

**CERTIFICATE OF FORMATION FOR  
TRINITY RIVER CORRIDOR LOCAL GOVERNMENT CORPORATION**

The undersigned natural persons, each of whom is at least eighteen (18) years of age or more and a resident of the City of Dallas, Texas (the “City”) acting as incorporators of a corporation under the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the “Act”), Chapter 394, Texas Local Government Code (“TLGC”) and Chapter 22, Texas Business Organizations Code (the “TBOC”), do hereby adopt the following Certificate of Formation for such corporation:

**ARTICLE I**

The name of the corporation is TRINITY RIVER CORRIDOR LOCAL GOVERNMENT CORPORATION (the “Corporation”).

**ARTICLE II**

The Corporation is a public nonprofit local government corporation.

**ARTICLE III**

The period of duration of the Corporation shall be perpetual.

**ARTICLE IV**

The Corporation is organized for aiding, assisting, and acting on behalf of the City in the performance of its governmental functions; namely, the design, planning, development, financing, operation, and maintenance of public recreation uses of City fee-owned property located in a portion of the Trinity River Corridor, that portion also known as the “Dallas Floodway” and located on the Elm and West Forks through the main stem of the Trinity River through Dallas, Texas and ending at the ATSF Bridge, including City fee-owned property inside and within one-quarter mile outside of the centerline of the levees (the “Property”). It is understood by the Corporation that any use of the Property would be subservient to the City’s paramount use of the Property, which is to maintain the flood control system in conformance with the requirements of (i) the United States Army Corp of Engineers, (ii) the Record of Decision Modified Dallas Floodway Project Feasibility Report and Environmental Impact Statement Dallas, Texas, and (iii) the Trinity River Corridor Project’s Balanced Vision Plan as approved by the City Council of City in Resolution No. 03-3391 on December 8, 2003, as amended by Resolution No. 04-1252 approved by the City Council of City on April 14, 2014.

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

The Corporation shall have and exercise all the rights, powers, privileges, authority, and functions given by the general laws of the State of Texas to non-profit corporations incorporated under the Act and under the TBOC.

The Corporation shall have all powers which are available to nonprofit and local government corporations in Texas under the laws of the State of Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created, including the power to issue bonds, notes, or other debt obligations, and otherwise exercise its borrowing power to accomplish the purposes for which it was created; provided, however, that the Corporation shall not issue bonds, notes, or other debt obligations without the consent of the City Council of the City in conformance with the Bylaws of the Corporation.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Chapter 101, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental, and not proprietary, functions. The Corporation shall have the power to acquire land in accordance with the Act as amended from time to time, provided that the Corporation shall not acquire land without the consent of the City Council of the City in conformance with the Bylaws of the Corporation.

In the exercise of its powers, the Corporation may enter into lease, trust, or other agreements as authorized by the Act that are necessary and appropriate to the fulfillment of the public purpose of the Corporation, subject to the consent rights of the City Council of the City as described herein and in the Bylaws. In connection with any issuance of bonds, notes, or other debt instruments or obligations approved by the City Council of the City, the Corporation shall select, at the Corporation's sole cost, bond counsel and financial advisors acceptable to the City in City's sole discretion.

#### **ARTICLE V**

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

#### **ARTICLE VI**

Subject to actions requiring City Council approval as identified below, all powers of the Corporation shall be vested in a Board of Directors consisting of at least three (3) and up to seven (7) persons who shall be appointed by the City Council of the City, upon recommendation of the Mayor of the City (the "Mayor"). To be eligible to serve as a Director, a person must be (1) a registered voter of the State of Texas, and (2) a resident of the City.

The initial three Board of Directors members are identified in Article IX below and shall serve for the term expiring on the date set forth therein, or until his or her successor is appointed by the City Council of City. Additional Board members may be appointed by the City Council of City to serve terms expiring on September 30, 2021 in conformance with the Bylaws of Corporation. Subsequent Board members shall serve for a term of three (3) years or until his or her successor is appointed by the City Council of the City, unless such Board member has been appointed to fill an unexpired term, in which case the term of such Board member shall expire on the expiration date of the term of the Board member whom he or she was appointed to replace. Board members shall be eligible for reappointment. Any Board member may be removed from office at any time, with or without cause, by the recommendation of the Mayor and the affirmative vote of the City Council of City.

Actions taken by the Board of Directors which require prior approval by resolution of the City Council of the City are:

- a) Amendment or restatement of the Bylaws or Certificate of Formation of the Corporation;
- b) acquisition of land;
- c) any action affecting or involving the Property, except as may be delegated to Corporation by written agreement with the City;
- d) any action or decision, including but not limited to applications for grants or other funding, requiring the approval or consent of any federal or state governmental agency or department;
- e) issuance of bonds;
- f) issuance of notes or other evidence of indebtedness with a term greater than one year;
- g) construction of a toll road or any other regional, state, or federally sponsored roadway infrastructure, but not including roadway infrastructure incidental to vehicular and pedestrian access to the Property which shall function as internal recreational vehicular and pedestrian accessways and not publicly dedicated right of ways;
- h) proposing or sponsoring legislation, or calling any election or voter referendum; and
- i) creating a subsidiary entity or any other entity.

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

**ARTICLE VII**

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

**ARTICLE VIII**

The name and street address of each incorporator is:

	1500 Marilla, Dallas, Texas 75201
	1500 Marilla, Dallas, Texas 75201
	1500 Marilla, Dallas, Texas 75201

**ARTICLE IX**

The Corporation shall be governed by a Board of Directors consisting of at least three (3) and up to seven (7) Directors. The names, addresses and initial terms of office of the initial three Directors are:

NAME	ADDRESS	INITIAL TERM EXPIRES
_____	_____	September 30, 2020
_____	_____	September 30, 2020
_____	_____	September 30, 2020

**ARTICLE X**

A resolution approving the form of this Certificate of Formation has been adopted by the City Council of the City on \_\_\_\_\_, 2017.

**ARTICLE XI**

No Director shall be liable to the Corporation for monetary damages for an act or omission in the Director’s capacity as a Director, except for liability (i) for any breach of the Director’s duty of loyalty to the Corporation, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) for any transaction from which the Director received an improper benefit, regardless of whether the benefit resulted from an act taken within the scope of the Director’s office, or (iv) for acts or omissions for which the liability of a Director is expressly provided by statute. Any repeal or amendment of this Article shall be prospective only, and shall not adversely affect any limitation on the personal liability of a Director existing at the time of such repeal or amendment. In addition to the circumstances in which a Director is not personally liable as set forth in the preceding sentences, a Director shall not be liable to the fullest extent permitted by any amendment to the Texas statutes hereafter enacted that further limits the liability of a Director.

**ARTICLE XII**

The Corporation: (a) shall not permit any part of the net earnings of the Corporation to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Corporation in effecting one or more of its purposes); (b) shall not direct any of its activities to attempting to influence legislation by propaganda or otherwise; (c) shall not participate in or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office; and (d) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives.

Any income earned by the Corporation after payment of necessary expenses, debt, and such reserves as may be required by a lender in the authorizing documents related to the issuance of debt as approved in writing by City, shall accrue to the City. The City shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover the expenditures described herein. Any income of the Corporation received by the City shall be deposited into such account or fund as determined by the City Council of City. No

part of the Corporation's income shall inure to the benefit of any private interests.

### **ARTICLE XIII**

If the Corporation is a private foundation within the meaning of Section 509(a) of the Internal Revenue Code, the Corporation (a) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code; (b) shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code; (c) shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code; (d) shall not make any investments in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code; and (e) shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code.

### **ARTICLE XIV**

If the Board determines by resolution that the purposes for which the Corporation was created have been substantially met and all bonds issued by and all obligations incurred by the Corporation have been fully paid, the Board may execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the requirements of Section 394.026 of TLGC or with applicable law then in existence. The City Council may at any time consider and approve by a two-thirds vote an ordinance or resolution directing the Board to proceed with the dissolution of the Corporation, subject to any limitation on the impairment of contracts or other obligations entered into by the Corporation, at which time the Board shall proceed with the dissolution of the Corporation in accordance with applicable state law. The failure of the Board to proceed with the dissolution of the Corporation in accordance with this Section shall be deemed a cause for the removal from office of any or all of the Directors as permitted by Article VI of this Certificate of Formation. In the event of dissolution or liquidation of the Corporation, all assets will be turned over to the City for deposit into such accounts as the City Council of City shall direct.

### **ARTICLE XV**

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

### **ARTICLE XVI**

The Corporation is a constituted authority and a public or governmental instrumentality within the meaning of the regulations of the United States Treasury Department and the rulings of the Internal Revenue Service prescribed and promulgated pursuant to Section 103 of the Internal Revenue Code. Although the Corporation is authorized to act on behalf of one or more governmental entities as provided in this Certificate, the Corporation is not a political subdivision or political authority of the

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

## ARTICLE XVII

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

DRAFT

IN WITNESS WHEREOF, we have hereunto set our hand this \_\_\_ day of \_\_\_\_\_ 2017.

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

\_\_\_\_\_  
Incorporator

This instrument was acknowledged before me on this \_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, each being sworn on his or her oath that he or she is an individual residing in the City of Dallas, Texas.

Given under my hand and seal of office this \_\_\_ day of \_\_\_\_\_. 2017.

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

DRAFT