

**AMENDED AND RESTATED  
CERTIFICATE OF FORMATION  
OF  
KILLEEN PUBLIC FACILITY CORPORATION**

Pursuant to the provisions of Chapter 303 of the Texas Local Government Code (the “Act”), as amended, and specifically Section 303.029 of the Act, the undersigned nonprofit public facility corporation adopts, with the approval of the City Council of the City (the “Governing Body”), as evidenced by the Resolution attached hereto as Exhibit A and made a part hereof for all purposes, the following Amended and Restated Certificate of Formation (this “Amended and Restated Certificate”), which shall amend and restate in its entirety the Certificate of Formation (the “Original Certificate”) filed in the office of the Secretary of State of the State of Texas (the “SOS”) on January 22, 2021, and which such Amended and Restated Certificate accurately copies the Original Certificate and all amendments that are in effect of the date of filing without further changes:

**ARTICLE ONE  
NAME**

The name of the Corporation is the Killeen Public Facility Corporation (the “Corporation”). The filing number issued to the Corporation by the SOS is 803907943.

**ARTICLE TWO  
DURATION**

Subject to the provisions of Article Eleven hereof, the period of duration of the Corporation is perpetual.

**ARTICLE THREE  
PURPOSE AND LIMITATIONS**

(a) The Corporation is organized exclusively for the purpose of assisting the City of Killeen (the “City”) in financing, refinancing, or providing public facilities. The Corporation shall have and possess the broadest possible powers to provide for the acquisition, construction, rehabilitation, renovation, repair, equipping, furnishing and placement in service of public facilities in an orderly, planned manner and at the lowest possible borrowing costs. The Corporation is further authorized to acquire an interest in any partnership or other entity in order to accomplish any of the above purposes. The Corporation is a public nonprofit corporation, a constituted authority, and a public instrumentality within the meaning of the Act, the United States Treasury Department, the rulings of the Internal Revenue Service prescribed and promulgated pursuant to sections 103 and 141 of the Internal Revenue Code of 1986, as amended, and the Corporation is authorized to act on behalf of the City as provided in this Amended and Restated Certificate. The Corporation is not authorized to issue “bonds” as defined and permitted by the Act; provided, however, that notwithstanding the foregoing, the Corporation may enter into any contracts and agreements, and incur such other obligations, as permitted under the Act, without first receiving Governing Body approval

The Corporation will not advertise or hold out to the public in any manner that it is a state or national bank, trust company or depository institution, or that it is authorized to conduct banking or trust business.

(b) In the fulfillment of its corporate purpose, the Corporation shall have and may exercise the powers described in paragraph (a) of this Article, together with all of the other powers granted to the corporations that are incorporated under the Act and to the extent not in conflict with the Act, the

Corporation shall additionally have and may exercise all of the rights, powers, privileges, authorities, and functions given by the general laws of the State of Texas (the "State") to nonprofit corporations under the Texas Nonprofit Corporation Law, Chapter 22 of the Texas Business Organizations Code, as amended, or any other applicable laws of the State.

(c) The Corporation shall have the purposes and powers permitted by the Act, but the Corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax, eminent domain, and police power. However, for the purposes of the Texas Tort Claims Act (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code, as amended), the Corporation is a governmental unit, and its actions are governmental functions.

(d) No bonds or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, other debt instruments, or other obligations or the lending of credit, or a grant of the public money or things of value, of, belonging to, or by the State, the City, or any other political corporation, subdivision or agency of the State, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, other debt instruments, and other obligations, contracts and agreements shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.

(e) The Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities, consistent with the Act and subject to limitations provided by law relating to the impairment of contracts entered into by the Corporation.

#### **ARTICLE FOUR FINANCING**

(a) The Corporation shall not sell or deliver any bonds.

(b) In the exercise of the powers of the Corporation, the Corporation may enter into loan, 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.

#### **ARTICLE FIVE MEMBERS**

The Corporation has no members and is a nonstock corporation.

#### **ARTICLE SIX AMENDMENTS**

This Amended and Restated Certificate may be amended at any time as provided in the Act, to make any changes and add any provisions which might have been included in the Certificate of Formation in the first instance. The Governing Body may, at its sole discretion, and at any time, amend this Amended and Restated Certificate and alter or change the structure, name, organization, programs or activities of the Corporation, or terminate or dissolve the Corporation (subject to Article Thirteen and the provisions of the Act, and subject to any limitation provided by the constitutions and laws of the impairment of contract entered into by the Corporation) by a resolution adopting the certificate of amendment or certificate of termination at a meeting of the Governing Body, and delivering a certificate of amendment or certificate of termination to the Secretary of State, as provided in the Act. An amended and restated certificate of formation may be filed with the Secretary of State as provided in the Act.

## **ARTICLE SEVEN ADDRESS**

The street address of the registered office of the Corporation is 101 N. College Street, Killeen, Texas 76541, and the name of its registered agent at that address is City Manager Kent Cagle.

## **ARTICLE EIGHT BOARD OF DIRECTORS**

(a) The affairs of the Corporation shall be managed by, and all powers of the Corporation shall be vested in, a board of directors (the "Board of Directors"), which shall be composed of the Mayor and Councilmembers of the City (each, a "Director"). Each Director's term will be coterminous with their term as Mayor or as a Councilmember of the City. Any Director shall cease to be a Director at the time he or she ceases to be a member of the Governing Body. Each time a new Mayor or Councilmember of the City takes office, they shall automatically become a member of the Board of Directors. Directors are removable by the Governing Body under the same terms, conditions, and procedures as required for the removal of members of the Governing Body. A majority of the entire membership of the Board of Directors, including any vacancies, is a quorum. The Board of Directors shall conduct all meetings within the boundaries of the City.

(b) The number of directors of the Corporation is eight. The names and street addresses of the persons who are current Directors are as follows:

<b>Names</b>	<b>Addresses</b>
Jessica Gonzalez	101 N. College Street, Killeen, Texas 76541
Michael Boyd	101 N. College Street, Killeen, Texas 76541
Debbie Nash-King	101 N. College Street, Killeen, Texas 76541
Nina Cobb	101 N. College Street, Killeen, Texas 76541
Jose L. Segarra	101 N. College Street, Killeen, Texas 76541
Ramon Alvarez	101 N. College Street, Killeen, Texas 76541
Joseph Solomon	101 N. College Street, Killeen, Texas 76541
Riakos Adams	101 N. College Street, Killeen, Texas 76541

(c) The Directors shall serve without compensation, but they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors.

(d) The Directors shall elect a president, vice president, secretary, and any other officers that the Corporation considers necessary, to serve as executive officers of the Corporation, as more specifically provided in the Corporation's Bylaws. The City Manager shall serve as an Assistant Secretary to the Corporation.

(e) Any Director or officer may resign at any time, and a successor shall be appointed in accordance with the procedures set forth in the Bylaws.

## **ARTICLE NINE BYLAWS**

The initial Bylaws of the Corporation have been adopted by the Board of Directors and shall, together with this Amended and Restated Certificate, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of the Act and this Amended and Restated Certificate. The Bylaws and each amendment and repeal of the Bylaws must be approved by the Governing Body by a resolution.

## **ARTICLE TEN GOVERNING BODY APPROVAL**

(a) The City has specifically authorized the Corporation by resolution to act on its behalf to further the public purposes stated in this Amended and Restated Certificate, and the City has by the Resolution attached hereto as Exhibit A, approved this Amended and Restated Certificate. The date of approval of this Amended and Restated Certificate by the Governing Body is March 19, 2024, at which time this Amended and Restated Certificate was determined to be advisable and was authorized by a majority vote of the members of the Governing Body. A copy of the Resolution is on file among the permanent public records of the City and the Corporation. As set forth in Article Six, the Governing Body, in its sole discretion, may alter the Corporation's structure, name, organization, programs, or activities, consistent with the provisions of the Act.

(b) The City is the Corporation's "Sponsor" (as defined by the Act) and has caused this Corporation to be created. The City's principal office address is 101 N. College Street, Killeen, Texas 76541, and the Corporation's principal office address is 101 N. College Street, Killeen, Texas 76541.

## **ARTICLE ELEVEN DISSOLUTION**

(a) The duration of the Corporation is perpetual.

(b) The Governing Body, by written resolution, may authorize and direct the dissolution of the Corporation. However, the Corporation shall not be dissolved, and its business shall not be terminated, by act of the Governing Body or otherwise, so long as the Corporation shall be obligated to pay any debt obligation.

(c) No action shall be taken pursuant to paragraph (a) of this Article or pursuant to paragraph (b) of Article Twelve of this Amended and Restated Certificate, in any manner or at any time that would impair any contract, lease, right, or other obligation executed, granted, or incurred by the Corporation prior to such action.

## **ARTICLE TWELVE MISCELLANEOUS**

(a) All properties owned by the Corporation shall be held for the use and benefit of the public on a nondiscriminatory basis.

(b) No dividends shall ever be paid by the Corporation, and no part of its net earnings remaining after payment of its expenses and other obligations shall be distributed to or inure to the benefit of its directors or officers, or any individual, private firm, or private corporation or association, except in reasonable amounts for services rendered and expenses incurred.

(c) If, after the close of any fiscal year, the Board of Directors shall determine that sufficient provision has been made for the full payment of all current and future expenses and needs of the Corporation, together with all amounts payable on the contracts, agreements, and other obligations of the Corporation, and that all of the terms, provisions, and covenants therein have been met, then any net earnings derived from sources thereafter accruing in connection with public facilities financed or refinanced pursuant to the Act may be provided to the City.

(d) If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after satisfaction of debts and claims.

(e) No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign of or in opposition to any candidate for public office.

(f) Every amendment to the Original Certificate contained in this Amended and Restated Certificate has been made in conformity with the Act.

(g) This Amended and Restated Certificate accurately copies the Original Certificate and all previous amendments in effect on the date hereof, as further amended by the amendments in this Amended and Restated Certificate.

## **ARTICLE THIRTEEN DIRECTOR LIABILITY; INDEMNIFICATION**

(a) To the fullest extent permitted by State law, as the same exist 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 member of the Board of Directors shall not be liable, or shall be liable only to the extent provided in this Amended and Restated Certificate, to the Corporation for monetary damages for 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 member of the Board of Directors existing at the time of such repeal or amendment.

(b) 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 or 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 other 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.

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IN WITNESS WHEREOF, the undersigned have executed this Amended and Restated Certificate as of \_\_\_\_\_, 2024

\_\_\_\_\_, President  
Killeen Public Facility Corporation

\_\_\_\_\_, City Secretary

## **EXHIBIT A**

### **Approving Resolution of the City**