become feasible. This model only works if there currently are publicly owned real assets that the EDO can bring into more productive use, thereby creating new revenues streams. This can be done at the same time as increasing policy outcomes. This model has been used by other entities around the country and QBL was tasked with bringing back examples in Task 2.
- **Philanthropic Donations:** If structured correctly, the EDO could receive philanthropic donations. These donations could be for particular programs administered by the EDO (for which an administrative fee would be appropriate) or could be donated directly for support of the EDO’s operations.
- **Bond Management:** If there are bond projects that require management, or new revenue bond projects promoted by the EDO, there could be bond management fees associated with the projects that it would be appropriate for the EDO to receive.
- **Investment Management:** Several of those interviewed highlighted past interactions in which foreign investors had approached the COA with a desire to invest long term in infrastructure. In those interactions, City staff was not able to find an appropriate vehicle to receive, deploy and manage that capital. The idea was raised that the EDO could pursue such a program, and thereby receive management fees to support those efforts.

Powers. Respondents generally agreed that if there were a way to freeze the steadily increasing burdens of ownership or tenancy (property taxes, marketing and utilities) it would be useful – but many pointed out the challenge of engaging in any sort of tax abatement program. The issuance of revenue bonds was highlighted in this section as a typical power of an EDO that could expedite the completion of projects. In addition to these more general powers, several real estate powers were highlighted as critical components of a successful, self-funded EDO:

- The ability for the City to directly transfer real estate to the EDO in order for the EDO to act as its agent in a public bidding process on behalf of the City.
- Sale, lease and management of public and private real estate.
- Powers necessary to be a “public developer” leading the City’s policy goal for inclusive growth, serving as a lead in public/private partnerships (“P3”), and moving at the pace of the private market in a way that is challenging for COA.



- Many respondents, if not all, underscored that the most important power of such an entity would be to find some way to expedite public approvals for some subset of projects. The time taken for public approvals was repeatedly cited as one of the largest issues for supporting non-profits, affordable commercial space, local businesses and even small- to mid-size- developers. In general, these public approvals in question seemed to refer to rezoning proposals, but sometimes included building occupancy approvals, which could see significant delay, increasing holding costs for local businesses, non-profits and cultural uses.
- Ongoing asset and project management for large-scale development districts and multi-department projects on behalf of COA—but reporting to COA.

Projects. Several projects were highlighted for further exploration in Task 3 by QBL. Those projects that had more than half of the interviewees agreeing include:

- Support multiple departments, across silos, in coordinating inclusive growth policy across the COA, inclusive of the multi-department delivery of affordable housing, workforce housing, homeless resources, affordable commercial space, workforce development, advancement of Minority and Women owned Business Enterprises (“MWBE”), and financial access programs for individuals and businesses (“CDFI” activities). In no case would the EDO take on responsibilities already covered by expert departments (such as affordable housing) but instead would serve as a “Public” real estate developer, with all of the resources and functional skills necessary to help these departments pursue projects that would otherwise be unattainable.
- Form and manage a cultural trust.
- Form, fundraise and manage an international infrastructure investment fund.
- Help interface with the LGC that is leading coordination of Project Connect. The EDO will advocate and partner with that Project Connect LGC in order to advance the real estate efforts on parcels not needed for Project Connect that are proximate to or surrounding any Transit Oriented Development (“TOD”) which uses transit investments as a nexus for creating affordability (residential and commercial) and cultural programs.
- Serve as a Public Developer and Asset Manager for Real Estate for COA, working with the existing real estate departments and managers to optimize results across a wide range of policy outcomes that span departments.
- Other priority projects as directed by Council.

Examples from other cities. Interviewees suggested looking into NYC Economic Development Corporation, Invest Atlanta, Houston and Fort Worth Sports Authority.

Conclusions and Next Steps

Stakeholders generally agreed with Council’s direction to explore a new Economic Development Organization (“EDO”), with a particular focus on **inclusive growth** policies. The words inclusive growth were used by QBL to describe a particular type of economic development that is increasingly being used to combat gentrification across the US. Inclusive growth has as its goal to insure that ordinary people, local businesses and the features of a City that make it unique are not lost due to unmanaged growth. It was agreed that no additional support was needed to do incentive deals that attract companies to Austin; instead, the focus should be on affordability, equal access to opportunity, and preserving what makes Austin loved by its citizens and constituent



businesses. In order to pursue those policies, the City should have tight control over the entity as well as discretionary approvals for certain significant actions such as bond financing.

The critical features identified for the organization to be effective include the ability to accept philanthropic donations, do revenue bond financing, manage private investments, and fulfil the role of a public developer—managing public real estate and public/private partnerships on behalf of the City in order to achieve policies of inclusive growth. Each of these features provides a potential revenue stream for the organization to avoid reliance on sales tax as a funding mechanism. Exploration of existing entities in Austin revealed the existence of the Austin Industrial Development Corporation, which could provide the necessary bond financing powers for the EDO.

Next steps in Task 2 should include an initial analysis of what is allowable under Texas law, as well as an exploration of other models in Texas that are either working well or serve as examples to avoid. For Task 2, QBL will look at the top four cities (by population) in Texas: Houston, Dallas, San Antonio and Fort Worth. Also in Task 2, QBL will look back at the conclusions of the Peer Cities conference hosted in NYC referenced by Council in their resolution. The Peer Cities Conference included over 10 participating cities discussing real estate and inclusive growth policies. From that initial research review, QBL will select 2-3 cities outside of Texas to benchmark and evaluate lessons learned that could be applied to Austin. QBL will then bring this information to Council in a work session in January 2020. As a part of that work session, QBL will bring up the question of governance, with a particular focus on the constitution of a Board for the EDO. During Task 2, QBL will continue to gather potential projects that could be undertaken by the EDO. The analysis of projects will be done as a part of Task 3.



APPENDIX 2

LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE A. MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 253. SALE OR LEASE OF PROPERTY BY MUNICIPALITIES

LOCAL GOVERNMENT CODE

TITLE 8. ACQUISITION, SALE, OR LEASE OF PROPERTY

SUBTITLE A. MUNICIPAL ACQUISITION, SALE, OR LEASE OF PROPERTY

CHAPTER 253. SALE OR LEASE OF PROPERTY BY MUNICIPALITIES

Sec. 253.001. SALE OF PARK LAND, MUNICIPAL BUILDING SITE, OR ABANDONED ROADWAY. (a) Except as provided by Subsection (b), the governing body of a municipality may sell and convey land or an interest in land that the municipality owns, holds, or claims as a public square, park, or site for the city hall or other municipal building or that is an abandoned part of a street or alley. A sale under this section may include the improvements on the property.

(b) Land owned, held, or claimed as a public square or park may not be sold unless the issue of the sale is submitted to the qualified voters of the municipality at an election and is approved by a majority of the votes received at the election; provided, however, this provision shall not apply to the sale of land or right-of-way for drainage purposes to a district, county, or corporation acting on behalf of a county or district.

(c) To effect the sale, the governing body shall adopt an ordinance directing the municipality's mayor or city manager to execute the conveyance.

(d) The proceeds of the sale may be used only to acquire and improve property for the purposes for which the sold property was used. Failure to so use the proceeds, however, does not impair the title to the sold property acquired by a purchaser for a valuable consideration.

(e) Subsection (b) does not apply to a conveyance of park land that:

- (1) is owned by a home-rule municipality with a population of less than 80,000 and that is located in a county bordering the Gulf of Mexico;
- (2) is one acre or less;
- (3) is part of a park that is 100 acres or less;
- (4) is sold or is conveyed as a sale to the owner of adjoining property; and
- (5) is conveyed pursuant to a resolution or an ordinance that:
 - (A) is adopted under this section;
 - (B) requires the sale to be with an owner of adjoining property for fair market value as determined by an independent appraisal

obtained by the municipality; and

(C) has an effective date before December 31, 1995.

(f) The election requirements of Subsection (b) do not apply to a conveyance of a park if:

(1) the park is owned by a home-rule municipality with a population of more than one million;

(2) it is a park of two acres or less;

(3) the park is no longer usable and functional as a park;

(4) the proceeds of the sale will be used to acquire land for park purposes;

(5) a public hearing on the proposed conveyance is held by the governing body of the home-rule municipality and that body finds that the property is no longer usable and functional as a park; and

(6) the park is conveyed pursuant to an ordinance adopted by the governing body of the home-rule municipality, unless within 60 days from the date of the public hearing the governing body of the home-rule municipality is presented with a petition opposing the conveyance which contains the name, address, and date of signature of no less than 1,500 registered voters residing within the municipal limits of the municipality; then, the governing body of the home-rule municipality shall either deny the conveyance or shall approve the conveyance subject to the election required in Subsection (b); or

(7) the conveyance involves an exchange of two existing parks, situated within a home-rule municipality with a population of more than one million, that together total 1.5 acres or less in size, that are located within 1,000 feet of each other, that are located in an industrial area, that have been found in a public hearing to no longer be usable and functional as parks, and that are conveyed pursuant to an ordinance, adopted by the governing body of that municipality, that has an effective date before December 1, 1993.

(g) A sale made under Subsection (e) or (j) is exempt from the notice and bidding requirements in Chapter 272.

(h) Expired.

(i) Subsection (b) does not apply to a conveyance of park land that is:

(1) owned by a home-rule municipality with a population of more than 625,000;

(2) less than three acres and part of a larger park that is located in a flood plain or floodway;

(3) not actively used for recreational purposes;

(4) sold or conveyed as an interest in land to the owner of an interest in the adjoining property; and

(5) conveyed pursuant to a resolution or an ordinance that has an effective date before December 31, 2004.

(j) Subsection (b) does not apply to a conveyance of park land that is:

(1) owned by a home-rule municipality with a population of less than 100,000;

(2) one-third acre or less;

(3) part of a park that is five acres or less; and

(4) sold or conveyed as a sale to the owner of adjoining property as provided by a resolution or ordinance that has an effective date before December 31, 2007.

(k) A petition for the judicial review of the sale of park land under Subsection (j) must be filed on or before the 30th day after the date the ordinance or resolution is adopted. A petition filed after the period prescribed by this subsection is barred.

(l) Subsection (b) does not apply to a conveyance of park land owned by a home-rule municipality that:

(1) is located in a county with a population of more than three million; and

(2) has a population of more than 25,000 and less than 33,000.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 328, Sec. 14, eff. Sept. 1, 1989; Acts 1989, 71st Leg., ch. 597, Sec. 1, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 179, Sec. 1, eff. May 17, 1993; Acts 1995, 74th Leg., ch. 344, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 33, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 13.18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 754, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 633 (H.B. 680), Sec. 1, eff. June 15, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 577 (H.B. 3352), Sec. 1, eff. June 17, 2011.

Sec. 253.002. TRANSACTIONS CONCERNING AN ISLAND, FLAT, OR SUBMERGED LAND. (a) A municipality may sell, convey, lease, or provide an option to all or a part of an island, flat, or submerged land the municipality owns and may make development plans and contracts for these purposes, at the times and on the terms that the governing body determines are proper and in

the public interest, if the state or the Republic of Texas relinquished its interest in the land to the municipality before April 23, 1953.

(b) For a home-rule municipality the charter of which authorizes a referendum on such a transaction, the governing body may make the transaction without advertising or receiving bids, but the transaction may not take effect unless either it has been approved at a referendum ordered for that purpose or the period for the submission of a petition for a referendum on the transaction has expired.

(c) This section does not grant or convey to a municipality title to oil, gas, or other minerals.

(d) This section prevails over any conflicting charter provision of a home-rule municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.003. PURCHASE AND SALE OF FEDERAL PROPERTY. (a) The governing body of a municipality with fewer than 10,000 inhabitants may purchase for municipal purposes any real property, including improvements on the property, that the federal government offers for sale to the municipality.

(b) If the purpose for which property purchased under this section ceases to exist or if the property is no longer needed for the purpose, the governing body may sell and convey the property for the highest obtainable price.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.004. GRANT OR LEASE OF PROPERTY FOR JUVENILE BOARD. A home-rule municipality by grant or lease may donate to the county in which the municipality is located any unimproved land for use by a juvenile board of the county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.005. LEASE OF OIL, GAS, OR MINERAL LAND. (a) Except as provided by Subsection (b), a municipality may lease oil, gas, or mineral land that it owns, in the manner and on the terms that the governing body of the municipality determines, for the benefit of the municipality. A lease under this section is not a sale under the law governing the sale of municipal land.

(b) A municipality may lease under this section a street, alley, or public square in the municipality if the lease prohibits the lessee from using the surface of the land for drilling, production, or other operations. In this subsection, "public square" does not include a dedicated public park.

(c) A well may not be drilled in the thickly settled part of the municipality or within 200 feet of a private residence.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 446 (H.B. 2333), Sec. 1, eff. June 19, 2009.

Sec. 253.006. LEASE OF MUNICIPAL HOSPITAL OR SWIMMING POOL. (a) The governing body of a municipality with a population of 65,000 or less may lease all or part of a hospital owned by the municipality, to be operated by the lessee as a public hospital.

(b) The governing body of any municipality may lease a swimming pool owned by the municipality, to be operated by the lessee as a public swimming pool.

(c) A lease under this section must:

(1) be authorized by ordinance or resolution adopted by the governing body;

(2) be executed on behalf of the municipality by the mayor and the municipal secretary or clerk;

(3) be impressed with the municipal seal; and

(4) cover a period of not more than 50 years.

(d) A lease under this section is subject to the terms agreed to by the governing body and the lessee.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Sec. 253.007. SALE OR LEASE OF COMPUTER SOFTWARE BY CERTAIN MUNICIPALITIES. (a) This section applies only to a municipality that has a population of more than 5,000.

(b) A municipality that independently or in conjunction with any person develops automated information systems software may contract with a person for the sale, lease, marketing, or other distribution of the software. Any release of municipally developed automated information systems software must be under a contract that provides that the municipality will receive a royalty, license right, or other appropriate

compensation for developing the software. The provisions of Chapter 552, Government Code, governing the cost of making copies of public records do not apply to automated information systems software subject to a contract under this section.

(c) In this section, "automated information systems software" means any procedure or software that is designed, operated, or maintained to collect, record, process, store, retrieve, display, or transmit information.

(d) Notwithstanding any other provision of this section, this section does not apply to the cost of production for public inspection or copying of public records collected, assembled, or maintained through use of the software, which cost is governed by Subchapter F, Chapter 552, Government Code, without regard to the cost of developing the software.

Added by Acts 1993, 73rd Leg., ch. 505, Sec. 1, eff. Aug. 30, 1993.

Amended by Acts 1993, 73rd Leg., ch. 428, Sec. 7, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), (100), eff. Sept. 1, 1995.

Sec. 253.008. SALE OF REAL PROPERTY BY PUBLIC AUCTION. (a) The governing body of a municipality may sell real property owned by the municipality by public auction or by sealed bid under Section 272.001.

(b) To sell real property by public auction, the governing body of a municipality shall publish notice of the auction before the 20th day before the date the auction is held. The notice for sale of the real property must be published once a week for three consecutive weeks before the date the auction is held in a newspaper of general circulation in the county in which the municipality is located and, if the real property is located in another county, in a newspaper of general circulation in the county in which the real property is located. The notice must include a description of the real property, including its location, and the date, time, and location at which the auction is to be held.

Added by Acts 1993, 73rd Leg., ch. 206, Sec. 1, eff. Aug. 30, 1993.

Renumbered from Local Government Code Sec. 253.007 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(39), eff. Sept. 1, 1995.

Sec. 253.009. CONVEYANCE OF ADJOINING PROPERTY TO MUNICIPAL DEVELOPMENT CORPORATION. (a) A municipality may convey to a municipally created economic development corporation, including a development corporation organized under the Development Corporation Act (Subtitle C1, Title 12), real property that has been conveyed by gift to the municipality

or conveyed to the municipality as part of a legal settlement and that is adjacent to an area designated for development by the corporation.

(b) A municipality may convey property under Subsection (a) for any fair consideration approved by the governing body of the municipality. For a conveyance under this section to be effective, the governing body must adopt an ordinance that:

- (1) describes the property to be conveyed;
- (2) requires the conveyance to comply with the requirements of Section 5.022, Property Code, except a covenant of general warranty is not required; and
- (3) states the consideration paid.

(c) A municipality may convey the property under this section without complying with the other notice or bidding requirements prescribed by other law, including Section 272.001.

Added by Acts 1999, 76th Leg., ch. 1186, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 3.17, eff. April 1, 2009.

Sec. 253.010. SALE OF REAL PROPERTY TO CERTAIN NONPROFIT OR RELIGIOUS ORGANIZATIONS. (a) Notwithstanding any other provision of law, the governing body of a municipality may provide for the manner in which any land acquired by the municipality may be sold if the land is sold to:

(1) a nonprofit organization that develops housing for low-income individuals and families as a primary activity to promote community-based revitalization of the municipality;

(2) a nonprofit corporation described by 26 U.S.C. Section 501(c)

(3) that:

(A) has been incorporated in this state for at least one year;

(B) has a corporate purpose to develop affordable housing that is stated in its articles of incorporation, bylaws, or charter;

(C) has at least one-fourth of its board of directors residing in the municipality; and

(D) engages primarily in the building, repair, rental, or sale of housing for low-income individuals and families; or

(3) a religious organization that:

(A) owns other property located in the municipality that is exempt from taxation under Section 11.20, Tax Code; and

(B) has entered into a written agreement with the municipality regarding the revitalization of the land.

(b) A municipality operating under this section may by ordinance determine the individuals and families who qualify as low-income individuals and families under Subsection (a) (1) or (2). In adopting an ordinance under this subsection, the municipality shall consider median income of individuals and median family income in the area.

Added by Acts 1995, 74th Leg., ch. 550, Sec. 1, eff. June 13, 1995.

Amended by Acts 1997, 75th Leg., ch. 712, Sec. 1, eff. June 17, 1997; Acts 1999, 76th Leg., ch. 181, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 817, Sec. 3, eff. Sept. 1, 1999. Redesignated from Tax Code, Sec. 34.015 and amended by Acts 2001, 77th Leg., ch. 1420, Sec. 18.005, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1430, Sec. 33, eff. Sept. 1, 2001.

Sec. 253.011. CONVEYANCE TO NONPROFIT CORPORATION FOR PUBLIC USE.

(a) In this section, "nonprofit organization" means an organization exempt from federal taxation under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

(b) This section does not apply to a municipality with a population of 1.9 million or more.

(c) A municipality may transfer to a nonprofit organization, for consideration described by this section, real property or an interest in real property without complying with the notice and bidding requirements of Section 272.001(a) or other law.

(d) Consideration for the transfer authorized by this section shall be in the form of an agreement between the parties that requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the municipality. If the nonprofit organization at any time fails to use the property in that manner, ownership of the property automatically reverts to the municipality.

(e) The municipality shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that:

(1) requires the nonprofit organization to use the property in a manner that primarily promotes a public purpose of the municipality; and

(2) indicates that ownership of the property automatically reverts to the municipality if the nonprofit organization at any time fails to use the property in that manner.

(f) Provided, however, that if the real property to be transferred lies outside the municipality's corporate limits and outside the county

where 80 percent of the municipality's residents reside, the municipality must obtain the consent of the county commissioners court in the county where the real property is located.

Added by Acts 2001, 77th Leg., ch. 784, Sec. 1, eff. Sept. 1, 2001.

Sec. 253.012. CONVEYANCE TO ECONOMIC DEVELOPMENT CORPORATION BY CERTAIN MUNICIPALITIES. (a) In this section, "economic development corporation" means a Type A corporation governed by Chapter 504 or a Type B corporation governed by Chapter 505.

(b) This section applies only to a municipality with a population of 20,000 or less.

(c) A municipality may transfer to an economic development corporation, for consideration described by this section, real property or an interest in real property without complying with the notice and bidding requirements of Section 272.001(a) or other law.

(d) Consideration for a transfer authorized by this section is in the form of an agreement between the parties that requires the economic development corporation to use the property in a manner that primarily promotes a public purpose of the municipality. If the economic development corporation at any time fails to use the property in that manner, ownership of the property automatically reverts to the municipality.

(e) The municipality shall transfer the property by an appropriate instrument of transfer. The instrument must include a provision that:

(1) requires the economic development corporation to use the property in a manner that primarily promotes a public purpose of the municipality; and

(2) indicates that ownership of the property automatically reverts to the municipality if the nonprofit organization at any time fails to use the property in that manner.

(f) A municipality may not transfer property to an economic development corporation under this section if the municipality acquired the property through eminent domain.

Added by Acts 2009, 81st Leg., R.S., Ch. 1158 (H.B. 3072), Sec. 1, eff. June 19, 2009.

Sec. 253.013. DONATION OF REAL PROPERTY OF NEGLIGIBLE OR NEGATIVE VALUE TO CERTAIN PRIVATE PERSONS. (a) This section applies only to:

(1) a municipality with a population greater than 150,000 and less than 200,000 that is located in three counties; and

(2) a municipality with a population greater than 65,000 and less than 90,000 that is located in a county in which part but not all of a military installation is located.

(b) The governing body of a municipality to which this section applies may determine that real property located inside the boundaries of the municipality and owned by the municipality is surplus real property of negligible or negative value if:

(1) the property is not improved, including by having a structure on it or by being paved;

(2) ownership of the property does not provide any identifiable positive benefit to the municipality in relation to the municipality's current needs;

(3) ownership of the property is not likely to provide any identifiable positive benefit to the municipality in relation to the municipality's future needs; and

(4) the cost of maintaining the property is a substantial burden to the municipality.

(c) The governing body of a municipality that makes a determination under Subsection (b) shall adopt written findings and conclusions regarding the determination made.

(d) The governing body of a municipality that makes a determination under Subsection (b) that certain real property is surplus real property of negligible or negative value may donate that property to a private person who owns property adjacent to the surplus real property of negligible or negative value.

(e) Section [272.001](#) does not apply to a conveyance of property authorized by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 816 (H.B. [2584](#)), Sec. 1, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 303 (H.B. [1427](#)), Sec. 1, eff. June 14, 2013.

Sec. 253.014. BROKER AGREEMENTS AND FEES FOR SALE OF REAL PROPERTY BY HOME-RULE MUNICIPALITY. (a) In this section, "broker" means a person licensed as a broker under Chapter [1101](#), Occupations Code.

(b) The governing body of a home-rule municipality may contract with a broker to sell a tract of real property that the municipality:

(1) owns; or

(2) holds in trust and has the authority to sell.

(c) The governing body may pay a fee if a broker produces a ready, willing, and able buyer to purchase a tract of real property.

(d) If a contract is made under Subsection (b) with a broker to list the tract of real property for sale for at least 30 days with a multiple-listing service, the governing body on or after the 30th day after the date the property is listed may sell the tract of real property to a ready, willing, and able buyer who is produced by any broker using the multiple-listing service and who submits the highest cash offer.

(e) The governing body may sell a tract of real property under this section without complying with the public auction requirements prescribed by Section [253.008](#) or other law or the notice and bidding requirements prescribed by Section [272.001](#) or other law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 462 (S.B. [985](#)), Sec. 1, eff. June 14, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1110 (H.B. [3244](#)), Sec. 1, eff. June 19, 2015.



APPENDIX 3-A

TRANSPORTATION CODE
TITLE 6. ROADWAYS
SUBTITLE I. TRANSPORTATION CORPORATIONS
CHAPTER 431. TEXAS TRANSPORTATION CORPORATION ACT

TRANSPORTATION CODE

TITLE 6. ROADWAYS

SUBTITLE I. TRANSPORTATION CORPORATIONS

CHAPTER 431. TEXAS TRANSPORTATION CORPORATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 431.001. SHORT TITLE. This chapter may be cited as the Texas Transportation Corporation Act.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.002. PURPOSES; LIBERAL CONSTRUCTION. (a) The purposes of this chapter are:

- (1) the promotion and development of public transportation facilities and systems by new and alternative means;
- (2) the expansion and improvement of transportation facilities and systems;
- (3) the creation of corporations to secure and obtain rights-of-way for urgently needed transportation systems and to assist in the planning and design of those systems;
- (4) the reduction of burdens and demands on the limited funds available to the commission and an increase in the effectiveness and efficiency of the commission; and
- (5) the promotion and development of transportation facilities and systems that are public, not private, in nature, although these facilities and systems may benefit private interests as well as the public.

(b) This chapter shall be liberally construed to give effect to the purposes of this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.003. DEFINITIONS. In this chapter:

- (1) "Board" means the board of directors of a corporation organized under this chapter.
- (2) "Corporation" means a corporation organized under this chapter and includes a local government corporation.
- (3) "Local government" means:

(A) a municipality;

(B) a county; or

(C) for purposes of Subchapter D:

(i) a navigation district, hospital district, or hospital authority;

(ii) a regional transportation authority governed by Chapter 452;

(iii) a rapid transit authority governed by Chapter 451; or

(iv) a coordinated county transportation authority governed by Chapter 460.

(4) "Local government corporation" means a corporation incorporated as provided by Subchapter D to act on behalf of a local government.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1370, Sec. 1, eff. June 16, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 241 (H.B. 2090), Sec. 1, eff. May 25, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 422 (S.B. 888), Sec. 1, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 71 (S.B. 276), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 594 (S.B. 948), Sec. 1, eff. September 1, 2013.

Sec. 431.004. OPEN MEETINGS. (a) A corporation is subject to Chapter 551, Government Code.

(b) Except as provided by Subsection (c) or (d), the board shall file notice of each meeting of the board in the same manner and in the same location as is required of a state governmental body under Chapter 551, Government Code.

(c) If the commission designates an area of the state in which a corporation may act on behalf of the commission, the board shall file notice of each meeting of the board in the same manner and in the same location as is required of a governmental body under Section 551.053, Government Code.

(d) The board of a local government corporation shall file notice of each meeting of the board in the same manner and in the same location as is required of the governing body under Chapter 551, Government Code, of the

one or more local governments that created the local government corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.005. OPEN RECORDS. The board is subject to Chapter 552, Government Code.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.006. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a corporation to the extent that the provisions of that Act are not inconsistent with this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. CREATION AND OPERATION OF CORPORATION

Sec. 431.021. PURPOSE OF CORPORATION. The purpose of a corporation is limited to the promotion and development of public transportation facilities and systems.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.022. APPLICATION. (a) Three or more individuals may file with the commission an application for the creation of a corporation within a designated area.

(b) Each of the individuals must be a qualified voter.

(c) The application must be in writing.

(d) The application must contain the articles of incorporation proposed to be used in organizing the corporation.

(e) The commission may not charge a filing fee for the application.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.023. ADOPTION OF RESOLUTION. (a) A corporation may be created only if the commission adopts a resolution authorizing the creation of a corporation to act on behalf of the commission.

(b) A resolution must state that the commission:

(1) determines that creation of the corporation is advisable;

and

(2) approves the articles of incorporation proposed to be used in organizing the corporation.

(c) The commission may designate the area of the state in which the corporation may act on behalf of the commission. The designated area may include the territory of more than one political subdivision of the state.

(d) The commission may authorize the creation of more than one corporation to act within the same designated area. The resolution authorizing each corporation must specify the public purpose of that corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 17.04, eff. Sept. 1, 1999.

Sec. 431.024. FORM OF CORPORATION. (a) A corporation is a nonmember, nonstock corporation.

(b) A corporation is nonprofit, and its earnings may not benefit a private interest.

(c) A corporation may be created as a perpetual corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.025. ARTICLES OF INCORPORATION. The articles of incorporation must state:

(1) the name of the corporation;

(2) that the corporation is a nonprofit corporation;

(3) the duration of the corporation;

(4) the specific purpose for which the corporation is organized on behalf of the commission;

(5) that the corporation does not have any members and is a nonstock corporation;

(6) the street address of the corporation's initial registered office and the name of its initial registered agent at that address;

(7) the number of directors of the initial board and the name and address of each director;

(8) the name and street address of each incorporator;

(9) any provision for the regulation of the internal affairs of the corporation, including any provision required or permitted by this chapter to be in the bylaws; and

(10) that the commission has:

(A) by resolution specifically authorized the corporation to act on its behalf to further the public purpose stated in the resolution and in the articles of incorporation; and

(B) approved the articles of incorporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.026. DELIVERY AND FILING OF CERTIFICATE OF INCORPORATION.

(a) After the commission adopts a resolution under Section 431.023, three originals of the articles of incorporation shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the articles of incorporation conform to this chapter. On determination that the articles conform to this chapter and on receipt of a \$25 fee, the secretary of state shall:

(1) endorse on each original the word "filed" and the date of the filing;

(2) file one of the originals in the secretary's office;

(3) issue two certificates of incorporation;

(4) attach to each certificate an original of the articles of incorporation; and

(5) deliver a certificate of incorporation and the attached articles of incorporation to:

(A) each incorporator or its representative; and

(B) the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.027. EFFECT OF ISSUANCE OF CERTIFICATE OF INCORPORATION.

(a) A corporation's existence begins when its certificate of incorporation is issued.

(b) After the issuance of the certificate of incorporation, the incorporation may not be contested for any reason.

(c) A certificate of incorporation is conclusive evidence that:

(1) all conditions for incorporation required of the incorporators and the commission are satisfied; and

(2) the corporation is incorporated under this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.028. BOARD. (a) A corporation must have a board in which the powers of the corporation reside.

(b) The board consists of three or more directors.

(c) The commission shall appoint each director for a term that may not exceed six years.

(d) The commission may remove a director for or without cause.

(e) A director serves without compensation but is entitled to reimbursement from the corporation for expenses incurred in the performance of the director's duties.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.029. ADVISORY DIRECTORS. (a) The board may appoint any number of advisory directors.

(b) An advisory director advises and assists the directors in promoting and developing new and expanded transportation facilities and systems.

(c) An advisory director serves until the completion of a particular project or at the will of the directors.

(d) An advisory director does not have a vote in the affairs of the corporation.

(e) An advisory director serves without compensation. The corporation may not reimburse an advisory director for expenses incurred in the performance of the director's duties.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.030. BYLAWS. (a) The board shall adopt the initial bylaws of a corporation. The commission, by resolution, must approve the initial bylaws.

(b) A corporation may change its bylaws only with the approval of the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.031. QUORUM. (a) A quorum of a board is the lesser of:

(1) a majority of:

(A) the membership of the board under the bylaws; or

(B) if the bylaws do not provide the membership of the board, the membership of the board under the articles of incorporation; or

(2) the number, which must be more than two, set as the quorum by the articles of incorporation or the bylaws.

(b) An act of the majority of the directors present at a meeting at which there is a quorum is an act of the board, unless the act of a greater number is required by the articles of incorporation or the bylaws.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.032. INDEMNIFICATION. (a) A corporation may indemnify a director or officer of the corporation for necessary expenses and costs, including attorney's fees, incurred by the director or officer in connection with any claim asserted against the director or officer in a court action or otherwise for negligence or misconduct.

(b) If a corporation does not fully indemnify a director or officer as provided by Subsection (a), the court in a proceeding in which any claim against the director or officer is asserted or any court with jurisdiction of an action instituted by the director or officer on a claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by the director or officer, including attorney's fees, to pay any judgment or settlement of the claim necessarily incurred by the director or officer in connection with the claim in an amount the court considers reasonable and equitable only if the court finds that, in connection with the claim, the director or officer is not guilty of negligence or misconduct.

(c) A court may not assess indemnity under Subsection (b) for an amount paid by the director or officer to the corporation.

(d) In this section, "director or officer" includes a former director or officer.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.033. EXEMPTION FROM TAXATION. A corporation affects all the people in its area by assuming to a material extent what otherwise might be an obligation or duty of the commission and is a purely public charity under Section 2, Article VIII, Texas Constitution. However, a corporation is exempt from the franchise tax under Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.034. INCOME OF TRANSPORTATION CORPORATION. The commission has the unrestricted right at any time to receive any income earned by a corporation other than a local government corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. CORPORATE POWERS

Sec. 431.061. DEFINITIONS. In this subchapter:

- (1) "Construction" includes improvement and landscaping.
- (2) "Highway" includes an improvement to a highway.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.062. GENERAL POWERS. (a) A corporation has the powers and privileges of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes).

(b) A corporation has the powers provided by this subchapter to promote and develop new and expanded transportation facilities and systems on behalf of the commission and powers incidental to or necessary for the performance of that purpose.

(c) A corporation may, at the request of the commission, perform any function not specified by this chapter to promote and develop transportation facilities and systems.

(d) A corporation has the powers necessary to construct or improve transportation facilities and systems approved by the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.063. PROMOTION AND DEVELOPMENT OF TRANSPORTATION FACILITIES AND SYSTEMS. A corporation may work directly with property owners, local and state governmental agencies, and elected officials to support an activity required to promote and develop a transportation facility or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.064. ALIGNMENT STUDIES. A corporation may perform a preliminary or final alignment study.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.065. CONTRIBUTIONS; EXPENSES. (a) A corporation may receive:

- (1) a contribution of real property for a right-of-way; and
- (2) a cash donation for:
 - (A) the purchase of a right-of-way; or
 - (B) the design or construction of a transportation facility

or system.

(b) A corporation may establish a formula to determine the amount of cash donations from affected property owners and others necessary to cover the cost of a service to be performed by the corporation or its consultants.

(c) A corporation may borrow money to meet any expense or need associated with the regular operation of the corporation or a particular transportation project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.066. EMPLOYEES AND CONSULTANTS. (a) A corporation may employ an administrative staff.

(b) A corporation may retain legal, public relations, and engineering services required to develop a transportation facility or system.

(c) Through its staff and retained consultants, a corporation may prepare an exhibit, right-of-way document, environmental report, schematic, or preliminary or final engineering plan necessary to develop a transportation facility or system.

(d) A corporation may pay an employee or consultant from money donated to develop a transportation facility or system.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.067. PROMOTIONAL ACTIVITIES. (a) A corporation may make official presentations to the state and other affected agencies or groups concerning the development of a transportation project.

(b) A corporation may issue a press release or other material to promote the activities of a transportation project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.068. CONSTRUCTION OR IMPROVEMENT CONTRACTS. (a) A corporation may contract with the commission to:

(1) construct or improve a transportation project designated by the commission; and

(2) sell the project or improvement to the commission.

(b) For a transportation project constructed by a corporation, the corporation may contract with the commission for the commission to:

(1) supervise the construction; or

(2) provide construction management services.

(c) A corporation and a county, a home-rule municipality, a county road district created under Chapter 257, or a road utility district created under Chapter 441 may contract to pay jointly the cost of a transportation project designated by the commission. The contract may obligate the corporation to design, construct, or improve the transportation project.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.069. LOCATION OF TRANSPORTATION PROJECTS. A corporation may construct or improve a transportation project on real property, including a right-of-way acquired by the corporation, provided to the corporation for that purpose by the commission or a political subdivision of this state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.070. BONDS AND NOTES. (a) A corporation may issue bonds and notes to carry out its purpose.

(b) The bonds and notes may be issued under any power or authority available to the corporation, including Chapter 1201, Government Code.

(c) A bond or note must state on its face that it is not an obligation of the State of Texas.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.394, eff. Sept. 1, 2001.

Sec. 431.071. APPROVAL OF BONDS AND NOTES BY ATTORNEY GENERAL. (a) A corporation shall submit a bond or note authorized under Section 431.070 and a contract supporting its issuance to the attorney general for examination.

(b) If the attorney general finds that the bond or note, and any supporting contract are authorized under this chapter, the attorney general shall approve them.

(c) After approval by the attorney general, a bond, note, or contract may not be contested for any reason.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.072. LIMITATION TO FEDERAL OR STATE HIGHWAY SYSTEM. A corporation may plan, design, acquire, construct, improve, extend, or maintain a transportation project only if the project:

- (1) is intended by the commission to become part of the federal or state highway system; and
- (2) is not intended to:
 - (A) become a county road or municipal street; or
 - (B) be owned by a county road district or by a road utility district.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.073. PROJECT IN COUNTY OF 500,000 OR MORE OR ADJACENT COUNTY. (a) This section applies only to a corporation that was created by the state or one or more counties or municipalities to implement a transportation project in:

- (1) a county with a population of 500,000 or more; or
- (2) a county adjacent to a county described by Subdivision (1).

(b) If approved and authorized by the commission, a corporation created by the state has the rights, powers, privileges, authority, and functions given the department under this title to:

- (1) construct, improve, operate, and maintain high occupancy vehicle lanes; and
- (2) charge a toll for the use of one or more high occupancy vehicle lanes for the purpose of congestion mitigation.

(c) A corporation in existence on August 31, 1991, has the powers, rights, and privileges of a corporation created under Chapter 11, Title 32, Revised Statutes, as that law existed on August 31, 1991, except that the required right-of-way of any highway, road, street, or turnpike may be of the width required or approved by the commission or each governing body creating the corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1171, Sec. 1.25, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 967, Sec. 6, eff. Sept. 1, 2001.

SUBCHAPTER D. LOCAL GOVERNMENT CORPORATIONS

Sec. 431.101. CREATION OF LOCAL GOVERNMENT CORPORATION. (a) A local government corporation may be created to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments. To be effective, the articles of incorporation and the bylaws of a local government corporation must be approved by ordinance, resolution, or order adopted by the governing body of each local government that the corporation is created to aid and act on behalf of.

(b) A local government corporation has the powers of a corporation authorized for creation by the commission under this chapter.

(c) The provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) relating to powers, standards of conduct, and interests in contracts apply to the directors and officers of the local government corporation.

(d) A provision of this chapter relating to the creation, dissolution, administration, or supervision of a corporation by the commission does not apply to a local government corporation.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1129, Sec. 5.01(4), eff. September 1, 2011.

(f) A member of the board of directors of a local government corporation:

- (1) is not a public official by virtue of that position; and
- (2) unless otherwise ineligible, may be appointed to serve concurrently on the board of directors of a reinvestment zone created under Chapter 311, Tax Code.

(g) A local government corporation must comply with all state law related to the design and construction of projects, including the procurement of design and construction services, that applies to the local government that created the corporation.

(h) A local government corporation formed by a navigation district shall not condemn a right-of-way through any part of a municipality without the consent of the municipality's governing body.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.24, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 983, Sec. 12, eff. June 18, 1999; Acts 2001, 77th Leg., ch. 1370, Sec. 2, 3, eff. June 16, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 15, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 1129 (H.B. 628), Sec. 5.01(4), eff. September 1, 2011.

Sec. 431.102. APPLICATION OF CHAPTER 394, LOCAL GOVERNMENT CODE. (a) In the manner in which Chapter 394, Local Government Code, applies to a corporation created under that chapter, that chapter applies to:

(1) the manner in which a local government corporation is created and dissolved;

(2) the appointment of the board of a local government corporation and the members' terms of service;

(3) the manner and the conditions under which the board serves; and

(4) the form, execution, approval, filing, and amending of the articles of incorporation and bylaws of a local government corporation.

(b) The property of a local government corporation and a transaction to acquire the property is exempt from taxation in the same manner as a corporation created under Chapter 394, Local Government Code, except that property of a local government corporation created by a municipal power agency that was created under Subchapter C, Chapter 163, Utilities Code, is not exempt from ad valorem taxation if the property is located outside of the boundaries of each of the municipalities that created the municipal power agency.

(c) The requirement of Section 394.021(a), Local Government Code, that all directors must be residents of the local government shall not be applicable to directors of a local government corporation except that a person may not be appointed to the board of a local government corporation if the appointment of that person would result in less than a majority of the board members being residents of the local government.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 983, Sec. 13, eff. June 18, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 654 (S.B. 1120), Sec. 1, eff. June 17, 2011.

Sec. 431.103. CONTRACTS WITH POLITICAL SUBDIVISIONS. A local government corporation may contract with a political subdivision of this state in the manner and to the same extent as any other corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.104. ASSUMPTION OF POWERS AND DUTIES. (a) The governing body of a local government may assume for the local government the powers and duties of a local government corporation created by the local government.

(b) A local government that assumes the powers and duties of a local government corporation assumes the assets and liabilities of the corporation.

(c) The powers and duties of a local government corporation created by more than one local government may be assumed only if each local government that created the corporation agrees to the assumption.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.105. CONTRACTUAL AUTHORITY. (a) A state agency, including the commission, or a political subdivision may contract with a local government corporation to accomplish a governmental purpose of the sponsoring local government in the same manner and to the same extent that it:

(1) may contract with any other corporation created under this chapter; and

(2) is authorized to contract under Subchapter A, Chapter 472.

(b) A local government may contract with a corporation to accomplish the purposes of the sponsoring local government in the manner provided under Subchapter C, Chapter 224.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.106. PUBLIC SAFETY RULES. A local government that creates a local government corporation may establish and enforce traffic and other public safety rules on a toll road, toll bridge, or turnpike of the corporation. Local governments that jointly create a local government corporation may jointly establish and enforce those rules.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.107. INCOME OF LOCAL GOVERNMENT CORPORATION. (a) A local government creating a local government corporation is entitled at any time to receive any income earned by the local government corporation that is not needed to pay the corporation's expenses or obligations.

(b) The earnings of a local government corporation may not benefit a private interest.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.108. GOVERNMENTAL FUNCTIONS. (a) A local government corporation is a governmental unit as that term is used in Chapter 101, Civil Practice and Remedies Code.

(b) The operations of a local government corporation are governmental, not proprietary, functions.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.109. CONTRACTS FOR HISTORICALLY UNDERUTILIZED BUSINESSES.

(a) This section applies only to a local government corporation serving a county with a population of more than 3.3 million.

(b) A local government corporation shall set and make a good faith effort to meet or exceed goals for awarding contracts or subcontracts associated with a project it operates, maintains, or constructs to historically underutilized businesses.

(c) The goals must equal or exceed:

(1) the federal requirement on federal money used in highway construction and maintenance; and

(2) the goals adopted by the department under Section 201.702.

(d) The goals apply to the total value of all contracts and subcontracts awarded, including contracts and subcontracts for construction, maintenance, operations, supplies, services, materials, equipment, professional services, the issuance of bonds, and bond counsel.

(e) In this section, "historically underutilized business" means:

(1) a corporation formed for the purpose of making a profit in which at least 51 percent of all classes of the shares of stock or other equitable securities is owned, managed, and in daily operations controlled by one or more persons who have been historically underutilized because of their identification as members of certain groups, including African Americans, Hispanic Americans, women, Asian Pacific Americans, and Native Americans, who have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(2) a sole proprietorship formed for the purpose of making a profit that is 100 percent owned and in daily operation is controlled by a person described by Subdivision (1);

(3) a partnership formed for the purpose of making a profit in which at least 51 percent of the assets and interest in the partnership are owned by one or more persons described by Subdivision (1) and who also have

proportionate interest in the control, daily operation, and management of the partnership's affairs;

(4) a joint venture in which each entity in the joint venture is a historically underutilized business; or

(5) a supplier contract between a historically underutilized business and a prime contractor under which the historically underutilized business is directly involved in the manufacture or distribution of the supplies or materials or otherwise warehouses and ships the supplies or materials.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 132, eff. September 1, 2011.

Sec. 431.110. COMPETITIVE BIDDING EXCEPTION FOR CERTAIN IMPROVEMENTS. Any competitive bidding requirement or restriction on a local government that created a local government corporation does not apply to an expenditure by the local government corporation for:

(1) an improvement:

(A) that is constructed in a reinvestment zone; and

(B) the construction of which is managed by a private venture participant; or

(2) an improvement constructed by the corporation for which more than 50 percent of the construction is funded by a private entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 1213 (H.B. 1886), Sec. 16, eff. September 1, 2007.

SUBCHAPTER E. AMENDMENT OR RESTATEMENT OF ARTICLES OF INCORPORATION

Sec. 431.141. AMENDMENT. The articles of incorporation of a corporation created under this chapter may be amended only as provided by this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.142. AMENDMENT BY BOARD OF DIRECTORS. (a) The board at any time may file with the commission a written application requesting that the commission approve an amendment to the articles of incorporation.

(b) The application must specify the proposed amendment.

(c) The board shall amend the articles if the commission by resolution:

- (1) determines that it is advisable to adopt the proposed amendment;
- (2) authorizes the adoption of the amendment; and
- (3) approves the form of the amendment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.143. AMENDMENT BY COMMISSION. The commission, at its sole discretion, may amend the articles of incorporation at any time by:

- (1) adopting the amendment by resolution; and
- (2) delivering the articles of amendment to the secretary of state.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.144. CONTENTS OF ARTICLES OF AMENDMENT. The articles of amendment must:

- (1) state the name of the corporation;
- (2) if the amendment alters a provision of the articles of incorporation, identify by reference or describe the altered provision and include its text as it is amended;
- (3) if the amendment is an addition to the articles of incorporation, state that fact and include the text of each provision added; and
- (4) state that the amendment was adopted or was approved by the commission and give the date the commission adopted or approved the amendment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.145. EXECUTION AND VERIFICATION OF ARTICLES OF AMENDMENT.

- (a) Articles of amendment adopted by the board shall be executed by:
- (1) the president or vice-president of the corporation; and
 - (2) the secretary or assistant secretary of the corporation.
- (b) Articles of amendment adopted by the commission shall be executed by:
- (1) the presiding officer of the commission; and
 - (2) the secretary or clerk of the commission.

(c) One of the officers signing the articles shall verify each of the articles of amendment.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.146. DELIVERY AND FILING OF ARTICLES OF AMENDMENT. (a) Three originals of the articles of amendment shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the articles of amendment conform to this chapter. On determination that the articles conform to this chapter and on receipt of a \$25 fee, the secretary of state shall:

- (1) endorse on each original the word "filed" and the date of the filing;
- (2) file one of the originals in the secretary's office;
- (3) issue two certificates of amendment;
- (4) attach to each certificate one of the originals; and
- (5) deliver a certificate of amendment and the attached articles of amendment to:

(A) the corporation or its representative; and

(B) the commission.

(c) On the issuance of the certificate of amendment, the amendment is effective and the articles of incorporation are amended accordingly.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.147. SUITS NOT AFFECTED. (a) An amendment to the articles of incorporation does not affect:

- (1) any existing cause of action in favor of or against the corporation;
- (2) any pending suit to which the corporation is a party; or
- (3) the existing rights of any person.

(b) If an amendment to the articles of incorporation changes the name of the corporation, a suit brought by or against the corporation under its former name does not abate for that reason.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.148. RESTATEMENT OF ARTICLES. A corporation, by following the procedure to amend the articles of incorporation in this subchapter,

including obtaining the approval of the commission, may authorize, execute, and file restated articles of incorporation as provided by this subchapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.149. RESTATEMENT WITHOUT ADDITIONAL AMENDMENT. (a) A corporation may, without making any additional amendment, restate the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state.

(b) The introductory paragraph of a restatement under this section must contain a statement that the restatement:

- (1) accurately copies the articles of incorporation and all amendments to the articles that are in effect; and
- (2) does not contain any additional amendments to the articles.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.150. RESTATEMENT WITH ADDITIONAL AMENDMENT. (a) A corporation may:

- (1) restate the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; and
- (2) as part of the restatement, make additional amendments to the articles.

(b) A restatement under this section must:

- (1) state that any additional amendment to the articles of incorporation conforms to this chapter;
- (2) contain any statement required by this subchapter for articles of amendment except that the full text of any additional amendment is not required to be presented other than in the restatement itself;
- (3) contain a statement that:
 - (A) the restatement is an accurate copy of the articles of incorporation and all amendments to the articles that are in effect and all additional amendments made to the articles; and
 - (B) the restatement does not contain any other change; and
- (4) restate the text of the entire articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as additionally amended by the restated articles of incorporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.151. CHANGE IN BOARD INFORMATION NOT AMENDMENT. For the purposes of Sections 431.149 and 431.150, substituting in the restated articles of incorporation the number, names, and addresses of the directors for the initial board or omitting the name and address of each incorporator is not an amendment or change in the articles of incorporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.152. EXECUTION AND VERIFICATION OF RESTATEMENT OF ARTICLES.

(a) Originals of the restated articles of incorporation shall be executed by:

- (1) the president or vice-president of the corporation; and
- (2) the secretary or assistant secretary of the corporation.

(b) One of the officers signing the restated articles shall verify each of the restated articles.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.153. DELIVERY AND FILING OF RESTATEMENT OF ARTICLES. (a)

Three originals of the restated articles of incorporation shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the restated articles conform to this chapter. On a determination that the restated articles conform to law and on receipt of a \$50 fee, the secretary of state shall:

- (1) endorse on each original the word "filed" and the date of the filing;
- (2) file one of the originals in the secretary's office;
- (3) issue two restated certificates of incorporation;
- (4) attach to each certificate one of the original restated articles; and
- (5) deliver a restated certificate of incorporation and the attached restated articles to:
 - (A) the corporation or its representative; and
 - (B) the governing body of the entity that created the corporation.

(c) On the issuance of the restated certificate of incorporation, the original articles of incorporation and all amendments to the original

articles are superseded. The restated articles of incorporation become the articles of incorporation of the corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER F. ALTERATION OR DISSOLUTION OF CORPORATION

Sec. 431.181. ALTERATION OR DISSOLUTION BY COMMISSION. (a) At any time the commission in its sole discretion may:

(1) alter the structure, organization, programs, or activities of a corporation; or

(2) dissolve a corporation.

(b) The authority of the commission under this section is limited only by:

(1) any law of this state prohibiting the impairment of a contract entered into by a corporation; and

(2) any provision of this subchapter relating to alteration or dissolution.

(c) The commission must make an alteration or dissolution under this section by a written resolution.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.182. DISSOLUTION BY BOARD ON COMPLETION OF PURPOSE. The board, with the approval by written resolution of the commission, shall dissolve the corporation as provided by this subchapter if the board by resolution determines that:

(1) the purposes for which the corporation was formed have been substantially fulfilled; and

(2) all obligations of the corporation have been fully paid.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.183. EXECUTION OF ARTICLES OF DISSOLUTION. Articles of dissolution shall be executed by:

(1) the president or vice-president of the corporation and the secretary or assistant secretary of the corporation; or

(2) any two members of the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.184. DELIVERY AND FILING OF ARTICLES OF DISSOLUTION. (a) Three originals of the articles of dissolution shall be delivered to the secretary of state.

(b) The secretary of state shall determine whether the articles of dissolution conform to this chapter. On a determination that the articles conform and on receipt of a \$50 fee, the secretary of state shall:

- (1) endorse on each original the word "filed" and the date of the filing;
- (2) file one of the originals in the secretary's office;
- (3) issue two certificates of dissolution;
- (4) attach to each certificate an original of the articles of dissolution; and
- (5) deliver a certificate and the attached articles of dissolution to:
 - (A) the representative of the dissolved corporation; and
 - (B) the commission.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.185. EFFECT OF ISSUANCE OF CERTIFICATE OF DISSOLUTION. The corporate existence ends on the issuance of the certificate of dissolution except for:

- (1) the purpose of any ongoing suit or other proceeding; and
- (2) corporate action by a director or officer under this chapter.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.

Sec. 431.186. ASSETS ON DISSOLUTION. On dissolution or liquidation of a corporation, the title to all assets, including funds and property, shall be transferred to the commission unless the corporation is a local government corporation, in which case the title shall be transferred to the local governments that created the corporation.

Acts 1995, 74th Leg., ch. 165, Sec. 1, eff. Sept. 1, 1995.



APPENDIX 3-B

Texas Attorney General Opinion

JC-0335



January 22, 2001

The Honorable Bill Ratliff
Lieutenant Governor
State of Texas
P.O. Box 12068
Austin, Texas 78711-2068

Opinion No. JC-0335

Re: Applicability of various state statutes to local government corporations created under chapter 431 of the Transportation Code (RQ-0269-JC)

Dear Governor Ratliff:

You ask whether local government corporations created under Transportation Code chapter 431, subchapter D (Vernon 1999 & Supp. 2001), are subject to the following statutes: the Texas Open Meetings Act, TEX. GOV'T CODE ANN. ch. 551 (Vernon 1994 & Supp. 2001); the Texas Public Information Act, *id.* ch. 552; the Professional Services Procurement Act, *id.* §§ 2254.001-.006 (Vernon 2000); and the provisions of Government Code chapter 2251 requiring prompt payment by governmental entities, *id.* ch. 2251. You also ask whether local governmental entities are authorized to fund the operations of a local government corporation for any and all purposes.

We conclude in answer to your questions that local government corporations created under Transportation Code chapter 431, subchapter D, are subject to the Open Meetings Act and the Public Information Act. They are not subject to the Professional Services Procurement Act or the provisions of chapter 2251 of the Government Code. The authority of local governmental entities to transfer funds to a local government corporation is subject to constitutional and other limitations. Any transfer of funds by local governmental entities to local government corporations must comply with the provisions of the Texas Constitution that require public funds to be used for public purposes and that prevent a city or county from making a gift of public funds to a public or private entity. Moreover, a local government corporation may use funds only to carry out the purposes stated in its articles of incorporation. A city or county may not, in connection with determining the purpose of a local government corporation, transfer control of its governmental functions to the corporation.

You ask us to determine whether four statutes that apply to state agencies and political subdivisions also apply to a "local government corporation." In the case of three of these statutes, the express language of Transportation Code, chapter 431, provides the answer to your question. The fourth statute, chapter 2251 of the Government Code, is much more difficult to address, because chapter 431, subchapter D, is silent as to it. We must determine whether a local government corporation is the kind of entity that is subject to chapter 2251 of the Government Code, and thus we must consider the combined public and private nature of local government corporations. Because such corporations have the powers and duties of both public and private entities, they are difficult

to categorize for purposes of deciding whether limitations applicable to governmental entities also apply to them. The courts have dealt with legal issues involving specific “quasi-governmental” corporations but their decisions do not provide a test for deciding when such corporations should be treated as public entities and when as private entities. *See Central Appraisal Dist. of Erath County v. Pecan Valley Facilities, Inc.*, 704 S.W.2d 86, 89 (Tex. App.—Eastland 1985, writ ref’d n.r.e.) (nonprofit corporation created solely to purchase land and lease it to a local mental health and mental retardation region was not a governmental entity or agency entitled to an exemption from ad valorem tax under article XI, section 9 of the Texas Constitution); *Transamerica Ins. Co. v. Housing Auth. of City of Victoria*, 669 S.W.2d 818 (Tex. App.—Corpus Christi 1984, writ ref’d n.r.e.) (housing authority as a quasi-governmental entity was expressly required by statute to have performance bond). A review of the provisions governing local government corporations demonstrates their complex and ambiguous nature.

Local government corporations are nonprofit corporations created by a city or a county, “to aid and act on behalf of one or more local governments to accomplish any governmental purpose of those local governments.” TEX. TRANSP. CODE ANN. § 431.101(a) (Vernon Supp. 2001); *see id.* § 431.003(3) (Vernon 1999) (“local government” means a municipality or a county); *see also id.* §§ 431.001, .006, .021 (authorizing creation of transportation corporations to expand and improve transportation facilities and systems). A local government corporation has broad statutory authority including the powers of a transportation corporation under chapter 431 of the Transportation Code and the powers of a nonprofit corporation incorporated under the Texas Non-Profit Corporation Act, to the extent that its provisions are not inconsistent with chapter 431 of the Transportation Code. *See id.* § 431.101(b), (c) (Vernon Supp. 2001); *see also id.* § 431.006 (Vernon 1999). Thus, a local government corporation may exercise powers in addition to the powers expressly stated in the Transportation Code provisions under which it was created.

Such corporations are also subject to control and supervision by the governmental entity that created them and they have duties and powers typical of a governmental entity. A local government corporation is created and dissolved in the same manner as a corporation under the Texas Housing Finance Corporations Act, TEX. LOC. GOV’T CODE ANN. ch. 394 (Vernon 1999 & Supp. 2001); *see* TEX. TRANSP. CODE ANN. § 431.102(a) (Vernon Supp. 2001); *see also* TEX. LOC. GOV’T CODE ANN. § 394.001 (Vernon 1999). Three residents of the local government must file a written application for incorporation with the governmental body. TEX. LOC. GOV’T CODE ANN. § 394.011(a) (Vernon 1999). The governmental body approves the corporation’s articles of incorporation and appoints the corporation’s directors. *See* TEX. TRANSP. CODE ANN. § 431.101(a) (Vernon Supp. 2001); *see also* TEX. LOC. GOV’T CODE ANN. § 394.021(b) (Vernon 1999). It is a “governmental unit” as that term is used in Civil Practices and Remedies Code, chapter 101, and its operations are governmental, not proprietary, functions for purposes of chapter 101. *See* TEX. TRANSP. CODE ANN. § 431.108 (Vernon 1999). Thus, the Texas Tort Claims Act, TEX. CIV. PRAC. & REM. CODE ANN. ch. 101 (Vernon 1997 & Supp. 2001), applies to such corporations. *See id.* § 101.021, .0215 (Vernon Supp. 2001).

Its property and transactions to acquire property are exempt from property tax in the same manner as a corporation created under the Texas Housing Finance Corporations Act, TEX. LOC.

GOV'T CODE ANN. ch. 394 (Vernon 1999 & Supp. 2001). *See* TEX. TRANSP. CODE ANN. § 431.102(b) (Vernon Supp. 2001). Thus, all property owned by a local government corporation is exempt from property taxes "as public property used for public purposes." TEX. LOC. GOV'T CODE ANN. § 394.905 (Vernon 1999); *see Harris County Appraisal Dist. v. Southeast Tex. Hous. Fin. Corp.*, 991 S.W.2d 18 (Tex. App.—Amarillo 1998, no writ) (subsidiary corporations created by housing finance corporation to hold and operate low income and elderly housing were entitled to tax exemption for that property). The local government that created a local government corporation "is entitled at any time to receive any income earned by the local government corporation that is not needed to pay the corporation's expenses or obligations." TEX. TRANSP. CODE ANN. § 431.107(a) (Vernon 1999). The governing body of a local government may assume the powers and duties of the local government corporation it created, but if it does so, it must also assume its assets and liabilities. *Id.* § 431.104.

Because of the difficulties of characterizing local government corporations and other nonprofit corporations established to assist governmental bodies as either public or private, opinions of this office usually address questions about them narrowly, focusing on the specific provision at issue. *See* Tex. Att'y Gen. Op. No. JC-206 (2000) (Transportation Code section 431.101(e) excepts a local government corporation from the competitive bidding provisions applicable to the county that created it). This is the approach we will apply to your questions.

We first consider whether local government corporations are subject to the Texas Open Meetings Act and the Texas Public Information Act. These statutes apply to local government corporations created under Transportation Code chapter 431, subchapter D (Vernon 1999 & Supp. 2001). Transportation Code section 431.003(2) provides that "[c]orporation" means a corporation organized under this chapter and includes a local government corporation." TEX. TRANSP. CODE ANN. § 431.003(2) (Vernon 1999). Chapter 431 expressly provides that "[a] corporation is subject to Chapter 551, Government Code," the Texas Open Meetings Act. *Id.* § 431.004(a). In addition, "[t]he board is subject to Chapter 552, Government Code," the Texas Public Information Act. *Id.* § 431.005. "Board" means the board of directors of a corporation organized under chapter 431, thus including the board of a local government corporation. *See id.* § 431.003(1) (Vernon 1999); *see also id.* § 431.102(a)(2), (3) (Vernon Supp. 2001) (board of a local government corporation). The governing body of a local government corporation must comply with both the Open Meetings Act and the Public Information Act.

You ask whether Local Government Code section 394.904 exempts local government corporations from the Professional Services Procurement Act and Government Code chapter 2251. Section 431.101(e) of the Transportation Code states as follows: "Section 394.904(a), Local Government Code, applies to property and improvements owned by a local government corporation. Section 394.904(b) of the code applies to each contract awarded by the local government corporation." *Id.* § 431.101(e) (Vernon Supp. 2001).

Local Government Code section 394.904, a provision of the Texas Housing Finance Corporation Act, provides as follows:

(a) The acquisition, construction, or rehabilitation of a private residential development or a home is not subject to requirements relating to public buildings, structures, grounds, works, or improvements imposed by the laws of this state, or to any other similar requirements.

(b) Any competitive bidding requirement or restriction imposed on the procedure regarding the award of contracts for that acquisition, construction, or rehabilitation or regarding the lease, sale, or other disposition of property of the local government is not applicable to any action taken under this chapter.

TEX. LOC. GOV'T CODE ANN. § 394.904 (Vernon 1999).

Attorney General Opinion JC-0206 considered whether subsection 394.904(b), Local Government Code, excepted a local government corporation from the County Purchasing Act, *id.* ch. 262 (Vernon 1999 & Supp. 2001), which requires the county to comply with competitive bidding or competitive sealed proposal procedures for purchases under contracts requiring an expenditure in excess of \$25,000. We held that the language of section 394.904(b), as incorporated into chapter 431, Transportation Code, excepted a local government corporation from the County Purchasing Act. *See* Tex. Att'y Gen. Op. No. JC-0206 (2000) at 4. Attorney General Opinion JC-206 noted that "the reference to section 394.904(b) in section 431.101(e) of the Transportation Code is perplexing," given the differences between housing finance corporations and local government corporations, in particular "the great difference in their breadth of purpose." *Id.* However, the opinion noted that under section 431.101(e), section 394.904(b) applied "to each contract awarded by the local government corporation," and it concluded that all contracts of a local government corporation were exempted from the competitive bidding provisions applicable to the local governmental body that created the corporation. *Id.*

In our opinion, section 394.904(b) of the Local Government Code also excepts contracts of a local government corporation from the Professional Services Procurement Act, TEX. GOV'T CODE ANN. §§ 2254.001-.006 (Vernon 2000). This Act states that "[a] governmental entity may not select a provider of professional services . . . on the basis of competitive bids" and sets out the procedures for choosing a provider. *Id.* § 2254.003. The Professional Services Procurement Act imposes a "restriction . . . on the procedure regarding the award of contracts for that acquisition, construction, or rehabilitation or regarding the lease, sale, or other disposition of property" by the local government corporation and therefore does not apply to the corporation. TEX. LOC. GOV'T CODE ANN. § 394.904 (Vernon 1999).

The next question is whether local government corporations must comply with Government Code chapter 2251, which establishes time limitations within which state agencies and political subdivisions must pay vendors for goods and services, and vendors who receive payment from such government entities must pay their subcontractors. *See* TEX. GOV'T CODE ANN. §§ 2251.021-.023 (Vernon 2000); Tex. Att'y Gen. Op. No. DM-88 (1992) at 1. For example, a payment by a governmental entity under contract is overdue on the 31st day after the later of the date the governmental entity receives the goods, the date the performance of the service under the contract is completed, or the date the governmental entity receives an invoice for the goods or services. TEX. GOV'T CODE ANN. § 2251.021 (Vernon 2000); *see id.* § 2251.002(a) (exceptions). Its requirements apply to payments under construction contracts. *See* Tex. Att'y Gen. Op. No. DM-88 (1992) at 3.

We will first consider whether Local Government Code section 394.904 as incorporated by section 431.101(e) of the Transportation Code excepts local government corporations from chapter 2251 of the Government Code. Section 431.101(e) states that section 394.904(b) of the Local Government Code applies to each contract awarded by the local government corporation. As we have already seen in discussing the Professional Services Procurement Act, section 394.904(b) provides an exception for “[a]ny competitive bidding requirement or restriction imposed on the procedure regarding the award of contracts.” TEX. LOC. GOV'T CODE ANN. § 394.904(b) (Vernon 1999). Chapter 2251 of the Government Code does not impose a restriction on the procedure for awarding contracts. It requires prompt payment under a contract for goods and services after the contract is awarded by a governmental entity. Accordingly, Local Government Code section 394.904 as incorporated by section 431.101(e) of the Transportation Code does not except local government corporations from chapter 2251 of the Government Code.

We must therefore determine whether a local development corporation is a “governmental entity” within chapter 2251, which defines a “[g]overnmental entity” as “a state agency or political subdivision.” TEX. GOV'T CODE ANN. § 2251.001(2) (Vernon 2000). A “political subdivision” is a county, a municipality, a public school district, or a special-purpose district or authority. *Id.* § 2251.001(4). In answering this question, we rely on a provision of the Code Construction Act: “Words and phrases are to be read in context and construed according to the rules of grammar and common usage,” unless they have acquired a technical meaning by legislation or otherwise. *Id.* § 311.011 (Vernon 1998). The legislature has not given “governmental entity” in Government Code chapter 2251 a technical meaning that would encompass a local government corporation established according to Transportation Code chapter 431, subchapter D. *Compare* TEX. GOV'T CODE ANN. § 2251.001(2), (4) (Vernon 2000) *with id.* §§ 791.025(a) (Vernon Supp. 2001) (for purposes of interlocal purchasing contract, local government includes a nonprofit corporation created to provide governmental services); 2253.001(1) (Vernon 2000) (for purposes of public work performance and payment bond statute, “governmental entity” means a governmental or quasi-governmental entity authorized to make a public work contract); 2256.002(7) (for purposes of Public Funds Investment Act, “local government” includes any nonprofit corporation acting on behalf of a municipality, county, school district, political subdivision, and similar public entities).

A local government corporation is not “a county” or “a municipality” within the common meaning of those terms. It is created differently from those political subdivisions and, more important, it does not possess governmental authority, but may only “aid and act on behalf of” a city or county to accomplish the city’s or county’s governmental purposes. A local government corporation could not legally possess the full powers of a city or county, according to the well-established rule that a local government may not transfer control of its governmental functions to another entity. *See generally, Nairn v. Bean*, 48 S.W.2d 584, 586 (Tex. Comm’n App. 1932, opinion adopted); *City of Arlington v. City of Fort Worth*, 844 S.W.2d 875, 878 (Tex. App.—Ft. Worth 1992, writ denied).

A local government corporation is not “a public school district,” nor is it a “special district or authority” within the common meaning of those terms. In the Public Facility Corporation Act, the legislature defined “a special district” as

(A) a district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(B) a hospital district or authority; or

(C) a junior college district authorized by Chapter 130, Education Code.

TEX. LOC. GOV’T CODE ANN. § 303.003(10) (Vernon 2000). A local government corporation is unlike any of the entities specifically listed in the above provision. We conclude that a local government corporation is not a special district or authority subject to chapter 2251 of the Government Code. Because a local government corporation is not a governmental entity within the meaning of chapter 2251 of the Government Code, it is not subject to the prompt payment requirements of that statute.

You finally ask whether local governmental entities have authority to fund the operations of a local government corporation for any and all purposes. We assume that you are referring to funds transferred under a contract between a political subdivision and the economic development corporation that it founded. *See TEX. TRANSP. CODE ANN. § 431.103* (Vernon 1999) (local government corporation may contract with political subdivision of the state). Because your question is phrased in general terms, we cannot answer it definitively. We will address some of the legal issues raised by your question, but we will not discuss specific activities that a particular local development corporation might undertake on behalf of the entity that created it.

The Texas Constitution places limits on the power of a local government to transfer funds to any other entity. Article III, section 52 of the Texas Constitution provides that the legislature may not authorize any county, city, or other political corporation of the state “to lend its credit or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever.” TEX. CONST. art. III, § 52; *see also id.* art. XI, § 3 (similar provision). These

provisions bar donations of funds from one governmental entity to another, as well as donations from governmental entities to private entities. *See Harris County Flood Control Dist. v. Mann*, 140 S.W.2d 1098 (Tex. 1940); *San Antonio Indep. Sch. Dist. v. Board of Trustees of San Antonio Elec. & Gas Sys.*, 204 S.W.2d 22 (Tex. Civ. App.—El Paso 1947, writ ref'd n.r.e.). A city's or county's transfer of funds to a local development corporation must serve a public purpose, and must be subject to adequate controls, contractual or otherwise, to ensure that the public purpose is accomplished. *See Key v. Commissioners Court*, 727 S.W.2d 667, 669 (Tex. App.—Texarkana 1987, no writ). Although a political subdivision may not make an unrestricted grant of funds to a private, nonprofit corporation, it may contract with it to provide services or accomplish a public purpose that the county is authorized to provide. For example, while a county may not donate funds to a private hospital, it may contract with it to provide medical care for its indigents and to assist in providing ambulance services in the county. *See Tex. Att'y Gen. Op. No. JM-65* (1983) at 2; *see also Tex. Att'y Gen. Op. No. H-127* (1973) at 4 (county may contract with private corporation to provide recreational facility for aged persons); LO-93-079 at 3 (county with authority to establish a "wildlife hotline" may contract with a private entity to operate hotline).

Transactions between a city or county and the local government corporation it created must be consistent with the purpose defined in the local government corporation's articles of incorporation. *See TEX. REV. CIV. STAT. ANN. art. 1396-2.01A.* (Vernon 1997) (purposes of nonprofit corporation shall be stated in articles of incorporation); *TEX. LOC. GOV'T CODE ANN. § 394.014(a)(4)* (Vernon 1999) (articles of incorporation state purpose of corporation). While section 431.101(a) of the Transportation Code authorizes a city or county to create a local government corporation to aid it in accomplishing "any governmental purpose," the purpose of a particular local government corporation must be stated in the articles of incorporation. Thus, a city or county may engage in transactions with a local development corporation only in connection with the purpose or purposes stated in the articles of incorporation.

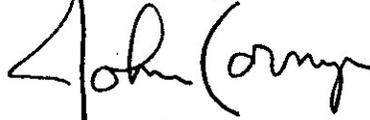
Finally, in approving the purpose of the corporation, the local government may not surrender a governmental function to the corporation. Absent specific constitutional authorization, a city or county may not transfer control of its governmental functions to another entity. *See Arlington*, 844 S.W.2d at 878. "No governmental agency can, by contract or otherwise, suspend or surrender its functions, nor can it legally enter into any contract which will embarrass or control its legislative power and duties or will amount to an abdication thereof." *City of Corpus Christi v. Bayfront Assocs., Ltd.*, 814 S.W.2d 98, 107 (Tex. App.—Corpus Christi 1991, writ denied); *Guerra v. Rodriguez*, 239 S.W.2d 915 (Tex. Civ. App.—San Antonio 1951, no writ); *see Nairn*, 48 S.W.2d at 584, 586. Accordingly, the rules concerning delegation of legislative authority also limit the purposes for which a city or county may transact business with a local development corporation.

S U M M A R Y

Local government corporations created under Transportation Code chapter 431, subchapter D, are subject to the Open Meetings Act and the Public Information Act. They are not subject to the Professional Services Procurement Act or chapter 2251 of the Government Code, which requires prompt payment of vendors by governmental entities.

The authority of local governmental entities to transfer funds to a local government corporation is subject to constitutional limitations. In creating a local government corporation to assist it or act on behalf of it, a city or county may not transfer control of its governmental functions to the corporation. Any transfer of funds by local governmental entities to local government corporations must comply with the provisions of the Texas Constitution that require public funds to be used for public purposes and that prevent a city or county from making a gift of public funds to a public or private entity.

Yours very truly,



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APPENDIX 4

Texas Development Corporation Act of 1979

Art. 5190.6. Development Corporation Act of 1979

Short title

Sec. 1. This Act may be cited as the "Development Corporation Act of 1979."

Definitions

Sec. 2. Wherever used in this Act unless a different meaning clearly appears in the context, the following terms, whether singular or plural, shall mean as follows:

- (1) "Board of directors" shall mean the board of directors of any corporation organized pursuant to the provisions of this Act.
- (2) "Department" shall mean the Texas Department of Commerce.
- (3) "Corporation" shall mean any industrial development corporation organized pursuant to the provisions of this Act.
- (4) "Cost" as applied to a project shall mean and embrace the cost of acquisition, cleanup, construction, reconstruction, improvement, and expansion, including the cost of the acquisition of all land, rights-of-way, property rights, easements, and interests, the cost of all machinery and equipment, financing charges, inventory, raw materials and other supplies, research and development costs, interest prior to and during construction and for one year after completion of construction whether or not capitalized, necessary reserve funds, cost of estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenue, other expenses necessary or incident to determining the feasibility and practicability of acquiring, cleaning, constructing, reconstructing, improving, and expanding any such project, administrative expense and such other expense as may be necessary or incident to the acquisition, cleanup, construction, reconstruction, improvement, and expansion thereof, the placing of the same in operation, and the financing or refinancing of any such project, including the refunding of any outstanding obligations, mortgages, or advances issued, made or given by any person for any of the aforementioned costs.
- (5) "City" shall mean any municipality of the state incorporated under the provisions of (i) any general or special law or (ii) the home-rule amendment to the constitution.
- (6) "County" shall mean a county of this state.
- (7) "County alliance" means two or more counties that jointly authorize the creation of a corporation under this Act.

(8) "District" shall mean a conservation and reclamation district established under authority of Article XVI, Section 59, of the Texas Constitution.

(9) "Governing body" shall mean the board, council, commission, commissioners court, or legislative body of the unit.

(10) "Industrial development corporation" shall mean a corporation created and existing under the provisions of this Act as a constituted authority for the purpose of financing one or more projects.

*** Section 2(11) as amended by Texas Senate Bill 252, 79th Legislature, Regular Session (2005) (effective date April 12, 2005), Texas House Bill 1253, 79th Legislature, Regular Session (2005) (effective date , 2005), Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005); and Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005)**

(11) ~~(A)~~ "Project" shall mean:

~~(A)~~ the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements (one or more) that are for the creation or retention of primary jobs and that are found by the board of directors to be required or suitable for the development, retention, or expansion of manufacturing and industrial facilities, research and development facilities, military facilities, including closed or realigned military bases, transportation facilities (including but not limited to airports, ports, mass commuting facilities, and parking facilities), sewage or solid waste disposal facilities, recycling facilities, air or water pollution control facilities, facilities for the furnishing of water to the general public, distribution centers, small warehouse facilities capable of serving as decentralized storage and distribution centers, primary job training facilities for use by institutions of higher education, and regional or national corporate headquarters facilities;~~;~~

~~(B)~~ ~~"Project"~~ ~~also includes~~ job training required or suitable for the promotion of development and expansion of business enterprises and other enterprises described by this Act, as provided by Section 38 of this Act;~~;~~

~~(C)~~ ~~"Project"~~ ~~also includes~~ expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises limited to streets and roads, rail spurs, water and sewer utilities, and electric utilities, gas utilities, drainage, site improvements, and related improvements, ~~[and]~~ telecommunications and Internet improvements, and beach remediation along the Gulf of Mexico;~~;~~

✦ **Section 2(11)(D) as added by Texas House Bill 1253, 79th Legislature, Regular Session (2005) (effective date , 2005).**

(D) land, buildings, equipment, facilities, improvements, and expenditures found by the board of directors to be required or suitable for use for a career center, if the area to be benefited by the career center is not located in the taxing jurisdiction of a junior college district.

✦ **Section 2(11)(D) and (E) as added by Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005).**

(D) for a corporation created by a city any part of which is located within 25 miles of an international border, the land, buildings, facilities, infrastructure, and improvements that:

(i) the board of directors finds are required or suitable for the development or expansion of airport facilities; or

(ii) are undertaken by the corporation if the city that created the corporation has, at the time the project is approved by the corporation as provided by this Act:

(a) a population of less than 50,000; or

(b) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved; or

(E) expenditures found by the board of directors to be required or suitable for infrastructure necessary to promote or develop new or expanded business enterprises, including airports, ports, and sewer or solid waste disposal facilities, if the corporation:

(i) is created by a city wholly or partly located in a county that is bordered by the Rio Grande, has a population of at least 500,000, and has wholly or partly within its boundaries at least four cities that each have a population of at least 25,000; and

(ii) does not support a project, as defined by this subdivision, with sales and use tax revenue collected under Section 4A or 4B of this Act.

✦ **Section 2(11) as amended by Texas Senate Bill 252, 79th Legislature, Regular Session (2005) (effective date April 12, 2005).**

"Project" also includes the infrastructure, improvements, land acquisition, buildings, or expenditures that:

(A) are for the creation or retention of primary jobs or jobs that are included in North American Industry Classification System (NAICS) sector number 926120, Regulation and Administration of Transportation Programs, for the corresponding index entry for Coast Guard (except the Coast Guard Academy); and

(B) are found by the board of directors to be required or suitable for:

(i) promoting or supporting a military base in active use to prevent the possible future closure or realignment of the base;

(ii) attracting new military missions to a military base in active use; or

(iii) redeveloping a military base that has been closed or realigned, including a military base closed or realigned according to the recommendation of the Defense Base Closure and Realignment Commission under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note).

(12) "Resolution" shall mean the resolution, order, ordinance, or other official action by the governing body of a unit.

(13) "Unit" shall mean a city, county, or district which may create and utilize a corporation.

(14) "Bonds" includes bonds, notes, and other evidences of indebtedness.

(15) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(15) "User" means an individual, partnership, corporation, or any other private entity, whether organized for profit or not for profit, or a city, county, district, or any other political subdivision, public entity, or agency of the state or federal government.

✳ Section 2(17) as amended by Texas Senate Bill 252, 79th Legislature, Regular Session (2005) (effective date April 12, 2005) and as amended by Texas House Bill 551, 79th Legislature, Regular Session (2005) (effective date , 2005) (which added “56142 - Telephone call centers” to definition of primary job)

(17) "Primary job" means:

(A) a job that is:

(i) [~~(A)~~] available at a company for which a majority of the products or services of that company are ultimately exported to regional, statewide, national, or international markets infusing new dollars into the local economy; and

(ii) ~~(B)~~ included in one of the following sectors of the North American Industry Classification System (NAICS):

NAICS Sector #	Description
111	Crop Production
112	Animal Production
113	Forestry and Logging
11411	Commercial Fishing
115	Support Activities for Agriculture and Forestry
211-213	Mining
221	Utilities
311-339	Manufacturing
42	Wholesale Trade
48-49	Transportation and Warehousing
51 (excluding 512131 and 512132)	Information (excluding movie theaters and drive-in theaters)
523-525	Securities, Commodity Contracts, and Other Financial Investments and Related Activities; Insurance Carriers and Related Activities; Funds, Trusts, and Other Financial Vehicles
5413, 5415, 5416, 5417, and 5419	Scientific Research and Development Services
551	Management of Companies and Enterprises
<u>56142</u>	<u>Telephone Call Centers</u>
922140	Correctional Institutions; <u>or</u>

(B) a job that is included in North American Industry Classification System (NAICS) sector number 928110, National Security, for the corresponding index entries for Armed Forces, Army, Navy, Air Force, Marine Corps, and Military Bases.

(18) "Corporate headquarters facilities" means buildings proposed for construction or occupancy as the principal office for a business enterprise's administrative and management services.

Findings and Construction

Sec. 3. (a) It is hereby found, determined, and declared:

(1) that the present and prospective right to gainful employment and general welfare of the people of this state require as a public purpose the promotion and development of new and expanded business enterprises and the promotion and development of job training:

(2) that the existence, development, and expansion of business, commerce, industry, and higher education are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(2) that the existence, development, and expansion of business, commerce, industry, and job training are essential to the economic growth of the state and to the full employment, welfare, and prosperity of its citizens;

(3) that the assistance provided by industrial development corporations in promoting higher education opportunities will encourage and foster the development and diversification of the economy of the state and the elimination of unemployment and underemployment in the state;

(4) that the means and measures authorized by this Act and the assistance provided in this Act, especially with respect to financing, are in the public interest and serve a public purpose of the state in promoting the welfare of the citizens of the state economically by the securing and retaining of business enterprises and the resulting maintenance of a higher level of employment, economic activity, and stability;

(5) that community industrial development corporations in Texas have themselves invested substantial funds in successful industrial development projects and have experienced difficulty in undertaking such additional projects by reason of the partial inadequacy of their own funds or funds potentially available from local subscription sources and by reason of limitations of local financial institutions in providing additional and sufficiently sizable first mortgage loans; and

(6) that communities in this state are at a critical disadvantage in competing with communities in other states for the location or expansion of such enterprises by virtue of the availability and prevalent use in all other states of financing and other special incentives; therefore, the issuance of revenue bonds by corporations on behalf of political subdivisions of the state as hereinafter provided for the promotion and development of new and expanded business enterprises to provide and encourage employment and the public welfare is hereby declared to be in the public interest and a public purpose.

(b) This Act shall be construed in conformity with the intention of the legislature herein expressed.

Creation of Corporation; Texas Small Business Industrial Development Corporation

Sec. 4. (a) Any number of natural persons, not less than three, each of whom is at least 18 years of age and a qualified elector of the unit may file with the governing body of a unit a written application requesting that the unit authorize and approve creation of a corporation to act on behalf of the unit. The governing body of the unit may not charge a filing fee for the application. If the governing body by appropriate resolution finds and determines that it is advisable that the corporation be authorized and created and approves the articles of incorporation proposed to be used in organizing the corporation, then the articles of incorporation for the corporation may be filed as hereinafter provided. A unit may authorize and approve creation of one or more corporations, provided that the resolution approving the creation of each corporation shall specify the public purpose or purposes of the unit which the corporation may further on behalf of the unit, which purpose or purposes shall be limited to the promotion and development of industrial and manufacturing enterprises to promote and encourage employment and the public welfare. No corporation may be formed unless the unit has properly adopted a resolution as herein described.

(b) There is hereby created the Texas Small Business Industrial Development Corporation which shall act on behalf of the state to carry out the public purposes of this Act. The Texas Small Business Industrial Development Corporation shall be considered to be a corporation within the meaning of this Act, shall be organized and governed in accordance with the provisions of this Act, and shall have all of the powers, and shall be subject to all of the limitations, provided for corporations by this Act, except as otherwise provided by this section. For purposes of this Act, the state shall be considered to be the unit under whose auspices the Texas Small Business Industrial Development Corporation is created and the department shall be considered to be the governing body. To the extent that the provisions of this section are inconsistent with other provisions of this Act, the provisions of this section shall control as to the existence, powers, limitations, organization, administration, operation, and affairs of the Texas Small Business Industrial Development Corporation.

(c) All bonds issued and delivered by the Texas Small Business Industrial Development Corporation before September 1, 1987, and all proceedings authorizing those bonds are validated, ratified, confirmed, and approved in all respects, and they are incontestable.

(d) The members of the board of the department shall serve ex officio as the board of directors of the Texas Small Business Industrial Development Corporation.

(e) A director, officer, employee, or member of the department acting on behalf of the Texas Small Business Industrial Development Corporation is not personally liable for damage, loss, or injury resulting from the performance of the person's duties under this Act or on any contract, commitment, or agreement executed on behalf of the Texas Small Business Industrial Development Corporation under this Act.

(f) All programs and expenditures of the Texas Small Business Industrial Development Corporation must be approved on behalf of the state by the department. Expenses incurred by the Texas Small Business Industrial Development Corporation in the operation and administration of its programs

and affairs, including expenditures for employees and program assistance or development, shall be paid out of fees collected or revenues generated under this Act.

(g) The revenues and funds of the Texas Small Business Industrial Development Corporation shall be deposited with one or more financial institutions chosen for that purpose by the board of directors. Funds of the Texas Small Business Industrial Development Corporation may not be used or made available for use by the department except to reimburse the department for expenses it incurs in its official capacity on behalf of the Texas Small Business Industrial Development Corporation.

(h) In addition to the powers provided for corporations by this Act, the Texas Small Business Industrial Development Corporation may:

(A) make loans through the purchase of or participation in, and pledge, hypothecate, negotiate, and sell, bonds, notes, and other evidences of indebtedness incurred by users to finance projects that represent a direct loan, grant, or loan participation, or the repayment of which is totally or partially insured or otherwise guaranteed, by the United States of America, by the state, or by any agency, department, or instrumentality of either; and

(B) otherwise provide financing for users, either directly or indirectly, in the manner that the Texas Small Business Industrial Development Corporation determines to be necessary or convenient for the performance of its public purposes, functions, and duties under this Act.

(i) Notwithstanding any other provision of this Act, "project" includes any use of amounts financed through the purchase by the Texas Small Business Industrial Development Corporation of bonds, notes, or other evidences of indebtedness of users under this subsection if the uses are found by the board of directors of the Texas Small Business Industrial Development Corporation to be required or suitable for the promotion of economic development in the state. Those findings may be based solely on a review by the board of directors of the Texas Small Business Industrial Development Corporation of the criteria used to determine eligibility of a user for obtaining a direct loan, grant, loan participation, insurance, or any other guarantee from the United States of America, the state, or any agency or instrumentality of either. Proceeds of bonds issued before September 1, 1987, may be used to pay all or part of the costs of a project regardless of whether the costs or project were within the definition of those terms under the Texas Department of Commerce Act before that date, or for any other purposes authorized by this Act.

(j) The Texas Small Business Industrial Development Corporation may not issue bonds for any purpose after September 1, 1987.

**Corporation in City Located in County with Population of 500,000
or Fewer or City with Population of Fewer than 50,000**

**Cities located in counties with population of 500,000 or fewer or
with population of fewer than 50,000 in certain cases**

Sec. 4A (a) This section applies only to a city:

(1) located in a county with a population of 500,000 or fewer; or

(2) with a population of fewer than 50,000 that:

(A) is located in two or more counties, one of which has a population of 500,000 or greater;

(B) is located within the territorial limits but has not elected to become a part of a metropolitan rapid transit authority that has a principal city with a population of less than 1.9 million with such authority being created before January 1, 1980, under Chapter 141, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1118x, Vernon's Texas Civil Statutes); or

(C) is located within the territorial limits but has not elected to become a part of a metropolitan rapid transit authority that has a principal city with a population of more than 750,000 with such authority being created under Chapter 683, Acts of the 66th Legislature, Regular Session, 1979 (Article 1118y, Vernon's Texas Civil Statutes).

(b)(1) A city may create a corporation under this Act governed by this section. The corporation has the powers and is subject to the limitations of a corporation created under other provisions of this Act. To the extent of a conflict between this section and another provision of this Act, this section prevails. The articles of incorporation of a corporation under this section must state that the corporation is governed by this section. A city may not create more than one corporation governed by this section. A corporation created under this section may spend no more than 10 percent of the corporate revenues for promotional purposes and may contract with other existing private corporations to carry out industrial development programs or objectives or to assist with the development or operation of an economic development program or objective consistent with the purposes and duties as set out in this Act.

(2) Notwithstanding Subdivision (1), a corporation created under this section may spend no more than 25 percent of the corporate revenues for promotional purposes if the corporation was created by a city:

(i) the municipal limits of which include two counties;

- (ii) that has less than 24,250 population according to the 1990 federal census; and
- (iii) any part of which is located within ten miles of a federal military reservation.

✳ **Section 4A(c) as amended by Texas House Bill 3036, 79th Legislature, Regular Session (2005) (effective date _____, 2005).**

(c) The board of directors of a corporation under this section consists of at least five directors who are appointed by the governing body of the city and who serve at the pleasure of the governing body and may be removed by the governing body at any time without cause. The governing body of the city shall determine the number of directors and the length of the term of each director, not to exceed six years. A majority of the entire membership of the board constitutes a quorum. The board shall conduct each of its meetings within the boundaries of the city. The board shall appoint a president, a secretary, and other officers of the corporation that the governing body of the city considers necessary. The corporation's registered agent must be an individual resident of the state and the corporation's registered office must be within the boundaries of the city.

(c-1) The costs of a publicly owned and operated project that is purchased or constructed under this section include the maintenance and operating costs of the project. The proceeds of taxes imposed under this section may be used to pay the maintenance and operating costs of a project, unless not later than the 60th day after the date notice of this specific use of the tax proceeds is first published, the governing body of the city receives a petition from more than 10 percent of the registered voters of the city requesting that an election be held before the tax proceeds may be used to pay the maintenance and operating costs of a project.

(d) The city may levy a sales and use tax for the benefit of a corporation under this section if the tax is authorized by a majority of the qualified voters of the city voting at an election called and held for that purpose. If the city adopts the tax, there is imposed a tax on the receipts from the sale at retail of taxable items within the city at the rate approved by the voters. The rate must be equal to one-eighth, one-fourth, three-eighths, or one-half of one percent. The city may not adopt a rate that would result in a combined rate of all sales and use taxes, including the tax under this section, imposed by the city and other political subdivisions of this state having territory in the city that exceeds two percent. An election adopting a rate that exceeds the limit on the combined rate has no effect. There is also imposed an excise tax on the use, storage, or other consumption within the city of taxable items purchased, leased, or rented from a retailer during the period that the tax is effective within the city. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sales price of the taxable items.

(e) The Municipal Sales and Use Tax Act (Chapter 321, Tax Code) governs an election to authorize the imposition of the sales and use tax under this section and governs the imposition, computation, administration, governance, abolition, and use of the tax except as inconsistent with this section. The tax imposed under this section takes effect as provided by Section 321.102(a), Tax Code.

(f) On receipt of the proceeds of the sales and use tax imposed under this section from the comptroller, the city shall deliver the proceeds to the corporation to use in carrying out its functions. Tax proceeds may be used to pay the principal of, interest on, and other costs relating to the corporation's bonds, but neither the bonds nor any instrument related to the bonds may give a

bondholder a right to demand payment from tax proceeds in excess of those collected from the tax imposed by this section. Tax proceeds may also be used to pay expenses incurred by the corporation under Section 38 of this Act relating to job training.

(g) The corporation may not exercise the power of eminent domain except by action of the governing body of the city that created the corporation.

(h) Section 24 of this Act does not apply to a corporation under this section.

✳ Section 4A(i) as amended by Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005).

(i) Except as provided by this subsection, the corporation may not undertake a project the primary purpose of which is to provide transportation facilities, solid waste disposal facilities, sewage facilities, facilities for furnishing water to the general public, or air or water pollution control facilities. However, the corporation may provide those facilities to benefit property acquired for a project having another primary purpose. The corporation may undertake a project the primary purpose of which is to provide:

(1) a general aviation business service airport that is an integral part of an industrial park; or

(2) port-related facilities to support waterborne commerce; or

(3) airport-related facilities, if the corporation is created by a city that is wholly or partly located within 25 miles of an international border and has, at the time the project is approved by the corporation as provided by this Act:

(A) a population of less than 50,000; or

(B) an average rate of unemployment that is greater than the state average rate of unemployment during the 12-month period for which data is available that immediately precedes the date the project is approved.

(j) The corporation, a director of the corporation, the city creating the corporation, a member of the governing body of the city, or an employee of the corporation or city is not liable for damages arising from the performance of a governmental function of the corporation or city. For the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Civil Practice and Remedies Code), the corporation is a governmental unit and its actions are governmental functions.

(k) On petition of 10 percent or more of the registered voters of the city requesting an election on the dissolution of the corporation, the governing body shall order an election on the issue at the next available uniform election date that is not less than 45 days after the date that the petition is filed. The election must be conducted according to the applicable provisions of the Election Code. The ballot for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the _____ (name of the corporation)." If a majority of voters voting on the issue approve the dissolution, the corporation shall continue operations only as necessary to pay the

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principal of and interest on its bonds and to meet obligations incurred before the date of the election and, to the extent practicable, shall dispose of its assets and apply the proceeds to satisfy those obligations. When the last of the obligations is satisfied, any remaining assets of the corporation shall be transferred to the city, and the corporation is dissolved. A tax imposed under this section may not be collected after the last day of the first calendar quarter beginning after notification to the comptroller by the corporation that the last of its obligations is satisfied.

(l) On approval of the governing body of each unit and corporation involved, a corporation created under this Act that is not created under this section may transfer all of its assets to a corporation governed by this section and dissolve as provided by this Act.

(m) In an election to adopt the tax under this section, the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax for the promotion and development of new and expanded business enterprises at the rate of _____ of one percent" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

(n) At an election called and held under Subsection (d) or (o) of this section, the city may also allow the voters to vote on a ballot proposition that limits the length of time that a sales and use tax may be imposed. If a city elects to limit the period the sales and use tax may be imposed, there shall be added to the end of the ballot proposition prescribed by Subsection (m) of this section: "to be imposed for _____ years" (the number of years to be inserted as appropriate). The governing body of the city shall set the expiration date of the proposed tax to occur on the appropriate anniversary of the effective date of the tax. A sales and use tax imposed for a limited period under this subsection expires on the date set by the governing body under this section or on an earlier date if, by a majority of the voters voting in an election held in the city, the tax is repealed. If an earlier abolition election is held, Sections 321.102(a) and 321.402(b), Tax Code, apply to the date of repeal.

A tax that is approved without a limit on its period of imposition is effective until repealed by election. Before the 60th day before the date that a tax is to expire, the governing body shall send a notice to the comptroller stating the expiration date of the tax. Revenue collected after the expiration of the tax from the imposition of the tax after its expiration date shall be forwarded by the state to the governing body to be used to pay current bonded indebtedness of the municipality. A municipality that has imposed a tax under this section may not extend the period of the tax's imposition or reimpose the tax unless the extension or reimposition is authorized by a majority of the qualified voters of the municipality voting in an election called and held for that purpose. If a city reduces the rate of an additional sales and use tax under Chapter 321, Tax Code, to impose a tax under this section for a limited period as provided under this subsection, and does not have an election to change the rate of the additional sales and use tax before the expiration date of the tax under this section, the rate of the additional sales and use tax under Section 321.101(b), Tax Code, in the city returns to its previous rate in effect at the time the tax imposed under this section was adopted on the expiration date of the tax under this section without having to hold an election under Chapter 321, Tax Code, to impose the increase in the rate.

(o) In a city in which a sales and use tax for the benefit of a corporation has been imposed under this section, in the same manner and by the same procedure the city by majority vote of the qualified voters of the city voting at an election called and held for the purpose may reduce or increase the tax. The rate may be reduced in one or more increments of one-eighth of one percent to a minimum of one-eighth of one percent or increased in one or more increments of one-eighth of one percent to a

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maximum of one-half of one percent. On petition of 10 percent or more of the registered voters of the city requesting an election on the increase or decrease of the tax under this section, the governing body of the city shall order an election on the issue. The ballot shall be printed in the same manner as the ballot under Subsection (m) of this section.

(o-1) Notwithstanding Subsection (a), this subsection applies only to a city that is located within the territorial limits of a regional transportation authority and has been added to the territory of the authority under Section 452.6025, Transportation Code. Notwithstanding any other provision of this section, a tax imposed by the city under this section is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code.

(p) A city that is authorized by this section to impose, reduce, increase, or abolish the tax under this section may, at the same time and on the same ballot, impose, reduce, increase, or abolish the additional sales and use tax imposed under Section 321.101(b), Tax Code, if the city is authorized by Chapter 321, Tax Code, to impose, reduce, increase, or abolish the additional sales and use tax. The city must follow, in relation to the imposition, reduction, increase, or abolishment of the additional sales and use tax imposed under Section 321.101(b), Tax Code, the procedures of that chapter, except that in an election to impose, reduce, increase, or abolish the tax under this section and the additional sales and use tax the ballot shall be printed to provide for voting for or against the proposition: "The adoption of a sales and use tax within the city for the promotion and development of new and expanded business enterprises at the rate of _____ of one percent (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate) and the adoption of an additional sales and use tax within the city at the rate of _____ of one percent to be used to reduce the property tax rate" (one-eighth, one-fourth, three-eighths, or one-half to be inserted as appropriate).

(q) A corporation under this section may not assume a debt or make any expenditure to pay principal or interest on a debt if the debt existed before the date the city created the corporation.

(r) At an election called or held under Subsection (d) or (o) of this section, the city may also allow the voters to vote on a ballot proposition that limits the use of the sales and use tax to a specific project. If a city elects to limit the use to a specific project, in the ballot proposition prescribed by Subsection (m) or (p) a description of the project shall be substituted in place of the words "new and expanded business enterprises." When the last of its obligations for the specific project have been satisfied, the corporation shall send a notice to the comptroller stating that the sales and use tax imposed for the specific project may not be collected after the last day of the first calendar quarter beginning after the date of notification. A sales and use tax imposed for a specific project under this subsection may not be collected after the last day of the first calendar quarter beginning after the date of the notification to the comptroller. Revenue collected after the obligations for the specific project have been satisfied shall be forwarded by the state to the governing body to be used to pay current bonded indebtedness of the municipality. A corporation that has been created to perform a specific project under this subsection may retain its corporate existence and perform other projects as may be approved by the voters of the city under an election called and held under Subsection (d) or (o) of this section.

(s)(1) A city that creates or has created a corporation governed by this section may submit to the voters of the city, at a separate election to be held on a uniform election date or at an election held under another provision of this Act, including the election at which the proposition to initially

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authorize the collection of a sales and use tax for the benefit of the corporation is submitted, a ballot proposition that authorizes the corporation to use the sales and use tax, including any amount previously authorized and collected, for a specific project or for a specific category of projects, including a sports venue and related infrastructure, that does not qualify under this section but qualifies under Section 4B of this Act. Prior approval of a specific project at an election or completion of a specific project approved at an election does not prohibit a city from seeking voter approval of an additional project or category of projects under this subsection to be funded from the same sales and use tax.

(2) In the election to authorize the use of the sales or use tax for a specific project or for a specific category of projects not authorized under this section, including a sports venue and related infrastructure, the project or category of projects must be clearly described on the ballot so that a voter will be able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales or use tax, the ballot language must clearly state that fact.

(3) Before an election may be held under this subsection, a public hearing shall be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located. The notice shall be published on a weekly basis until the date of the hearing.

(3) Before an election may be held under this subsection, a public hearing shall be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located. The notice should be published on a weekly basis until the date of the hearing.

(4) If a majority of the voters voting on the issue do not approve a specific project or a specific category of projects at an election under this subsection, another election may not be held on the same project or category of projects before the first anniversary of the date of the most recent election disapproving the project or category of projects.

(5) In this subsection:

(A) "Related infrastructure" has the meaning assigned by Section 334.001, Local Government Code.

(B) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility:

(i) that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events; and

(ii) for which a fee for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events, is charged or is planned to be charged.

(5) Projects undertaken under this subsection are governed by the provisions of this section including the provisions relating to the authorization and expiration of any sales and use tax.

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(t) The department, with the assistance of the Texas Commission on Environmental Quality, may encourage the cleanup of contaminated property by corporations created under this section through the use of sales and use tax proceeds. A corporation created under this section may use proceeds from the sales and use tax to undertake the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

(u)(1) In this subsection:

(A) "Base taxable value" means the taxable value of property located in the defined area of a project as of January 1 of the year in which the agreement is entered into under this subsection.

(B) "Corresponding taxing unit" means another taxing unit of the same type of political subdivision as a taxing unit that enters into an agreement under this subsection.

(C) "Taxing unit" has the meaning assigned by Section 1.04, Tax Code.

(2) Before entering into an agreement under this subsection, the corporation undertaking the project must designate a defined area that includes the territory where the project is to be located.

(3) A taxing unit may enter into an agreement with a corporation created under this section to invest in a project that is undertaken by the corporation and that is not located in the territory of the taxing unit. A corporation may enter into an agreement under this subsection with more than one taxing unit.

(4) An agreement entered into under this subsection shall state the base taxable value of the property in the defined area of the project.

(5) The agreement may provide that the taxing unit is entitled to receive from the corporation, in exchange for the investment, an amount equal to a specified percentage of the tax revenue from taxes imposed by the corresponding taxing unit that taxes property located in the defined area of the project on the taxable value of the property in the defined area that exceeds the base taxable value, for so long as the corresponding taxing unit imposes taxes on that property.

(6) If a corporation enters into an agreement under this subsection, the corporation shall enter into an agreement with a corresponding taxing unit that taxes property located in the defined area of the project to recover the amount paid by the corporation to a taxing unit as provided by Subdivision (5).

(7) This subsection does not affect a taxing unit's authority to grant a tax abatement.

(8) This subsection does not affect a corporation's authority to invest in a project or recover its total investment by contract under Section 23(a) of this Act.

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Corporation in City Located in County With Population of 750,000 or More, or 150,000 or more

Sec. 4B. (a) In this section:

(1) "Eligible city" means a city:

(A) that is located in a county with a population of 500,000 or more, according to the most recent federal decennial census and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city does not exceed 8.25 percent on the date of any election held under or made applicable to this section;

(B) that has a population of 400,000 or more according to the most recent federal decennial census, and that is located in more than one county, and in which the combined rate of all sales and use taxes imposed by the city, the state, and other political subdivisions of the state having territory in the city, including taxes under this section, does not exceed 8.25 percent;
or

(C) to which Section 4A of this Act applies.

✳ **Section 4B(a)(2)(F) as added by Texas House Bill 2755, 79th Legislature, Regular Session (2005) (effective date , 2005).**

(2) "Project" means land, buildings, equipment, facilities, expenditures, and improvements included in the definition of that term under Section 2 of this Act, and includes job training as provided by Section 38 of this Act. For purposes of this section, the term includes recycling facilities, and land, buildings, equipment, facilities, and improvements found by the board of directors to:

(A) be required or suitable for use for professional and amateur (including children's) sports, athletic, entertainment, tourist, convention, and public park purposes and events, including stadiums, ball parks, auditoriums, amphitheaters, concert halls, parks and park facilities, open space improvements, museums, exhibition facilities, and related store, restaurant, concession, and automobile parking facilities, related area transportation facilities, and related roads, streets, and water and sewer facilities, and other related improvements that enhance any of those items;

(B) promote or develop new or expanded business enterprises that create or retain primary jobs, including a project to provide public safety facilities, streets and roads, drainage and related improvements, demolition of existing structures, general municipally owned improvements, as well as any improvements or facilities that are related to any of those projects and any other project that the board in its discretion determines promotes or develops new or expanded business enterprises that create or retain primary jobs;

(C) be required or suitable for the promotion of development and expansion of affordable housing, as defined by 42 U.S.C. Section 12745;

(D) be required or suitable for the development or improvement of water supply facilities, including dams, transmission lines, well field developments, and other water supply alternatives; or

(E) be required or suitable for the development and institution of water conservation programs, including incentives to install water-saving plumbing fixtures, educational programs, brush control programs, and programs to replace malfunctioning or leaking water lines and other water facilities; or

(F) be required or suitable for the development, retention, or expansion of business enterprises if the project is undertaken by a corporation created by an eligible city:

(i) that has not for each of the preceding two fiscal years received more than \$50,000 in revenues from sales and use taxes imposed under this section; and

(ii) the governing body of which has authorized the project by adopting a resolution only after giving the resolution at least two separate readings conducted at least one week apart.

✧ Section 4B(a)(3) as added by Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005).

(3) For a corporation created by an eligible city with a population of 20,000 or less, “project” shall also include the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the board of directors to promote new or expanded business development. A corporation may not undertake a project authorized by this subdivision that requires an expenditure of more than \$10,000 until the governing body of the eligible city creating the corporation adopts a resolution authorizing the project after giving the resolution at least two separate readings.

✧ Section 4B(a)(4) as added by Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005).

(4)(A) In this subdivision, “landlocked community” means a city that is wholly or partly located in a county with a population of 2 million or more and has within its city limits and extraterritorial jurisdiction less than 100 acres that can be used for the development of manufacturing or industrial facilities in accordance with the zoning laws or land use restrictions of the city.

(B) For a landlocked community that creates or has created a corporation governed by this section, “project” also includes expenditures found by the board of directors to be required for the promotion of new or expanded business enterprises within the landlocked community.

(a-1) A corporation may undertake a project under this section unless within 60 days after first publishing notice of a specific project or type of general project the governing body of the city receives a petition from more than 10 percent of the registered voters of the city where the petition requests that an election be held before that specific project or that general type of project is undertaken. An election is not required to be held after the submission of a petition if the qualified citizens of the city have previously approved the undertaking of a specific project or that general type of project at an election called for that purpose by the governing body of the city or in conjunction with another election required to be held under this section.

(a-2) The costs of a publicly owned and operated project that is purchased or constructed under this section include the maintenance and operating costs of the project, and the proceeds of taxes may be used to pay the maintenance and operating costs of a project, unless within 60 days after first publishing notice of this specific use of the proceeds of the taxes the governing body of the city receives a petition from more than 10 percent of the registered voters of the city where the petition requests that an election be held before the proceeds of taxes imposed under this section may be used to pay the maintenance and operating costs of a project. An election is not required to be held after the submission of a petition if the qualified citizens of the city have previously approved that the costs of a publicly owned and operated project purchased or constructed under this section include the maintenance and operating costs of the project and that the proceeds of taxes may be used to pay the maintenance and operating costs of a project, at an election called for that purpose by the governing body of the city or in conjunction with another election required to be held under this section. The election in this subsection shall not be required in a municipality located in a county with a population in excess of 1.3 million that has held an election prior to February 1, 1993, under this section and at which election the additional sales tax was approved.

(a-3)(1) A city that creates or has created a corporation governed by this section may submit to the voters of the city, at a separate election to be held on a uniform election date or at an election held under another provision of this Act, including the election at which the proposition to initially authorize the collection of a sales and use tax for the benefit of the corporation is submitted, a ballot proposition that authorizes the corporation to use the sales and use tax, including any amount previously authorized and collected, for a specific sports venue project, including related infrastructure, or for a specific category of sports venue projects, including related infrastructure. Prior approval of a specific sports venue project at an election or completion of a specific sports venue project approved at an election does not prohibit a city from seeking voter approval of an additional project or category of projects under this subsection to be funded from the same sales and use tax that is used to fund the previously approved sports venue project. This subsection does not affect the authority of a municipality to call an election under this section to levy a sales and use tax for any purpose authorized by this section after the sales and use tax described by this subsection is no longer collected as provided by Subsection (i) of this section.

(2) In the election to authorize the use of the sales or use tax for a specific sports venue project or for a specific category of sports venue projects, the project or category of projects must be clearly described on the ballot so that a voter will be able to discern the limits of the specific project or category of projects authorized by the proposition. If maintenance and operating costs of an otherwise authorized facility are to be paid from the sales or use tax, the ballot language must clearly state that fact.

(3) Before an election may be held under this subsection, a public hearing shall be held in the city to inform the residents of the city of the cost and impact of the project or category of projects. At least 30 days before the date set for the hearing, a notice of the date, time, place, and subject of the hearing shall be published in a newspaper with general circulation in the city in which the project is located. The notice shall be published on a weekly basis until the date of the hearing.

(4) If a majority of the voters voting on the issue do not approve a specific sports venue project or a specific category of sports venue projects at an election under this subsection, another election may not be held on the same project or category of projects before the first anniversary of the date of the most recent election disapproving the project or category of projects.

(a-4) In this section:

(1) "Related infrastructure" has the meaning assigned by Section 334.001, Local Government Code.

(2) "Sports venue" means an arena, coliseum, stadium, or other type of area or facility that is primarily used or is planned for primary use for one or more professional or amateur sports or athletics events and for which a fee for admission to the sports or athletics events, other than occasional civic, charitable, or promotional events, is charged or is planned to be charged. The term does not include an arena, coliseum, stadium, or other type of area or facility that is or will be owned and operated by a state-supported institution of higher education.

(a-5) (1) Notwithstanding any other provision of this section, a corporation created under this section may use proceeds from the sales and use tax to undertake a project described by Subsection (a)(2)(D) or (E) of this section only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for infrastructure relating to _____ (insert water supply facilities or water conservation programs, as appropriate)."

(2) An election held under Subdivision (1) of this subsection may be authorized by the governing body of an eligible city subsequent to an earlier election authorized under Subsection (d) of this section.

(b) An eligible city may create a corporation under this Act governed by this section. The corporation has the powers granted by this section and by other sections of this Act and is subject to the limitations of a corporation created under other provisions of this Act. To the extent of a conflict between this section and another provision of this Act, this section prevails. The articles of incorporation of a corporation under this section must state that the corporation is governed by this section and may include within its name any words and phrases specified by the eligible city. An eligible city may not create more than one corporation governed by this section. A corporation created under this section may spend no more than 10 percent of the corporate revenues for promotional purposes and may contract with another existing private corporation to carry out an industrial development program or objective or to assist with the development or operation of an

economic development program or objective consistent with the purposes and duties specified in this Act.

(c) The board of directors of a corporation under this section consists of seven directors who are appointed by the governing body of the eligible city for two-year terms of office. A director may be removed by the governing body of the eligible city at any time without cause. Each director of a corporation created by an eligible city with a population of 20,000 or more must be a resident of the eligible city. Each director of a corporation created by an eligible city with a population of less than 20,000 must be a resident of the eligible city, be a resident of the county in which the major part of the area of the eligible city is located, or reside at a place that is within 10 miles of the eligible city's boundaries and is in a county bordering the county in which the major part of the area of the eligible city is located. Three directors shall be persons who are not employees, officers, or members of the governing body of the eligible city. A majority of the entire membership of the board is a quorum. The board shall conduct all meetings within the boundaries of the eligible city. The board shall appoint a president, a secretary, and other officers of the corporation that the governing body of the eligible city considers necessary. The corporation's registered agent must be an individual resident of the state and the corporation's registered office must be within the boundaries of the eligible city.

(d) The governing body of an eligible city by ordinance may levy a sales and use tax for the benefit of the corporation under this section if the tax is authorized by a majority of the qualified voters of the eligible city voting at an election called and held for that purpose in accordance with Chapter 321, Tax Code. This election requirement is satisfied and another election is not required if the voters of the eligible city approved the levy and collection of an additional one-half cent sales and use tax at an election held before the effective date of this section under an ordinance calling the election that was published in a newspaper of general circulation within the eligible city at least 14 days in advance of the election and that expressly stated that the election was held in anticipation of the enactment of enabling and implementing legislation without further elections. An election described by this section and held before the effective date of this section is validated as of the date on which the election occurred.

(e) The rate of a tax adopted under this section must be one-eighth, one-fourth, three-eighths, or one-half of one percent. The ballot proposition at the election held to adopt the tax must specify the rate of the tax to be adopted. A corporation that holds an election to reduce or abolish a tax imposed under Section 4A of this Act may in the same or in a separate proposition on the same ballot adopt a tax under this section. If an eligible city adopts the tax, a tax is imposed on the receipts from the sale at retail of taxable items within the eligible city at the rate approved at the election. There is also imposed an excise tax on the use, storage, or other consumption within the eligible city of tangible personal property purchased, leased, or rented from a retailer during the period that the tax is effective within the eligible city. The rate of the excise tax is the same as the rate of the sales tax portion of the tax and is applied to the sale price of the tangible personal property.

(e-1) Notwithstanding any other provision of this section, if a city dissolves a corporation created under Section 4A of this Act and creates a corporation under this section, a person serving as a director of the corporation created under Section 4A of this Act at the time of dissolution may serve on the board of directors of the corporation created under this section.

(f) Chapter 321, Tax Code, governs the imposition, computation, administration, collection, and remittance of the tax except as inconsistent with this section. The tax imposed under this section takes effect as provided by Section 321.102(a), Tax Code. If, however, an election is held under this section at the same time an election is held to impose or change the rate of the additional municipal sales and use tax, the tax under this section and the imposition or change in rate of the additional municipal sales and use tax take effect as provided by Section 321.102(b), Tax Code. After the effective date of the taxes imposed under this section, the adoption of a sales and use tax or the attempted adoption of a sales and use tax by the eligible city or any other taxing jurisdiction having territory in the city does not impair the taxes imposed under this section.

(g) On receipt of the proceeds of the sales and use tax imposed under this section from the comptroller, the eligible city shall deliver the proceeds to the corporation. Tax proceeds may be used to:

- (1) pay the costs of projects of the types added to the definition of that term by Subsection (a) of this section; or
- (2) pay the principal of, interest on, and other costs relating to bonds or other obligations issued by the corporation to pay the costs of the projects or to refund bonds or other obligations issued to pay the costs of projects.

(h) Bonds or other obligations having a maturity not longer than 30 years and issued to pay the costs of projects of the types added to the definition of that term by Subsection (a) of this section may be made payable from any source of funds available to the corporation, including the proceeds of a sales and use tax imposed under this section. The bonds or other obligations that by their terms are payable from the tax may not be paid in whole or in part from any property taxes raised or to be raised by the eligible city and are not a debt of and do not give rise to a claim for payment against the eligible city except as to sales and use tax revenue held by a city and required under this section to be paid over to the corporation.

(i) A sales and use tax imposed under this section may not be collected after the last day of the first calendar quarter occurring after notification to the comptroller by the corporation that all bonds or other obligations of the corporation that are payable in whole or in part from the proceeds of the sales and use tax under this section, including any refunding bonds or other obligations, have been paid in full or the full amount of money, exclusive of guaranteed interest, necessary to pay in full the bonds and other obligations has been set aside in a trust account dedicated to the payment of the bonds and other obligations.

(j) The corporation may exercise the power of eminent domain only on approval of the action by the governing body of the eligible city. The power must be exercised in accordance with and subject to the laws applicable to the eligible city.

(k) The legislature finds for all constitutional and statutory purposes that projects of the types added to the definition of that term by Subsection (a) of this section are owned, used, and held for public purposes for and on behalf of the eligible city incorporating the corporation, and except as otherwise provided by this subsection, Section 23(b) of this Act and Section 25.07(a), Tax Code, are not applicable to leasehold or other possessory interests granted by the corporation during the period

projects are owned by the corporation on behalf of the eligible city. Projects are exempt from taxation under Section 11.11, Tax Code, for that period. For a corporation governed by this section in which the voters of the eligible city that created the corporation have not authorized the levy of a sales and use tax for the benefit of the corporation under Subsection (d) of this section, an ownership, leasehold, or other possessory interest of a person other than the corporation in real property constituting a project of the corporation described by this subsection is subject to ad valorem taxation under Section 25.07(a), Tax Code, except that an ownership, leasehold, or other possessory interest of a person other than the corporation in real property described by this subsection that is created under an agreement entered into by the corporation before September 1, 1999, is covered by the provisions of this subsection governing ad valorem taxation of the ownership, leasehold, or other possessory interest that were in effect on the date on which the agreement was executed.

(l) Section 24 of this Act does not apply to a corporation under this section.

(m) The corporation, a director of the corporation, the eligible city creating the corporation, a member of the governing body of the eligible city, or an employee of the corporation or eligible city is not liable for damages arising from the performance of a governmental function of the corporation or eligible city. For the purposes of Chapter 101, Civil Practice and Remedies Code, the corporation is a governmental unit and its actions are governmental functions.

(n) Before expending funds to undertake a project, a corporation under this section shall hold at least one public hearing on the proposed project.

(n-1) This subsection applies only to a city that is located within the territorial limits of a regional transportation authority that has been added to the territory of the authority under Section 452.6025, Transportation Code. Notwithstanding any other provision of this section, a tax imposed by the city under this section is subject to reduction in the manner prescribed by Section 452.6025, Transportation Code.

(o)(1) The governing body of a city creating a corporation under this section shall order an election on the dissolution of the corporation on receipt of a petition requesting the election that is signed by at least 10 percent of the registered voters of the city. The election must be held on the first available uniform election date that occurs on or after the 45th day after the date the petition is filed with the city.

(2) At the election the ballot shall be printed to permit voting for or against the proposition: "Dissolution of the _____ (name of corporation)."

(3) If a majority of the votes cast are in favor of the dissolution, the corporation shall continue operations only as necessary to meet obligations the corporation incurred before the date of the election, including paying the principal of and interest on bonds. To the extent practicable, the corporation shall liquidate assets of the corporation and apply the proceeds to satisfy the corporation's obligations. After all of the obligations are satisfied, any remaining assets of the corporation shall be transferred to the city, and the corporation is dissolved. The city shall promptly notify the comptroller and the secretary of state of the date a corporation is dissolved under this

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subsection.

(4) A tax imposed under this section may not be collected after the last day of the first calendar quarter that begins after the city provides notice under Subdivision (3) of this section.

(5) If less than a majority of the votes cast at the election favor the dissolution, Subdivisions (3) and (4) of this subsection have no effect.

(p) The department, with the assistance of the Texas Commission on Environmental Quality, may encourage the cleanup of contaminated property by corporations created under this section through the use of sales and use tax proceeds. Notwithstanding any other provision of this section, a corporation created under this section may use proceeds from the sales and use tax to undertake the cleanup of contaminated property only if the use of tax proceeds for that purpose is authorized by a majority of the qualified voters of the city voting in an election called and held for that purpose. The ballot in an election held under this subsection shall be printed to provide for voting for or against the proposition: "The use of sales and use tax proceeds for the cleanup of contaminated property."

Report to Comptroller

Sec. 4C. (a) Not later than February 1 of each year, the board of directors of a corporation created under Section 4A or 4B of this Act shall submit to the comptroller a report in the form required by the comptroller.

(b) The reporting form shall not exceed one page in length and must include:

- (1) a statement of the corporation's primary economic development objectives;
- (2) a statement of the corporation's total revenues during the preceding fiscal year;
- (3) a statement of the corporation's total expenditures during the preceding fiscal year;
- (4) a statement of the corporation's total expenditures during the preceding fiscal year in each of the following categories:
 - (A) administration;
 - (B) personnel;
 - (C) marketing or promotion;
 - (D) direct business incentives;
 - (E) job training;
 - (F) debt service;
 - (G) capital costs;
 - (H) affordable housing; and
 - (I) payments to taxing units, including school districts;
- (5) a list of the corporation's capital assets, including land and buildings; and
- (6) any other information the comptroller requires to determine the use of the sales and use tax imposed under Section 4A or 4B of this Act to encourage economic development in this state.

(c) If a corporation fails to file a report in accordance with this section or fails to include sufficient information in the report, the comptroller shall provide to the corporation written notice of this failure. The written notice must include information on how to correct the failure.

(d) The comptroller may impose an administrative penalty of \$200 against a corporation that does not correct the failure before the 31st day after the date the corporation receives the written notice under Subsection (c) of this section.

(e) The comptroller by rule shall prescribe the procedures for the imposition of an administrative penalty under this section. The rules must protect the due process rights of a corporation.

(f) Not later than November 1 of each even-numbered year, the comptroller shall submit to the legislature a report on the use of the sales and use tax imposed under Sections 4A and 4B of this Act to encourage economic development in this state.

(g) On request, the comptroller shall provide without charge a copy of the report required by Subsection (f) of this section to a corporation organized under Section 4A or 4B of this Act.

Form of corporation

Sec. 5. The corporation shall be a nonmember, nonstock corporation.

Articles of incorporation

Sec. 6. The articles of incorporation shall set forth:

- (1) the name of the corporation;
- (2) a statement that the corporation is a nonprofit corporation;
- (3) the period of duration which may be perpetual;
- (4) the specific purpose or purposes for which the corporation is organized and may issue bonds on behalf of the unit;
- (5) that the corporation has no members and is a nonstock corporation;
- (6) any provision not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws, for the regulation of the internal affairs of the corporation;
- (7) the street address of its initial registered office and the name of its initial registered agent at such street address;
- (8) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;
- (9) the name and street address of each incorporator; and
- (10) a recital that the unit has specifically authorized the corporation by resolution to act on its behalf to further the public purpose or purposes stated in the resolution and in the articles of incorporation and has approved the articles of incorporation.

Certificate of Incorporation

Sec. 7. (a) Triplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to the requirements of this Act, he shall:

- (1) endorse on each original the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of incorporation to each of which he shall affix one of such originals.

(b) A certificate of incorporation together with an original of the articles of incorporation affixed thereto by the secretary of state shall be delivered to the incorporators or their representatives and to the governing body of the unit under whose auspices the corporation was created. A certificate of incorporation granted to a county alliance corporation and the original of the articles of incorporation that is required to be delivered under this subsection to the governing body of the county alliance under whose auspices the corporation was created shall be delivered to the commissioners court of any county in the county alliance and that county shall provide photocopies of the certificate of incorporation and the articles of incorporation to each other member of the county alliance.

(c) Upon the issuance of the certificate of incorporation, the corporate existence shall begin. After the issuance of the certificate of incorporation, the incorporation of the corporation shall be incontestable for any cause, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators and by the unit have been complied with and that the corporation has been incorporated under this Act.

Registered office and agent

Sec. 8. Each corporation shall have and continuously maintain in this state:

- (1) a registered office which may be, but need not be, the same as its principal office; and
- (2) a registered agent, which agent may be an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or to conduct its affairs in this state which has a principal or business office identical with such registered office.

Change of registered office or agent

Sec. 9. (a) A corporation may change its registered office or change its registered agent or both upon filing in the office of the secretary of state a statement setting forth:

- (1) the name of the corporation;

- (2) the post-office address of its then registered office;
- (3) if the post-office address of its registered office is to be changed, the post-office address to which the registered office is to be changed;
- (4) the name of its then registered agent;
- (5) if its registered agent is to be changed, the name of its successor registered agent;
- (6) that the post-office address of its registered office and the post-office address of the business office of its registered agent as changed will be identical; and
- (7) that such change was authorized by its board of directors or by an officer of the corporation so authorized by the board of directors.

(b) Duplicate originals of such statement shall be executed by the corporation by its president or vice-president and verified by him and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) return the other original to the corporation or its representative.

(c) Upon such filing, the change of address of the registered office or the appointment of a new registered agent or both, as the case may be, shall become effective.

(d) Any registered agent of a corporation may resign:

- (1) by giving written notice to the corporation at its last known address; and
- (2) by giving written notice in triplicate to the secretary of state within 10 days after mailing or delivery of said notice to the corporation.

Such notice shall include the last known address of the corporation and shall include the statement that written notice of resignation has been given to the corporation and the date thereof. Upon compliance with the requirements as to written notice, the appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(e) If the secretary of state finds that such written notice conforms to the provisions of this Act, he shall:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the

filing thereof;

(2) file one of such originals in his office;

(3) return one original to such resigning registered agent; and

(4) return one original to the corporation at the last known address of the corporation as shown in such written notice.

Service of process on president or vice-president; service on secretary of state

Sec. 10. (a) The president and all vice-presidents of the corporation and the registered agent of the corporation shall be agents of such corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

✳ Section 10(b) as amended by Texas House Bill 297, 79th Legislature, Regular Session (2005) (effective date September 1, 2005).

(b) Whenever a corporation shall fail to appoint or maintain a registered agent in this state or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any process, notice, or demand shall be made by delivering to and leaving with him or with the deputy ~~assistant~~ secretary of state or with any clerk having charge of the corporation department of his office duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than 30 days.

(c) The secretary of state shall keep a record of all processes, notices, and demands served upon him under this article and shall record therein the time of such service and his action with reference thereto.

Board of directors

Sec. 11. (a) The corporation shall have a board of directors in which all powers of the corporation shall be vested and which shall consist of any number of directors, not less than three, each of whom shall be appointed by the governing body of the unit under whose auspices the corporation was created for a term of no more than six years, and each of whom shall be removable by the unit for cause or at will. The directors shall serve as such without compensation except that they shall be reimbursed for their actual expenses incurred in the performance of their duties hereunder.

(b) The board of directors is subject to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes).

Organizational meeting of board

Sec. 12. After the issuance of the certificate of incorporation, an organizational meeting of the board of directors named in the articles of incorporation shall be held within this state for the purpose of adopting bylaws, electing officers, and for such other purposes as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director named in the articles of incorporation, which notice shall state the time and place of the meeting.

Adoption and approval of initial bylaws

Sec. 13. The initial bylaws of a corporation shall be adopted by its board of directors and approved by resolution of the governing body of the unit under whose auspices the corporation was created.

Quorum; actions of majority at meeting; action without meeting

Sec. 14. (a) A quorum for the transaction of business by the board of directors shall be whichever is less:

(1) a majority of the number of directors fixed by the bylaws or in the absence of a bylaw fixing the number of directors a majority of the number of directors stated in the articles of incorporation; or

(2) any number, not less than three, fixed as a quorum by the articles of incorporation or the bylaws.

(b) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

(c) Any action required by this Act to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action to be taken, shall be signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this Act.

Application of Open Records Act

Sec. 14A. The board of directors is subject to the open records act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

Indemnification of directors and officers; notice of meetings; waiver of notice

Sec. 15. (a) The corporation shall have the power to indemnify any director or officer or former director or officer of the corporation for expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him by action in court or otherwise by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(b) If the corporation has not fully indemnified him, the court in the proceeding in which any claim against such director or officer has been asserted or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity may assess indemnity against the corporation, its receiver, or trustee for the amount paid by such director or officer (including attorneys' fees) in satisfaction of any judgment or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable; provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of negligence or misconduct in respect of the matter in which indemnity is sought.

(c) Regular meetings of the board of directors may be held within the state with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless required by the bylaws.

(d) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Officers

Sec. 16. The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed annually by the board of directors. One person may hold more than one office, except that the president may not hold the office of secretary.

Amendment of articles

Sec. 17. (a) The articles of incorporation may at any time and from time to time be amended,

provided that the board of directors files with the governing body of the unit under whose auspices the corporation was created a written application requesting that the unit approve such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made. If the governing body by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made, and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles as hereinafter provided.

(b) The articles of incorporation may also be amended at any time by the governing body of the unit under whose auspices the corporation was created at its sole discretion by adopting an amendment to the articles of incorporation of the corporation by resolution of such governing body and delivering the articles of amendment to the secretary of state as hereinafter provided.

(c) An amendment of the articles of incorporation of a county alliance corporation may not be adopted under this section unless approved by the governing body of each member of the county alliance under whose auspices the corporation was created.

Execution and verification of amendments

Sec. 18. The articles of amendment shall be executed in duplicate by the corporation by its president or by a vice-president and by its secretary or an assistant secretary or by the presiding officer and the secretary or clerk of the governing body of the unit under whose auspices the corporation was created, shall be verified by one of the officers signing such articles, and shall set forth:

(1) the name of the corporation;

(2) if the amendment alters any provision of the original or amended articles of incorporation, an identification by reference or description of the altered provision and a statement of its text as it is amended to read; if the amendment is an addition to the original or amended articles of incorporation, a statement of that fact and the full text of each provision added; and

(3) the fact that such amendment was adopted or approved by the governing body of the unit and the date of the meeting at which the amendment was adopted or approved by such governing body.

Certificate of amendment; effect of amendment

Sec. 19. (a) Triplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

- (3) issue two certificates of amendment to each of which he shall affix an original.
- (b) A certificate of amendment together with an original of the articles of amendment affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created.
- (c) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.
- (d) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than members; and in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

Restated articles of incorporation and restated certificate of incorporation

Sec. 20. (a) A corporation may, by following the procedure to amend the articles of incorporation provided by this Act including obtaining the approval of the governing body of the unit under whose auspices the corporation was created, authorize, execute, and file restated articles of incorporation which may restate either:

- (1) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state; or
 - (2) the entire text of the articles of incorporation as amended or supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation.
- (b) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state without making any further amendment thereof, the introductory paragraph shall contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and that the instrument contains no change in the provisions thereof, provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the name and address of each incorporator may be omitted.
- (c) If the restated articles of incorporation restate the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by such restated articles of incorporation, the instrument containing such articles shall:

(1) set forth for any amendment made by such restated articles of incorporation a statement that each such amendment has been effected in conformity with the provisions of this Act and shall further set forth the statements required by this Act to be contained in articles of amendment, provided that the full text of such amendments need not be set forth except in the restated articles of incorporation as so amended;

(2) contain a statement that the instrument accurately copies the articles of incorporation and all amendments thereto that are in effect to date and as further amended by such restated articles of incorporation and that the instrument contains no other change in any provision thereof; provided that the number of directors then constituting the board of directors and the names and addresses of the persons then serving as directors may be inserted in lieu of similar information concerning the initial board of directors, and the names and addresses of each incorporator may be omitted; and

(3) restate the text of the entire articles of incorporation as amended and supplemented by all certificates of amendment previously issued by the secretary of state and as further amended by the restated articles of incorporation.

(d) Such restated articles of incorporation shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall be verified by one of the officers signing such articles. Triplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the restated articles of incorporation conform to law, he shall, when a fee of \$25 has been paid:

(1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;

(2) file one of such originals in his office; and

(3) issue two restated certificates of incorporation to each of which he shall affix one of such originals.

(e) A restated certificate of incorporation together with a triplicate original of the restated articles of incorporation affixed thereto by the secretary of state shall be delivered to the corporation or its representative and to the governing body of the unit under whose auspices the corporation was created. A restated certificate of incorporation granted to a county alliance corporation and the originals of the restated articles of incorporation that are required to be delivered under this subsection to the governing body of the county alliance under whose auspices the corporation was created shall be delivered to the commissioners court of any county that is a member of the county alliance and that county shall provide photocopies of the certificate of incorporation and the articles of incorporation to each other member of the county alliance.

(f) Upon the issuance of the restated certificate of incorporation by the secretary of state, the original articles of incorporation and all amendments thereto shall be superseded and the restated articles of incorporation shall be deemed to be articles of incorporation of the corporation.

Authority to issue bonds; approval of programs and expenditures; financial statements, books and records

Sec. 21. Every unit is hereby authorized to utilize a corporation to issue bonds on its behalf to finance the cost of projects, including projects in federally designated empowerment zones and enterprise communities or enterprise zones designated under the Texas Enterprise Zone Act, to promote and develop new and expanded business enterprises to promote and encourage employment and the public welfare. No unit is or shall be authorized to lend its credit or grant any public money or thing of value in aid of a corporation, except that a city may grant public money to a corporation under a contract authorized by Section 380.002, Local Government Code. The unit will approve all programs and expenditures of the corporation and annually review any financial statements of the corporation, and at all times the unit will have access to the books and records of the corporation.

Bonds not debt of state or political subdivision; corporation as constituted authority and instrumentality but not political subdivision or corporation

Sec. 22. Bonds issued under the provisions of this Act shall be deemed not to constitute a debt of the state, of the unit, or of any other political corporation, subdivision, or agency of this state or a pledge of the faith and credit of any of them, but such bonds shall be payable solely from the funds herein provided therefor from revenues. All such revenue bonds shall contain on the face thereof a statement to the effect that neither the state, the unit, nor any political corporation, subdivision, or agency of the state shall be obligated to pay the same or the interest thereon and that neither the faith and credit nor the taxing power of the state, the unit, or any other political corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on such bonds. The corporation shall not be authorized to incur financial obligations which cannot be paid from proceeds of the bonds, from revenues realized from the lease or sale of a project or realized from a loan made by the corporation to finance or refinance in whole or in part a project, or from revenues from a contract with a city under Section 380.002, Local Government Code. The corporation when established and created pursuant to the terms of the Act shall be a constituted authority and an instrumentality (within the meaning of those terms in the regulations of the treasury and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code of 1954, as amended) and shall be authorized to act on behalf of the unit under whose auspices it is created for the specific public purpose or purposes authorized by such unit; but the corporation is not intended to be and shall not be a political subdivision or a political corporation within the meaning of the constitution and the laws of the state, including without limitation Article III, Section 52, of the Texas Constitution, and a unit shall never delegate to a corporation any of such unit's attributes of sovereignty, including the power to tax, the power of eminent domain, and the police power.

Powers of Corporation

Sec. 23. (a) The corporation shall have and exercise all of the rights, powers, privileges, authority, and functions given by the general laws of this state to nonprofit corporations incorporated under the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil

Statutes); but to the extent that the provisions of the general laws are in conflict or inconsistent with this Act, this Act prevails. In addition, the corporation shall have the following powers with respect to projects together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

(1) to acquire, whether by construction, devise, purchase, gift, lease, or otherwise or any one or more of such methods and to construct, improve, maintain, equip, and furnish one or more projects undertaken by a different corporation or located within the state or within the coastal waters of the state and within or partially within the limits of the unit under whose auspices the corporation was created or within the limits of a different unit, where the governing body of the different corporation or the unit requests the corporation to exercise its powers therein;

(2) to recover the costs of an investment under Subdivision (1) of this subsection from a unit or another corporation under a contract that may have an unlimited duration;

(3) to lease to a user all or any part of any project for such rentals and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(4) to sell by installment payments or otherwise and convey all or any part of any project to a user for such purchase price and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(5) to donate, exchange, convey, sell, or lease land, improvements, or any other interest in real property or furnishings, fixtures or equipment, or personal property to an institution of higher education for a legal purpose of the institution upon such terms and conditions as the corporation's board of directors may deem advisable that are not in conflict with the provisions of this Act;

(6) to make secured or unsecured loans to a user for the purpose of providing temporary or permanent financing or refinancing of all or part of the cost of any project, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the cost of a project; and to charge and collect interest on such loans for such loan payments and upon such terms and conditions as its board of directors may deem advisable and not in conflict with the provisions of this Act;

(7) to issue bonds for the purpose of defraying all or part of the cost of any project, whether or not the bonds are exempt in whole or part from federal income taxation, to secure the payment of such bonds as provided in this Act, and to sell bonds at a price or prices determined by the board of directors or to exchange bonds for property, labor, services, material, or equipment comprising a project or incidental to the acquisition of a project, and those bonds may bear interest at any rate or rates determined by the board of directors, subject to the limitations set forth in this Act;

(8) as security for the payment of the principal of and interest on any bonds issued and any agreements made in connection therewith, to mortgage and pledge any or all of its projects or any part or parts thereof, whether then owned or thereafter acquired, and to assign any

mortgage and repledge any security conveyed to the corporation to secure any loan made by the corporation and to pledge the revenues and receipts therefrom;

(9) to sue and be sued, complain and defend, in its corporate name;

(10) to have a corporate seal and to use the same by causing it or a facsimile thereof to be impressed on, affixed to, or in any manner reproduced upon instruments of any nature required to be executed by its proper officers;

(11) to make and alter bylaws not inconsistent with its articles of incorporation or with the laws of this state with the approval of the unit under whose auspices the corporation was created by resolution of the governing body for the administration and regulation of the affairs of the corporation;

(12) to cease its corporate activities and terminate its existence by voluntary dissolution as provided herein; and

(13) whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized which powers shall be subject at all times to the control of the governing body of the unit under whose auspices the corporation was created.

 **Section 23(b) as amended by Texas Senate Bill 252, 79th Legislature, Regular Session (2005) (effective date April 12, 2005).**

(b) The corporation shall not have the power to own or operate any project as a business other than as lessor, seller, or lender or pursuant to the requirements of any trust agreement securing the credit transaction. Accordingly, the user pursuant to any lease, sale, or loan agreement relating to a project shall be considered to be the owner of the project for the purposes of the application of any ad valorem, sales, and use taxes or any other taxes levied or imposed by this state or any political subdivision of this state. The purchase and holding of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof shall not be deemed the operation of a project. The corporation shall, however, have all powers necessary to own and operate a project as a business if the project is a military installation or military facility that has been closed or realigned, including a military installation or facility closed or realigned pursuant to the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687 note) as amended.

(c) Notwithstanding any law to the contrary, any corporation created by a unit under this Act may, with the consent of the unit, obtain health benefits coverage, liability coverage, workers' compensation coverage, and property coverage under the unit's insurance policies, self-funded coverage, or coverage provided under an Interlocal Agreement with other political subdivisions. Health benefits coverage may be extended to the corporation's directors and employees, and the dependents of such directors and employees. Workers' compensation benefits may be extended to the corporation's directors, employees, and volunteers. The liability coverage may be extended to protect the corporation and its directors and employees.

(d) Notwithstanding any law to the contrary, any corporation created by a unit under this Act may,

with the consent of the unit, obtain retirement benefits under any retirement program operated or participated in by the unit. Retirement benefits may be extended to the corporation's employees.

(e) A corporation may use the reverse auction procedure, as defined by Section 2155.062(d), Government Code, for purchasing.

Leases, Sales, and Loan Agreements; Approval of Bonds, Leases, Sales, or Loan Agreements; Permit for Offer and Sale of Securities; Fee Schedules and Bond Procedures; Rules and Regulations

*** Section 24 does not apply to 4A or 4B corporations. See Sections 4A (h) and 4B (l).**

Sec. 24. (a) The department shall approve the contents of any lease, sale, or loan agreement made under this Act. The department shall prescribe rules and regulations setting forth minimum standards for project eligibility and for lease, sale, and loan agreements and guidelines with respect to the business experience, financial resources, and responsibilities of the lessee, purchaser, or borrower under any such agreement, but in no event shall the department approve any agreement unless it affirmatively finds that the project sought to be financed is in furtherance of the public purposes of this Act. Appeal from any adverse ruling or decision of the department under this subsection may be made by the corporation to the District Court of Travis County. The substantial evidence rule shall apply. Rules, regulations, and guidelines promulgated by the department and amendments thereto shall be effective only after they have been filed with the secretary of state.

(b) The corporation may submit a transcript of proceedings in connection with the issuance of the bonds to the department and request that the department approve the bonds. On filing a request for the department's approval of issuance of the bonds, the corporation shall pay to the department a nonrefundable filing fee. The department shall set the amount of the fee at a reasonable amount, but not less than \$500 or more than \$25,000. If the department refuses to approve the bond issue solely on the basis of law, the corporation may seek a writ of mandamus from the Supreme Court, and for this purpose the chair of the department shall be considered a state officer as provided in Section 22.002, Government Code.

(c) The department may delegate to the executive director of the department the authority to approve a lease, sale, or loan agreement made under this Act or bonds issued by a corporation or any documents submitted as provided herein.

(d) No corporation shall sell or offer for sale any bonds or other securities until a permit authorizing the corporation to offer and sell such securities has been granted by the securities commissioner under the registration provisions of The Securities Act, as amended (Article 581-1 et seq., Vernon's Texas Civil Statutes), except as the State Securities Board may exempt from registration by rule, regulation, or order. Appeal from any adverse decision of the securities commissioner or the State Securities Board shall be as provided by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). The substantial evidence rule shall apply in all such appeals.

(e) The department by rule shall require corporations to file fee schedules and bond procedures.

Bond counsel and financial advisors participating in an issue shall be mutually acceptable to the corporation and the user.

(f) The department shall adopt rules and regulations governing programs for small businesses receiving loans guaranteed in whole or in part by the Small Business Administration or other federal agencies. The department may also adopt rules and regulations governing the terms and conditions of loans by a corporation to banks or other lending institutions the proceeds of which are reloaned as permanent or temporary financing of a project.

Bonds and proceeds of bonds

Sec. 25. (a) The principal of and the interest on any bonds issued by a corporation shall be payable solely from the funds provided for such payment and from the revenues of the one or more projects for which the bonds were authorized. The bonds of each issue shall be dated, shall bear interest at such rate or rates that are fixed, variable, floating, or otherwise, shall mature at such time or times not exceeding 40 years from their date as may be determined by the board of directors, and may be made redeemable before maturity at the option of the board of directors at such price or prices and under such terms and conditions as may be fixed by the board of directors of the corporation prior to the issuance of the bonds.

(b) The board of directors shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest. In cases where any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature for all purposes is the same as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both as the board of directors of the corporation may determine, and provisions may be made for the registration of any coupon bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The corporation may sell bonds at public or private sale and at an interest rate not to exceed that permitted by the constitution or laws of the state.

(c) The proceeds of the bonds of each issue shall be used for the payment of all or part of the cost of or for the making of a loan in the amount of all or part of the cost of the project or projects for which authorized as defined herein and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the same. Bond proceeds may be used to pay all costs incurred in issuing the bonds, interest on the bonds for such time as may be determined by the board of directors of the corporation, and to establish reserve funds and sinking funds for the bonds. If the proceeds of the bonds of any series issued with respect to the cost of any project shall exceed the cost of the project for which the same shall have been issued, the surplus shall be deposited to the credit of the sinking fund for such bonds or used to purchase bonds in the open market.

(d) Prior to the preparation of definitive bonds, the corporation may under like restrictions issue interim or temporary bonds with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. Bonds may be issued and lease, sale, and loan agreements entered into under the provisions of this Act without obtaining the consent or

approval of any department, division, commission, board, bureau, or agency of the state except as otherwise provided herein.

(e) The principal of and interest on any bonds issued by the corporation shall be secured by a pledge of the revenues and receipts derived by the corporation from the lease or sale of the project so financed or from the loan made by the corporation with respect to the project so financed or refinanced and may be secured by a mortgage covering all or any part of such project, including any enlargements of and additions to such project thereafter made. The resolution under which the bonds are authorized to be issued and any such mortgage may contain any agreements and provisions respecting the maintenance of the project covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable and not in conflict with the provisions hereof. The resolution under which the bonds are authorized to be issued and the mortgage may contain any agreements and provisions for satisfying the financial assurance requirements applicable to a project for which a permit is required under Chapter 361, Health and Safety Code, or Chapter 27, Water Code, including those relating to construction, proper operation, liability coverage, emergency response capability, well plugging, closure, and postclosure care. Evidence of the passage of a resolution by a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements applicable to such a project is an adequate demonstration that sufficient financial resources will be available to comply with all existing financial assurance requirements. Each pledge, agreement, and mortgage made for the benefit or security of any of the bonds of the corporation shall continue effective until the principal of and interest on the bonds for the benefit for which the same were made have been fully paid.

(f) No issue of bonds, including refunding bonds, shall be delivered by the corporation without a resolution of the governing body adopted no more than 60 days prior to the date of delivery of the bonds specifically approving the resolution of the corporation providing for the issuance of the bonds. If the corporation is authorized by a county alliance, the resolution required by this subsection must be adopted by the commissioners courts of at least three-fifths of the members of the county alliance.

(g) Bonds issued under this Act, and coupons, if any, representing interest on the bonds, are securities as defined by Chapter 8, Business & Commerce Code, as amended, and are negotiable if issued in accordance with this Act.

Refunding bonds

Sec. 26. Each corporation is hereby authorized to provide by resolution for the issuance of its refunding bonds for the purpose of refunding any bonds then outstanding, issued on account of a project, which shall have been issued under the provisions of this Act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds and, if deemed advisable by the corporation, for the additional purpose of financing improvements, extensions, or enlargements to the project in connection with which the bonds to be refunded shall have been issued or for another project. The issuance of such bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the corporation in respect to the same shall be governed by the provisions of this Act insofar as the same may be applicable. Within the discretion of the corporation, the refunding bonds may be issued in exchange for outstanding bonds or may be sold and the proceeds used for the purpose of redeeming outstanding bonds.

Trust agreements

Sec. 27. Any bonds issued under the provisions of this Act may be secured by a trust agreement by and between the corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. Any such trust agreement may evidence a pledge or assignment of the lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to a project for the payment of principal of and interest and any premium on such bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for such purposes. Any such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation, and insurance of the project in connection with which such bonds shall have been authorized, and the custody, safeguarding, and application of all money. It shall be lawful for any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the corporation. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition to the foregoing, any such trust agreement may contain such provisions as the corporation may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of any such trust agreement may be treated as a part of the cost of the operation of the project.

Enforcement of agreements or mortgages

Sec. 28. (a) Any agreement relating to any project shall be for the benefit of the corporation. Any such agreement shall contain a provision that, in the event of a default in the payment of the principal of or the interest or premium on such bonds or in the performance of any agreement contained in such proceedings, mortgage, or instrument, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan payments and to apply the revenues from the project in accordance with such resolution, mortgage, or instrument.

(b) Any mortgage to secure bonds issued thereunder may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor.

Option to purchase granted to lessee

Sec. 29. A corporation may grant a lessee an option to purchase all or any part of a project when all bonds of the corporation delivered to provide such facilities have been paid or provision has been made for their final payment. The provisions of this law are procedurally exclusive for authority to convey or grant an option to purchase, and reference to no other law shall be required.

Authority of Corporation Regarding Bonds, Lease, Sale, or Loan Agreements

Sec. 30. Except as limited by the provisions of this Act or as limited by the rules, regulations, and guidelines of the department, each corporation shall have full and complete authority with respect to bonds, lease, sale, or loan agreements and the provisions thereof.

Validation of Acts of Defense Base Development Corporations

Sec. 30A. (a) For purposes of this section, a "defense base development corporation" means a corporation established under Section 4B of this Act, for the purpose of promoting projects regarding a military base closure or realignment under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Section 2687) and its subsequent amendments.

(b) Each of the following acts of a defense base development corporation is validated and confirmed as of the date it occurred:

- (1) each act or proceeding of the corporation taken before March 1, 1999;
- (2) the election or appointment and each act of a director or other official of the corporation who took office before the effective date of this Act;
- (3) each act or proceeding relating to a bond or other obligation of the corporation authorized before the effective date of this Act; and
- (4) each act or proceeding relating to the entity's incorporation under this Act.

(c) This section does not apply to:

- (1) an act, proceeding, bond, or obligation the validity of which is the subject of litigation that is pending on the effective date of this Act;

- (2) an election or appointment of a director or official the validity of which is the subject of litigation that is pending on the effective date of this Act;
- (3) an act or proceeding that was void or that, under a statute of this state at the time the action or proceeding occurred, was a misdemeanor or felony; or
- (4) an act or proceeding that has been held invalid by a final judgment of a court.

Bonds as legal and authorized investments

Sec. 31. Any bonds issued pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas. Such bonds shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas; and such bonds shall be lawful and sufficient security for said deposits to the extent of their face value when accompanied by all unmatured coupons appurtenant thereto.

Exemption from taxation

Sec. 32. The legislature finds, determines, and declares that the activities of a corporation created and organized under the provisions of this Act affect all the people of the unit under whose auspices it is created by assuming to a material extent that which might otherwise become the obligation or duty of such unit, and therefore such corporation is an institution of purely public charity within the tax exemption of Article VIII, Section 2, of the Texas Constitution. However, a corporation is exempt from the franchise tax imposed by Chapter 171, Tax Code, only if the corporation is exempted by that chapter.

Nonprofit nature of corporation

Sec. 33. The corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm, or corporation, except that in the event the board of directors shall determine that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the corporation, then any net earnings of the corporation thereafter accruing shall be paid to the unit under whose auspices the corporation was created.

Authority to alter or dissolve corporation

Sec. 34. At any time the unit may in its sole discretion alter the structure, organization, programs, or activities of the corporation or terminate and dissolve the corporation, subject only to any limitation provided by the constitution and laws of the state on the impairment of contracts entered into by the corporation. Such alteration or dissolution shall be made by written resolution of the governing

body of the unit and as hereinafter provided.

Dissolution upon completion of purposes

Sec. 35. Whenever the board of directors of the corporation by resolution shall determine that the purposes for which the corporation was formed have been substantially complied with and that all bonds theretofore issued by the corporation have been fully paid, the members of the board of directors of the corporation shall, with the approval by written resolution of the unit under whose auspices the corporation was created, thereupon dissolve the corporation as hereinafter provided.

Dissolution and certificate of dissolution

Sec. 36. (a) Articles of dissolution shall be executed in triplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary or by the presiding officer and secretary or clerk of the governing body under whose auspices the corporation was created. Triplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to the requirements of this Act, he shall, when a fee of \$25 has been paid:

- (1) endorse on each of such originals the word "Filed" and the month, day, and year of the filing thereof;
- (2) file one of such originals in his office; and
- (3) issue two certificates of dissolution to each of which he shall affix an original.

(b) A certificate of dissolution together with an original of the articles of dissolution affixed thereto by the secretary of state shall be returned to the representative of the dissolved corporation and to the governing body of the unit. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this Act.

(c) Whenever dissolution occurs, whether instituted by the governing body unit or by the board of directors of the corporation, the dissolution proceedings shall transfer the title to all funds and properties then owned by the corporation to the unit under whose auspices the corporation was created.

Construction with other laws and federal and state constitutions; severability

Sec. 37. This Act shall be cumulative of all other laws on the subject, but this Act shall be wholly sufficient authority within itself for the creation of the corporations authorized herein and all actions by such corporations authorized hereby without reference to any other general or special laws or specific acts or any restrictions or limitations contained therein; and in any case, to the extent of any conflict or inconsistency between any provisions of this Act and any other provisions of law, this

Act shall prevail and control; provided, however, any unit and any corporation shall have the right to use the provisions of any other laws not in conflict with the provisions hereof to the extent convenient or necessary to carry out any power or authority, express or implied, granted by this Act.

No proceedings, notice, or approval shall be required for the organization of the corporation or the issuance of any bonds or any instrument as security therefor, except as is herein provided, any other law to the contrary notwithstanding; provided that nothing herein shall be construed to deprive the state and its governmental subdivisions of their respective police powers over any properties of the corporation or to impair any police power thereover of any official or agency of the state and its governmental subdivisions as may be otherwise provided by law.

Nothing in this Act shall be construed to violate any provision of the federal or state constitution, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the corporation shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provisions of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof.

Average weekly wage; job training expenditures

Sec. 38. (b) A corporation may spend tax revenue received under this Act for job training offered through a business enterprise only if the business enterprise has committed in writing to:

- (1) create new jobs that pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area; or
- (2) increase its payroll to pay wages that are at least equal to the prevailing wage for the applicable occupation in the local labor market area.

Training Seminars

Sec. 39. (a) This section applies only to a corporation created under Section 4A or 4B of this Act or an entity that creates a corporation under Section 4A or 4B of this Act.

(b) At least once in each 24-month period, the following persons shall attend a training seminar regarding the operation of a corporation created under this Act:

- (1) the city attorney, the city administrator, or the city clerk of a city that created a corporation;
- (2) the county clerk or the county attorney of a county that created a corporation; and
- (3) the executive director of the corporation or other person who is responsible for the daily administration of the corporation.

(c) A corporation shall present proof of compliance with this section to the comptroller by presenting the certificates of completion issued under Subsection (h) of this section for each person that was required to attend the training seminar. The comptroller may impose an administrative penalty, in an amount not to exceed \$1,000 for each violation, against a corporation that fails to present proof in accordance with this section.

(d) A corporation may spend corporate revenue to pay the costs of attending a seminar required by Subsection (b) of this section.

(e) The training seminar described by Subsection (b) of this section must:

(1) be provided by a statewide organization that represents corporations organized under this Act, except as provided by Subsection (f) of this section;

(2) provide at least six hours of instruction devoted to topics relating to the legal and proper operation of a corporation created under this Act; and

(3) be held at least four times per calendar year in a different geographical region of this state.

(f) If the department or its successor determines that no statewide organization is able to provide a training seminar as prescribed by Subsection (e) of this section, the department or its successor, in conjunction with the attorney general and the comptroller, shall by rule develop a training seminar in conformance with this section. The department or its successor may enter into an agreement for the provision of a training seminar developed under this subsection with any person determined by the department or its successor to be qualified to provide the training seminar.

(g) A person, entity, or organization that provides a training seminar under this section may:

(1) charge a reasonable fee for attending the seminar; and

(2) compensate an individual who provides instruction at the seminar.

(h) The person, entity, or organization providing a training seminar under this section shall issue a certificate of completion, on a form approved by the comptroller, to each person who completes the training seminar.

Direct Incentive Provided to Business Enterprise

 **Section 40(a) as amended by Texas House Bill 2928, 79th Legislature, Regular Session (2005) (effective date September 1, 2005).**

Sec. 40. (a) A corporation created under this Act may not provide a direct incentive to or make an expenditure on behalf of a business enterprise under a project as defined by Section 2 or 4B(a)(2), (3), or (4) of this Act unless the corporation enters into a performance agreement with the business

enterprise.

(b) A performance agreement between a corporation and business enterprise, at a minimum, must provide for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement. The performance agreement must also specify the terms under which repayment must be made if the business enterprise fails to meet the performance requirements specified in the agreement.

Requirement for Third-Party Contract for Business Recruitment or Development

Sec. 41. (a) This section does not apply to a payment to an employee of the corporation.

(b) A corporation organized under Section 4A or 4B of this Act must enter into a written contract approved by the corporation's board of directors in connection with the payment of a commission, fee, or other compensation or thing of value to a broker, agent, or other third party who is involved in business recruitment or development.

(c) A corporation that violates Subsection (b) of this section is liable to the state for a civil penalty in an amount not to exceed \$10,000.

(d) The attorney general may bring an action to recover the civil penalty in a district court in Travis County or the county in which the violation occurred.

Economic Incentive for Certain Business Enterprise Prohibited

Sec. 42. (a) In this section, "related party" means a person or entity that owns at least 80 percent of the business enterprise to which the sales and use tax would be rebated as part of an economic incentive.

(b) Notwithstanding any other provision of this Act, a corporation created under this Act may not offer to provide an economic incentive for a business enterprise whose business consists primarily of purchasing taxable items using a resale certificate and then reselling those items to a related party.



APPENDIX 5

QBL Task 2 Memo



March 19, 2020

Veronica Briseno, Director
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Economic Development Department
City of Austin

SUBJECT: Program of Work to Determine Funding Streams and Organizational Structure (Task 2 Memo)

Background

On January 21st, 2020, at a work session for the City Council of the City of Austin (“Council”), QBL Partners (“QBL”) presented an update on progress to create an Economic Development Organization (“EDO”). The presentation was entitled “Presentation Regarding an Economic Development Entity: Task 2 Benchmarking Through Research”. In this Council work session, QBL reviewed:

- The background and genesis of QBL’s contract with the City of Austin (“COA”).
- The full scope of work of the contract, along with the timeline to completion.
- A summary of the stakeholders interviewed in Task 1.
- A summary of the topics and conclusions upon which those interviewed agreed.
- National benchmarking research on similar economic development entities.
- Specifics of Texas laws and limitations around organizational structures, funding streams, and the powers allowed to a theoretical EDO.
- Research on what types of entities exist in other Texas cities.
- Focused research on what other entities exist in the top 4 Texas cities, by population.
- A discussion on possible governance structure, with Q&A from Council live in the room.
- Next steps to complete the scope of work.

The presentation was entered into the public record and was made available to each member of Council as a follow-up. Meetings were then requested for March in line with Task 3 of the contract scope. Those March meetings will focus on an initial proposal for the EDO.

At the conclusion of QBL’s Task 2 Scope, we are charged with briefly detailing the next steps needed to determine both funding streams and organizational structure for the entity—that is the purpose of this Memorandum.

Next Steps: Overall

Based on the work performed to date, QBL now has a fairly comprehensive view of the



need for an EDO in Austin. We concur with the significant majority of those interviewed that the entity would be useful to advance a policy of inclusive growth in the City of Austin.¹ Task 3 requires QBL to come forward with a presentation for Council that describes the main features of the plan for a new EDO. The components of the plan that will be required in Task 3 include:

- Initial Organizational Chart (3 Year)
- Initial Budget (3 Year)
- Project List (3 Year)
- Board Structure (Initial)
- Abstract of Bylaws
- Abstract of all Formation Documents
- Start-up and Transition Narrative
- Cultural Trust Narrative Exploration
- Funding Streams anticipated

In QBL’s estimate, the organizational chart and budget are integrally linked with the project list—in fact, the staffing list and budget are predominantly determined by what projects are selected for the EDO. Based on the work in Task 1 and Task 2, QBL has a rough idea of the projects that stakeholders believe are important.² Balancing the funding streams available in those projects with the overall policy objectives and the staff and budget required to accomplish the projects is critical to a successful start-up of the EDO.³ As a next step, we will review these projects in detail, asking what are the necessary powers, staffing, and budget to support each of these projects. In each case, those powers and budget sources must fall within the constraints outlined in Texas law and described in the Task 2 presentation. Based on QBL’s experience, the precedent materials provided, the benchmarking examples explored nationally and in Texas, and the constraints of Texas economic development law, we can suggest a set of projects and an organizational chart as a part of the Task 3 presentations to Council and EDD Staff.

Given information currently in hand, we will divide Task 3 into two parts. Initially, QBL will present specific project suggestions divided into two types: (i) Major Projects and (ii) Ongoing City Projects.⁴ In a new presentation deck, we will present “Thoughts on the Initial Proposal” and present this to Council in small group sessions in March. This presentation is not an official deliverable as it will be used for discussion purposes only and will not be entered into the public

¹ Please refer to Memo 1 for the definition of inclusive growth, which is quoted here: “The words inclusive growth were used by QBL to describe a particular type of economic development that is increasingly being used to combat gentrification across the US. Inclusive growth has as its goal to insure that ordinary people, local businesses and the features of a City that make it unique are not lost due to unmanaged growth. It was agreed that no additional support was needed to do incentive deals that attract companies to Austin; instead, the focus should be on affordability, equal access to opportunity, and preserving what makes Austin loved by its citizens and constituent businesses.”

² See slide 12 of the Council Work Session presentation referred to above.

³ This will be described at length in the “Start-up and Transition Narrative” at the end of Task 3.

⁴ Major projects are multi-year projects that will provide an anchoring effect for the organization’s staff and funding streams. Ongoing City Projects will be projects for which the EDO lessens the burden of the COA by taking on some responsibility for ongoing projects managed by COA and offloading some of that work to the EDO. In addition to these types, there will always be new projects as directed by Council.



record since it only represents the thoughts and ideas of QBL, the consultant, to spur the ideas and discussions with Council, staff and stakeholders. To this end, this presentation can be thought of as a “straw person” proposal with ideas that are propped up only to be used as a starting point for more refined ideas that come from discussion. As such we will call this the Initial Proposal, and it will include:

- Task 1 & 2 Refresh.
- A list of “Major Projects” and a list of “Ongoing City Projects”.
- Project Proposal Deep Dives: For each Major Project, a description of the role the entity would take, and what potential funding streams would come from that Major Project.
- Initial Organizational Chart.
- Next Steps.

In order to move from the Initial Proposal to Deliverable 4: Presentation on Organizational Development Plan, QBL will need further explanation, discussion and information as follows:

- Feedback in small group sessions from each Council member and/or their staff.
- To brainstorm with Director Briseno and her leadership team about the initial org chart.
- To obtain information regarding pay levels and benefits from COA.
- To meet with some key project teams from the Major Projects to flesh out any gaps in understanding of those projects. In particular it is anticipated this will need to be done for Huston-Tilletson University, South Central Waterfront, the Cultural Trust, the COA team behind the Project Connect financing, and affordable housing personnel from COA.
- Some specific subject matter expertise around funding and legal structure, each described further in turn below.

Next Steps: Determining Funding Streams

QBL now has a general understanding of the funding streams that are proposed to be associated with each Major Project and Ongoing City Project. We will need to validate these funding streams by looking at examples of previous COA projects that utilized the same streams. QBL can work with COA EDD staff to track down examples, including sample contracts and budgets for TIF/TIRZ districts, PID budgets, city leases, revenue and “back-door GO” bond financings, contracts for service between COA and outside entities, any past investment fund structures, and any conduit financing examples—including from the Austin Industrial Development Corporation—whether tax rate election (TRE) or bond backed, if any.

Next Steps: Determining Organizational Structure

Finally, QBL will need to validate with subject-matter expert attorneys various assumptions concerning organizational structure. It is preferred that there be multiple attorneys consulted: the



General Counsel for COA, an experienced state-wide economic development attorney, an experienced public finance bond attorney from the private sector (along with their finance counterpart inside COA), and an Austin-based private sector economic development attorney to draft (or review) entity formation documents. It is contemplated that the City of Austin would pay directly for any costs associated with these legal consultations. Following these conversations, QBL will do additional calls with the benchmark organizations in NYC, Atlanta, Houston, Dallas and San Antonio. As needed, QBL may engage with subject matter experts in those or other organizations, or academia, as required to complete the assignment—if there is any cost associated with these subject matter experts, this will be done inclusive in the existing contract, at no additional cost to COA.

Conclusion and Next Steps

It is now clear that the new Economic Development Organization (“EDO”) is likely to actually be a family of organizations under an umbrella management structure. Our current hypothesis is that the family will include: a Local Government Corporation, the existing Austin Industrial Development Corporation, and a 501(c)3 Cultural Trust – this last could be an existing entity, a new entity, or a program of an existing entity such as Austin’s Community Foundation. This structure of a “family” of entities going under a single common name is a best practice noted in all national examples that had the same scale and scope as what is suggested here. Those included NYC Economic Development Corporation (“NYCEDC”), Philadelphia Industrial Development Corporation (“PIDC”) and InvestAtlanta.⁵ NYCEDC serves as a non-profit umbrella management structure for its NYC-based family of organizations that includes: (i) a local development corporation (also called NYCEDC) which functions as the real estate arm; (ii) an Industrial Development Authority that focuses on incentives and revenue bonds; (iii) a financing conduit for construction of infrastructure (BuildNYC); and a cultural trust that focuses on exempt issuances.⁶ Philadelphia has a non-profit umbrella organization called PIDC with a subsidiary conduit financing entity called Philadelphia Authority for Industrial Development (PAID), a 501c3 CDFI called PIDC Community Capital,⁷ and an EB-5 based investment fund called the PIDC Regional Center. Atlanta has Invest Atlanta, which is a government authority composed of the Urban Residential Finance Authority, the Downtown Development Authority, the Atlanta Economic Renaissance Corporation, and the Creative Industries Loan Fund.

All of the above information is detailed in the January 21st Council Briefing appendix. While dense in context, it is cited here to remind those reading that what is proposed is far from a radical idea—it is, in fact, the norm. In each case, a single name—NYCEDC, InvestAtlanta and PIDC—is used to refer to what actually is a family of organizations. In Austin, QBL believes that the EDO should have as its umbrella management organization a new Local Development Corporation that achieves 501(c)3 status with the Service. This LGC should integrate the already

⁵ Moreover, this structure was also found in San Antonio, Chicago, Miami and Los Angeles.

⁶ NYCEDC also creates subsidiary development corporations for large projects, such as the Brooklyn Navy Yard Development Corporation and the Hudson Yards Development Corporation.

⁷ A CDFI is a Community Development Financing Institution which is a particular type of economic development finance entity focused on inclusive growth and equitable access to financial resources.



existing Austin Industrial Development Corporation—which currently serves as a bond financing entity only. AIDC has no full time staff and its Board is by definition and formation documents the Council itself. With the LGC managing, and an AIDC financing arm controlled by Council, we still need to determine if the cultural trust needs to be its own standalone entity. This will be highly dependent on what specific projects are to be undertaken. QBL’s preference is for the minimum number of entities required to get the policy objective dictated by Council accomplished. Any addition of entities could cause an increase in administrative costs and this should be avoided as much as possible. These monies could be better spent on policy priorities related to inclusive growth. Every dollar spent on administration, even for a cultural trust, is a dollar not spent on affordability for music and arts venues.

The critical features identified for the organization previously to be effective include: the ability to accept philanthropic donations, do revenue bond financing, manage private investments, and fulfil the role of a public developer—managing public real estate and public/private partnerships on behalf of the City in order to achieve inclusive growth policies. Each of these features provides a potential revenue stream for the organization to avoid reliance on sales tax as a funding mechanism. The family of entities including the LGC and the AIDC is sufficient to capture the needed function and powers described in earlier phases. However, there could be additional fundraising power for the Cultural Trust (presumably a 501(c)3) if the EDO sought a partnership with an existing viable foundation that shared the mission goal.

With the conclusion of this Memo comes the conclusion of Task 2. Next steps are for QBL to create the Initial Proposal described above. We will work with City of Austin staff to calendar follow-up meetings with all of the Council (and/or their staff) in early March. We also would like to meet with the Mayor (and his key advisors) as well as City Manager Cronk to review progress to date and insure we are on a path inline with their collective vision and goals. In addition to these meetings with public officials, we will pursue meetings with particular project groups as described above. After all of these meetings and the review of the Initial Proposal, we will then revise the Initial Proposal to create Deliverable 4, and review the updates in a presentation that will be available in the record. At that point we will seek to meet with the attorneys and financial staff mentioned above. QBL will then bring this information via a revised presentation (Deliverable 6) to Council in a work session in April 2020.



APPENDIX 6

QBL Task 2 Council Briefing

Agenda

- Timeline and Scope Review
- Task 1: Summary of Findings
- National Benchmarks and Case Studies
- Texas Tools and Case Studies
- Discussion: Strategic Options
- Next Steps

Timeline & Scope Review

Timeline and Scope Review: Council Direction

Create broad scope entity; Solicit feedback on governance and structure

- City Council directs the City Manager to initiate the necessary processes to authorize the Creation of an economic development entity, identify potential funding sources, solicit stakeholder feedback on the entity's governance and operational structure, and, if necessary, contract with a subject matter expert to develop an implementation plan.
- City Council directs the City Manager to structure the entity broadly enough to manage a range of projects, which could include affordable housing development, public-private Partnerships with private-led development such as the South Central Waterfront that Could provide community benefits, and shall include a Cultural Trust to support acquisition and preservation of creative space.
- City Council directs the City Manager to bring forward a recommendation for funding needs to implement this direction for consideration during the Fiscal Year 2020 budget deliberations.

Timeline and Scope Review (2): SOW

- **Task 1: Engagement Kick-off and Team Formation (Dec)**
 - Review of Materials
 - Interviews
- **Task 2: Research and Benchmarking (Dec-Jan)**
 - Expanded precedent document review and broad research
 - Benchmarks nationally and in Texas
- **Task 3: Initial Proposal to Staff, Stakeholders and Leadership (Feb)**
- **Task 4: Presentation and Recommendations (March)**

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Task 1: Summary of Findings

Task 1: Kick-Off Meetings (40+ interviews)

Most meetings were conducted Dec 9, 10, and 11 in Austin's City Hall. Council member meetings were delayed due to LDC conversations and conducted via phone in January.

- **City of Austin Elected Officials and/or Policy Staff:** CM Tovo, CM Alter, CM Pool, CM Kitchen, CM Flannigan, CM Casar, Mayor Pro Tem Garza, Mayor Adler
- **City of Austin Department Staff:** City Manager, Asst. CM; Economic Development Department; EDD Cultural Arts Division; Redevelopment Division; EDD Strategy & Int'l; EDD Music & Entertainment Division; Planning and Project Group EDD; COA Planning; Neighborhood Housing & Community Development (AHCD) and AHFC; Real Estate & Finance; Law Department
- **Inter-Governmental:** County Commissioner Travillion, Office of the Judge of Travis County, County Commissioner Shea, University of Texas, Capital Metro, CAMPO, Austin Community College, Austin Independent School District, State Senator Watson, Texas Council on Economic Development, City of San Antonio
- **Stakeholders and Anchors:** Capital City Innovation, Downtown Austin Alliance, Red River Cultural District, Austin Cultural Alliance, Greater Austin Chamber of Commerce, Urban Land Institute, Perkins+Will, Austin Community Foundation, Affordable Central Texas, Housing Authority of the City of Austin ("HACA") with HACA, AAHC, NHCD, AHFC

Task 1 Interviews Summary

Topics of Discussion

- Topics of Discussion
 - Structure
 - Governance
 - Funding
 - Powers
 - Projects
 - Examples from other cities
- **Places of Agreement: In the next several slides, we indicate items on which a majority of interviewees agreed as suggestions for consideration by Council.**

Task 1 Interviews Summary: Places of Agreement

Governance, Structure and Funding

- **Structure & Governance**

- Formation of an outside entity
- Board ultimately controlled by Council
- Strong accountability to Council – cautions about Council serving as Board
- Split thoughts on inclusion of other taxing entities on the Board

- **Funding**

- Taking general fund dollars for operations could be challenging
- Explore fee for contract services model as alternative to more COA hiring
- Real estate fees, rents, sales could be a primary long-term funding stream
- Entity should accept philanthropic donations
- Entity could accept fees for bond management
- Entity could accept fee for investment management

Task 1 Interviews Summary: Places of Agreement (2)

Powers

- **General Powers**

- Freezing property tax could be challenging but could assist with affordability
- Issuance of revenue bonds should be explored

- **Real Estate Powers**

- Direct transfer of real estate from City to entity
- Sale, lease, management of public real estate
- Act as public developer, leading and funding inclusive growth
- City lead for P3 Negotiations: Move at the pace of private market
- Expedite public approvals, “be more nimble than the City”
- Management of large-scale development districts and projects on behalf of COA

Task 1 Interviews Summary: Places of Agreement (3)

Projects

- **Lead Agency for Coordinating Inclusive Growth Policy**
 - Affordable Housing, Workforce Housing, Homelessness
 - Affordable Commercial space
 - Workforce development, MWBE, Financial programs / CDFI
- **Cultural Trust**
- **International Investment Fund**
- **Coordinated Transit-Oriented Development with CapMetro**
 - Utilize transit investments as a nexus for creating affordability and cultural programs.
- **Real Estate / Public Developer**
- **Other Priority Projects as Directed by Council**



Note: Places of agreement indicate items on which a majority of interviewees agreed as suggestions for consideration by Council. In some cases there is interpretation of responses by QBL Partners.

National Benchmarks from Peer Cities

National Benchmarks: Summary of Peer Cities

	Population (2018)	Lead Agency	Single Entity v. Family of Orgs	Fees for contract services to City	Fees from Public Developer Role	Fees from bonding	Inclusive Growth Programs (including finance)
NYC	8,398,748	NYCEDC	Family	Yes	Yes	Yes (NYCIDA)	Yes
SF	883,305	City Department	--	--	Yes*	--	Yes
LA	3,990,456	City Department (+LAEDC)	Family	--	Yes	Yes (MICLA & IDA)	Yes
Philadelphia	1,584,138	PIDC	Family	Yes	Yes	Yes (PIDA)	Yes
Miami	470,914	City Department	Family	--	Yes	Yes (MDIDA & DDA)	Yes* (Beacon Council)
Chicago	2,705,994	City Department	City: 2FM & DPD	--	Yes*	Yes*	Yes* (CRGC)
Boston	694,583	City Department	Family (EDIC/BRA)	--	Yes*	Yes (BIDFA)	Yes
Austin	964,254	--	--	--	--	--	--

*City is negotiating deals and/or issuing bonds directly or through a captive conduit. Is capable of receiving fees, but not verified.



Sources: NYCEDC's Peer Cities Conference (2017); Matthew Kwatinetz' experience working with NYCEDC, PIDC. Former director of BRA; Research conducted by QBL of online resources of each entity and city studies.

Deep Dive: NYC, Philadelphia and Atlanta

More Alike Than Different

Deep Dive Summary	NYCEDC	PIDC	Invest Atlanta
Separate Entity	Yes	Yes	Yes
Board	Mixed	Mixed	Mixed
Funding			
General Fund	Pass through	Pass through	Yes*
Dedicated Tax to support operations	No	No	No
Bonds	Yes	Yes	Yes
Contract for Services to government	Yes	Yes	Yes
Real Estate Sales, Lease Revenues, Transaction Fees, AM	Yes	Yes	Yes
Non-Local Government Grants and/or donations	Yes	Yes	Yes*
Fees for Managing Private Funds	Yes	Yes	No
Real Estate Powers and Special Relationship	Yes	Yes	Yes
Projects			
Corporate Attraction & Retention	Yes	Yes	Yes
Industry development	Yes	Yes	Yes
Inclusive Growth (Affordability, Workforce, and/or MWBE)	Yes	Yes	Yes
Affordable Housing and/or Affordable Commercial	Yes	Yes*	Yes
Cultural Trust or cultural affordability program	Yes	No*	Yes*

Texas Tools & Benchmarks

Texas Economic Development

Several Options Already in Use or Not Feasible For Rapid Deployment

- Economic Development Sales Tax (Local Option Sales Tax)
 - EDC Type A/B
- Local Government Corporations (Chapter 431)
- Sports & Community Venue Projects and Districts (Chapters 334, 335)
- Local Property Tax Incentives (Chapters 311-313)
- Economic Development Through Tourism (“HOT”)
- Grants and Loans (Chapter 380)
- Real Property for Economic Development (Chapters 272, 273)
- Agreements not to Annex
- Interlocal Agreements (Chapter 791)
- County Economic Development Powers
- Issuing Debt for Economic Development



Sources: Texas Municipal League: Economic Development Handbook (2017); Texas Local Government Code (Chapters 272, 273, 311-313, 334-335, 380, 431, 791); Texas Development Corporation Act (1979); Basics Regarding Statutory Economic Development Tools for Municipal Attorneys (2004)

Texas Economic Development

Several Options Are Feasible To Explore

- ~~Economic Development Sales Tax (Local Option Sales Tax)~~
 - **EDC Type B**
- **Local Government Corporations (Chapter 431)**
- ~~Sports & Community Venue Projects and Districts (Chapters 334, 335)~~
- **Local Property Tax Incentives (Chapters 311-313)**
- ~~Economic Development Through Tourism (“HOT”)~~
- ~~Grants and Loans (Chapter 380)~~
- **Real Property for Economic Development (Chapters 272, 273, 253)**
- ~~Agreements not to Annex~~
- **Interlocal Agreements (Chapter 791)**
- ~~County Economic Development Powers~~
- **Issuing Debt for Economic Development**



Sources: The elimination of items above is based upon interviews done by QBL in Task 1 that indicated that a given program was: (a) already being utilized by the City or another entity; (b) not applicable to the COA; and/or (c) represented a politically infeasible approach.

Texas Case Studies Summary

Houston, Dallas, San Antonio and Fort Worth

Texas Case Studies Summary	Houston	Dallas	San Antonio	Fort Worth
Structure: Separate Entity, Family, City Department	Houston First	EDD	EDD/SAEDC / IDA/SAEDF	EDD*
Board: All Officials, Some Officials, No Officials	Some	--	Some	Some (FWSA)
Funding				
General Fund	TBD	--	--	
Dedicated Tax	HOT	--	--	HOT
Bonds	No	Yes	--	Yes
Contract for Services to government	Yes	--	Yes	--
Real Estate Sales, Lease Revenues, Transaction Fees, AM	Yes	--	--	--
Non-Local Government Grants and/or donations	Yes	--	SAEDF	--
Fees for Managing Private Funds	No	No	SAEDC	--
Real Estate Powers	Yes	--	--	Yes
Projects				
Corporate Attraction & Retention	Some	Yes	SAEDF	--
Industry development	Some	Yes	SAEDC	Yes
Inclusive Growth (Affordability, Workforce, and/or MWBE)	No	Workforce	Workforce	No
Affordable Housing and/or Affordable Commercial	No	No	No	No
Cultural Trust or cultural affordability program	No	No	No	No

Conclusions of Interviews and Research

These are initial conclusions only and subject to revision

- **A “Family” of Organizations is likely most able to fulfill all Council purposes with appropriate oversight for critical decisions.**
 - Entity 1: Bonding Entity (Such as existing AIDC)
 - Entity 2: EDO Entity
 - City of Austin EDD
 - Partner with existing entities: Affordable Housing, DAA, GACC
- **Critical Governance Decisions Should be City-Controlled**
 - Financing and bonding done as a component unit of COA
 - EDO annual budget and projects should be approved by Council
- **Certain Powers are ideal for sustaining the organization at scale**
 - Real estate on behalf of City (and other entities if possible)
 - Revenue Bonds
 - Contracts for services on behalf of City
- **Broad agreement to pursue “inclusive growth” priorities**



Note: Conclusions are built upon Places of Agreement, and refined by looking at research done in the US and in Texas. In some cases there is interpretation of responses by QBL Partners.

Discussion:

Options for Governance

Governance Structure

Three Options for Discussion

- **Austin Economic Development Corporation (AEDC)**
- **Austin Community Development Corporation (ACDC)**
- **Austin Regional Economic Development Authority (AREDA)**



Note: Names are for ease of discussion only. The governance structure being discussed is for the new Economic Development Organization only. It is assumed that the bonding entity would be the City or the Austin Industrial Development Corporation.

Should Board Include Other Governments?

Three Options for Discussion

- **Austin Economic Development Corporation (AEDC)**
 - Board is appointed by City Council, based on specific expertise
 - Some (but minority) of Board are elected officials

- **Austin Community Development Corporation (ACDC)**
 - ACDC is City-led entity with a regional focus
 - Board is majority City-appointed (some elected officials serve)
 - Some (minority) of directors may be appointed by one or more other governments

- **Austin Regional Economic Development Authority (AREDA)**
 - AREDA is regional entity, co-led by multiple governments
 - Board is majority City-appointed (and can be all elected officials)
 - Board includes ex-officio government officials from all regionally-applicable governments

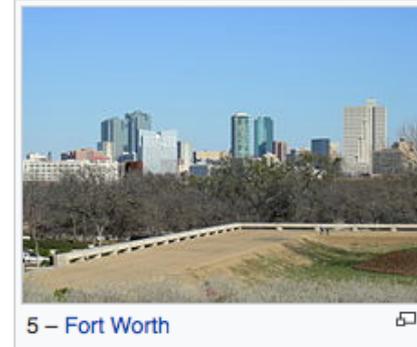
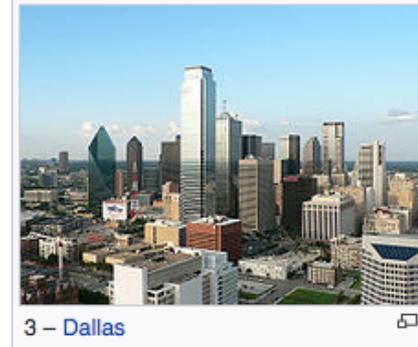
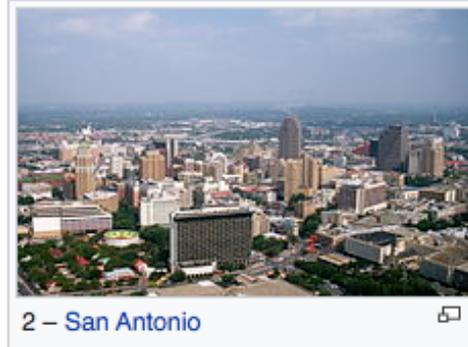
Next Steps

- **Task 1: Engagement Kick-off and Team Formation (Dec)**
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Questions

Texas Case Studies

Texas Benchmark Cities



List of cities and towns [\[edit \]](#)

Rank	Place name	2018 Census Estimates	2010 Census	% Change
1	Houston	2,325,502	2,100,389	10.11%
2	San Antonio	1,532,233	1,327,407	13.90%
3	Dallas	1,345,047	1,197,816	11.96%
4	Austin	964,254	790,390	20.28%
5	Fort Worth	895,008	741,206	17.94%
6	El Paso	682,669	649,121	5.31%
7	Arlington	398,112	365,438	8.47%
8	Corpus Christi	326,554	305,215	6.68%

Houstonfirst

ABOUT US

Houston First Corporation is leading the effort to promote Houston as one of the great cities of the world. Our employees operate the city's finest convention, arts and entertainment venues. A local government corporation formed in 2011, Houston First manages more than 10 city-owned buildings and properties and underground and surface parking for nearly 10,000 vehicles.

- Promoting the region as a destination for tourism and convention business.
- Attract film production to the area
- Operates theaters where world-class performances take center stage
- Managing outdoor spaces where festivals and other activities thrive.
- Managing more than 10,000 parking spaces (Office/Theatre)

MISSION

To enhance the quality of life, advance economic prosperity and promote the Houston region.

14.7

acres of plazas and
other green space

11

buildings valued in
excess of \$1 billion

254

contracts and
14 leases

2,650,000

square feet of building space

10,000

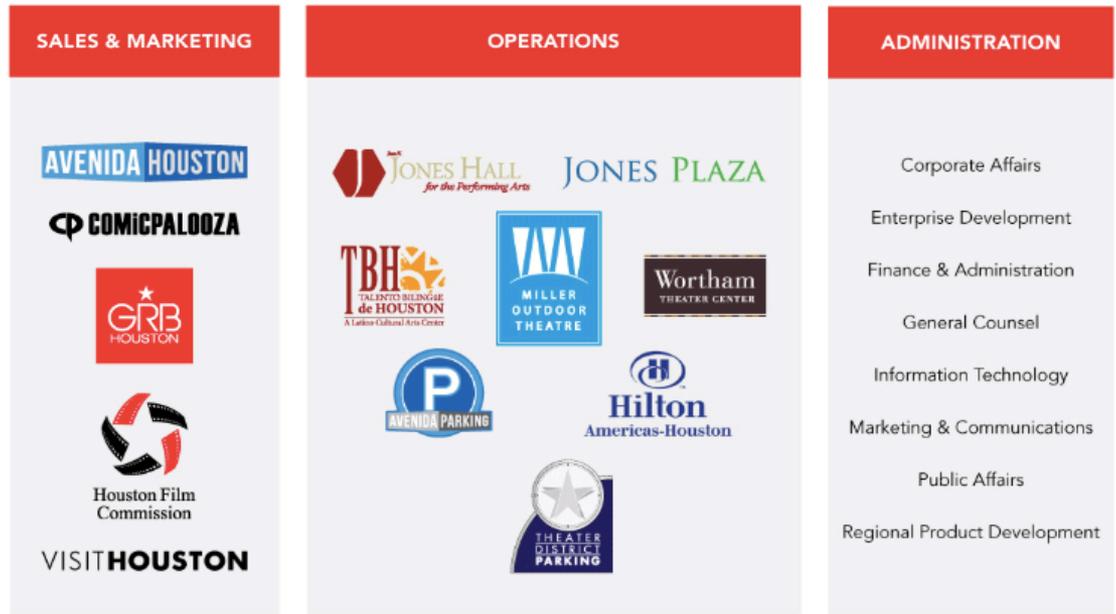
parking spaces

Houstonfirst

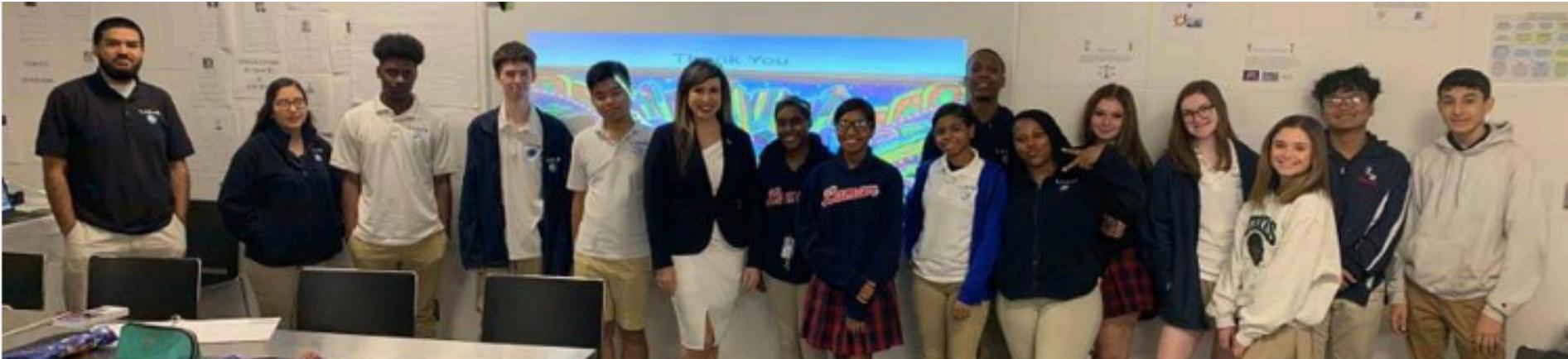
Houston First operations include day-to-day maintenance, management and licensing of its properties as the sites of conventions and trade shows (40 major events and 200 smaller events, per year), concerts and theatrical performances (more than 600, per year), and civic events. The organization also acts as the City of Houston's agent for collection of hotel occupancy tax revenue.

Houston First owns the Hilton Americas-Houston and manages these assets for the City of Houston:

George R. Brown Convention Center
Hilton Americas-Houston Hotel
Jones Hall for the Performing Arts
Jones Plaza
Miller Outdoor Theatre
Talento Bilingüe de Houston
Theater District Parking
Toyota Tundra Garage
Wortham Theater Center
Partnership Tower



Source: <https://www.houstonfirst.com> accessed in December 2019 and January 2020.



In 2011, the City of Houston established Houston First, a local government corporation created to operate the city's convention and performing arts facilities, as well as promote Houston as a world-class destination for tourism and conventions.

Houston First's establishment was the result of more than 10 years of study. In forming the organization, the City consolidated its Convention & Entertainment Facilities Department, and the Houston Convention Center Hotel Corporation (created by the City in 2000). This consolidation was enhanced in 2014 when Houston First and the Greater Houston Convention & Visitors Bureau (GHCVB) aligned to create a single, unified voice that speaks for the Houston product in all sales and marketing efforts. The restructuring has streamlined our organization and improved accountability, while providing Houston First with the flexibility to adjust sales and marketing expenditures based on market conditions.



A 12-member Board of Directors sets policy for the corporation and approves its major initiatives and expenditures. The City of Houston maintains an oversight role through the City Council's approval of board appointments and its annual budget. Two City Council members also sit on the Board of Directors, in ex-officio roles.

Board:

- 12 Members appointed by Mayor and confirmed by Council
 - Four may be recommendations of HCVB
 - One may be recommended by the Judge of Harris County
- 1 Member appointed and confirmed by Council
- All members of the board must have background in one or more of the following:
 - Management of venues and restaurants
 - Promotion of events or venues
 - Accounting
 - Law
 - Other business of the corporation
- Any member may be removed by the Mayor at any time
- 2 Councilmembers serve as *Ex-Officio* Members of the Board



- The San Antonio Development Corporation (SAEDC) is a non-profit EDC Type B corporation established by the City Council in 2010 to help the City in facilitating economic development projects, particularly when there is an opportunity to secure equity in a company.
- The primary goals of the SAEDC are to promote innovation and assist local entrepreneurs and startup companies in the City's targeted industries; and to create a self-sustaining Economic Development Fund through future potential returns from projects and investments.
- The SAEDC has a 7-member Board consisting of the Mayor, City Manager, two City Council members and three citizens-at-large appointed by City Council.
- City Council annually considers and approves funding for the SAEDC and must approve any proposed project and investment of over \$50,000.



San Antonio Economic Development Foundation (SAEDF) is a private, nonprofit organization that leads the development and diversification of the San Antonio regional economy through the location and expansion of quality employers and job producing investments. We exist to drive San Antonio's economic growth and diversification through recruiting new business to San Antonio, helping our local companies stay and grow, and bridging the gap between education and industry to build a sustainable workforce pipeline for the community. SAEDF is supported by its partners (City of San Antonio, Bexar County, CPS Energy, SAWS) and more than 165 private sector investors. Since 1975, SAEDF has assisted over 450 companies with their location and/or expansion plans, creating more than 110,000 jobs for San Antonians.

The City of Dallas maintains a full-service economic development program that leads the City's business and real estate development efforts. The Office supports existing and prospective Dallas businesses as well as development and redevelopment within the city of Dallas. The office does not get directly involved in real estate management, but uses standard Chapter 380 tools as well as TIFs, PIDs and the site selection toolkit from Texas.



National Case Studies

Case Study: Philadelphia

We are Philadelphia's public-private economic development corporation.



PIDC is a **non-profit organization** founded by the City of Philadelphia and the Chamber of Commerce for Greater Philadelphia in 1958.

MISSION & VALUES

Our mission is to spur investment, support business growth, and foster developments that create jobs, revitalize neighborhoods, and drive growth to every corner of Philadelphia. To achieve our mission we attract, manage, and invest public and private resources in the clients, communities, and markets that energize Philadelphia's economy.

HOW WE DO IT

We offer flexible financing tools, a targeted portfolio of industrial and commercial real estate, and decades of Philadelphia-based knowledge to help our clients invest, develop, and grow. We also structure and invest in public-private partnerships for key City policy areas and development priorities.

TRACK RECORD

Over the past 58 years, PIDC and its affiliates have settled 6,700 transactions, including \$14 billion in financing that has leveraged over \$25 billion in total investment and assisted in creating and retaining hundreds of thousands of jobs. Its direct loan and managed third-party portfolio at the start of 2016 exceeded \$642 million, representing 520 loans.



Source: <https://www.pidc.org> accessed in December 2019 and January 2020.

A thirty-member **Board of Directors**, appointed by the Mayor of Philadelphia and the President of the Greater Philadelphia Chamber of Commerce, governs PIDC.

The Staff includes 65 full-time employees and the annual budget is funded largely from service fees generated by PIDC's business activities. PIDC manages **a family of organizations**:

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT (PAID)

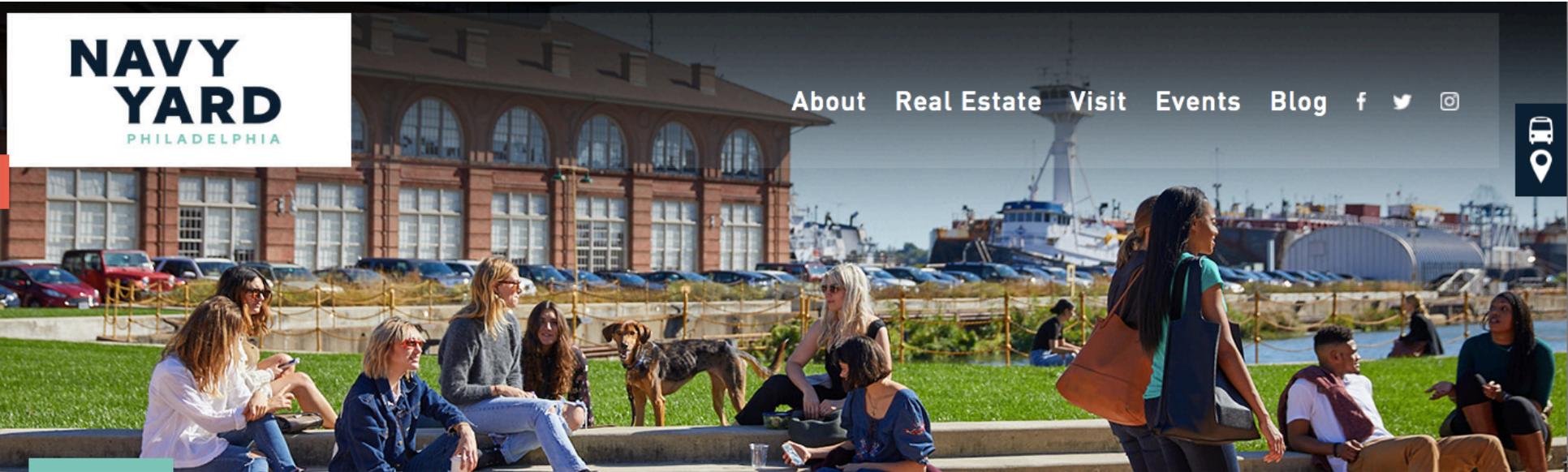
A public authority organized to undertake three main activities in support of PIDC's mission. PAID is a vehicle through which PIDC manages industrial and commercial real estate; issues taxable and tax-exempt bonds on behalf of non-profits and manufacturers; and delivers governmental grant funding for economic development projects throughout the city.

PIDC COMMUNITY CAPITAL

A 501(c)(3) non-profit and certified community development financial institution (CDFI) which supports PIDC's mission of community investment and delivers additional resources with a particular focus on small business lending and technical assistance in underserved, low-income communities.

PIDC REGIONAL CENTER

The PIDC Regional Center is a partnership between PIDC and CanAm Enterprises, LLC to sponsor investment opportunities in projects that qualify for the U.S. Immigration Investor Program (EB-5 Program).



Since acquiring the 1,200-acre site from the federal government in 2000, [PIDC](#), has led the planning, development, and operation of the Navy Yard. *POLITICO* has called the Navy Yard “the coolest shipyard in America”. Today, the Navy Yard is an expanding community of nearly 15,000 employees and 170 employers who occupy 7.5 million square feet of facilities across a mix of property types, including office, retail, industrial, R&D, and institutional. In recent years, the Navy Yard’s total employment has steadily expanded by approximately 1,000 new employees per year and will support an additional 10 million square feet of commercial and residential development at full buildout.



Oxford Mills, a \$38 million mixed use project that transformed an abandoned factory into **affordable living space for teachers** and **office space for educational non-profit** organizations. The fully renovated building now houses offices for Teach for America, a national teacher corps of recent college graduates who strive to effect change in under-resourced areas. Funded in part by an allocation of New Markets Tax Credits from PIDC, Oxford Mills generated 200 construction jobs and 100 permanent jobs, created a vibrant culture where educators can collaborate and thrive, and built an economic anchor for the neighborhood.



is charged with creating strong neighborhoods and good jobs.



NYCEDC is a **non-profit organization** founded by the City of NY in 1947. NYCEDC is the placeholder name representing a family of organizations: a Local Development Corporation (NYCLDC), a non-profit (NYCEDC), an Industrial Development Authority (NYC IDA), a financing conduit for construction (BuildNYC), a cultural trust. NYCEDC also creates subsidiaries for particular districts such as the Brooklyn Navy Yard Development Corporation and the Hudson Yards Development Corporation.

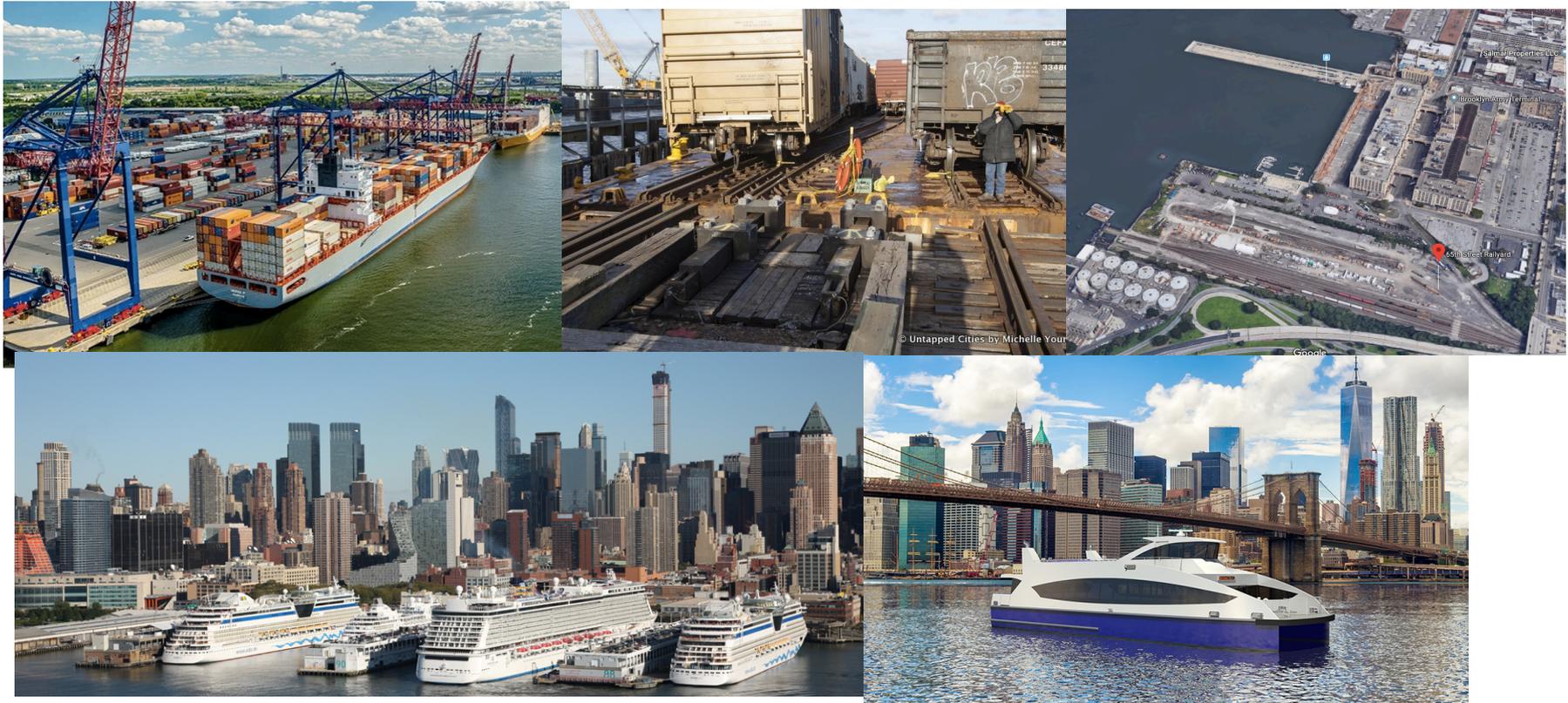


Organization	Total Square Feet
NYCEDC	65,000,000
Brookfield Asset Management	27,529,529
SL Green Realty Corp.	27,240,372
Vornado Realty Trust	24,669,785
Tishman Speyer	22,882,568
City of NY (DCAS)	22,000,000
Silverstein Properties	13,413,719
The Durst Organization	12,325,582
Rudin Management Company	10,363,057

NYCEDC is primarily funded from monies generated from the real estate portfolio: sales, leases, transaction fees, financing fees and contract for services with NYC. The real estate portfolio is primarily city-owned land in the jurisdiction of Small Business Services, Department of Parks and Recreation, Cultural Affairs, Department of Education, Department of Housing Preservation and Development, and others. There are significant inter-governmental management projects for real estate (especially with the state). While the real estate is used to generate money, much of that money is then spent on inclusive growth policies: affordable housing, affordable transportation, affordable ECE, cultural space, food security, etc.

...and we run a Port

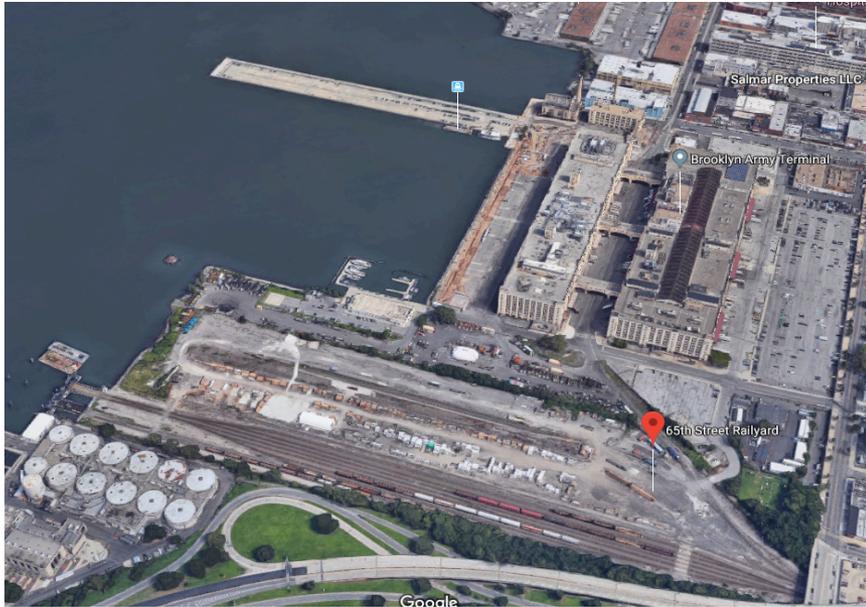
Rail freight, marine terminals, cruise, heliports, distribution, ferries



As NYCEDC became increasingly efficient at managing programs of the City, NYC reorganized multiple large functions into the entity. Most significantly this include the Port of NY (see above), and the Department of Transportation private ferry operations. NYCEDC has a history of jumping into collaborations with other government entities as well as with other city departments. NYEDC brands this “PortNYC” although it is not a technical separate entity. PortNYC is currently focused on moving freight from roadways to a marine highway to reduce carbon emissions; and building port infrastructure to support offshore wind energy farms.

NYCEDC: Brooklyn Army Terminal Public Developer

Inclusive Growth: Permanently Affordable 21st Century Industrial Campus



- 500k SF permanently affordable industrial; 800,000 SF vertical Industrial
- Rail Float Bridge 7k to 300k TEU's
- Universal Pre-K; Daycare; Affordable Food – CSA (from markets)
- Job Training & Classes; Living Wage
- NYC Ferry
- Community: Fishing/Esplanade access; Piers: Concerts, Programs; AREA

NYCEDC: MiNY Campus Public Developer

Production Capacity in Fastest Growing Sector + Affordable Commercial + Creative



- \$136M investment in affordable, best-in-class industrial facilities for garment manufacturing, film and media production, and related services and industries
- Creating 1,500 jobs through new construction and infrastructure investment starting in 2020. Resilience and Appendix G.
- Adjacent to the new NYCEDC-built Bush Terminal Piers Park
- Currently home to more than 50 tenants.

Invest Atlanta

Atlanta Development Authority: Overview



- Mission: To advance Atlanta's global competitiveness by **growing a strong economy, building vibrant communities, and increasing economic prosperity** for all Atlantans.
- Invest Atlanta is the official economic development authority for the City of Atlanta. Its purpose is to strengthen Atlanta's economy and global competitiveness to create increased opportunity and prosperity for the people of Atlanta. Invest Atlanta is a government authority comprised of:
 - Urban Residential Finance Authority
 - Downtown Development Authority
 - Atlanta Economic Renaissance Corporation .
- .We build and lead coalitions through our powerful network of businesses, educational institutions, and civic organizations.
- Programs: developing and fostering public-private partnerships to accelerate job creation/economic growth, neighborhood revitalization/investment, and innovation/entrepreneurship.

2018 HIGHLIGHTS		
Jobs Created or Retained	10,832	
Affordable Units Created	926	
Down Payment Assistance	\$3M	
New Capital Investment	\$1.6B	
Small Business Loans	\$1.2M	



Source: <https://www.investatlanta.com/> accessed in December 2019 and January 2020.

Invest Atlanta

Atlanta Development Authority: Governance & Powers



- Receives governmental power through two pieces of legislation: the Local Government Authorities Registration Act and the Georgia Redevelopment Powers Law. Able to receive charitable donations. Invest Atlanta's economic tools include bond financing, revolving loan funds, housing financing, tax increment financing and tax credits.
- Board: The composition of the 9 member board of directors shall be as follows:
 - Mayor
 - Chair of the City Council Community Development and Human Resource Committee
 - One representative of the Atlanta Planning and Advisory Board ("APAB") appointed by the Mayor from a list of three nominees submitted by APAB
 - Two members appointed by the Mayor and confirmed by the City Council who have experience in the following areas:
 - business; and
 - finance;
 - Two members appointed by the City Council who have experience in:
 - Business; and
 - Real Estate
 - One nominated by the Board of Commissioners of Fulton County, appointed by Mayor
 - One nominated by the City of Atlanta Board of Education, appointed by the City Council



Source: AMENDED AND RESTATED BYLAWS OF THE ATLANTA DEVELOPMENT AUTHORITY
d/b/a "INVEST ATLANTA", July 21, 2016

Invest Atlanta: Inclusive Growth

Economic Mobility



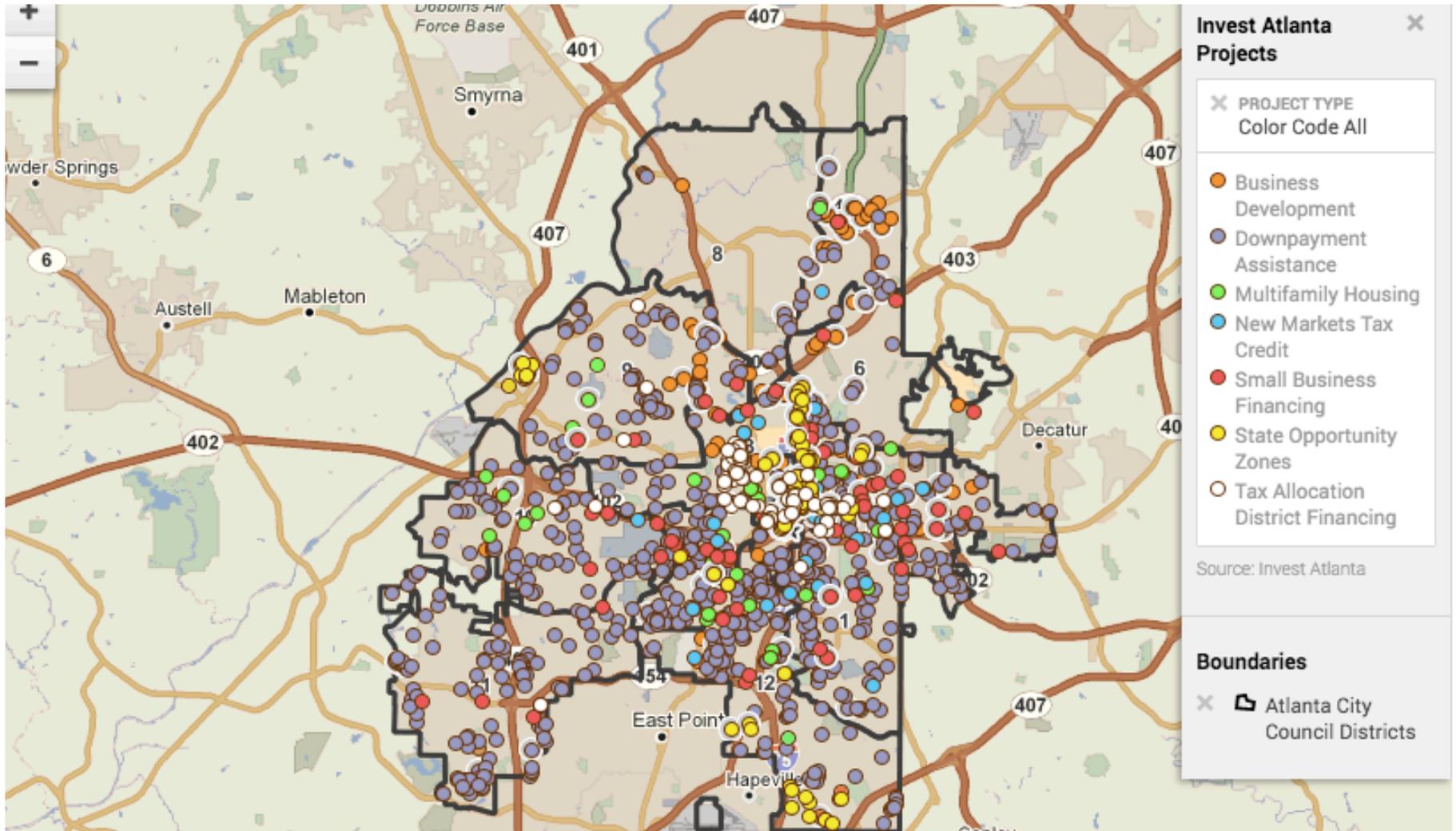
- Economic prosperity and competitiveness in Atlanta start with equity—equitable access to opportunity and pathways to wealth creation. It is more than a goal, it is a guiding principle that drives us. We advance our work through this lens to ensure that all Atlantans are positioned to benefit from economic investments in our city, regardless of their zip code.
- We are committed to responsibly utilizing the resources, economic incentives, programs and financial tools available to us to increase sustainable living-wage jobs and affordable housing, reduce income and wealth gaps across racial and social-economic lines, and help ensure all Atlanta neighborhoods and residents have the assets they need to thrive.



Source: <https://www.investatlanta.com/> accessed in December 2019 and January 2020.

Invest Atlanta: Expansive Projects

Achieving Scale



Invest Atlanta: Creative Industries Loan Fund

Inspiring Creatives Through Financing



	Film	Music	Digital Entertainment
Criteria	Assist content creators in film production, post production and distribution	Assist content creators in music production, post production and touring	Assist content creators in digital entertainment with production and distribution
Loan Amount	\$5,000 - \$50,000	\$5,000 - \$50,000 <i>up to \$100,000 for touring/festival</i>	\$5,000 - \$50,000
Typical Structure	Direct Loans	Direct Loans	Direct Loans
Term	1 - 5 years	1 - 5 years	1 - 5 years
Interest Rate	3% - 7%	3% - 7%	3% - 7%
Eligible Uses	Production Post Production Marketing Distribution	Production Post Production Marketing Distribution Touring/Festival	Prototype Development Product Development Sales & Attraction
Jobs Created/Retained	Yes	Yes	Yes
Application Fee	\$100 (nonrefundable)	\$100 (nonrefundable)	\$100 (nonrefundable)

Texas P3 Corporate Structures:

A Primer

Texas Economic Development

- Economic Development Sales Tax (Local Option Sales Tax)
 - EDC Type A/B
- Sports & Community Venue Projects and Districts (Chapters 334, 335)
- Local Property Tax Incentives (Chapters 311-313)
- Economic Development Through Tourism (“HOT”)
- Grants and Loans (Chapter 380)
- Real Property for Economic Development (Chapters 272, 273)
- Agreements not to Annex
- Interlocal Agreements (Chapter 791)
- County Economic Development Powers
- Issuing Debt for Economic Development

EDC Type A & Type B: Governance and Oversight

- Open Meetings Act & Public Information Act
- Board
 - Appointed by majority vote of council at open meeting
 - Members: Minimum 5 member (Type A) or 7 member (Type B) Board of Directors
 - Terms: Six Year (Type A) and Two Year (Type B).
 - Any director may be removed by council at any time.
 - Type B directors must be residents.
 - Type B directors must include at least three members not elected officials or city staff.
- City approves all programs and expenditures of the EDC
- City annually reviews financials and approves budget of the EDC, access to books.
- City may alter the structure, organization, programs or activities at any time.
- EDCs are not a political subdivision. The attorney general has concluded that the following do not apply to EDCs: Chapter 171 governing conflicts of interest, Chapter 272 governing the city sale of real property, Chapter 2258 concerning prevailing wage law is not applicable to a worker employed by or on behalf of an economic development corporation.

EDC: Governance and Oversight: State Annual Report

- A statement of the corporation's primary economic development objectives
- A statement of the corporation's total revenues for the preceding fiscal year
- A statement of the corporation's total expenditures for the preceding fiscal year
- A statement of the corporation's total expenditures during the preceding fiscal year in each of the following categories:
 - administration
 - personnel
 - marketing or promotion
 - direct business incentives
 - job training
 - debt service
 - capital costs
 - affordable housing
 - payments to taxing units, including school districts
- A list of the corporation's capital assets, including land and buildings (for example, industrial parks, recreation and sports facilities, etc.)
- Any other information required by the comptroller



EDC: Powers of Type A & B

- Power to expend tax proceeds
- Powers of a non-profit corporation (unless in conflict with the Act)
- Legal and Financial Transaction Powers
 - Sell and lease a project
 - Not required to follow Chapter 272 public bidding (JC-109, 1999)
 - Must obtain FMV when selling real property
 - Type B: If acquiring with bond monies, must obtain appraisal
 - Make secured and unsecured loans
 - Sue and be sued
- Non-profit that is non-member and non-stock
- Tax Exemption: Considered public charities
 - Exempt from state and local sales tax, state franchise tax
 - Type B: Owned projects are exempt from property tax

EDC: Powers of Type A & B (cont.)

- Eminent Domain: Type B only. Only with approval of the action by the City.
- Limited Tort Claims Action protection
- Limited Power to Own or Operate a Project: Real Estate, Airport, Military
- City Grants: Yes, if for “development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development and expansion of commerce in the state.” Note that providing back-office services from the City requires payment of EDC
- Conveyance of Real Property
 - Gift or legal settlement and adjacent to designated development area
 - City with population <1.9M can convey to a 501c3 non-profit
 - Notice and bidding of Chapter 272 of LGC not required
 - Must have agreement to promote public purpose of the City
 - Reversion rights of City apply if not for a public purpose (at any time)

EDC: Powers of Type A & B (cont.)

- City may provide insurance coverage and retirement benefits to EDC employees
- Authorized to use reverse auction proceedings for purchasing of goods and services
- Performance Agreements are required for expenditure of tax proceeds
 - Schedule of additional payroll or jobs to be created or retained
 - Capital investment to be made by the private business enterprise
 - Terms of repayment should business fail to perform
 - Additional restrictions on undocumented workers and immigration violations
- Requirement for written contracts for third party business recruitment
- Limitations on incentives to Purchasing Companies (resellers to related parties)

Chapter 273 & 272

Real property for Economic Development

- Ch. 273: This statute lists purposes for which a City may purchase land
 - City is not authorized to purchase land for EcoDev or to give to private party.
 - Unlike the purchase of personal property or the purchase of certain services, expenditures by a city for real property are not required to be competitively bid.
- Ch. 272: This statute governs the disposition of city-owned land
 - Requires public notice and sale-by-bid
 - There are some exceptions, those notable here are:
 - city land that is located in a reinvestment zone that has been designated as provided by law and that the city desires to have developed under a project plan adopted by the city for the zone;
 - In certain cases sale to another political subdivision
 - private sale of city-owned property if the real property is acquired by the city with economic development funds from the community development block grant nonentitlement program
 - Transfer at FMV to an EDC if it land: was a gift; settlement proceeds; next to a designated economic development area
 - for cities under 1.9 million, a transfer of title or interest in land to a federally-exempt nonprofit organization is also exempt from the notice and bidding requirements of Chapter 272 of the Local Government Code.1061 An agreement with the nonprofit organization must require use of the land in a manner that primarily promotes a public purpose of the city.

Issuing Debt for Economic Development

Home rule cities must point to a particular statute to authorize bond issuance

- Chapter 311 of the Tax Code
 - Tax Increment bonds to finance a tax increment economic development project

- Chapter 1509 of Government Code
 - A city may issue revenue or general obligation bonds to finance the construction or purchase of a facility for the purpose of leasing the facility to a private entity for use in a manufacturing or another commercial activity

- Development Corporation Act (Local Government Code Chapters 501-507)
 - Authorizes development corporations to issue bonds for economic development under certain circumstances. The city is not the issuer of the debt.

- What about Chapter 380, for bonds to be issued to provide for grants and loans?
 - There must be a specific provision in the City Charter
 - The voters must approve the bond issuance in an election.





APPENDIX 7

COA LGC Summary List

City of Austin, Texas – Local Government Corporations 03/05/2020 DRAFT

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
The Austin Housing Finance Corporation (AHFC)	A	<p>AHFC was created in 1979 as a public, nonprofit corporation and instrumentality of the City under the provisions of the Texas Housing Finance Corporation Act, Chapter 394, and Local Government Code. The mission of the AHFC is to generate and implement strategic housing solutions for the benefit of low- and moderate-income residents of the City. AHFC is governed by a board composed of the City Council. In addition, City management has operational responsibilities for this component unit.</p> <p>Reporting Fund: Housing Assistance fund, a nonmajor special revenue fund.</p> <p>AHFC's primary functions are to:</p> <ul style="list-style-type: none"> • Issue single-family and multi-family bonds for the financing of reasonably priced housing • Assist the City in the delivery of reasonably priced housing programs using HOME Investment Partnerships (HOME) and Community Development Block Grant (CDBG) funds granted to the City by the U.S. Department of Housing and Urban Development (HUD) <p>City Council acts as the board of directors of the corporation. In addition, City management has operational responsibilities for this component unit.</p> <p>http://www.austintexas.gov/department/austin-housing-finance-corporation</p>	Austin City Council serves as the AHFC's Board of Directors.	Rosie Truelove, Neighborhood Housing, 512-974-3064	

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
Urban Renewal Agency (URA)	A	<p>URA was created by the City under Chapter 374 of the Texas Local Government Code. The Mayor, with consent of the City Council, appoints the board of commissioners for this agency, whose primary responsibility is to oversee the implementation and compliance of urban renewal plans adopted by the City Council. An urban renewal plan's primary purpose is to eliminate slum and blighting influence within a designated area of the city. City Council maintains the ability to impose its will on the organization. URA exclusively receives financial support/benefits from its relationship with the City.</p> <p>Reporting Fund: Urban Renewal Agency fund, a nonmajor special revenue fund.</p>			<p>Research is not complete. Diana Thomas or Controller's Office may be able to provide additional information since this is reported in the CAFR.</p>
Austin Industrial Development Corporation (AIDC)	A	<p>AIDC was created under the Texas Development Corporation Act of 1979 to provide a means of extending tax-exempt financing to projects that are deemed to have substantial social benefit through the creation of commercial, industrial, and manufacturing enterprises, in order to promote and encourage employment in the City. City Council acts as the board of directors of the corporation. In addition, City management has operational responsibilities for this component unit.</p> <p>Reporting Fund: Austin Industrial Development Corporation fund, a nonmajor special revenue fund.</p> <p>The mission of the AIDC is to promote and develop commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare, pursuant to the provisions of the Development Corporation Act, Chapter 501, Texas Local Government Code. http://www.austintexas.gov/department/austin-industrial-development-corporation</p>	Austin City Council serves as the AIDC's Board of Directors.	Director, Economic Development Department.	

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
Mueller Local Government Corporation (MLGC)	A	<p>MLGC is a non-profit local government corporation created by the City under Subchapter D of Chapter 431 of the Texas Transportation Code. MLGC was created for the purpose of financing infrastructure projects required for the development of the former site of Mueller Airport. City Council acts as the board of directors of the corporation.</p> <p>Members of the City staff serve as officers of the corporation and have operational responsibilities for this component unit.</p> <p>Reporting Fund: Mueller Local Government Corporation, a nonmajor special revenue fund.</p> <p>http://www.austintexas.gov/department/mueller-local-government-corporation</p>	Austin City Council serves as the MLGC's Board of Directors.	Greg Canally, Financial Services: 512-974-2609	
Austin-Bergstrom International Airport (ABIA) Development Corporation	A	<p>ABIA Development Corporation is governed by a board composed of the City Council. The entity has no day-to-day operations. Its existence relates only to the authorization for issuance of industrial revenue bonds or to other similar financing arrangements in accordance with the Texas Development Corporation Act of 1979. To date, none of the bonds issued constitute a liability of ABIA Development Corporation or the City. In addition, City management has operational responsibilities for this component unit.</p> <p>There is no financial activity to report related to this component unit.</p> <p>http://www.austintexas.gov/department/abia-development-corporation</p>	Austin City Council serves as the ABIA Development Corporation's Board of Directors.	Susana Carbajal, Aviation Department, 512-530-6364	

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
Austin Bergstrom Landhost Enterprise, Inc. (ABLE)	B 2018 CAFR Pg 199- 202	ABLE is a legally separate entity that issues revenue bonds for the purpose of financing the cost of acquiring, improving, and equipping a full-service hotel on airport property. City Council appoints this entity's Board and maintains a contractual ability to remove board members at will. Debt issued by ABLE does not constitute a debt or pledge of the faith and credit of the City. http://www.austintexas.gov/department/austin-bergstrom-landhost-enterprise-inc Austin Hilton Hotel	Appointed by Austin City Council. Gregory S. Milligan, President Elaine Hart Susana Carbajal Jim Smith	Becky Nagel, Aviation Department, (512) 530-6614	Bylaws: Bylaws of Austin Bergstrom Landhost Enterprises, Inc.
Austin Convention Enterprises, Inc. (ACE)	B 2018 CAFR Pg 199- 202	ACE is a legally separate entity that owns, operates, and finances the Austin Convention Center Hotel. City Council appoints this entity's Board and maintains a contractual ability to remove board members at will. Debt issued by ACE does not constitute a debt or pledge of the faith and credit of the City. http://www.austintexas.gov/department/austin-convention-enterprises-inc Austin Convention Center Hilton Hotel	Appointed by Austin City Council. Phillip Schmandt Jolsna Thomas Sherri Greenberg	Lee Crawford, Law Department. David Dawson, ACE's Legal Counsel with Winstead PC, 401 Congress Avenue, Suite 2100, Austin, Texas 78701 512.370.2847 direct, 512.659.1863 cell 512.370.2850 fax ddawson@winstead.com John Roberts, Advisor to ACE Board 4412 Glenwick Ln Dallas, TX 75205 214-373-1919 (o) 214-505-4927 (m) Johnroberts0816@gmail.com	Bylaws: Bylaws of Austin Convention Enterprise, Inc. First Amendment to the Bylaws

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
Waller Creek Local Government Corporation (WCLGC)	B	<p>WCLGC is a non-profit local government corporation created by the City under Subchapter D of Chapter 431 of the Texas Transportation Code. The purpose of WCLGC is implementing the financing, design, construction, maintenance and operation of certain public improvements located within or around the Waller Creek Redevelopment Project district. The WCLGC is fiscally dependent on the City and in a relationship of financial benefit/burden with the City.</p> <p>There is no financial activity to report related to this component unit.</p> <p>http://www.austintexas.gov/department/waller-creek-local-government-corporation</p>	<p>Appointed by Austin City Council.</p> <p>Rodney Gonzales- President Melba Whatley - Vice President Martha Smiley - Secretary Carla Steffen – Treasurer Lucia Athens Jesus Garza Rudy Green Allan Shearer Liana Kallivoka Jorge Morales</p>	<p>Jackie Ramos, Watershed Protection Department, 512-974-3318</p>	<p>Bylaws: Articles of Incorporation and Bylaws Waller Creek Joint Development Agreement: Joint Development Agreement- April 2014 See Resolution No. 20110428-014.</p>

<p>Austin/Travis County Sobriety Center Local Government Corporation (SCLGC)</p>	<p>B 2018 CAFR Pg. 199- 202</p>	<p>SCLGC is a non-profit local government corporation created by the City and Travis County under Subchapter D of Chapter 431 of the Texas Transportation Code. The purpose of SCLGC is to operate a sobriety center located within the City of Austin and Travis County. The City Council and the County each appoint five members of the SCLGC board. The operations of the Sobriety Center are primarily funded by the City. The SCLGC is fiscally dependent on the City and in a relationship of financial benefit/burden with the City.</p> <p>The mission of the Austin/County Sobriety Center is to enhance public health and public safety by providing an alternative to the emergency room and jail for publicly intoxicated individuals to sober up and, where appropriate, to initiate recovery. http://www.austintexas.gov/department/sobriety-center-local-government-corporation</p>	<p>The City Council and the County each appoint five members of the SCLGC board.</p> <p>As of February 12, 2020: Chair: Jana Ortega Vice-Chair: Craig Moore Secretary: Council Member Kathie Toyo Treasurer: Douglas Smith Stephen Strakowski Christopher Ziebell Nancy Hobengarten Past-Chair Andy Brown Vacancy Commissioner Margaret Gomez Director: Vacancy Ex-Officio: Travis County Judge Sarah Eckhardt (designee:</p>	<p>ACM Arellano's Executive Assistant, Office of the City Manager, (512) 974-2194</p>	<p>Articles of Incorporation: Articles of Incorporation: Sobriety Center Local Government Corporation By-laws: By-laws: Sobriety Center Local Government Corporation</p>
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Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
			Roger Jefferies Austin City Manager, Spencer Cronk (designee: Asst. City Manager Rey Arellano) Austin Chief of Police Brian Manley (designee: Asst. Chief Joseph Chacon) Austin Chief of EMS Ernesto Rodriguez (designee: Asst. Chief Jasper Brown) Austin Public Health Director Stephanie Hayden		

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
Austin Regeneration Fund	C	<p>The purpose of the corporation is to assist in carrying out the economic development program and objectives of the City by generating private investment capital through the New Markets Tax Credit Program to be made available for investment in low-income communities. http://www.austintexas.gov/department/austin-regeneration-fund-board-directors</p> <p>Research is incomplete. Appears this was set up, but cannot determine if it was ever established or still exists. ACM Gonzalez may be able to provide additional background and status.</p>	<p>Appointed by Austin City Council.</p> <p>Sue Edwards Kevin Johns Rodney Gonzalez</p>	Economic Development Department	<p>See Resolution 20110609-008 - The City Manager is authorized to create a Texas non-profit corporation, to apply for and receive an allocation of new market tax credits and to perform other duties to carry out the purposes of the new market tax credit program. http://www.austintexas.gov/edims/document.cfm?id=153771 See RCA for 20110609-008 http://www.austintexas.gov/edims/document.cfm?id=156258 Bylaws: Bylaws, Austin Regeneration Fund Most recent Board meeting on June 17, 2011 appears to be an initial organization meeting– for agenda see http://www.austintexas.gov/edims/document.cfm?id=175950 Call Meeting to Order 1. Discussion and vote on proposed draft of bylaws. 2. Discussion and vote on board of directors resolutions authorizing the initial organizational activities of the fund, such as: Appointment of officers. Appointment of Advisory Board members. Applications for federal and state tax exempt status. Application for Community Development Entity status. Application for New Market Tax Credits. Adjourn</p>

Name	In CAFR	Brief Description of Activities, Relationship to City, and Key Inclusion Criteria	Board of Directors	Staff Contact	Other Information
Austin Rosewood Community Development Corporation	C	<p>Austin Rosewood Community Development Corporation was established in 1995 as a requirement associated with a HUD Section 109 guaranteed loan for the Millennium Youth Entertainment Center (MYEC). Formation was approved by the Attorney General's Office as a local government corporation under Subchapter D, Chapter 431, Texas Transportation Code. The Corporation was charged with overseeing the construction and operation of MYEC which was completed in 1999.</p> <p>In 2009, the structure of the corporation was modified to provide two (2) additional board positions with direction to fill ex-officio positions with youth community members.</p> <p>http://www.austintexas.gov/department/austin-rosewood-community-development-corporation</p>	<p>Appointed by 222</p> <p>As of February 6, 2020: A.J. Bingham James Burns Frances Jordan Nelson Linder Dr. Courtney Robinson Dr. Deborah Taylor-King Barry Franklin Quincy Dunlap Ghislaine Jean</p>	Parks and Recreation, Kimberley McNeeley	<p>Bylaws: Bylaws of the Rosewood Community Development Corporation</p>

NOTES:

A = Blended component units, although legally separate entities, are in substance, part of the City's operations; therefore, data from these units are combined with data of the City in the Comprehensive Annual Financial Report (CAFR).

B = Discrete component units are legally separate entities that are not considered part of the City's operations; therefore, data from these units are shown separately from data of the City in the Comprehensive Annual Financial Report (CAFR).

C = No data from these units are shown in the City's Comprehensive Annual Financial Report (CAFR).

Austin Regeneration Fund

The New Markets Tax Credit (NMTC) Program was created in 2000 by the federal government as part of the federal Community Renewal Tax Relief Act (CRTRA) to encourage equity investments in businesses in low-income communities (LIC's) by providing a tax incentive for qualified investments.

In basic terms, the NMTC Program permits individual and corporate taxpayers to receive a credit against federal income taxes for making qualified equity investments (QEI's) in community development entities (CDE's), limited liability companies (LLC's), limited liability partnerships (LLP's), or corporations that provide services primarily to low income communities (LIC's) and commit to use substantially all of the QEI's received for qualified investments. In order to be designated as an LIC, the population census tract in question has to have at least a 20 percent poverty rate or a median family income (MFI) level of up to 80 percent of area median or statewide median.

The federal tax credit provided to the investor equals 39 percent of the cost of the investment and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to 5 percent annually. For the final four years, the value of the credit is 6 percent annually. Investors may not redeem their investments in CDE's prior to the conclusion of the seven-year period.

EGRSO is proposing to create a non-profit corporation, that will apply for certification as a Community Development Entity and for NMTC allocations to be used to improve the economic conditions of the City's economically-distressed areas. The goals for this new program will be to facilitate projects that do the following:

- Create jobs for low-income persons and residents of economically-distressed areas
- Increase wages or incomes for low-income persons and residents of economically-distressed areas
- Target job creation to areas of high unemployment
- Finance or assist businesses committed to remaining in an eligible census tract
- Finance or assist businesses owned by residents of economically-distressed areas
- Finance or assist minority or women-owned businesses



APPENDIX 8

QBL Presentation to ACM: Why a new LGC?

Why a New LGC:

**Are We Creating Too Many
Organizations in Austin?**

Existing Organizations in Austin

- **Austin Housing Finance Corporation (AHFC)**
 - **Urban Renewal Agency (URA)**
 - **Austin Industrial Development Corporation (AIDC)**
 - **Mueller Local Government Corporation (MLGC)**
 - **Austin-Bergstrom Int'l Airport Development Corporation (ABIA)**
 - **Austin Bergstrom Landhost Enterprise (ABLE)**
 - **Austin Convention Enterprises**
 - **Waller Creek LGC**
 - **Austin/Travis County Sobriety Center LGC**
 - **Austin Regeneration Fund**
 - **Austin Rosewood CDC**
 - **South Central Waterfront Advisory Board (SCWAB)**
- Blended component units, although legally separate entities, are in substance, part of the City's operations; therefore, data from these units are combined with data of the City in the Comprehensive Annual Financial Report (CAFR).
 - Discrete component units are legally separate entities that are not considered part of the City's operations; therefore, data from these units are shown separately from data of the City in the Comprehensive Annual Financial Report (CAFR).
 - No data from these units are shown in the City's Comprehensive Annual Financial Report (CAFR).

Conduit Entities: Created to Meet Financing/Legal Guidelines

Most have no day-to-day operations or staffing—work with COA.

- **Austin Housing Finance Corporation (AHFC)**
- **Urban Renewal Agency (URA) – Unclear if active**
- **Austin Industrial Development Corporation (AIDC) – Not active**
- **Mueller Local Government Corporation (MLGC)**
- **Austin-Bergstrom Int'l Airport Development Corporation (ABIA)**
- **Austin Bergstrom Landhost Enterprise (ABLE)**
- **Austin Regeneration Fund (Private financing via NMTC) – Not active**

It is typical for municipalities to create entities to support specific government purposes that allow for special financing, ownership and/or district powers. These entities normally do not have dedicated staffing, and as the municipality grows, there can be a period in which the tools created and projects to be undertaken exceed the capacity of normal City staffing. This is a point at which cities like NYC and Philadelphia consolidate at least some day-to-day management of activities and strategies to a central entity such as an EDC. Financing control always remains with the municipality, but the addition of staff allows for a higher volume of projects, and therefore revenues to the municipality, creating a virtuous circle.

Special Purpose (Domain Expertise) Entities

In any size City, these entities are likely to be standalone due to their targeted expertise and/or purpose. They are partners to a new AEDC.

- **Austin Housing Finance Corporation (AHFC)**
- **Austin-Bergstrom Int'l Airport Development Corporation (ABIA)**
- **Austin/Travis County Sobriety Center LGC**

There will always be the need for some special purpose, or dedicated purpose entities that a general staff and board will not have the expertise to manage as well as a dedicated group. However, until these entities achieve scale, they often can benefit from incubation and acceleration of a master entity such as an EDC, should it exist. In these cases, it did not exist – but these all represent potential partners for a new AEDC that can help them grow or execute on particular deals.

Entities Resulting from Limited Scale of Activity

It made sense to create these entities at the time, because there was no AEDC. If we create an AEDC, future projects of the scale of those noted here could be rolled into AEDC without creating the overhead of a new organization. *For purposes of clarity, we are not recommending rolling any of those listed below into AEDC.*

- **Mueller Local Government Corporation (MLGC)**
- **(Homestead Preservation District)**
- **Waller Creek LGC**
- **Austin Rosewood CDC**

These entities would benefit by being partnered with AEDC. AEDC can provide services without increasing existing staff and build the capacity of these entities to accomplish their goals.

Current AEDC Proposal Reduces Number of Organizations

AEDC could perform the staff functions of the below organizations, thereby rolling them into the “family” of organizations proposed. Two of the below appear to be defunct due to lack of staff infrastructure.

- **Urban Renewal Agency (URA)**
- **Austin Industrial Development Corporation (AIDC)**
- **Austin Regeneration Fund**
- **South Central Waterfront Advisory Board (SCWAB)**

The City of Austin should contract with AEDC to manage the day-to-day of these particular entities and make them part of the “family” of organizations. It may make sense to disband some of them. But each exists because the need to try to take advantage of a particular tool (legally, financially) or target a particular area (SCWAB). None is currently working at its potential for lack of scale and staff – adding AEDC will assist with this.

A Family of Organizations

- **A family of organizations is the best solution**
 - New Entity: Austin Economic Development Corporation (AEDC)
 - Existing Entities: Austin Industrial Development Corporation (AIDC)
Austin Regeneration Fund (NMTC)
Urban Renewal Agency -- investigate more
 - Existing Commission: South Central Waterfront Advisory Committee (SCWAB)
 - Donor Advised Fund: TBD Existing Foundation (including PRI, MRI investments)
- **The family is managed by contract by EDD**
- **A family is what we saw in all similar nat'l benchmarks except SF**
 - Atlanta, Philadelphia, NYC, LA, Miami, Chicago, Boston



APPENDIX 9

COA Resolution 20190808-072

RESOLUTION NO. 20190808-072

WHEREAS, the State of Texas gives municipal governments the authority to create entities in their communities that can structure public-private partnerships and help local governments accomplish holistic goals related to economic development; and

WHEREAS, Resolution No. 20141211-122 directed the City Manager to deliver a feasibility study and timeline for creating an economic development corporation or another appropriate corporate structure that could manage economic development projects, including the development of workforce housing; and

WHEREAS, Resolution No. 20170216-040 directed the City Manager to bring forward for Council consideration specific proposals for creating an economic development corporation or similar entity that could create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City; and

WHEREAS, Resolution No. 20180215-082 directed the City Manager to, among other things, analyze and provide next steps for collaboration and support of an "Austin Cultural Trust" that could create spaces that supports artists and arts organizations, preserve historic and iconic cultural buildings and spaces for creative and cultural uses, and function in a way that provides for cultural assets to exist in all parts of the City; and

WHEREAS, the staff memo dated August 17, 2018, and responding to Resolution No. 20180215-082 notes that the Trust could be formed as a supporting organization

under the aegis of an existing nonprofit organization or entity such as an economic development corporation or a local government corporation; and

WHEREAS, the South Central Waterfront Vision Framework Plan called for the creation of an economic development corporation to assist the execution of both public and private projects within the South Central Waterfront District and to facilitate and advocate for necessary public approvals, champion city-building public infrastructure to support development, and package a range of incentives and funding tools necessary to achieve the aspirations of the South Central Waterfront Vision; and

WHEREAS, the May 29, 2019, response to Resolution No. 20170216-040 concluded that an entity such as an economic development corporation could “operate to complement the City’s vision and programming for inclusive economic development through the formation of public-private partnerships and facilitation of resulting projects that generate additional resources or revenues for the City”; and

WHEREAS, an economic development corporation also has the ability to manage and coordinate a wide range of development programs and funding streams individually or in concert and has the organizational flexibility to deploy targeted activities that further overall City goals; and

WHEREAS, although Texas’s Development Corporation Act of 1979 identifies two types of economic development corporations, the statute limits cities with a population greater than 500,000 to Type B Economic Development Corporations; and

WHEREAS, Type B Economic Development Corporations are typically funded by sales and use taxes and must have a revenue stream to issue bonds or obtain loans to fund projects; and

WHEREAS, the Texas Tax Code limits the combined rate of all sales and use taxes to 8.25% within the City, leaving no additional sales or use tax revenue for the City to allocate to an economic development corporation; and

WHEREAS, revenue to support an economic development corporation would need to derive from other sources, such as grants, loans, bonds, interest on loans, user and admission fees, and real estate profits; and

WHEREAS, in 2019 the Texas Legislature passed Senate Bill 2, which will go into effect in 2020, that lowers the tax rate some taxing units can adopt without voter approval and requiring a mandatory election to go above the lowered rate; and

WHEREAS, municipalities impacted by this bill will need to find innovative ways to address potential revenue shortfalls, and an economic development corporation could provide one option for the City to generate revenues for projects authorized by the Development Corporation Act of 1979, as amended, such as affordable housing, redevelopment, revitalization, and other priority projects and goals of the City; and

WHEREAS, Chapter 501, Subchapter C, of the Local Government Code allows for several authorized uses of an Economic Development Corporation; and; **NOW**,

THEREFORE:

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

City Council directs the City Manager to initiate the necessary processes to authorize the creation of an economic development entity, identify potential funding sources, solicit stakeholder feedback on the entity's governance and operational structure, and, if necessary, contract with a subject matter expert to develop an implementation plan.

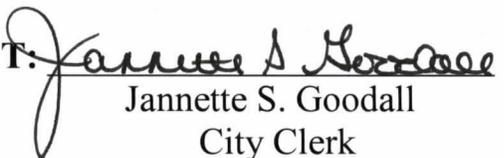
BE IT FURTHER RESOLVED:

City Council directs the City Manager to structure the entity broadly enough to include all potential uses allowable under State law, which could include affordable housing development, public-private partnerships with private-led development such as the South Central Waterfront that could provide community benefits, and shall include a Cultural Trust to support acquisition and preservation of creative space.

BE IT FURTHER RESOLVED:

City Council directs the City Manager to bring forward a recommendation for funding needs to implement this direction for consideration during the Fiscal Year 2020 budget deliberations.

ADOPTED: August 8, 2019

ATTEST: 
Jannette S. Goodall
City Clerk



APPENDIX 10

COA Resolution 20141211-122

RESOLUTION NO. 20141211-122

WHEREAS, corporations, such as Economic Development Corporations (EDCs) are a tool that can be used by municipal governments to be proactive about community development by providing a suite of pre-development and development services as well as access to financing; and

WHEREAS, the State of Texas gives cities the ability to finance new and expanded infrastructure or enterprises in their local communities through non-profit economic development corporations and other corporate structures such as local government corporations; and

WHEREAS, to establish a corporation that can assist with economic development, key decisions about the sources and application of funds as well as the governance structure need to be determined; and

WHEREAS, City of Austin studies and plans have frequently recommended that an EDC or other type of corporation be formed with focus areas that are either geographic (Innovation District, Transit Oriented Developments) or based on functional areas (workforce housing, minority business development); and

WHEREAS, there is an interest in addressing service gaps that exist with current community development; and

WHEREAS, the supply of workforce housing has already been identified as a current community need that a tool such as an EDC may be useful in addressing;

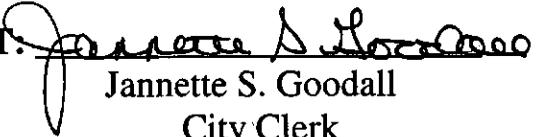
NOW, THEREFORE,

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

The City Manager is directed to deliver a feasibility study for initiating and administering a corporation such as an EDC, or other appropriate corporate structure to assist with the development of workforce housing within 180 days. The study should include a timeline for any feasible scenarios.

BE IT FURTHER RESOLVED:

The City Manager is directed to review all other prior recommendations for EDCs from city plans and analyze community needs that could be serviced through the use of an economic development corporation, or other appropriate corporate structure, and make a recommendation for other focus areas based on needs as well as potential sources and applications of funding within 180 days.

ADOPTED: December 11, 2014 **ATTEST:** 
Jannette S. Goodall
City Clerk



APPENDIX 11

COA Resolution 20170216-040

RESOLUTION NO. 20170216-040

WHEREAS, the State of Texas gives municipal governments the authority to create entities in their communities that can structure public-private partnerships and help local governments accomplish holistic goals related to economic development; and

WHEREAS, entities such as nonprofit Economic Development Corporations (EDCs) can help create new and expanded infrastructure or enterprises in their local communities; and

WHEREAS, EDCs can issue taxable and tax-exempt bonds for projects and activities related to economic development; and

WHEREAS, such an entity could help the City engage in socially beneficial real estate development, among other economic development projects; and

WHEREAS, the Downtown Austin and the South Central Waterfront plans recommend the creation of an EDC or other type of corporation to achieve goals such as workforce housing, minority business development, and district revitalization; and

WHEREAS, both the Downtown Austin Alliance and Travis County have created affiliated economic development corporations; and

WHEREAS, cities around the state have created similar development corporations to leverage investments for economic development, affordable housing, and job creation/retention among other community priorities; and

WHEREAS, Resolution No. 20141211-122 directed the City Manager within 180 days to deliver a feasibility study and timeline for creating an Economic Development Corporation or another appropriate corporate structure that could manage economic development projects, including the development of workforce housing; and

WHEREAS, a memo from the City's Economic Development Department dated October 12, 2016, in response to this directive concluded, "an EDC could assist in addressing affordability and equity issues currently impacting our residents and neighborhoods, small businesses, and cultural, creative and music venues" and recognized workforce housing as another possible area of focus; and

WHEREAS, the Economic Development Department has conducted significant research on the benefits of EDCs and has completed considerable work related to conceptualizing how such an entity could operate within the City of Austin; and

WHEREAS, City representatives from multiple departments attended the New York Economic Development Corporation's Real Estate Asset Management Peer Cities summit on January 19, 2017, to learn about the role economic development corporations play in New York City as well as in cities such as Miami, Los Angeles, Philadelphia, Boston, and Tucson; **NOW, THEREFORE,**

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

The City Manager is directed to work with staff from Financial Services, Real Estate, and Economic Development to bring forward for Council consideration specific

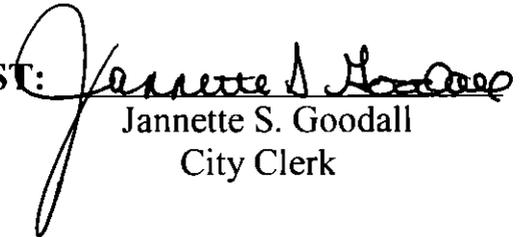
proposals for creating an Economic Development Corporation or similar entity that could create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City. The entity should also be capable of structuring public-private partnerships. The proposal should include a comparison of the benefits offered through different corporate structures and examples of the projects that could be undertaken by each such entity.

BE IT FURTHER RESOLVED:

The City Manager is further directed to return to Council no later than May 4, 2017.

ADOPTED: February 16, 2017

ATTEST:



Jannette S. Goodall
City Clerk



APPENDIX 12

COA Resolution 20180215-082

RESOLUTION NO. 20180215-082

WHEREAS, the City Council has supported multiple resolutions recognizing the importance of creativity as a cornerstone of Austin's identity and economic prosperity, generating rich, social, cultural and economic benefits, and being key to the City's unique and distinctive character; and

WHEREAS, Austin's creative communities continue to struggle to afford spaces to live, work, and promote their creative talents and the City has opportunities to create solutions, to further the vision of Imagine Austin Comprehensive Plan, through land development code changes and additional strategies successfully implemented in other creative supportive cities through trusts, public/private partnerships and other financing mechanisms; and

WHEREAS, the people of Austin value our local creative talent but may be financially challenged to afford to own, be supportive, and able to easily access or know where to access the products of our creative community's talent; and

WHEREAS, most arts and cultural organizations are small, local businesses bringing character and uniqueness to neighborhoods and the city's core, drawing both residents and visitors and providing economic spill-over effects that positively contribute to surrounding businesses and quality of life but are suffering from escalating property and lease pricing and displacement by new larger scale development; and

WHEREAS, Resolution No. 20160303-019 resulted in formation of a working group to evaluate recommendations and proposed policies, tools, and programs, as well as identify gaps and recommend actions to help provide relief for the city's creative community; and

WHEREAS, Resolution No. 20170302-034 initiated a stakeholder process to develop recommendations for revising the City's economic development incentives policies to result in more equitable and inclusive economic opportunities and increased community benefits; and

WHEREAS, on December 5th the economic development department provided to the council an Economic Development Policy Update outlining community outreach and research and efforts to refocus economic development policy to extend beyond business recruitment, including expanding the range of tools and programs as well as their next step to provide a draft presentation of 2018 Chapter 380 policy during the first quarter of 2018; and

WHEREAS, the December 5, 2017 briefing identified Ordinance 20090312-005 as eliminating economic development incentives for mixed-use development projects having a retail component and there being an opportunity to refine and update this policy direction; and

WHEREAS, there is a substantial body of evidence that cultural spaces bring economic value to property owners and project proponents that preserve existing cultural spaces or create new cultural spaces as part of their developments, giving visibility to the cultural artists but also distinguishing their development as a cultural destination; and

WHEREAS, retail for street-level use becomes harder to find as that space is proliferated and cultural uses are excellent candidates for signature buildings and ground level activity to help ensure those spaces remain activated and provide creative cultural arts as an integral part of our community fabric; and

WHEREAS, conditions remain challenging for the City's creative community to create, activate, and preserve affordable places to work in Austin's booming real estate environment; and

WHEREAS, the community is actively organizing the creation of a publicly owned, municipally affiliated, non-profit community land trust to develop and steward community assets; **NOW, THEREFORE**,

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

The City Manager is directed to analyze and provide next steps for collaboration and support of a community arts stabilization trust, the "Austin Cultural Trust", that creates, through purchase and long-term lease, affordable spaces that supports artists and arts organizations, preserves historic and iconic cultural buildings and spaces for creative and cultural uses, and functions in a way that provides for cultural assets to exist in all parts of the city. The analysis should consolidate the following as a resource for a cultural trust:

- The completed Cultural Asset Mapping Project report, including a catalog of existing space/cultural assets and potential assets;
- The completed catalog of creative community organizations and individual space needs;
- The completed catalog of examples of successful artist-space projects that can be presented to banks and other funding agencies to demonstrate the potential market;
- A catalog of city-owned land available for consideration for the cultural trust; and

- Identify a potential existing staff position that could serve as a Cultural Space Liaison to coordinate with the Cultural Trust and City sponsored efforts and programs.

BE IT FURTHER RESOLVED:

The City Manager is directed to review potential modifications to Ordinance 20090312-005 to potentially allow economic development incentives for built, mixed-use properties having a retail component with vacant underutilized space and further develop a program providing strategies to utilize vacant retail and commercial space in support of creative endeavors that enhance mixed-use, commercial properties and their surrounding communities. The following elements should be part of future programs for council consideration within the 380 Agreement framework, and recognize a cultural asset contributes value to developments that serve as a host or home for these creative enterprises. The proposed program should consider:

- Tiered spaces of varying size for short, long term, and permanent use;
- “Craft Certification” that brands and markets dedicated spaces and certifies people that support and promote a vibrant arts community in a way that reflects the level of commitment, similar to the concept identified in the city of Seattle’s May 2017 CAP Report;
- Ways to reduce or waive permit fees for certified Cultural Space projects; and
- Potential funding mechanism within economic development department’s budget allocations or other sources.

BE IT FURTHER RESOLVED:

The City Manager is directed to explore and provide options, whether public or private, to enable micro loans for Austinites to invest in and own local art products as is made available through similar successful models in Sydney Australia, England, the Netherlands and Tasmania.

BE IT FURTHER RESOLVED:

The City Manager is directed to explore and provide options, whether public or private, to continue and expand the pilot program to enable micro loans and grants for space needs.

BE IT FURTHER RESOLVED:

The City Manager is directed to explore and provide options in CodeNext to incentivize “Art Facilities” along corridors, Imagine Austin Comprehensive Plan centers, other pedestrian-oriented streets, and existing arts spaces.

BE IT FURTHER RESOLVED:

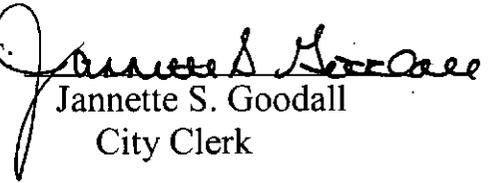
The City Manager is directed to report by March 22, 2018 the following:

- Next steps for support and collaboration with a community cultural trust in alignment with current staff efforts to explore the creation of an Economic Development Corporation;
- A proposed plan and next steps to expand utilization of vacant retail and commercial space for creative endeavors;
- Options for providing micro loans to Austinites to invest in local art;
- Options for providing micro loans and grants for cultural space needs; and

- Options available in CodeNext to incentivize “Art Facilities” along corridors, centers, other pedestrian-oriented streets, and existing arts spaces.

ADOPTED: February 15, 2018

ATTEST:


Jannette S. Goodall
City Clerk



APPENDIX 13

COA Resolution 20180808-072

RESOLUTION NO. 20190808-072

WHEREAS, the State of Texas gives municipal governments the authority to create entities in their communities that can structure public-private partnerships and help local governments accomplish holistic goals related to economic development; and

WHEREAS, Resolution No. 20141211-122 directed the City Manager to deliver a feasibility study and timeline for creating an economic development corporation or another appropriate corporate structure that could manage economic development projects, including the development of workforce housing; and

WHEREAS, Resolution No. 20170216-040 directed the City Manager to bring forward for Council consideration specific proposals for creating an economic development corporation or similar entity that could create or support development of affordable housing, redevelopment, revitalization and other priority projects and goals of the City; and

WHEREAS, Resolution No. 20180215-082 directed the City Manager to, among other things, analyze and provide next steps for collaboration and support of an "Austin Cultural Trust" that could create spaces that supports artists and arts organizations, preserve historic and iconic cultural buildings and spaces for creative and cultural uses, and function in a way that provides for cultural assets to exist in all parts of the City; and

WHEREAS, the staff memo dated August 17, 2018, and responding to Resolution No. 20180215-082 notes that the Trust could be formed as a supporting organization

under the aegis of an existing nonprofit organization or entity such as an economic development corporation or a local government corporation; and

WHEREAS, the South Central Waterfront Vision Framework Plan called for the creation of an economic development corporation to assist the execution of both public and private projects within the South Central Waterfront District and to facilitate and advocate for necessary public approvals, champion city-building public infrastructure to support development, and package a range of incentives and funding tools necessary to achieve the aspirations of the South Central Waterfront Vision; and

WHEREAS, the May 29, 2019, response to Resolution No. 20170216-040 concluded that an entity such as an economic development corporation could “operate to complement the City’s vision and programming for inclusive economic development through the formation of public-private partnerships and facilitation of resulting projects that generate additional resources or revenues for the City”; and

WHEREAS, an economic development corporation also has the ability to manage and coordinate a wide range of development programs and funding streams individually or in concert and has the organizational flexibility to deploy targeted activities that further overall City goals; and

WHEREAS, although Texas’s Development Corporation Act of 1979 identifies two types of economic development corporations, the statute limits cities with a population greater than 500,000 to Type B Economic Development Corporations; and

WHEREAS, Type B Economic Development Corporations are typically funded by sales and use taxes and must have a revenue stream to issue bonds or obtain loans to fund projects; and

WHEREAS, the Texas Tax Code limits the combined rate of all sales and use taxes to 8.25% within the City, leaving no additional sales or use tax revenue for the City to allocate to an economic development corporation; and

WHEREAS, revenue to support an economic development corporation would need to derive from other sources, such as grants, loans, bonds, interest on loans, user and admission fees, and real estate profits; and

WHEREAS, in 2019 the Texas Legislature passed Senate Bill 2, which will go into effect in 2020, that lowers the tax rate some taxing units can adopt without voter approval and requiring a mandatory election to go above the lowered rate; and

WHEREAS, municipalities impacted by this bill will need to find innovative ways to address potential revenue shortfalls, and an economic development corporation could provide one option for the City to generate revenues for projects authorized by the Development Corporation Act of 1979, as amended, such as affordable housing, redevelopment, revitalization, and other priority projects and goals of the City; and

WHEREAS, Chapter 501, Subchapter C, of the Local Government Code allows for several authorized uses of an Economic Development Corporation; and; **NOW**,

THEREFORE:

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

City Council directs the City Manager to initiate the necessary processes to authorize the creation of an economic development entity, identify potential funding sources, solicit stakeholder feedback on the entity's governance and operational structure, and, if necessary, contract with a subject matter expert to develop an implementation plan.

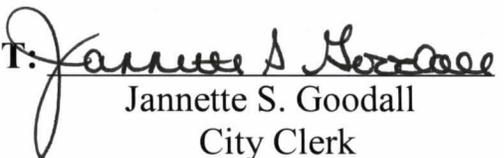
BE IT FURTHER RESOLVED:

City Council directs the City Manager to structure the entity broadly enough to include all potential uses allowable under State law, which could include affordable housing development, public-private partnerships with private-led development such as the South Central Waterfront that could provide community benefits, and shall include a Cultural Trust to support acquisition and preservation of creative space.

BE IT FURTHER RESOLVED:

City Council directs the City Manager to bring forward a recommendation for funding needs to implement this direction for consideration during the Fiscal Year 2020 budget deliberations.

ADOPTED: August 8, 2019

ATTEST: 
Jannette S. Goodall
City Clerk



APPENDIX 14

Proposed AEDC Budget

Projected Profit and Loss: Austin Economic Development Corporation (AEDC) Corporation

Fiscal Year 2021 - FY 2024
Last Revision: July 2020 by M Kwatinetz

	FY'21	FY'22	FY'23	FY'24
Revenue				
<i>Fiscal Year 2021 runs from Oct 1, 2020 to Sept 30, 2021</i>				
Contributed Income				
Government	200,000	-	-	-
Corporate & Foundations	-	400,000	300,000	300,000
Individuals				
Earned				
Real Estate Transactions	-	-	656,250	1,037,500
Real Estate Asset Management	-	-	354,000	854,000
District Management Fees (TIRZ, HPZ, etc)	-	-	500,000	500,000
Conduit Financing Fees	-	-	500,000	1,250,000
Government Contracts -- Transfer from COA EDD Budget	700,000	700,000	700,000	-
Government Contracts -- City	-	-	-	-
Government Contracts -- Federal	-	-	-	-
All Other Income	-	-	-	-
Total Revenue	900,000	1,100,000	3,010,250	3,941,500
Direct Expenses				
Real Estate Transactions	-	-	50,000	102,500
Transaction Legal Fees	-	-	-	-
Real Estate Asset Management (including Public Pipeline)	-	40,000	42,000	44,100
District Management (including TIRZ)	-	20,000	100,000	105,000
Cultural Trust & Cohort Services	-	50,000	350,000	367,500
Economic Empowerment & Financial Services (including COVID response)	-	-	-	-
Other Direct Expense: Includes On-Call Legal Services until GC is hired	50,000	52,500	205,125	317,944
Legal Formation Fees	150,000			
Total Direct Expenses	200,000	162,500	747,125	937,044
Gross Income / (Loss)	700,000	937,500	2,263,125	3,004,456
Operating Expenses				
General & Administrative	5,000	5,000	25,000	50,000
Directors and Officers Insurance	50,000	50,000	50,000	50,000
Facilities	-	-	50,000	53,500
Personnel	237,500	615,625	1,461,250	2,284,625
Public Affairs, Marketing & Outreach	25,000	10,000	55,125	57,881
Total Operating Expenses	317,500	1,083,941	1,936,898	2,551,819
Net Income / (Loss)	382,500	(146,441)	326,227	452,637
Contribution To / (Withdrawal From) Reserve Fund	337,500	(193,441)	277,227	400,137
End of Year Net Cash Position	45,000	47,000	49,000	52,500
Reserve Fund EOP Balance	337,500	189,059	513,286	962,423

Notes
<p align="center">200k from AIDC Balance in 2020 \$1M organizational development grant from one foundation, spread over 3 years.</p>
<p align="center">2023: Cultural Trust Txn @ 1.75% and 250k other RFP real estate transactions 2023: Rents/IAM from future RFPs 2022-23 SCW TIRZ Fee 2022: \$50M financing; 2023: \$125M financing EDD BUDGET TRANSFER: Use frozen headcount budget until entity becomes self-sustaining</p>
<p align="center">Cost of diligence for transaction Transaction legal fees are an expense of the project, paid by the developer and/or borrower (in the case of bonds). Legal services, architectural & engineering services Specific studies and reports to advance specific projects Workshops + debt service for loan to assist with rent payments (tenant of last resort) Ongoing education, distribution, workforce programs Includes on-call legal retainer for services until a General Counsel for the AEDC is hired Legal counsel for formation of entity</p>
<p align="center">Scales with personnel. Quote from Lockton obtained June 2020 for AEDC. Liability protection for city officials and citizens who serve as officers of AEDC First two years free or no office, then scales up in building See Staffing Worksheet (next slide)</p>



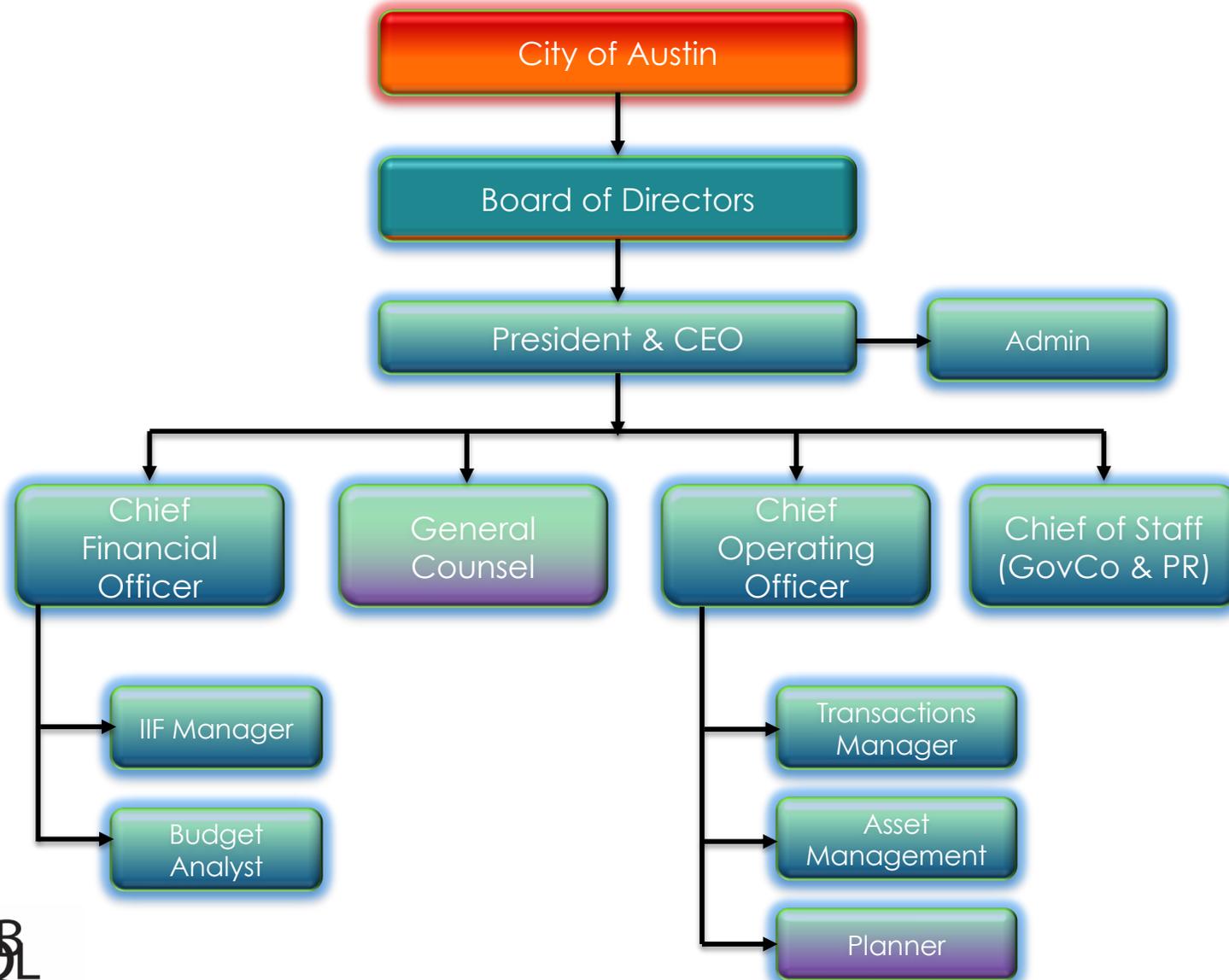
APPENDIX 15

Proposed AEDC Organizational Chart

(Year 3 Stabilized)

Organizational Chart

Purple roles can be initially outsourced. Orange roles not compensated by the organization itself.





APPENDIX 16

QBL Presentation on How AEDC Relates to EDC

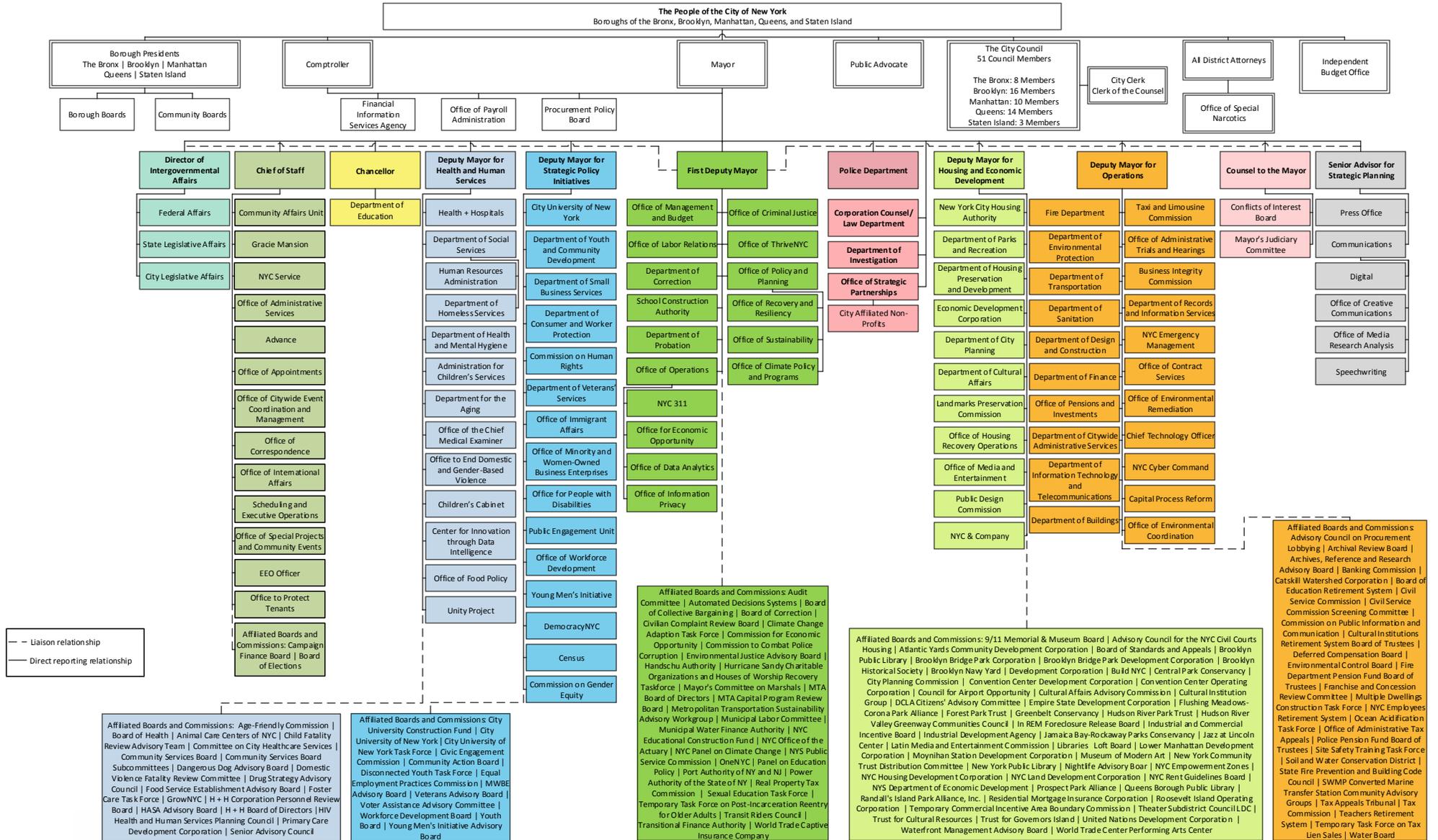
(Context from National Benchmarks)

What is relationship with EDD?

***What do other cities do?
Are we duplicating function?***

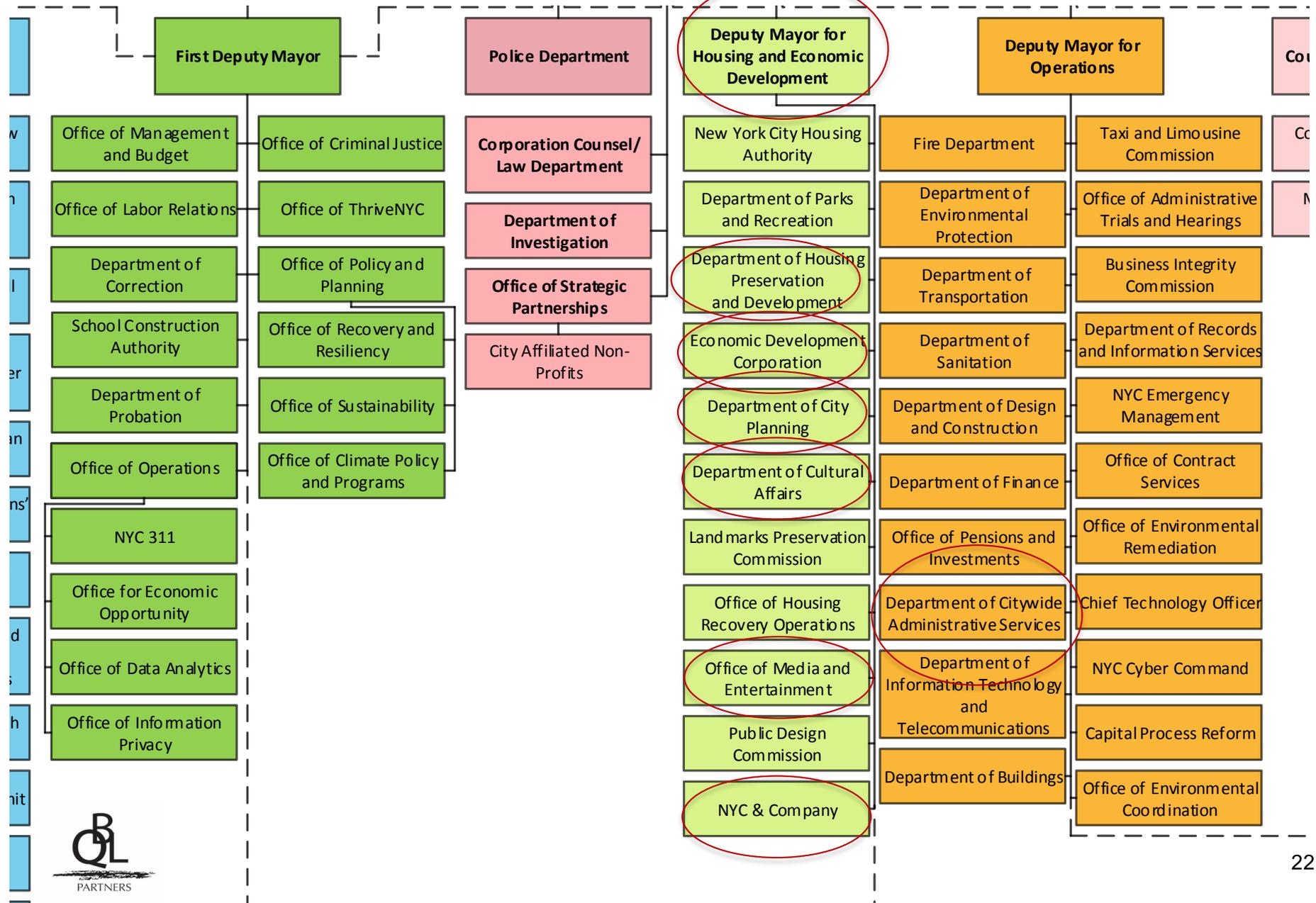
NYC Staffing / Org Chart

The blend of staff in each entity is particular to the City



NYC Staffing / Org Chart (2)

The blend of staff in each entity is particular to the City

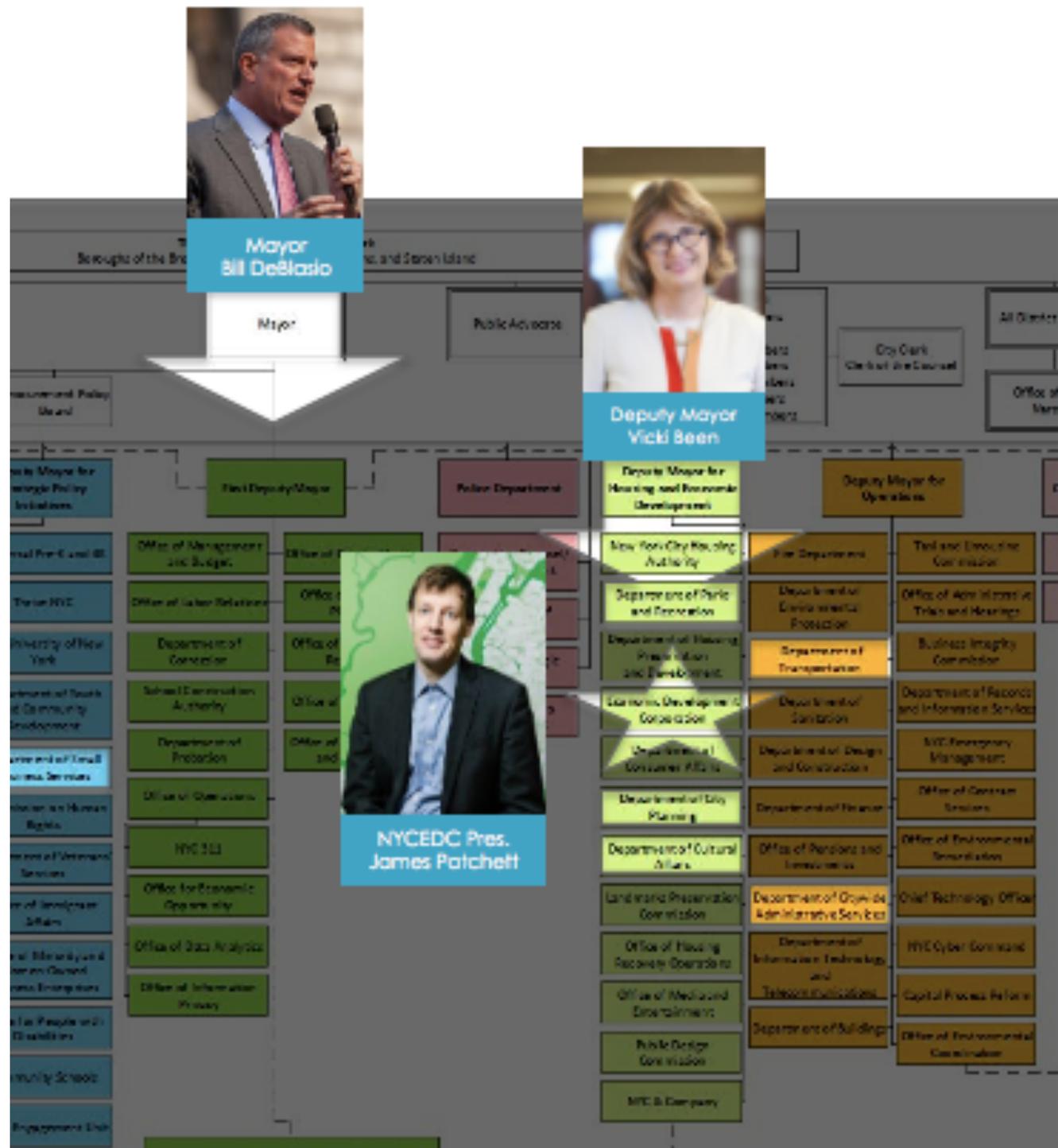


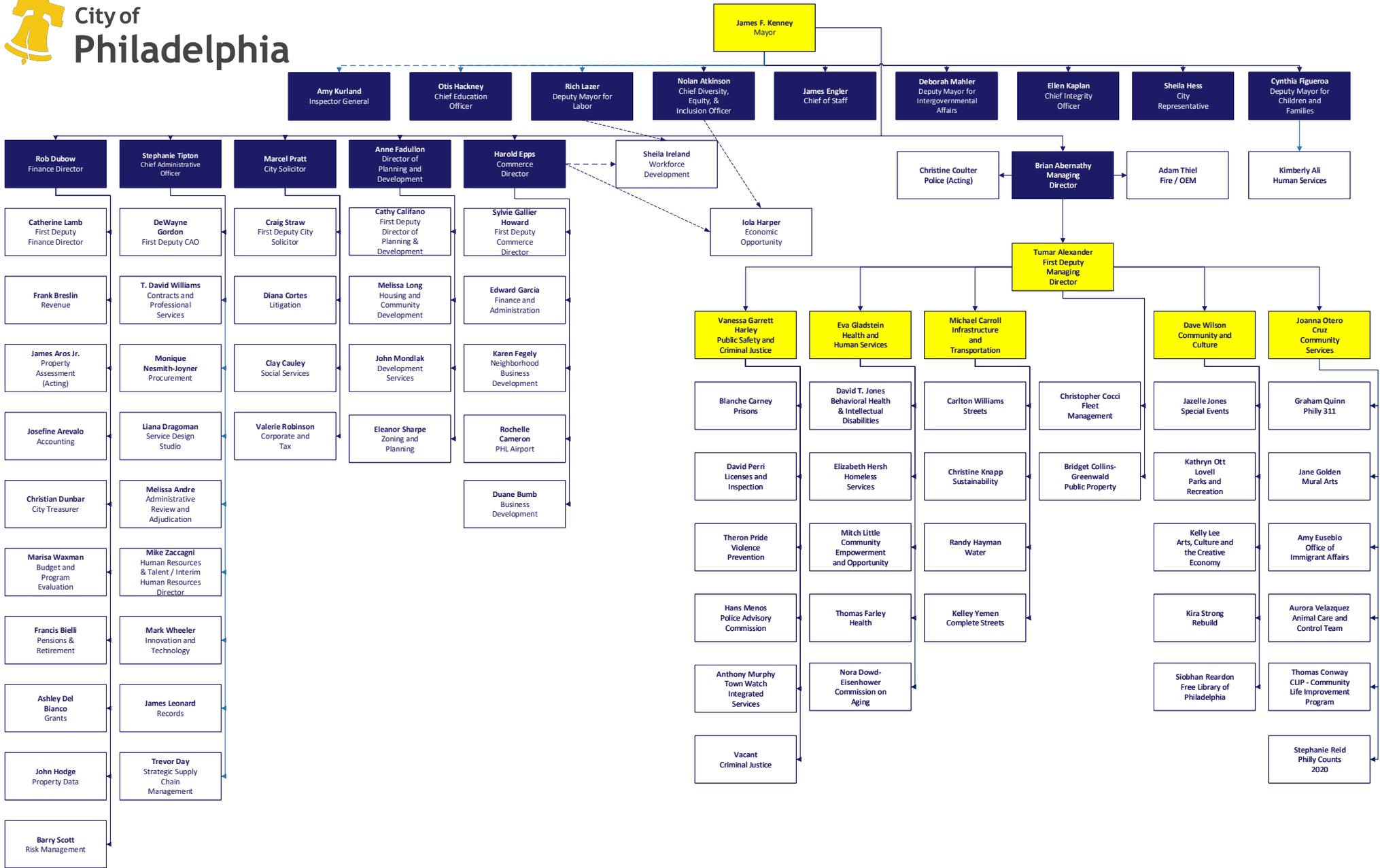
NYC (3)

A multiplicity of entities reporting up

Affiliated Boards and Commissions: 9/11 Memorial & Museum Board | Advisory Council for the NYC Civil Courts Housing | Atlantic Yards Community Development Corporation | Board of Standards and Appeals | Brooklyn Public Library | Brooklyn Bridge Park Corporation | Brooklyn Bridge Park Development Corporation | Brooklyn Historical Society | Brooklyn Navy Yard | Development Corporation | Build NYC | Central Park Conservancy | City Planning Commission | Convention Center Development Corporation | Convention Center Operating Corporation | Council for Airport Opportunity | Cultural Affairs Advisory Commission | Cultural Institution Group | DCLA Citizens' Advisory Committee | Empire State Development Corporation | Flushing Meadows-Corona Park Alliance | Forest Park Trust | Greenbelt Conservancy | Hudson River Park Trust | Hudson River Valley Greenway Communities Council | In REM Foreclosure Release Board | Industrial and Commercial Incentive Board | Industrial Development Agency | Jamaica Bay-Rockaway Parks Conservancy | Jazz at Lincoln Center | Latin Media and Entertainment Commission | Libraries Loft Board | Lower Manhattan Development Corporation | Moynihan Station Development Corporation | Museum of Modern Art | New York Community Trust Distribution Committee | New York Public Library | Nightlife Advisory Board | NYC Empowerment Zones | NYC Housing Development Corporation | NYC Land Development Corporation | NYC Rent Guidelines Board | NYS Department of Economic Development | Prospect Park Alliance | Queens Borough Public Library | Randall's Island Park Alliance, Inc. | Residential Mortgage Insurance Corporation | Roosevelt Island Operating Corporation | Temporary Commercial Incentive Area Boundary Commission | Theater Subdistrict Council LDC | Trust for Cultural Resources | Trust for Governors Island | United Nations Development Corporation | Waterfront Management Advisory Board | World Trade Center Performing Arts Center

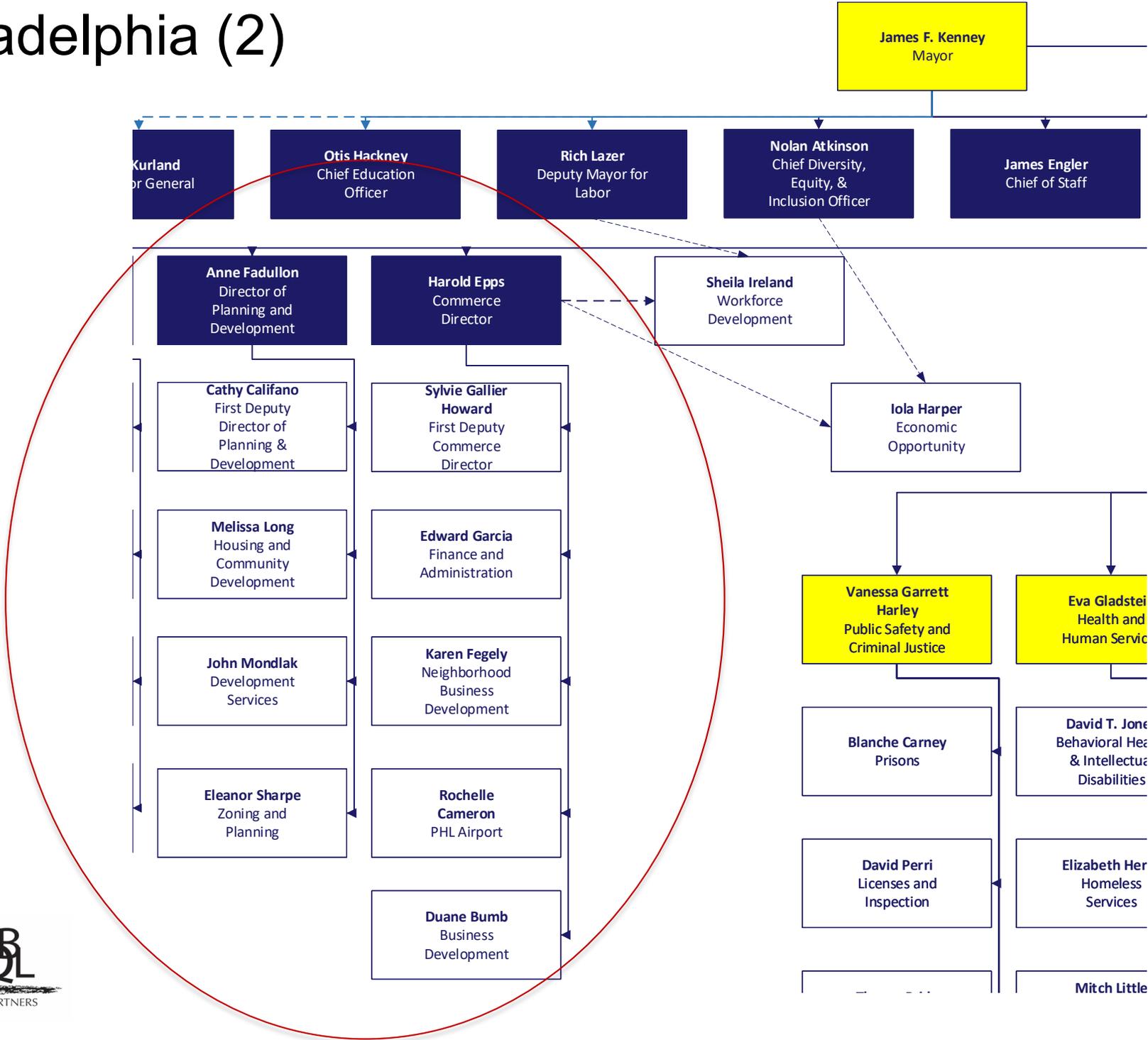
NYC (4)



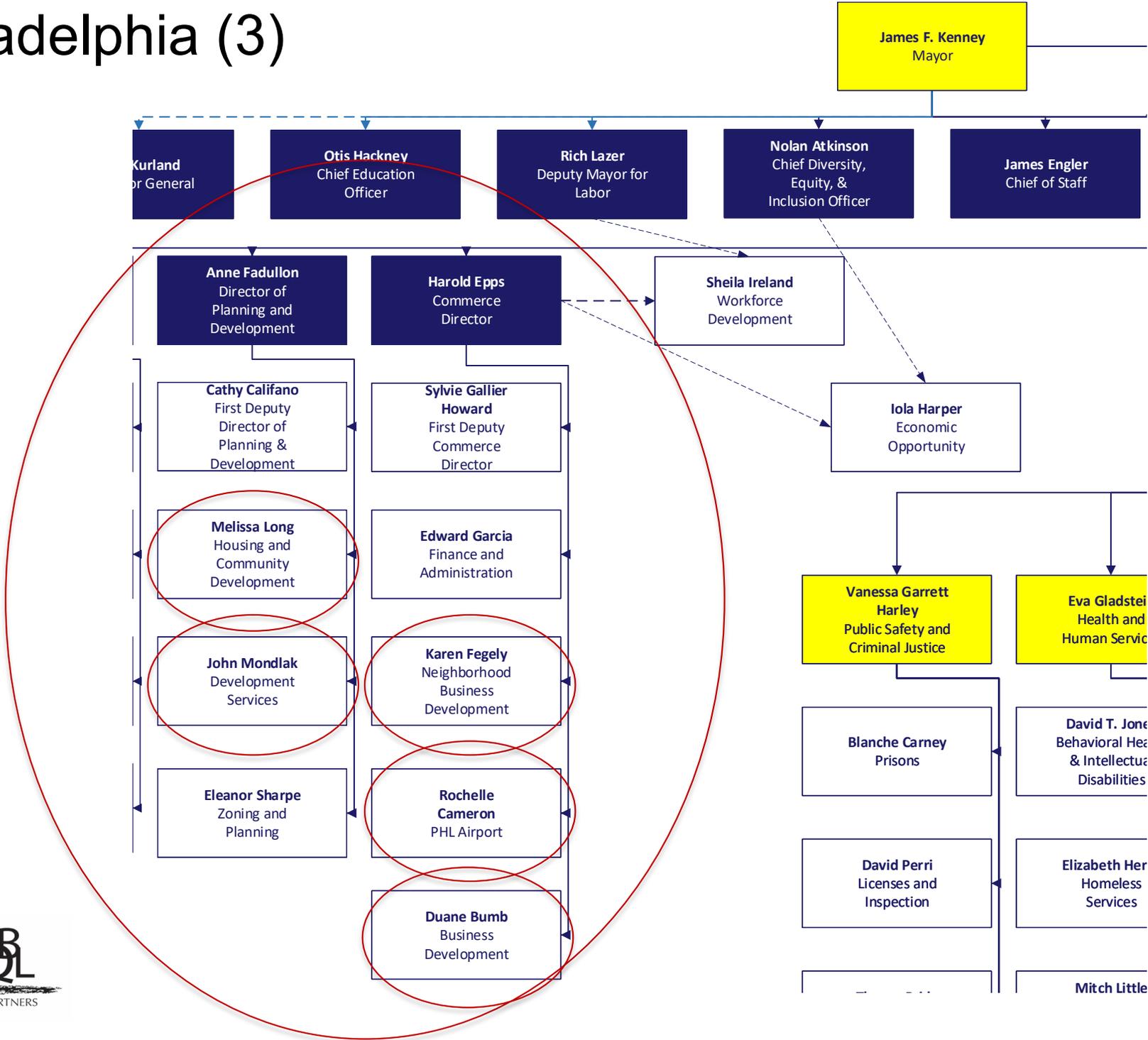


Last updated: Jan. 23, 2020

Philadelphia (2)



Philadelphia (3)



National Benchmarks: Summary of Peer Cities

	Population (2018)	Lead Agency	Single Entity v. Family of Orgs	Fees for contract services to City	Fees from Public Developer Role	Fees from bonding	Inclusive Growth Programs (including finance)
NYC	8,398,748	NYCEDC	Family	Yes	Yes	Yes (NYCIDA)	Yes
SF	883,305	City Department	--	--	Yes*	--	Yes
LA	3,990,456	City Department (+LAEDC)	Family	--	Yes	Yes (MICLA & IDA)	Yes
Philadelphia	1,584,138	PIDC	Family	Yes	Yes	Yes (PIDA)	Yes
Miami	470,914	City Department	Family	--	Yes	Yes (MDIDA & DDA)	Yes* (Beacon Council)
Chicago	2,705,994	City Department	City: 2FM & DPD	--	Yes*	Yes*	Yes* (CRGC)
Boston	694,583	City Department	Family (EDIC/BRA)	--	Yes*	Yes (BIDFA)	Yes
Austin	964,254	--	--	--	--	--	--

*City is negotiating deals and/or issuing bonds directly or through a captive conduit. Is capable of receiving fees, but not verified.



Sources: NYCEDC's Peer Cities Conference (2017); Matthew Kwatinetz' experience working with NYCEDC, PIDC. Former director of BRA; Research conducted by QBL of online resources of each entity and city studies.

Duplication of Staff vs. EDD: No One Way

Conclusion is same: EDD/COA Needs more Capacity

- Assume that the overall staff (between EDD and AEDC) is fixed
 - Hold some vacancies in EDD fixed to keep budget neutral
- Redevelopment Services has been extraordinarily successful
 - Increasing number of projects needs increased staff time
 - Will this be internal or external?
 - **Recommendation: Redevelopment Services is the brains of redevelopment and AEDC is the hands that get it done**
- Real Estate is typically separate from redev/ecodev – keep it that way
- AEDC can implement a long-term economic recovery strategy
 - Some allocation of vacancies in EDD (5) can be assigned
 - This can reduce EDD direct budget
 - If AEDC is successful, it pays for these staff members (not COA cost)



APPENDIX 17

EDD Memo to City Council on EDO (May 2020)



MEMORANDUM

TO: Mayor and City Council

FROM: Sylvania Holt-Rabb, Interim Director, Economic Development Department *SH*

DATE: June 12, 2020

SUBJECT: Economic Development Entity Request for Extension Until July 30, 2020

This memo requests an extension for the submission of working documents needed to create an economic development entity, as directed through [Resolution 20200521-095](#) and [Resolution 20200521-096](#).

The Economic Development Department's (EDD) progress on creating the working documents has been slowed by competing major projects. Specifically, EDD has used significant staff time and resources to rapidly establish and deploy disaster relief programming (e.g. the Austin Economic Injury Bridge Loan Program, Austin Musician Disaster Relief Fund, Austin Creative Space Disaster Relief Program, Commercial Loans for Economic Assistance & Recovery (CLEAR) Fund, Austin Nonprofit and Civic Health Organizations Relief (ANCHOR) Fund, and Childcare Support Fund).

EDD is working with its consultant team to develop a set of recommendations and proposal that require a thorough review of the legal and funding components. Additionally, per Council's resolution, the proposal requires the preparation of legal and administrative documents, which also require a thorough review. EDD asked the Law and Finance departments to review these recommendations.

For the reasons stated above, we are requesting an extension and expect to provide a written response to Council by July 30. For additional information, please feel free to contact me at (512) 974-3131 or David Colligan, Interim Assistant Director, at (512) 974-6381.

xc: Spencer Cronk, Austin City Manager
J. Rodney Gonzales, Assistant City Manager of Economic Opportunity and Affordability
Veronica Briseño, Chief Economic Recovery Officer



APPENDIX 18

Legal Brief on EDO from Outside Counsel

MEMORANDUM

TO: Matthew Kwatinetz, QBL Partners
FROM: Karen M. Kennard
DATE: June 30, 2020

RE: Creation of an Economic Development Entity for the City of Austin

Issues Presented

- (1) Does the proposed structure for an Economic Development Corporation create any legal issues?*
- (2) Does the exemption provided by Section 253.011 of the Texas Local Government Code allow a city to sell or transfer property without following bidding or auction provisions of Texas law?*
- (3) Does a Texas Local Government Corporation created under Chapter 431 of the Texas Transportation Code have the legal authority to issue bonds?*

Summary

Texas law allows the creation of a local government corporation (LGC) to perform a range of functions on behalf of a city, including economic development functions. The specific purposes of any such LGC would need to be specifically delineated in the documents creating the corporation.

There is a state law exception that allows the sell or transfer of city owned property without following bidding or auction provisions of state law. However, those provisions have limited application. The provisions of Section 253.011 allow a city to transfer property to a non-profit to use the property in a manner that primarily promotes a public purpose. If the property is not used in the manner stated in the transfer, the property automatically reverts to city ownership.

A local government corporation (LGC) created under Texas law has the legal authority to issue bonds if that authority is set in the Articles of Incorporation that create the LGC.

Background and Analysis

The City of Austin seeks to create an economic development entity to perform a broad range of activities. QBL Partners (“QBL”) was hired to review and assess the different types of entities under state law that the City might be able to create to undertake these economic development

activities. QBL reviewed several potential legal entities that could be used and has recommended the creation of a new local government corporation (LGC) to serve as an umbrella organization to carry specific economic development activities.

A local government corporation may be created to act on behalf of a city to accomplish a governmental purpose of the city.¹ An LGC has the powers granted to a transportation corporation under the Texas Transportation Code and the powers granted to a non-profit corporation under the Texas Business Organizations Code. Both types of corporations have among other powers, the power to contract and own property.² Such corporations have been created throughout the state to perform functions ranging from the operation of park systems to the building and operation of hotel facilities.

A local government corporation created by a city can have broad purposes and authority. An LGC that is created to aid and act on behalf of a city can be granted any governmental powers that the city finds appropriate. Therefore, a Local Government Corporation may issue debt on behalf of a city if the Certificate of Formation (f/k/a Articles of Incorporation) and Bylaws of the Corporation set out those powers for the entity.³

The City of Austin previously created an Industrial Development Corporation (IDC). State law prescribes a specific list of the types of projects that an IDC can be used to fund⁴. The Article of Incorporation and bylaws of the Austin IDC state that the Corporation was formed for the purpose to...issue obligations to finance all or part of the, cost of one or more **commercial, industrial or manufacturing projects to promote and develop commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare**, pursuant to the provisions of the Development Corporation Act, Chapter 501, Texas Local Government Code. State law sets out a two-part test to determine what types of projects qualify for funding by an IDC. Generally, projects funded by an IDC must involve the primary creation of jobs **AND** be required or suitable for the development, retention, or expansion of twelve (12) different types of projects.⁵ There are also a few other specific projects under state law that the Austin IDC could fund.⁶

QBL proposes a structure whereby the LGC works cooperatively with the City's Industrial Development Corporation and a potential Cultural Trust to manage and oversee a range economic development projects on behalf of the City. Under the proposed structure, the LGC, IDC, and Cultural Trust would share the same staff. This staff would oversee the operations of each of these entities. Even though there are no relevant examples of this structure found in Texas, there are no legal impediments to setting up the organizational structure in this manner. An appropriate contractual relationship could be created between each entity to establish the appropriate roles and responsibility for each entity that would allow a unified staff to carry out the purposes of each entity.

¹ TEX. TRANSP. CODE, Chapter 431

² See, TEX. BUS. ORG. CODE, Section 2.01; TEX TRANSP. CODE, Section 431.105

³ See, TEX. TRANSP. CODE, Section 431.101

⁴ TEX. LOCAL GOVT CODE, Section 501.101

⁵ Id.

⁶ See, TEX. BUS ORG. CODE, Sections 501.102, 501.103

ADMIN 37171784v3

One of the functions contemplated for the LGC is the ability to oversee and manage certain city owned property. Texas law and the Austin City Charter⁷ provide limitations on the City's ability to transfer or sell public property. As general rule, public property can only be sold or transferred after notice and bidding on the property or by auction as provided by state law.⁸ However, there are a few exceptions to those requirements. Under Texas Local Government Code Section 253.011, a city can transfer public property without notice and bidding or auction. Under those provisions, a city may transfer public property to a non-profit entity to use for a specific purpose. The instrument used to transfer the property must set how the property will be used. The transfer of property must also provide that if the property is no longer used for the purpose for which it was transferred to the non-profit, the property automatically reverts to the city. The creation of a right of reverter under state statute prevents the city from transferring fee title to the property to a non-profit.⁹ The non-profit could only use the property for the purpose set out in the transfer. In the situation contemplated for LGC, the City of Austin could allow the LGC to manage city owned property and market those properties for sale. Additionally, the City could allow the LGC to sell city owned property in accordance with state law requirements.

Conclusion

Texas law provides the City of Austin a mechanism to create an entity to perform economic development activities on behalf of the City. The creation of a local development corporation would allow the city to engage in a range of projects if the city sets out the scope of those functions and projects in the documents that create the corporation.

⁷ Austin City Charter, Article II, section 7

⁸ TEX, LOCAL GOVT. CODE, Chapter 272

⁹ See, Tex. Attorney Gen'l. Opinion, KP-0209 (2018)

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APPENDIX 19

City Council Resolution 20190808-077

RESOLUTION NO. 20190808-077

WHEREAS, Resolution No. 20141211-122 directed the City Manager to deliver a feasibility study for initiating and administering a corporation such as an Economic Development Corporations (EDCs); and

WHEREAS, the Resolution also directed the City Manager to review all other prior recommendations for EDCs from city plans and to analyze community needs that could be supported through the use of an economic development corporation or another corporate structure and to recommend other focus areas and potential sources of funding; and

WHEREAS, Resolution No. 20170216-040 directed the City Manager to bring forward a specific proposal or proposals for creating an entity or entities capable of structuring public-private partnerships to assist in accomplishing the priority projects and goals of the City; and

WHEREAS, Resolution No. 20170831-103 directed the City Manager to recommend options for creating a dedicated funding stream for capital and operating expenditures related to meeting the needs of those experiencing homelessness; and

WHEREAS, Resolution No. 20170928-052 directed the City Manager to complete the work required in Resolution 20170831-103 and to explore additional financial strategies; and

WHEREAS, Resolution No. 20170831-059 directed the City Manager to recommend options to engage the community in alternatives to activities such as “panhandling,” including means to facilitate contributions to direct assistance to those experiencing homelessness; and

WHEREAS, in March 2018, the Council approved Austin’s Strategic Direction 2023 plan and identified homelessness as the top priority indicator in the plan; and

WHEREAS, Resolution No. 20180426-030 endorsed the “Austin Action Plan to End Homelessness,” a plan with the goal of launching a public-private partnership to build a sustainable system that ends people’s homelessness in Austin, Texas; and

WHEREAS, Austin’s “Action Plan to End Homelessness” delineates five critical methods to effectively end homelessness, including strategies to build community commitment from both the public and private sectors; and

WHEREAS, the City has access to multiple funding sources for land acquisition and capital costs for both emergency shelter and permanent supportive housing, such as bond dollars, Community Development Block Grant funds, and revenue generated from the Waller Creek Tax Increment Reinvestment Zone; however, funds for operating and maintaining emergency shelters and other critical ancillary resources, such as emergency rental assistance, housing vouchers, landlord risk mitigation funds, case managers, and other wraparound services, are much more limited; and

WHEREAS, Senate Bill 2, which lowered the multiplier used in the rollback rate calculation from 8 percent to 3.5 percent for cities for nearly every Texas city, will make it more challenging for the City of Austin to fund the aforementioned services and resources; and

WHEREAS, the May 29, 2019, staff memo in response to Resolutions No. 20141211-122 and 20170216-040 states that the Texas Transportation Corporation Act grants municipalities the ability to create local government corporations (LGCs), nonprofit organizations empowered to act on behalf of a municipality to “accomplish any governmental purpose”; and

WHEREAS, according to the memo, “[t]he City would be able to transfer funds to the LGC through a contract. Among the potential sources of funding are fund transfers, hotel taxes (for allowable uses), TIF funds, that may serve as the backing for bonds and notes”; and

WHEREAS, LGCs can also take out loans and issue bonds, and bonds not backed by City property taxes would not be considered City property-tax backed debt; and

WHEREAS, as city staff note, the LGC structure allows it to “operate with the flexibility and speed required to capitalize on a range of market driven development opportunities”; and

WHEREAS, an LGC’s board must be comprised of at least three members not associated with the city; and

WHEREAS, the City of Dallas operates an LGC that, among other goals, raises money to support policy goals related to addressing homelessness; and

WHEREAS, individuals often ask City staff how they can assist in financially supporting efforts related to ending homelessness in Austin; and

WHEREAS, an LGC could act on behalf of the City to collect and distribute private funds to address homelessness in Austin; **NOW, THEREFORE:**

BE IT RESOLVED BY THE CITY OF AUSTIN CITY COUNCIL:

The City Council desires to create and incorporate a local government corporation to accomplish the governmental purpose of addressing homelessness in Austin. The City Council desires for this LGC to have and exercise all of the powers prescribed by Chapter 22, Texas Business Organizations Code and Chapter 431, Texas Transportation Code; and to accept donations of funds, services, and things of value. The City Council will require Council approval before the LGC can incur debt or acquire land. Additionally, the City Council will require its approval for certain expenditures.

BE IT FURTHER RESOLVED:

The City Council directs the City Manager to file a written application with the City Clerk that requests the City Council to approve and authorize the creation of a public non-profit LGC. The application must include the LGC's proposed articles of incorporation, bylaws, and scope of work. The proposed articles of incorporation must include the City Manager's recommendation on when Council's approval should be required for

expenditures. The scope of work must support the City's Action Plan to End Homelessness. The City Council directs the City Manager to file the application on or before November 1, 2019.

BE IT FURTHER RESOLVED:

Before submitting the application to the City Clerk, the City Council directs the City Manager to:

- (1) conduct stakeholder engagement regarding the LGC's scope of work;
- (2) explore the feasibility of classifying the LGC as a 501(c)(3); and
- (3) seek out subject matter experts, as needed.

BE IT FURTHER RESOLVED:

As part of the LGC's initial board, the City Council directs the City Manager to include a position for a representative from the Continuum of Care consortium, a private business sector representative, and a representative from the Downtown Austin Alliance. The City Council authorizes the City Manager to recommend additional external members that the City Manager deems appropriate to fulfill the mission of the LGC.

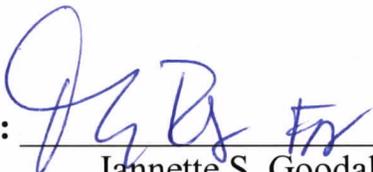
BE IT FURTHER RESOLVED:

Upon Council approval of the composition of the LGC Board, the City Council directs the City Clerk to solicit applications from citizens who are interested in serving as soon as feasible, with the goal of receiving applications by January 1, 2020.

An interested applicant shall be asked to supply a resume or curricula vita; a cover letter expressing experience or education relevant to the mission of ending homelessness; and a completed standard City of Austin application.

The members of the Health and Human Services Committee shall review all applications from citizens interested in serving on the Corporation board and make recommendations to the full City Council at the Council's last meeting in March of 2020.

ADOPTED: August 8, 2019

ATTEST: 

Jannette S. Goodall
City Clerk



APPENDIX 20

EDD Memo on Creative Space Bond (July 2020)



MEMORANDUM

TO: Mayor and City Council

FROM: Sylnovia Holt-Rabb, Acting Director *SHR*
Economic Development Department (EDD)

DATE: July 24, 2020

SUBJECT: \$12M Creative Space Bond:
Update and Next Steps on Acquisition Process

This memorandum provides an update on the execution of the \$12 million in funding earmarked in Proposition B of the 2018 Bond package for creative space acquisition and improvements.

In a [memorandum dated April 3, 2020](#), Economic Development Department (EDD) staff provided a detailed response on actions directed in [City Council Resolution No. 20180809-061](#) to recommend “a proposed process, description, and criteria for Creative Space Acquisition and Improvements... developed in consultation with the Arts and Music Commissions and in compliance with the use of bond funds.” The process outlined in the April 3rd memorandum is included as **Attachment A** to this memorandum for ease of reference. The process is foundationally based on the unanimously approved [Arts and Music Commission recommendations](#) of their appointed Joint Working Group and legal parameters related to the Bond Proposition and contract with the voters.

In a [memorandum dated May 14, 2020](#), EDD provided additional clarity about the types of projects the City would consider through the multi-party solicitation process outlined in Attachment A as well as a timeline. The engagement of this ensemble of brokerage and public-private partnership expertise will enable City staff expeditiously and more seamlessly match interested sites and landowners with potential facility operators in a manner consistent with the understanding outlined in the May 14th memorandum.

Next Steps

EDD is on track to meet the milestones outlined in the May 14, 2020 memorandum. City staff completed negotiations with the Texas Facilities Commission on an interlocal agreement (ILA) that will provide the City with requisite consultant and broker services for the acquisition process. The proposed ILA is placed on the July 30, 2020 City Council Agenda for consideration and action.

To advance more expeditiously on the timeline, EDD is in the process of engaging Alvarez and Marsal Public Service Advisors in a limited engagement to implement parts of the first two tasks covered by their services delivered through the Texas Facility Commission interlocal agreement. This limited engagement will enable City staff to commence the Request for Information initial stage of the process.

EDD will release a Request for Information to advertise the opportunity to serve as operator of a future facility(ies) to potential landowners and operators. This will inform landowners on how to indicate their interest and provide site information to the City through a broker. Operators will indicate their interest and provide information to the City through RFI that will come from the Purchasing Office. City staff will use evaluation through both broker and operator processes to identify how well each proposed site and operator can work together to meet the project goals. EDD anticipates issuing the Request for Information within 3-4 weeks.

Please direct any questions to me at 512.974.2156, or to Christine Maguire, Redevelopment Division Manager, at 512.974.7131.

xc: Spencer Cronk, City Manager
Nuria Rivera-Vandermyde, Deputy City Manager
J. Rodney Gonzales, Assistant City Manager
Anne Morgan, City Attorney
James Scarboro, Purchasing Officer
Leela Fireside, Assistant City Attorney
Ron Pigott, Assistant City Attorney

Attachment A: Solicitation Process for Land and Facilities Acquisition

The following outlines roles and responsibilities, as well as solicitation process for land and facilities acquisition. This multi-party process is staff's recommended method for delivering programmed, City-owned creative space to the community using an acquisition process similar to that of the new Planning and Development Center at Highland Mall.

Roles and Responsibilities:

- **Public-Private Partnership Advisor:** Informed by the work of the Arts and Music Commission through their Joint Recommendation to Mayor and Council, the Public-Private Partnership Advisor assists City staff with project delivery planning, requesting information and input from potential partners, site proposal evaluation criteria, analysis of site and project opportunities, assessment and evaluation of submitted proposals, and assistance with negotiation agreements and final transaction documents.
- **Real Estate Broker:** The Real Estate Broker works on the City's behalf to identify market opportunities and engage with interested landowners. The Broker issues the solicitation and is the intermediary for all contact between the City and landowners.
- **Facility Operator:** The Facility Operator is the entity operating the acquired facility or facilities. The Operator enters into a Qualified Management Services contract with the City to operate selected creative space, based on the terms and conditions outlined in a City-led Request for Proposals.

Expected Solicitation Process for Facilities Acquisition and Operations:

1. The City enters into an Interlocal Agreement with the Texas Facilities Commission to utilize their competitively selected Public-Private Partnership Advisor and Real Estate Broker. The Advisor assists staff throughout the site and operator selection process.
2. Solicitation for properties is issued independently by Real Estate Broker, who works with interested landowners in submitting proposals.
3. Through City Purchasing, the City issues a Request for Information to potential facility operators to gauge their level of interest in different types of facilities and potential Facility Operator business terms.
4. Through City Purchasing, the City issues a Qualified Management Services Request for Proposals informed by responses to Request for Information.
5. A pre-bid conference is held with parties interested in applying as facilities operators at top-contending properties that have responded to the Request for Information or to the Real Estate Broker's property solicitation.
6. Potential facility operators apply to City Purchasing's Request for Proposals and indicate their interest in one or more top-contending properties.
7. The City evaluates submitted proposals for Facility Operators in consultation with the Public-Private Partnership Advisor and in consideration of the Joint Recommendation of the Arts and Music Commissions.
8. City directs Real Estate Broker to negotiate terms for the purchase of one or more top-contending properties based on ranking of both the property and consideration of the strength and level of interest from the Facility Operator proposals.
9. City purchases propert(ies) and awards Facilities Operator contract(s).



APPENDIX 21

Guidance for Use of Voter Approved Bond for Creative Spaces

(City of Austin Legal)

VIA EMAIL

From: Fireside, Leela (Asst. City Attorney, COA Law Dept)

Sent: Friday, December 21, 2018 3:52 PM

Subject: **Use of Voter Approved Bond Funds for Creative Spaces**

Mayor and Council:

Some of you have requested a written general legal framework for staff and commission members who are working on recommendations to council for the process, description, and criteria for the creative space acquisition and improvements that are to be funded with the \$12 million in general obligation bond funds for creative spaces approved by the voters in the November 2018 election. We understand this information needs to be communicated so staff and commission members can complete the work set out in the Resolution No. 20180809-061. This guidance is general. Projects will need to be reviewed by bond counsel once the concepts have been developed by staff and the commission members, and reviewed by council. This guidance is not attorney-client confidential and may be shared with your commission members and others who may be contacting you about these bonds.

Big picture general framework:

Under the Texas Constitution, City funds must be spent for a City purpose. The City must have controls in place to make sure that the City purpose is being achieved. The City must get a benefit that is roughly equivalent to what it is spending in order to spend City funds.

Any bonds that the City issues must be approved by the Texas Attorney General's Office as to legality under Texas law. If the bonds are intended to be issued as tax-exempt obligations under the Internal Revenue Code, they must be issued in a way that complies with Federal income tax-law. The Bonds also must be issued in a manner that complies with applicable federal securities law regarding disclosure to investors. The City works with bond counsel to address these matters.

Determining whether a particular project can be funded with bond funds is dependent on the facts and circumstances surrounding the project. So, the information being provided in this email is not addressing whether any particular projects can be funded. Typically, the City sells voter-approved bonds to finance multiple projects in accordance with multiple propositions approved by the voters, and that may impact the timing of when and how much money can be raised through a bond sale.

Contract with the Voters:

Council made commitments to the voters regarding the use of these bond funds. This is referred to as "the contract with the voters." The Attorney General's Office will review these commitments to make sure the City is in compliance before the Attorney General's Office will approve the bonds.

1. The bonds must be used for capital projects. This means that they can be used to plan, design, acquire, construct, renovate, improve, and equip cultural arts facilities and museums which include creative spaces dedicated to the creation, exhibition, or preservation or art and creative expression. This includes acquiring land and interests in land and property for these purposes.

These funds cannot be used to provide economic development grants for rent for creative spaces, nor can they be used to make improvements in rented space that the City will not have a property interest in over the life of the bonds.

2. Because this funding is part of the \$128 million proposition for libraries, museums, and cultural centers, the more that the projects fit within this type of project, the more likely it is that the Attorney General's Office will approve the use of the bonds for these purposes.

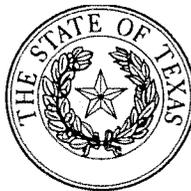
General concepts applicable to these bonds:

1. Projects that have a clear City purpose and that are owned by the City are also more likely to be approved for bond funding than projects that are owned by other entities.
2. Projects that are owned by the City and operated by the City, or by a nonprofit that operates the project consistent with the City purpose, are more likely to be approved by the Attorney General than projects that are operated by for-profit entities to benefit those entities. (An example of a currently operated project that is operated by a nonprofit, but owned by the City, is Zach Scott Theatre).
3. Projects that are not owned by the City present a higher degree of legal challenges and would need to be reviewed more specifically by bond counsel.
4. These bonds were not approved for economic development purposes. Therefore, the process, description, and criteria that staff and commission members are developing should focus on creating long-term city assets that can be used over many decades for creative spaces, not creating projects that are in the nature of economic development projects.



APPENDIX 22

Formation Documents for Austin Industrial Development Corporation



Office of the Secretary of State

CERTIFICATE OF FILING OF

THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION
File Number: 52492801

The undersigned, as Secretary of State of Texas, hereby certifies that the Nonprofit Periodic Report for the above named entity has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

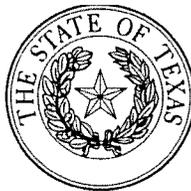
Dated: 04/22/2015

Effective: 04/22/2015



A handwritten signature in black ink, appearing to read "Cascos" followed by a horizontal line.

Carlos H. Cascos
Secretary of State



Office of the Secretary of State

April 27, 2015

TERESA MEDINA
P O Box 1088
Austin, TX 78767 USA

RE: THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION
File Number: 52492801

It has been our pleasure to file the Nonprofit Periodic Report for the referenced entity. Enclosed is the certificate evidencing filing. Payment of the filing fee is acknowledged by this letter.

If we may be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure

AMENDED AND RESTATED BYLAWS
OF
THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION

ARTICLE 1. NAME.

The name of the corporation is The Austin Industrial Development Corporation (the **“Corporation”**).

ARTICLE 2. PURPOSES AND DUTIES.

(A) In order to implement the purposes for which the Corporation was formed as set forth in its Articles of Incorporation, the Corporation shall issue obligations to finance all or part of the, cost of one or more commercial, industrial or manufacturing projects to promote and develop commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare, pursuant to the provisions of the Development Corporation Act, Chapter 501, Texas Local Government Code.

(B) The Corporation shall not issue any obligations unless the City Council (the **“City Council”**) of the City of Austin, Texas (the **“City”**) has approved by written resolution any agreement to issue obligations adopted by the Corporation, which agreement and resolution shall set out the amount and purpose of the obligations. No issue of obligations, including refunding bonds, shall be sold and delivered by the Corporation without a written resolution of the City Council adopted no more than sixty (60) days prior to the date of sale of the obligations specifically approving the resolution of the Corporation providing for the issuance of the obligations.

(C) The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the Board of Directors of the Corporation (the **“Board”**) shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall be paid to the City.

ARTICLE 3. BOARD OF DIRECTORS.

(A) The Board is composed of all of the duly elected City Council members.

(B) A member of the Board shall serve for a term of three years which is co-terminus with the member's elected term of office on the City Council of the City. The member's term of office shall automatically be extended for an additional three year term if the member remains a City Council member at the end of the member's then existing term on the Board. The member's term shall not exceed the period for which the member shall be a member of the City Council.

(C) A member of the Board may not act in an official capacity except through the action of the Board.

ARTICLE 4. OFFICERS.

(A) The officers of the Board shall consist of a chair and a vice-chair. The Mayor of the City shall serve as the chair of the Board and the Mayor Pro Tem of the City shall serve as the vice-chair of the Board. The officers of the Board shall serve for a term of three years which is co-terminus with the officer's elected term of office on the City Council of the City. The Board officer's term of office shall automatically be extended for an additional three year term if the Board officer remains the Mayor or Mayor Pro Tem of the City Council at the end of the Board officer's then existing term as chair or vice-chair on the Board. The Board officer's term shall not exceed the period for which the officer shall be the Mayor or Mayor Pro Tem of the City Council.

(B) The officers of the Corporation shall be a president, a vice-president, a secretary, a treasurer, and such other officers as the Board may from time to time elect or appoint. The City Manager of the City shall serve as the president of the Corporation; the Deputy Chief Financial Officer of the City or successor position shall serve as the vice-president of the Corporation; the Director of the Economic Development Department of the City or successor position shall serve as the secretary of the Corporation; and the Treasurer of the City or successor position shall serve as the treasurer of the Corporation. The officers of the Corporation shall serve for a term of three years. The Corporation officer's term of office shall automatically be extended for an additional three year term if the Corporation officer remains a City employee in the position described above at the end of the Corporation officer's then existing term as an officer of the Corporation. The Corporation officer's term shall not exceed the period for which the officer shall be an employee of the City.

ARTICLE 5. DUTIES OF OFFICERS.

(A) Chair: The chair shall preside at Board meetings, appoint all committees, represent the Board at ceremonial functions and approve each final meeting agenda.

(B) Vice-Chair: In the absence of the chair, the vice-chair shall perform all duties of the chair.

(C) President: The president shall be the chief executive officer of the Corporation and, subject to the authority of the Board, shall be in general charge of the properties and affairs of the Corporation. In furtherance of the purposes of this Corporation, the president may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation, subject to the approval of the Board.

(D) Vice-President: The vice-president shall have such powers and duties as may be assigned to the vice-president by the Board and shall exercise the powers of the president during that officer's absence or inability to act. 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 of the president to act at the time such action was taken.

(E) Treasurer: The treasurer shall have custody of all the funds and securities of the Corporation which come into the treasurer's hands. When necessary or proper, the treasurer 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. The treasurer may sign all receipts and vouchers for payment made to the Corporation, either alone or jointly with such other officer as is designated by the Board, and whenever required by the Board, the treasurer shall render a statement of the treasurer's cash account. The treasurer shall enter or cause to be entered regularly in the books of the Corporation to be kept by him for that purpose full and accurate accounts of all monies received and paid out on account of the Corporation, and the treasurer shall perform all acts incident to the position of treasurer subject to the control of the Board. The treasurer shall, if required by the Board, give such bond for the faithful discharge of the treasurer's duties in such form as the Board may require.

(F) Secretary: The secretary shall keep the minutes of all meetings of the Board in books provided for that purpose and shall attend to the giving and serving of all notices. In furtherance of the purposes of the Corporation, the secretary may sign with the president in the name of the Corporation, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Corporation, subject to the approval of the Board. The secretary shall have charge of the corporate 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 inspection upon application at the office of the Corporation during business hours, and the secretary shall in general perform all duties incident to the office of secretary subject to the control of the Board.

ARTICLE 6. AGENDAS.

(A) Two or more Board members may place an item on the agenda by oral or written request to the president of the Corporation or the president's designee at least five days before the meeting. After first consulting with and receiving input from the president of the Corporation or the president's designee, the chair shall approve each final meeting agenda.

(B) The president of the Corporation or the president's designee shall submit the meeting agenda through the online agenda posting system for each meeting not less than 72 hours before the meeting.

(C) Posting of the agenda must comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).

ARTICLE 7. MEETINGS.

(A) Meetings of the Board shall comply with Texas Government Code Chapter 551 (Texas Open Meetings Act).

(B) Board meetings shall be governed by Robert's Rules of Order.

(C) The Board may not conduct a closed meeting without the approval of the City Attorney.

(D) Prior to December 31st of each year, the Board shall adopt a schedule of the regular meetings for the upcoming year.

(E) The chair may call a special meeting, and the chair shall call a special meeting if requested by three or more members of the Board. The call notice shall state the purpose of the meeting.

(F) A majority of the members of the Board shall constitute a quorum for a meeting of the Board.

(G) To be effective, a Board action must be adopted by an affirmative vote of the number of members necessary to provide a quorum.

(H) The chair has the same voting privilege as any other member.

(I) The Board shall allow citizens to address the Board on agenda items and during a period of time set aside for citizen communications. The chair may limit a speaker to three minutes.

(J) The city clerk of the City shall prepare the Board minutes. The minutes of each Board meeting must include the vote of each member on each item before the Board and indicate whether a member is absent or failed to vote on an item.

(K) The city clerk of the City shall retain agendas, approved minutes, internal review reports and bylaws. The secretary shall retain all other Board documents. The documents are public records under Texas Local Government Code Chapter 552 (Texas Public Information Act).

(L) The chair shall adjourn a meeting not later than 10 p.m., unless the Board votes to continue the meeting.

(M) Each person and Board member attending a Board meeting should observe decorum pursuant to Section 2-1-48 of the City Code.

ARTICLE 8. COMMITTEES.

(A) The Corporation will initially have no committees, but a committee may be established by an affirmative vote of the Board. Each committee shall consist of at least three Board members appointed by the chair.

(B) The Board chair shall appoint a Board member as the committee chair, with such member's consent.

(C) A majority of the total number of appointed committee members constitutes a quorum.

(D) Committee meetings must be posted in accordance with Texas Government Code Chapter 551 (Texas Open Meetings Act).

(E) At each committee meeting, a committee member shall sign in on a sheet provided and shall indicate that the member has no conflict of interest with any item on the committee meeting agenda, or identify each agenda item on which the member has a conflict of interest.

ARTICLE 9. PARLIAMENTARY AUTHORITY.

The rules contained in the current edition of Robert's Rules of Order shall govern the Board in all cases to which they are applicable, except when inconsistent with these bylaws or with special rules of procedure which the Board may adopt.

ARTICLE 10. AMENDMENT OF BYLAWS.

A bylaw amendment is not effective unless approved in accordance with the Articles of Incorporation of the Corporation.

The form of these bylaws of the Corporation were approved by the City Council at its meeting held on December 11, 2014 as Resolution No. 20141211-034 and these bylaws were approved and adopted by the Board of Directors of the Corporation at its meeting held on December 11, 2014 as Resolution No. 20141211-AIDC-002.

Kevin Johns
Secretary of the Corporation]

AMENDED AND RESTATED BYLAWS
OF
THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION

ARTICLE 1. NAME.

The name of the corporation is The Austin Industrial Development Corporation (the **“Corporation”**).

ARTICLE 2. PURPOSES AND DUTIES.

(A) In order to implement the purposes for which the Corporation was formed as set forth in its Articles of Incorporation, the Corporation shall issue obligations to finance all or part of the, cost of one or more commercial, industrial or manufacturing projects to promote and develop commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare, pursuant to the provisions of the Development Corporation Act, Chapter 501, Texas Local Government Code.

(B) The Corporation shall not issue any obligations unless the City Council (the **“City Council”**) of the City of Austin, Texas (the **“City”**) has approved by written resolution any agreement to issue obligations adopted by the Corporation, which agreement and resolution shall set out the amount and purpose of the obligations. No issue of obligations, including refunding bonds, shall be sold and delivered by the Corporation without a written resolution of the City Council adopted no more than sixty (60) days prior to the date of sale of the obligations specifically approving the resolution of the Corporation providing for the issuance of the obligations.

(C) The Corporation shall be a nonprofit corporation, and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the Board of Directors of the Corporation (the **“Board”**) shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Corporation issued to finance all or part of the cost of a project, then any net earnings of the Corporation thereafter accruing with respect to said project shall be paid to the City.

ARTICLE 3. BOARD OF DIRECTORS.

(A) The Board is composed of all of the duly elected City Council members.

(B) A member of the Board shall serve for a term of three years which is co-terminus with the member's elected term of office on the City Council of the City. The member's term of office shall automatically be extended for an additional three year term if the member remains a City Council member at the end of the member's then existing term on the Board. The member's term shall not exceed the period for which the member shall be a member of the City Council.

(C) A member of the Board may not act in an official capacity except through the action of the Board.

ARTICLE 4. OFFICERS.

(A) The officers of the Board shall consist of a chair and a vice-chair. The Mayor of the City shall serve as the chair of the Board and the Mayor Pro Tem of the City shall serve as the vice-chair of the Board. The officers of the Board shall serve for a term of three years which is co-terminus with the officer's elected term of office on the City Council of the City. The Board officer's term of office shall automatically be extended for an additional three year term if the Board officer remains the Mayor or Mayor Pro Tem of the City Council at the end of the Board officer's then existing term as chair or vice-chair on the Board. The Board officer's term shall not exceed the period for which the officer shall be the Mayor or Mayor Pro Tem of the City Council.

(B) The officers of the Corporation shall be a president, a vice-president, a secretary, a treasurer, and such other officers as the Board may from time to time elect or appoint. The City Manager of the City shall serve as the president of the Corporation; the Deputy Chief Financial Officer of the City or successor position shall serve as the vice-president of the Corporation; the Director of the Economic Development Department of the City or successor position shall serve as the secretary of the Corporation; and the Treasurer of the City or successor position shall serve as the treasurer of the Corporation. The officers of the Corporation shall serve for a term of three years. The Corporation officer's term of office shall automatically be extended for an additional three year term if the Corporation officer remains a City employee in the position described above at the end of the Corporation officer's then existing term as an officer of the Corporation. The Corporation officer's term shall not exceed the period for which the officer shall be an employee of the City.

ARTICLE 5. DUTIES OF OFFICERS.

(A) Chair: The chair shall preside at Board meetings, appoint all committees, represent the Board at ceremonial functions and approve each final meeting agenda.

(B) Vice-Chair: In the absence of the chair, the vice-chair shall perform all duties of the chair.

(C) President: The president shall be the chief executive officer of the Corporation and, subject to the authority of the Board, shall be in general charge of the properties and affairs of the Corporation. In furtherance of the purposes of this Corporation, the president may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Corporation, subject to the approval of the Board.

(D) Vice-President: The vice-president shall have such powers and duties as may be assigned to the vice-president by the Board and shall exercise the powers of the president during that officer's absence or inability to act. 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 of the president to act at the time such action was taken.

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(L) The chair shall adjourn a meeting not later than 10 p.m., unless the Board votes to continue the meeting.

(M) Each person and Board member attending a Board meeting should observe decorum pursuant to Section 2-1-48 of the City Code.

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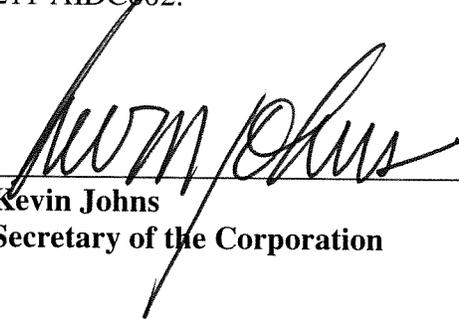
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Kevin Johns
Secretary of the Corporation

GREAT STREETS FURNISHINGS

- **TRASH & RECYCLE RECEPTACLE:**
TR-12 Fairweather Site Furnishings w/side openings – 35 gallon liner
“Silvadillo” color with top clear coat. Recycle can with blue top; one each per corner.
Contact: Patricia Calhoun (972) 492-2428
- **BENCHES:**
Landscape Forms – Plainwell- “Austin Great Streets Bench” – **5-foot length** with center arm in silver and Ipe slats
Landscape Forms - Plainwell - “Austin Chair” – **2 foot wide** in silver and Ipe slats
Silver Finish RAL 49/90380 with top clear coat # 49/00530
Contact: Melissa Henao-Robledo 800.430.6206 ext.1307
melissahr@landscapeforms.com
www.landscapeforms.com
- **BIKE RACKS:**
Type I Class III – Inverted “U” shaped bike rack; **1-2 spaces only** – galvanized
Color: Silver
- **CAST IRON TREE GRATE:**
6 ft. x 6 ft. with removable middle ring.
Refer to COA Standard Detail 437S-1
- **PAVER GRATE:**
Refer to COA Standard Detail 437S-1

FILED
In the Office of the
Secretary of State of Texas

JUL 11 1990

CLERK III
Corporation Division

ARTICLES OF INCORPORATION

OF

THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION

THE STATE OF TEXAS

X

COUNTY OF TRAVIS

X

X

WE, THE UNDERSIGNED, natural persons of the age of eighteen (18) years or more, citizens of the State of Texas, and residents and qualified electors of the City of Austin, Texas (the "City"), acting as incorporators of a corporation (the "Corporation") under the provisions of the "Development Corporation Act of 1979", having been granted authority by the City Council of the City as evidenced by the resolution attached hereto as Exhibit "A", do hereby adopt the following Articles of Incorporation for such Corporation.

ARTICLE ONE

The name of the Corporation is THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION.

ARTICLE TWO

The Corporation is a nonprofit corporation.

ARTICLE THREE

The duration of the Corporation shall be perpetual.

ARTICLE FOUR

The Corporation is organized and may issue bonds on behalf of the City for the Specific public purpose of the promotion and development of commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare.

ARTICLE FIVE

The Corporation is to have no members and is a nonstock corporation.

ARTICLE SIX

The Corporation's internal affairs shall be regulated by a set of Bylaws, no inconsistent with the laws of the State of Texas, which have been approved by the City Council of the City of Austin, under whose auspices the Corporation is created.

ARTICLE SEVEN

The street address of the initial registered office of the Corporation is 708 Colorado Street, Room 304, Austin, Texas 78701, and the name of its initial registered agent at such address is Jerry L. Harris.

ARTICLE EIGHT

The affairs of the Corporation shall be managed by a board of directors which shall be composed in its entirety of persons appointed by the governing body of the City. The number of directors constituting the initial board of directors is seven (7). The names and addresses of the persons who are to serve as the initial directors, and the dates of expiration of their initial terms as directors, are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>	<u>DATE OF EXPIRATION OF TERM</u>
Carole Keeton McClellan	124 West 8th Street, Austin, Texas 78701	May 15, 1981
Lee Cooke	124 West 8th Street, Austin, Texas 78701	May 15, 1981
Ron Mullen	124 West 8th Street, Austin, Texas 78701	May 15, 1981
Richard Goodman	124 West 8th Street, Austin, Texas 78701	May 15, 1981
Jimmy Snell	124 West 8th Street, Austin, Texas 78701	May 15, 1981
Betty Himmelblau	124 West 8th Street, Austin, Texas 78701	May 15, 1981
John Trevino, Jr.	124 West 8th Street, Austin, Texas 78701	May 15, 1981

Provided, however, the term of any director who is a public official of the City shall not exceed the period for which such director shall be a public official of the City.

Each of the initial directors resides within the City. Each director, including the initial directors, shall be eligible for reappointment. Directors are removable by the governing body of the City, for cause or at will, and must not be appointed for a term in excess of six (6) years. Any vacancy occurring on the board of directors, through death, resignation, or otherwise, shall be filled by appointment by the governing body of the City to hold office until the expiration of the term for which the vacating director had been appointed.

ARTICLE NINE

The name and street address of each incorporator is:

<u>NAME</u>	<u>ADDRESS</u>
Carole Keeton McClellan	124 West 8th Street, Austin, Texas 78701
Lee Cooke	124 West 8th Street, Austin, Texas 78701
Ron Mullen	124 West 8th Street, Austin, Texas 78701
Richard Goodman	124 West 8th Street, Austin, Texas 78701
Jimmy Snell	124 West 8th Street, Austin, Texas 78701
Betty Himmelblau	124 West 8th Street, Austin, Texas 78701
John Trevino, Jr.	124 West 8th Street, Austin, Texas 78701

Each incorporator resides within the City.

ARTICLE TEN

A resolution approving the form of these Articles of Incorporation has been duly adopted by the City Council of the City of Austin on the 26th day of June, 1980. Said resolution specifically authorizes the corporation to act on behalf of the City of Austin to further the specific public purpose of the promotion and development of commercial, industrial and manufacturing enterprises to promote and encourage employment and the public welfare. A copy of the resolution is attached hereto as Exhibit "A".

ARTICLE ELEVEN

These articles of incorporation may at any time and from time to time be amended. Any such amendment shall be effected in either of the following manners: (i) the board of directors shall file with the governing body

of the City a written application requesting approval of such amendment to the articles of incorporation, specifying in such application the amendment or amendments proposed to be made; if such governing body by appropriate resolution finds and determines that it is advisable that the proposed amendment be made, authorizes the same to be made and approves the form of the proposed amendment, the board of directors shall proceed to amend the articles in the manner provided in the Act, or (ii) the governing body of the City may, at its sole discretion, at any time, amend the articles of incorporation by adopting an amendment to the articles of incorporation of the corporation by resolution and delivering the articles of amendment to the Secretary of State as provided in the "Act".

IN WITNESS WHEREOF, we have hereunto set our hands this 3rd day of July, 1980.

Carole Keston McClellan
CAROLE KESTON MCCLELLAN

Lee Cooke
LEE COOKE

Ron Mullen
RON MULLEN

Richard Goodman
RICHARD GOODMAN

Jimmy Snell
JIMMY SNELL

Betty Himmelblau
BETTY HIMMELBLAU

John Trevino, Jr.
JOHN TREVINO, JR.

INCORPORATORS

THE STATE OF TEXAS

X
X
X

COUNTY OF TRAVIS

I, the undersigned, a Notary Public, do hereby certify that on this the 3rd day of July, 1980, personally appeared before me CAROLE KEETON MCCLELLAN, LEE COOKE, RON MULLEN, RICHARD GOODMAN, JIMMY SNELL, BETTY HIMMELBLAU, and JOHN TREVINO, JR., 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 day and year above written.

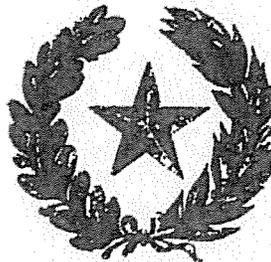
Grace Mouser

Notary Public in and for
Travis County, T E X A S

My Commission Expires: December 1980

(NOTARY PUBLIC SEAL)

EXHIBIT A-2



The State of Texas
SECRETARY OF STATE

IT IS HEREBY CERTIFIED, that

Articles of Incorporation

of

THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION

were filed in this office and a certificate of

incorporation was issued on

JULY 11, 1980;

IT IS FURTHER CERTIFIED, that no certificate
of dissolution has been issued, and the corporation
is still in existence.

IN TESTIMONY WHEREOF, I have hereunto
signed my name officially and caused to be im-
pressed hereon the Seal of State at my office in
the City of Austin, this

.....5th day of.....December..... A. D. 19 ..82..

David A. Nease
Secretary of State

SSS



EXHIBIT A-1



The State of Texas
SECRETARY OF STATE

The undersigned, as Secretary of State of the State of Texas, HEREBY CERTIFIES that the attached is a true and correct copy of the following described instruments on file in this office:

THE AUSTIN INDUSTRIAL DEVELOPMENT CORPORATION

ARTICLES OF INCORPORATION

JULY 11, 1980

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this

6th December 80
..... day of A. D. 19

David A. Allan

Secretary of State

SSS



APPENDIX 23

July 2020 Memo to Mayor and Council on South Central Waterfront

(City of Austin EDD)



To: Mayor and Council
From: Alan Holt, Planner Principal, Planning & Zoning (PAZ)
Through: Rodney Gonzales, Assistant City Manager, and Jerry Rusthoven, Interim Lead, PAZ
Date: July 23, 2020
RE: Update on Resolution No 20200220-044: Status of South Central Waterfront Efforts

This memorandum addresses City Council Resolution No. 20200220-044. This resolution, in part, directed the City Manager to provide a memo to Council with a status of all City efforts currently ongoing in the South Central Waterfront District by March 31, 2020. Due to the timing of the COVID-19 crisis, staff was unable to meet the initial deadline. However, as staff and consultants have since regrouped, key deliverables have now been completed which would not have been available for inclusion in an earlier memorandum.

This memorandum provides a current summary of work recently completed, as well as work coming due. Throughout this memorandum, hyperlinks are provided to access source materials referenced.

Background

The South Central Waterfront Vision Framework Plan (SCW Plan), adopted by Council in June 2016, established a vision to guide redevelopment in this district over the next 20 years. The adopted SCW Plan is based on a district-wide, public/private partnership model that will transform the district by:

- Retrofitting 17 acres of new connected parks, trails, plazas, and open spaces across a patchwork of 34 private properties.
- Adding over 2 miles of refurbished or new streetscapes, expand the street grid, and promote transportation options to create a lively, walkable and transit-friendly district.
- Enhancing connections and open spaces to and along the waterfront.
- Incentivizing affordable housing to ultimately equal 20% of the district's new residential units.

To fully realize the vision, the adopted SCW Plan includes recommendations on developing and adopting 14 interdependent policies, programs, agencies, and tools. Foremost among these interdependent measures includes:

- Developing opt-in zoning regulations (i.e. *Regulating Plan*).
- Establishing innovative financing tools - most importantly, Tax Increment Financing (TIF).
- Creating an Economic Development Entity.
- Leveraging the single City property in the district, One Texas Center, for affordable housing.

In summer 2019, the Planning & Zoning Department (PAZ) procured consultants' services to assist with efforts to implement the adopted SCW Plan. Since then, PAZ has coordinated with consultants and other CoA departments on implementation efforts, which are now coming to fruition.

RECENTLY COMPLETED WORK

Since the beginning of 2020, major deliverables have been completed and posted as backup for monthly meetings of the [South Central Waterfront Advisory Board](#) (SCWAB). These materials are milestones in themselves, and they are foundational prerequisites for completing the draft Regulating Plan, which is in process.

SCW Implementation Update: July 20, 2020 (staff presentation): At the July 20, 2020 meeting of the SCWAB, PAZ staff presented an implementation summary update which highlighted key findings from an array of recent deliverables. The linked staff summary presentation provides a useful overview and guide to this memorandum, to understand the individual deliverables and how those deliverables relate to and inform each other.

In brief, the hyperlinked staff presentation highlights:

- How the updated 2020 SCW Modified Physical Framework network of streets, parks, plazas, trails, open spaces, and utilities has changed since the adopted SCW Plan in 2016.
- Updated estimated costs for the Modified Physical Framework network at \$252 M.
- Updated the projected 2040 buildout under the adopted SCW Plan at 6.4 million square feet of new development.
- Estimated 568 units of new affordable housing (20%) of the updated projected buildout by 2040, given test scenario inputs.
- Updated Financial Framework Calculator which can adjust an array of input assumptions (bonus entitlements, infrastructure costs, affordable housing options, density bonus fees, gap financing requirements, etc) to test financial impact of policy decisions and implantation strategies. Depending on input selections, most scenarios indicate a financial gap of between \$400 M to \$600 M to achieve all adopted SCW Plan community benefits.
- According to a 2018 study, which needs to be updated, the potential tax valuation for the SCW district could go from \$858 M in 2018 to \$6.7 B in 2040 under the adopted SCW Plan.

A detailed narrative of recently completed work and work coming due follows:

2020 Modified SCW Framework:

The adopted SCW Plan in 2016 included a comprehensive "Physical Framework" section, which illustrated the projected 2040 district buildout for the network of streets/streetscapes (both new and improvements to existing) and other mobility elements; parks, trails, plazas and open spaces; and green infrastructure and utilities. The Physical Framework includes improvements on both private properties and in public rights-of-way (ROW). The 2016 SCW Appendices included details on the designs of these physical framework elements and the estimated costs.

Over the past year, staff and consultants conducted a thorough review and update of the 2016 physical framework. This update involved review of assumptions on the locations and alignments of physical elements, incorporation of latest street standards and transportation planning, inclusion of all utilities, and schematic design of district open spaces. Collectively, this update is titled the “2020 Modified SCW Physical Framework”.

A fundamental difference between the 2016 Physical Framework and the 2020 Modified Physical Framework is in the location and alignment of future streets and the open space network on the two largest properties – colloquially known as the Statesman Site and the adjacent Crockett Property.

- The 2016 Physical Framework assumed a co-development of these two properties that would allow for the primary new collector street, East Barton Springs Road, to cross both properties but primarily built on the Crockett Property. According to the adopted SCW Plan in 2016, this new street and its location would have been facilitated by a recommended development corporation and funded through recommended tax-increment financing. Given that neither of these recommendations have been initiated, the 2016 recommended street alignment has not been secured and the opportunity has been lost, due to market timing on development.
- In contrast, the 2020 Modified Physical Framework places the new collector road fully on the Statesman site, as allowed for in the flexibility provided in the draft SCW Regulating Plan and as proposed in the current Planned Unit Development (PUD) application for the Statesman site. Within the 2020 Modified Physical Framework, the overall amount of open spaces and district-serving streets that the adopted SCW Plan calls for are inserted and achieved across these two properties, but with an added burden on the Statesman site to accommodate approximately 1.6 acres for the new East Barton Springs Road extension that otherwise would have been on the neighboring Crockett Property under the 2016 plan. The Modified Physical Framework also adjusts the street grid and increases the size of the required plaza on the Crockett Property to accommodate the shift.

Based on the 2020 Modified SCW Physical Framework, the following key deliverables have been accomplished:

[2020 SCW Modified Physical Framework: Street Classifications and Sections, Transportation System, and Open Spaces \(final draft: 7/17/2020\)](#)

The update was produced by PAZ staff in cooperation with Austin Transportation Department (ATD), Public Works Department (PWD), and the Capitol Metropolitan Transportation Authority (Capitol Metro). The update incorporates latest ATD policies and best practices, accommodates the proposed Project Connect Blue Line and Orange Line, and integrates recommendations from the [Congress Avenue Urban Design Initiative](#).

Besides the street network, the key maps associated with this document also incorporate other mobility infrastructure (bike lanes and proposed high-capacity transit, as well as the district open space network and green infrastructure). These key maps help to understand how all these components work together as an integrated district system.

Significance of the SCW Street Classifications and Sections, Transportation System, and Open Spaces:

- a. This document forms the basis for updating cost estimation for all SCW streets and streetscapes – both for construction of new streets and for upgrades to existing streets.
- b. This document is referenced in the pending SCW Regulating Plan to identify requirements for the location and design of new streets on redeveloped properties and for upgrades to existing public streets.

2020 SCW Modified Physical Framework: Open Spaces – Schematic Designs, Quantities, and Cost Estimates (final draft: 7/20/2020)

This document focuses on the Open Space components (parks, trails, and plazas) of the SCW Physical Framework. This document includes schematic designs for the key open spaces, prepared with PAZ consultant support¹ and involvement from Public Works Department (PWD) and Parks and Recreation Department (PARD). Cost estimates for the open spaces were provided with PAZ consultant support² and City departments.

Significance of SCW Open Spaces – Schematic Designs, Quantities, and Cost Estimates:

- a. Cost estimates from this document are incorporated into the master 2020 update for cost estimates for the physical framework.
- b. The schematic open space designs provide a basis for evaluating proposed open space designs for compliance with the intension of the adopted SCW Plan.

2020 SCW Modified Physical Framework Cost Estimates (final draft: 7/20/2020)

The 2020 SCW Modified Physical Framework Cost Estimates cover all components of the SCW Physical Framework (2040 buildout) across the full SCW district. The Physical Framework includes all utilities infrastructure; streets and streetscapes for both new streets and improvements to existing streets; and the open space system (i.e., parks, trails, plazas, raingardens, and other open spaces). Cost data for streets, utilities, and green infrastructure was sourced by PWD and CoA utilities, based on 2019 work. Cost data for open spaces was supplied by consultants³.

Compared to 2016, the new cost estimates are more reliable and usable by virtue of (1) inclusion of detailed schematic designs for the key open spaces to provide for more accurate cost estimation, and (2) integrating data into an interactive database to provide for more precision and adaptability.

Significance of the 2020 SCW Modified Physical Framework Cost Estimates:

- a. This document and the associated database detail the *full cost of the SCW Physical Framework (2040 buildout) at \$252M⁴ including:*
 - i. Open Spaces: \$85.2M (34%)
 - ii. Roadway & Drainage: \$75.8M (30%)

¹ Asakura Robinson Landscape Architecture
² Project Cost Resources, as a subcontractor to Asakura Robinson
³ Asakura Robinson Landscape Architecture and Project Cost Resources
⁴ 2019 dollars. Includes all direct cost and indirect costs, with contingencies.

- iii. Streetscapes: \$51.2M (20%)
 - iv. Utilities: \$32.5M (13%)
 - v. Green infrastructure in ROW: \$5M (2%)
 - vi. Reclaimed water: \$2.2M (~1%)
- b. The city-created/owned database provides benchmarking for current planning, and it can be readily updated with new cost information to remain an adaptable tool for future use.
 - c. The cost estimates are a critical input into updating the SCW Financial Framework model.
 - d. The cost estimates provide the basis for assigning project costs for a potential SCW TIF Project Plan.
 - e. This document will be reference by the pending SCW Regulating Plan to inform developing properties of the physical framework elements which will be required on their properties.
 - f. The cost estimates provide a method to assess the anticipated costs and quality of the open spaces and street network in the current Planned Unit Development (PUD) proposal for the Statesman site.

2020 Hybrid Buildout for Financial Analysis (final draft: 7/20/2020)

Within the physical framework of streets, blocks, open spaces, and green infrastructure, the adopted SCW Plan envisions buildout scenarios on “tipping properties” (i.e., properties most likely to redevelop over the next twenty years, according to analysis in the 2016 adopted SCW Plan). Creating a buildout scenario involves two steps: (1) drawing site-specific, rational building concepts (i.e., building footprints, massing, and height) and (2) applying corresponding building program assumptions (i.e., square-footage of uses for office, hotel, residential, and retail). Creating a buildout scenario is a critical input into the financial analysis.

The adopted SCW Plan in 2016 modeled a potential of approximately 5.7 million square feet of new development across 10 tipping properties. One of those tipping properties, the Statesman Site, accounted for 2.1 million square feet of potential new development.

In 2019, a PUD proposal for the Statesman Site was submitted which includes taller buildings than was envisioned in the 2016 adopted SCW Plan. The PUD submission also proposes to put 90% of on-site parking underground, a significant improvement over the 2016 adopted SCW Plan which envisioned approximately 25% of parking underground and 75% in above-ground parking plinths (typical of downtown development). With the proposed additional density at the Statesman Site, the districtwide buildout across all ten tipping properties would generate approximately 7.4 million square feet of new development by 2040.

The **2020 Hybrid Buildout Scenario for Financial Analysis** takes the proposed building footprints and uses from the PUD proposal but reduces the building heights to limits as established in the 2016 adopted SCW Plan. The 2020 Hybrid Buildout also adopts the 90% underground parking for the Statesman Site, as proposed in the PUD application. Across the ten tipping properties, this scenario models a potential of approximately 6.4 million square feet of new development by 2040. The 2020 Hybrid Buildout becomes the basis for the 2020 update to the SCW financial analysis. A new key map, the **2020 SCW Modified Physical Framework Map**, is incorporated with this update. This new map,

which identifies all properties – tipping and non-tipping – and keys in references to all physical framework costs, is used to navigate all deliverables referenced in this memorandum.

Significance of the 2020 SCW Hybrid Buildout Scenario for Financial Analysis:

- a. Buildout assumptions are key inputs into creating the interactive Financial Framework Proforma Model, alternatively know as either the Financial Framework Tool or the Financial Framework Calculator. **2020 SCW Hybrid Buildout Scenario** will become the basis for the 2020 update to the SCW financial analysis.
- b. Buildout assumptions and the Financial Framework Proforma Model can be used to calculate potential development fees and financial gaps that might be expected from future development.
- c. The **2020 SCW Hybrid Buildout Scenario**, used as an input into the proforma model, can assess the financial impacts of the current PUD proposal but with building heights consistent with the 2016 adopted SCW Plan. However, the update to the financial proforma model also will allow an input for the building densities/heights at the Statesman site as proposed in the PUD application to understand financial impacts to the Statesman property and to the district as compared to the Hybrid Buildout heights.

2020 Physical Framework Funding Sources (final draft: 7/20/2020)

This stand-alone document draws from the **2020 SCW Modified Physical Frameworks and Project Costs Estimates** and the **SCW Hybrid Buildout Scenarios for Financial Analysis**. This document compares (1) Use of Funds (i.e., summary of cost estimates to build the physical framework for the full district) and (2) Source of Funds (i.e., summary of estimated contributions from potential funding sources).

At this stage, the potential funding sources identified and tabulated in this document include: Capital Improvement Programs (CIP); contributions from Utilities; and “Baseline Development” contributions (i.e., expected developer contributions before calculating “bonus fees”). To calculate baseline development contributions, this document uses existing and pending City policy and methodology to calculate impact fees. Staff coordinated with ATD for street infrastructure impact fees; Austin Water (AW) for water and wastewater impact fees; and Parks and Recreation Department (PARD) for parkland dedication fees.

Significance of SCW Physical Framework Funding Sources:

- a. This document identifies the financial gap that currently exists between Uses and Sources of Funds to pay for the full range of physical framework improvements. According to the adopted SCW Plan, the “Above and Beyond Costs” could be covered with potential density bonus fees and TIF.
- b. The “Above and Beyond Costs” are identified at \$114.8 M.
- c. This document informs the update to the SCW Financial Framework.

2020 Update to the SCW Financial Framework (consultant memo: 7/16/2020)

The 2020 Update to the SCW Financial Framework will include an interactive calculator (known variously as either the Financial Framework Tool, the Financial Framework Calculator, or the Financial Framework Proforma Model) and support documentation. Work has been led by PAZ staff and its financial

consultant, EcoNorthwest, with input from key departments. The consultant delivered a final memorandum (linked above) in July, and provided [a preview](#) of the pending SCW Financial Tool and Key Takeaways at the May meeting of the SCWAB. The interactive database (the Financial Framework Calculator) was released to staff mid-July for final review.

The financial calculator can be used to provide insight into the financial viability of redevelopment parcels in the SCW District under market conditions as of late 2019/early winter 2020. Unlike the 2016 Financial Framework, which was a static spreadsheet printout, the new Financial Framework Calculator can be adjusted to update market inputs, modify costs, or run alternative scenarios. The input variables include entitlements, infrastructure costs, affordable housing options, density bonus fees, and gap financing requirements. The modeling tool looks at districtwide impacts but can consider individual tipping parcels as well. For instance, up to nine affordable housing options can be modeled for One Texas Center.

Significance of the SCW Financial Framework:

- a. The Financial Framework Calculator can provide data to allow the staff to model scenarios to provide City Council with options to assess and compare the financial feasibility of multiple “input scenarios” to inform choices on policy directions and plan implementation.
- b. Given the array of input variables that the Financial Framework Calculator provides, dozens of scenarios can be generated to assess financial impacts. Early testing of the calculator indicates that to achieve the full community benefits of the adopted SCW Plan (all physical framework improvements, and 20% affordable housing target) most scenarios modeled will generate a bottom-line financial gap of between \$400 M to \$600 M.
- c. The above listed range of financial gap assumes the 2020 Hybrid Buildout (6.4 M square feet of new development by 2040) but **does not assume** any TIF funds.
- d. It was not part of the EcoNorthwest consultant contract to calculate the market feasibility and potential tax revenues for the 2020 Hybrid Buildout. This needs to be done. However, a [2018 feasibility study](#) – a work that needs to be redone to correct for current conditions and accommodate the 2020 SCW updates – indicated market feasibility to achieve buildouts similar to the 2020 SCW updates, projecting a total taxable value of \$6.7 billion in 2040 (from \$868 million valuation in 2018).

WORK IN PROGRESS

Building on the deliverables which have been completed, PAZ staff is working with other departments and consultants to produce the next set of key deliverables. Work in progress includes:

Recommendations for creating an Economic Development Entity:

The Economic Development Department (EDD), studying a potential Economic Development Entity in response to Council Resolution No. 20190808-072, began work in December 2019 with a consultant and coordinated with PAZ to consider the adopted SCW Plan requirements. EDD staff engaged with PAZ staff and the SCWAB to consider how such an entity might serve to implement the adopted SCW Plan.

Significance of the Economic Development Entity:

- a. The adopted SCW Plan assumes that private developer contributions (in-kind and financial) will need to be supplemented with public financing/funds (most importantly, TIF) to achieve the envisioned physical framework and affordable housing goals. These assumptions have been supported with the recently completed update to the SCW financial analysis. The adopted SCW Plan recommends creating an economic development entity to coordinate public and private funds; facilitate project delivery; and potentially to assist with district management and maintenance of the public realm.

2020 Update to the draft SCW Regulating Plan:

This document will replace the [last public draft \(12/2018\)](#). Now that the other 2020 updates, identified in this memorandum, have been completed, the final update to the regulating plan can proceed. The update to the SCW Regulating Plan is being led by PAZ staff and its urban design consultant, McCann Adams Studio, with input from key departments. The draft Regulating Plan will reference and synchronize with the updates to the SCW Street Typology and Sections, the SCW Physical Framework and Project Cost Estimates, and the SCW Financial Framework to provide a method for calibrating and assessing potential bonus fees. The updated Regulating Plan also anticipates the role of the potential Economic Development Corporation, as called for in the 2016 adopted SCW Plan. Staff anticipates the updated SCW Regulating Plan draft can be accomplished by early fall, 2020.

Significance of the SCW Regulating Plan:

- a. The SCW Regulating Plan provides the opt-in zoning that provides a pathway for a developer to gain site-specific bonus entitlements (e.g., additional building height) in exchange for site-specific community bonus contributions, either in-kind or fee-in-lieu.

CLOSING

If you have question regarding the South Central Waterfront implementation efforts and materials referenced in this memorandum, you may contact Alan Holt – alan.holt@austintexas.gov