

THE STATE OF TEXAS §
§
COUNTY OF ARANSAS §

**ARTICLE OF INCORPORATION / CERTIFICATE OF FORMATION OF THE
ARANSAS COUNTY ALLIANCE LOCAL GOVERNMENT CORPORATION**

WE, THE UNDERSIGNED natural persons, not less than three in number, each of whom is at least 18 years of age, and each of whom is a qualified elector of the City of Rockport, Texas and County of Aransas, Texas (which are a duly established City and County under the Texas Constitution), acting as incorporators of a public instrumentality and nonprofit Local Government Corporation (the “Corporation”) under Texas Transportation Code Chapter 431 Subchapter D, as amended (the “Act”), and to the extent required by the Act, Texas Local Government Code Chapter 394, as amended (collectively Chapter 394 and 431 are referenced as the “Acts”), pursuant to resolutions or orders of the governing bodies of the County of Aransas (the “County”), the City of Rockport (“the City”), Texas, the Town of Fulton (“the Town”), and the Aransas County Navigation District (“the District”), collectively referred to as the “Alliance” or “Sponsoring Entities” as evidenced by the resolutions and orders attached hereto and made a part hereof for all purposes, do hereby adopt the following Articles of Incorporation for the Corporation:

ARTICLE I

The name of the Corporation is “**THE ARANSAS COUNTY ALLIANCE LOCAL GOVERNMENT CORPORATION**” (the “Corporation”).

ARTICLE II

The Corporation is a non-profit corporation (under the Texas Non-Profit Corporation Act Article 1396-4.02) and is a Local Government Corporation under the Act.

ARTICLE III

The duration of the Corporation is perpetual.

ARTICLE IV

The Corporation is organized for the purpose of promotion and development of those enterprises promoting and encouraging employment; residential, commercial, and industrial development; and public welfare of Aransas County, the City of Rockport, the Town of Fulton, and Aransas County Navigation District, Texas, and its environs. To such end, the Corporation shall implement programs and strategies to lessen the burdens of government by creating a larger tax base for the benefit of all residents of the area by assisting with planning, developing, identifying potential partners, fundraising, managing, and financing projects that promote and encourage employment, workforce development, business recruitment, business retention, and economic development; and, to accomplish any other governmental purpose of the Sponsoring Entities. In its efforts to promote job creation and economic development, the Corporation will be a catalyst to achieve sustainable, high quality economic development success; and, assist the community to speak with one voice, grow, expand, and attract business to Aransas County through its planning, marketing, coordination, services, and support.

The Corporation is formed pursuant to the provisions of the Act, which authorizes the Corporation to assist and act on behalf of the Sponsoring Entities and to engage in activities in the furtherance of the purpose for its creation.

To the extent necessary to carry out its authorized purposes, the Corporation shall have and exercise all of the rights, powers and privileges, authority, and functions given by the general laws of the State to corporations incorporated under the Act, and to the extent applicable, Chapter 394, including, without limitation, all powers not in conflict with the Act granted to domestic nonprofit corporations by the Texas Nonprofit Corporation Law, as defined by Section 1.008 of the Texas Business Organizations Code, as amended, and shall have all other powers of a like or different nature not prohibited by law which are necessary or useful to enable the Corporation to perform the authorized purposes for which it is created.

The Corporation is created as a local government corporation pursuant to the Acts and shall be a governmental unit within the meaning of Section 101.001, Texas Civil Practice and Remedies Code, as amended. The operations of the Corporation are not proprietary functions for

the purposes of the Texas Tort Claims Act, Chapter 101, as amended, Texas Civil Practice and Remedies Code. The Corporation shall not exercise the powers of sovereignty of the Sponsoring Entities, including the power to tax, eminent domain power, or police power.

ARTICLE V
NO MEMBERS

The Corporation shall have no members and is a non-stock corporation.

ARTICLE VI

The Governing Bodies of the Sponsoring Entities, by resolution or order, authorized the creation of the Corporation as a local government corporation and approved as to form these Articles of Incorporation pursuant to the Acts.

To the extent necessary to carry out its authorized purposes, the Corporation shall have and exercise all of the rights, powers, privileges, authority and functions given under the Act, and under the general laws of the State to nonprofit corporations incorporated under the Texas Nonprofit Corporation Law, which are consistent with the provisions of the Act with respect to the development and operation of the Project, together with all powers incidental thereto or necessary therefor; except the Corporation is expressly prohibited from issuing bonds or notes. Additionally, in the exercise of its powers the Corporation may enter into any sale, loan, lease, trust, operating or other agreement authorized by the Act (including, but not limited to, agreements concerning the Corporation's acceptance of donations by gifts or devise or federal, state or private grants) that are necessary and appropriate to the fulfillment of the authorized purposes of the Corporation as set forth in Article IV hereof.

The Corporation is a constituted authority and public instrumentality, within the meaning of the regulations of the United States Treasury Department and rulings of the Internal Revenue Service prescribed and promulgated pursuant to section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and the Corporation is authorized to act on behalf of the Sponsoring Entities as provided in these Articles of Incorporation. However, the Corporation is

not a political subdivision or political corporation of the State within the meaning of the State constitution and laws, including, without limitation Article III, Section 52 of the State Constitution, and no agreements, bonds, debts, or obligations, of the Corporation are, or shall ever be, deemed to be the agreements, bonds, debts, or obligations or the lending of credit, or a grant of public money or thing of value, of, or by, the Sponsoring Entities, except as provided by State law, or by any other political corporation, subdivision or agency of the State, or a pledge of the faith any credit of any of them. Furthermore, the Sponsoring Entities will maintain substantial involvement in the activities of the Corporation, such that the Corporation will be treated, for the purposes of the federal tax law, as an “integral part” of the Sponsoring Entities, based on the level of control and funding the Sponsoring Entities has in regard to the Corporation.

ARTICLE VII

REGISTERED OFFICE AND REGISTERED AGENT

The street address of the registered office of the Corporation is 2840 Highway 35, Rockport, Texas 78382, and the name of the registered agent at such address is C.H. “Burt” Mills Jr., County Judge.

ARTICLE VIII

All matters pertaining to the internal affairs of the Corporation shall be governed by the bylaws of the Corporation so long as such bylaws are not inconsistent with these Articles of Incorporation or any law of the State of Texas. The bylaws and each amendment and repeal of the bylaws must be approved by each of the governing bodies of the Sponsoring Entities.

ARTICLE IX

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 bodies of Aransas County, the City of Rockport, Town of Fulton, and the Aransas County Navigation District, consisting of not less than four (4) or more than sixteen (16). The Board shall be composed entirely of persons appointed by resolutions or orders of the governing bodies of the Sponsoring Entities, with each member of the Alliance appointing an equal number of Directors (one (1) each if the

membership of the board equals four (4), two (2) each if the membership of the board equals eight (8), or four (4) each if the membership of the board equals sixteen (16).

The number of directors constituting the initial board of directors is four (4), with one director being appointed by the governing body of Aransas County, one being appointed by the governing body of the City of Rockport, one being appointed by the governing body of the Town of Fulton, and, one being appointed by the governing body of the Aransas County Navigation District. A change in the number of Directors may be made by amendment to the Bylaws.

The names and addresses of the persons who are to serve as the initial Directors/Incorporators and the dates of expiration of their initial terms as directors, are as follows:

<u>NAME</u>	<u>ADDRESS</u>	<u>EXPIRATION DATE</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Each director, including the initial directors, shall be eligible for reappointment. Directors are removable by the appointing governing body for cause or at will and shall be appointed in accordance with the Bylaws adopted by the Corporation and approved by the governing bodies of the Sponsoring Entities. The directors shall serve as such without compensation except that they shall be reimbursed for the actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the board of directors through death, resignation or otherwise shall be filled by appointment by the governing bodies of the Sponsoring Entities to hold office until the expiration of the term. Upon the expiration of the terms of the initial board, all members shall be appointed to a term of three (3) years in accordance with the Bylaws adopted and approved; and may be reappointed to successive terms.

ARTICLE X

These Articles of Incorporation may, at any time, and from time to time be amended as provided in the Acts so as to make any changes herein and add any provision hereto permitted by law. Any such amendment, not prohibited above, shall be effective in either of the manner which follows: (i) the members of the Board of Directors of the Corporation (the “Board”) shall file with the Sponsoring Entities a written application requesting permission to amend the Articles of Incorporation, specifying in such application the amendments proposed to be made, and the Sponsoring Entities may consider such application, and, if the Sponsoring Entities, unanimously, by appropriate resolutions or orders duly find and determine that it is wise, expedient, necessary or advisable the proposed amendments be made, and shall approve the form of the proposed amendments, then the Board may amend the Articles of Incorporation by adopting such amendments at a meeting of the Board and delivering the amendments to the Secretary of State; or (ii) the governing bodies of the Sponsoring Entities may, at their sole discretion, and at any time, amend these Articles of Incorporation, and alter or change the structure, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to the provisions of the Act, and subject to any limitation provided by the constitutions and laws of the State of Texas and the United States of America on the impairment of contracts entered into by the Corporation) by written resolution and order adopting the amendment to the Articles of Incorporation of the Corporation or articles of dissolution; provided said resolutions or orders be adopted in meetings of each of the respective governing bodies of the Sponsoring Entities and the articles of amendment or dissolution are delivered to the Secretary of State, as provided in the Act. Amendment or dissolution of the Articles of Incorporation may be initiated by any one of the governing bodies of the Sponsoring Entities but must be approved by all.

ARTICLE XI

The meetings of the Corporation shall be subject to the Open Meetings Act, Chapter 551, Texas Government Code, as amended, and the Board is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, as amended, in the same manner as if the Corporation were a political subdivision of the State.

ARTICLE XII

No dividends shall ever be paid by the Corporation, and no part of its net earnings shall be distributed to or inure to the benefit of its directors or officers or any private person, firm, corporation, or association except in reasonable amounts for services rendered. No Director or office of the Corporation, or any private individual, shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation.

If, after the close of any fiscal year, the Board shall determine that sufficient provision has been made for the full payment of all current expenses, together with all amounts payable on the contracts, agreements, bonds, notes and other obligations of the Corporation, and that all of the terms, provisions, and covenants therein have been met, the any net earnings derived from any lawfully permitted sources thereafter accruing shall be used solely for purposes permitted by the Act and Article Four herein.

Upon dissolution of the Corporation or the winding up of its affairs, that portion of the assets of the Corporation contributed by the Sponsoring Entities shall be distributed to the Sponsoring Entities in such percentage equal to the Sponsoring Entities' fiscal contribution to the Corporation.

No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempt to influence legislation, and the Corporation shall not participate in any political campaign of, or opposing, any candidate or measure (as such terms are defined in Texas Election Code Chapter 351, as amended).

ARTICLE XIII

If the Corporation is ever determined to be a "private foundation" within the meaning of section 5.09(a) of the Code, the Corporation shall: (i) distribute its income for each tax 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 Code; (ii) not engage in self-dealing as defined in section 4941(d) of the Code; (iii) not retain any excess business holdings as defined in section 4943(c) of

the Code; (iv) not make any investments in such manner as to subject it to tax under section 4944 of the Code; and (v) not make any taxable expenditures as defined in section 4945 of the Code.

ARTICLE XIV

To the fullest extent permitted by Texas statutes, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits broader limitations than permitted prior to such amendment), a Director shall not be liable, or shall be liable only to the extent provided in these Articles of Incorporation, to the Corporation for monetary damages or an act or omission in the director's capacity as a director. 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 of the Corporation existing at the time of such repeal or amendment. The Corporation may indemnify any Director, officer, employee or agent or former Director, officer, employee or agent of the Corporation for expenses and costs, including attorney's fees, actually and necessarily incurred by the person in connection with any claim asserted against the person, by action in court or other forum. By reason of such person having been a Director, officer, employee or agent, except that the Corporation may not provide indemnity in a matter if the Director, officer, employee or agent is guilty of negligence or misconduct in relation to the matter.

PASSED and **APPROVED** by **ARANSAS COUNTY COMMISSIONERS COURT** on the _____ day of May 2019.

ATTEST:

ARANSAS COUNTY:

Valerie K. Amason, County Clerk

C.H. "Burt" Mills, Jr., County Judge

PASSED and **APPROVED** by **ROCKPORT CITY COUNCIL** on the _____ day of May 2019.

ATTEST:

CITY OF ROCKPORT:

Teresa Valdez, City Secretary

Patrick R. Rios, Mayor

PASSED and APPROVED by **TOWN OF FULTON COUNCIL** on the _____ day of May 2019.

ATTEST:

TOWN OF FULTON:

Jan Hill, City Secretary

Jimmy Kendrick, Mayor

PASSED and APPROVED by **ARANSAS COUNTY NAVIGATION DISTRICT COMMISSIONERS** on the _____ day of May 2019.

ATTEST:

ARANSAS COUNTY NAVIGATION DISTRICT

Nelda Covarrubias, Administrative Assistant

Malcolm Dieckow, Chairman