

**ORDINANCE NO. 13-M-04**

**AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS AUTHORIZING AN AMENDED AND RESTATED CERTIFICATE OF FORMATION OF THE CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION; APPROVING AMENDED AND RESTATED BYLAWS OF SUCH CORPORATION; APPOINTING DIRECTORS TO THE BOARD OF DIRECTORS OF SUCH CORPORATION; AND OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City Council (the "Council") of the City of Schertz, Texas (the "City") has previously authorized the creation of the City of Schertz Economic Development Corporation (the "Corporation") in accordance with the Development Corporation Act, as amended, Title 12, Subtitle C1, Texas Local Government Code (the "Act"); and

WHEREAS, the Board of Directors of the Corporation has, by Resolution dated January 24, 2013, approved amendments to the existing Certificate of Formation and the Bylaws of the Corporation and has recommended those amendments to the Council; and

WHEREAS, the Council has reviewed and approved the proposed amendments to the existing Certificate of Formation and the existing Bylaws of the Corporation and has determined to authorize and approve such amendments; and

WHEREAS, the Council desires to approve the members of the Board of Directors of the Corporation; and

WHEREAS, the Council hereby finds and determines that the adoption of this Ordinance is in the best interests of the citizens of the City; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SCHERTZ, TEXAS THAT:**

Section 1. The Council hereby approves an Amended and Restated Certificate of Formation (the "Articles of Amendment") for the Corporation (a copy of which is attached in substantially final form to this Ordinance as Exhibit A). The Council hereby authorizes the City Secretary to execute the Articles of Amendment and to cooperate with the Corporation in filing such Articles of Amendment with the Texas Secretary of State, with any such changes therein which do not alter the substance thereof (as determined by the City Attorney) as may be required by the Secretary of State for filing.

Section 2. The Council hereby appoints the following persons for terms expiring on May 31 of the following years, as the directors of the Corporation, as set forth in the Articles of Amendment:

<u>Name</u>	<u>Term to Expire</u>
Angelina I. T. Kiser	5/31/2013
Tim Brown	5/31/2013
Roy Richard, Jr.	5/31/2013
Grady Morris	5/31/14
Marvin Thomas	5/31/14
Matthew Duke	5/31/14
Rosemary Scott	5/31/14

Section 3. The Council hereby approves the amended Bylaws for the Corporation in the form attached hereto as Exhibit B.

Section 4. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Governing Body.

Section 5. All ordinances and resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters resolved herein.

Section 6. This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

Section 7. If any provision of this Ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this Ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the Council hereby declares that this Ordinance would have been enacted without such invalid provision.

Section 8. It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

Section 9. This Ordinance shall be in force and effect from and after its final passage, and it is so ordered.

PASSED ON FIRST READING on the 29<sup>th</sup> day of January, 2013.

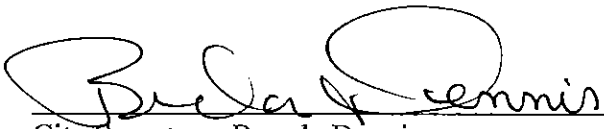
PASSED AND ADOPTED on second and final reading on the 5<sup>th</sup> day of February, 2013.

CITY OF SCHERTZ , TEXAS

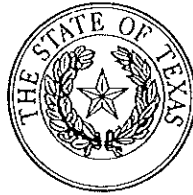
By: 

Mayor, Michael R. Carpenter

ATTEST:

  
City Secretary, Brenda Dennis

(SEAL OF THE CITY)



*original copy*

**Office of the Secretary of State**

**CERTIFICATE OF FILING  
OF**

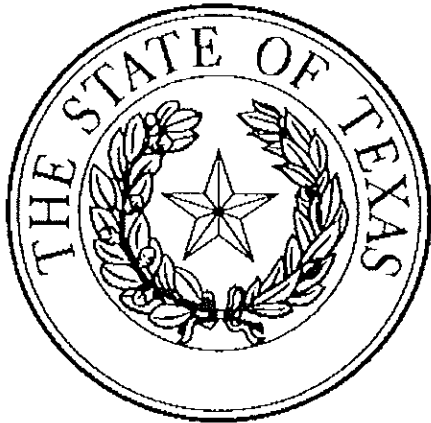
**"CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION"**  
147790301

The undersigned, as Secretary of State of Texas, hereby certifies that a Restated Certificate of Formation for the above named domestic nonprofit corporation 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: 02/08/2013

Effective: 02/08/2013



A handwritten signature of John Steen in black ink.

John Steen  
Secretary of State



## Office of the Secretary of State

February 11, 2013

Capitol Services Inc  
P O Box 1831  
Austin, TX 78767 USA

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RE: "CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION"  
File Number: 147790301

It has been our pleasure to file the Restated Certificate of Formation 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

FEB 08 2013

Corporations Section

AMENDED AND RESTATED CERTIFICATE OF FORMATION  
OF  
CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION

1. The City Council of the City of Schertz, Texas, the governing body of the city under whose auspices the City of Schertz Economic Development Corporation was created, pursuant to the Texas Non-Profit Corporation Act, as amended, and the Development Corporation Act, as amended, hereby adopts an amended and restated certificate of formation which accurately copies the original articles of incorporation and all amendments thereto that are in effect to date and as further amended by such amended and restated certificate of formation as hereinafter set forth and which contains no other change in any provision thereof.

2. Each such amendment made by this amended and restated certificate of formation has been effected in conformity with the provisions of the Texas Non-Profit Corporation Act, as amended, and the Development Corporation Act, as amended, specifically Title 12, subtitle C1, Texas Local Government Code, and such amended and restated certificate of formation and each such amendment made by this amended and restated certificate of formation were duly approved by the City Council of the City of Schertz, Texas on February 5, 2013 in accordance with Section 501.310 of the Development Corporation Act, as amended.

3. The original articles of incorporation and all amendments and supplements thereto are hereby amended and superseded by the following amended and restated certificate of formation, which accurately copies the entire text thereof in effect and as amended to date and as herein amended, and this instrument contains no other change in any provision thereof:

*(remainder of page intentionally left blank)*

**AMENDED AND RESTATED  
CERTIFICATE OF FORMATION**

**OF**

**CITY OF SCHERTZ ECONOMIC DEVELOPMENT CORPORATION**

**Article One  
Name**

The name of the Corporation is the "City of Schertz Economic Development Corporation".

**Article Two  
Authorization**

The Corporation is a nonprofit corporation and is an industrial development corporation under the Development Corporation Act, as amended, Title 12, Subtitle C1, Texas Local Government Code (the "Act") and shall be governed by Chapter 501, Chapter 502, and Chapter 505 of the Act, as now existing or as may be amended and an election held in the City on August 9, 1997.

**Article Three  
Duration**

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

**Article Four  
Purpose And Limitations**

(a) The Corporation is organized exclusively for the purposes of benefiting and accomplishing public purposes of, and to act on behalf of, the City, and the specific purposes for which the Corporation is organized. It may issue bonds, notes, and other forms of debt instruments, and it may acquire, maintain, lease, and sell property, and interests therein, on behalf of the City as authorized by Chapter 501, Chapter 502, and Chapter 505 of the Act to promote economic development within the City and the State of Texas in order to eliminate unemployment and under employment and to promote and encourage employment and the public welfare of, for, and on behalf of the City. The Corporation may finance and undertake any such project, subject to the regulations and limitations set forth in Chapter 501, Chapter 502, and Chapter 505 of the Act and an election held in the City on August 9, 1997. The Corporation is authorized to issue bonds as permitted by the Act, provided, however, no bonds may be issued by the Corporation and no project may be financed with bond proceeds or other revenues of the Corporation unless such bonds or projects are first approved by the Council. The Corporation is a constituted authority and a public instrumentality within the meaning of the Act, the regulations of the United States Treasury Department, and 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 the Act and this Certificate of Formation.

(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 corporations that are incorporated under the Act and that are governed by Chapter 501, Chapter 502, and Chapter 505 thereof, 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 to nonprofit corporations under the Non-Profit Corporation Act (Texas Business Organizations Code, as amended).

(c) The Corporation shall have the purposes and powers permitted by the Act pursuant to the authority granted in Article III, Section 52-a of the Texas Constitution, but the Corporation does not have, and shall not exercise the powers of sovereignty of the City, including the power to tax (except for the power to receive and use the sales and use taxes specified in Chapter 501, Chapter 502, and Chapter 505 of the Act) and the police power, except that the Corporation shall have and may exercise the power of eminent domain when the exercise thereof is approved by the Council and to the extent allowed by the City Charter. However, for the purposes of the Texas Tort Claims Act, as amended (Subchapter A, Chapter 101, Texas Civil Practice and Remedies Code), the Corporation is a governmental unit, and its actions are governmental functions.

(d) No bonds, notes, or other debt instruments or other obligations, contracts, or agreements of the Corporation are or shall ever be deemed to be or constitute the contracts, agreements, bonds, notes, or 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 of Texas, the City, or any other political corporation, subdivision or agency of the State of Texas, or a pledge of the faith and credit of any of them. Any and all of such contracts, agreements, bonds, notes, and 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 Chapter 501, Chapter 502, and Chapter 505 of the Act and from such other sources as may be otherwise lawfully available and belonging to the Corporation from time to time.

#### **Article Five Financing**

(a) Before the consummation of the initial delivery of any bonds, notes, or other forms of debt instruments, the Corporation shall obtain approval by the Council.

(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, all of which agreements, and the specific uses, and the methods of withdrawal and expenditure of the proceeds of the bonds, notes, or other debt instruments, must be included as a part of the approval process of the Council required by paragraph (a) above.

(c) In the exercise of the powers of the Corporation, the Corporation may not enter into any loan, lease, trust, or other agreement the effect of which would grant, convey, transfer, mortgage, encumber, pledge or assign a security interest or any other interest in any property owned by the City. Any agreement entered into by the Corporation shall contain language substantially to the effect that any grant, conveyance, transfer, mortgage, encumbrance, pledge or assignment of property owned by the City is prohibited.

#### **Article Six No Members**

The Corporation has no members and is a nonstock corporation.

#### **Article Seven Sales Tax**

Upon receipt from the City of the proceeds of the sales and use tax imposed under Chapter 501, Chapter 502, and Chapter 505 of the Act, the Corporation may use the proceeds as permitted by the Act as now existing or as may be amended and this Certificate of Formation.

#### **Article Eight Amendment**

This Certificate of Formation 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 this Certificate of Formation in the first instance or as may be permitted by subsequent changes in the law. Any amendment may be accomplished in either of the following manners:

(1) The members of the Board of Directors of the Corporation shall file with the Council a written application requesting approval of the amendments to this Certificate of Formation, specifying in such application the amendments proposed to be made. The Council shall consider such application and, if it shall, by ordinance, duly find and determine that it is advisable that the proposed amendments be made it shall approve the form of the proposed amendments. The Board of Directors of the Corporation may then amend this Certificate of Formation by adopting such amendment at a meeting of the Board of Directors and delivering such amendments to the Secretary of State; or

(2) The Council may, at its sole discretion, and at any time, amend this Certificate of Formation 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 applicable constitutions and laws of the impairment of contracts entered into by the Corporation) by ordinance adopting the amendment to this Certificate of Formation or certificate of dissolution at a meeting of the Council, and delivering a certificate of amendment or dissolution to the Secretary of State, as provided in the Act. A restated Certificate of Formation may be filed with the Secretary of State as provided in the Act without the consent of the Council.

**Article Nine**  
**Registered Office and Registered Agent**

The street address of the registered office of the Corporation is 1400 Schertz Parkway, Schertz, Texas 78154, and the name of its registered agent at that address is John C. Kessel.

**Article Ten**  
**Board of Directors; Officers**

(a) The affairs of the Corporation shall be managed by a board of directors which shall be composed of seven (7) persons appointed by the Council. The terms of the board of directors named in this Amended and Restated Certificate of Formation shall be as follows: Three (3) of the directors shall be appointed to terms expiring May 31, 2013, and four (4) of the directors shall be appointed to terms expiring May 31, 2014. Thereafter, the terms of directors shall be two (2) years, expiring on May 31 of odd numbered and even numbered years, respectively. Directors may be appointed to succeed themselves. Each director must be a resident and qualified elector of the City. No employee or officer of the City or member of the Council may be a director. A majority of the entire membership of the board, including any vacancies, is a quorum. The board shall conduct all meetings within the boundaries of the City.

(b) The names and street addresses of the persons who are to serve as the directors as of the effective date of this Amended and Restated Certificate of Formation and the dates of expiration of their terms as directors, are as follows:

<u>Names</u>	<u>Addresses</u>	<u>Expiration of Term</u>
Angelina I. T. Kiser	1400 Schertz Parkway Schertz, TX 78154	5/31/2013
Tim Brown	1400 Schertz Parkway Schertz, TX 78154	5/31/2013
Roy Richard, Jr.	1400 Schertz Parkway Schertz, TX 78154	5/31/2013
Grady Morris	1400 Schertz Parkway Schertz, TX 78154	5/31/2014
Marvin Thomas	1400 Schertz Parkway Schertz, TX 78154	5/31/2014
Matthew Duke	1400 Schertz Parkway Schertz, TX 78154	5/31/2014
Rosemary Scott	1400 Schertz Parkway Schertz, TX 78154	5/31/2014

Each director shall serve until a successor is appointed. Directors are removable by the Council at any time with or without cause. Any vacancy occurring on the board of directors (by

reason of death, resignation, or otherwise) shall be filled by appointment by the Council of a person who shall hold office until the expiration of the term.

(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 board of 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 term of each officer's office shall expire on May 31<sup>st</sup> of each year. The City Manager, or his designee, shall serve as the Executive Director of the Corporation to provide administrative support services for the Corporation, but the Executive Director shall not be a member of the board of directors.

(e) Meetings of the board of directors are subject to the Texas Open Meetings Act, as amended (Texas Government Code, Chapter 551), and the Corporation is subject to the Texas Public Information Act, as amended (Texas Government Code, Chapter 552).

#### **Article Eleven Bylaws**

The Bylaws of the Corporation have been approved by the Council and shall be adopted by the Corporation's board of directors and shall, together with this Certificate of Formation, govern the initial affairs of the Corporation until and unless amended in accordance with the provisions of the Act and this Certificate of Formation.

#### **Article Twelve Council Approval**

The City has specifically authorized the Corporation by Ordinance dated September 4, 2007 to act on its behalf to further the public purposes stated in such Ordinance and this Certificate of Formation, and the City has by such Ordinance approved the Corporation's original Articles of Incorporation, as amended, and this Certificate of Formation. A copy of the Ordinance is on file among the permanent public records of the City and the Corporation.

#### **Article Thirteen Dissolution**

(a) The Corporation shall not be dissolved, and its business shall not be terminated, by act of the Council or otherwise, so long as the Corporation is obligated to pay any bonds, notes, or other obligations and unless the collection of the sales and use tax authorized by Chapter 501, Chapter 502 and Chapter 505 of the Act is eligible for termination in accordance with the provisions of Chapter 505 of the Act.

(b) No action shall be taken pursuant to paragraph (a) of this Article or pursuant to paragraph (b) of Article Fifteen of this Certificate of Formation, in any manner or at any time that would impair any contract, lease, right, or other obligation theretofore executed, granted, or incurred by the Corporation.

## **Article Fourteen**

### **Not a Private Foundation**

If the Corporation is ever determined to be a private foundation within the meaning of section 509(a) of the Internal Revenue Code of 1986, as amended (the "Code"), the Corporation:

- (1) 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 Code;
- (2) shall not engage in any act of self-dealing as defined in section 4941(d) of the Code.
- (3) shall not retain any excess business holdings as defined in section 4943(c) of the Code;
- (4) shall not make any investments in such manner as to subject it to tax under section 4944 of the Code; and
- (5) shall not make any taxable expenditures as defined in section 4945(d) of the Code.

## **Article Fifteen**

### **Miscellaneous**

(a) 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 be benefit of its directors or officers, or any individual, private firm, or private corporation or association, except in reasonable amounts for services rendered.

(b) If, after the close of any fiscal year, the board of directors determines 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, then any net earnings derived from sources other than the sales and use taxes collected for the account of Corporation pursuant to Chapter 501, Chapter 502, and Chapter 505 of the Act thereafter accruing in connection with projects financed pursuant to Chapter 501, Chapter 502, and Chapter 505 of the Act, and lease payments received in connection with projects financed pursuant to Chapter 501, Chapter 502, and Chapter 505 of the Act shall be used solely for the purposes permitted by Chapter 501, Chapter 502, and Chapter 505 of the Act and Article 4(a) of this Certificate of Formation.

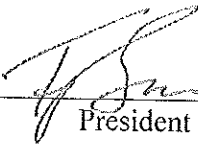
(c) If the Corporation ever should be dissolved when it has, or is entitled to, any interest in any funds or property of any kind, real, personal or mixed, such funds or property or rights thereto shall not be transferred to private ownership, but shall be transferred and delivered to the City after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

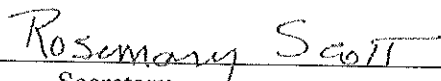
(d) No part of the Corporation's activities shall consist of the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in any political campaign for or in opposition to any candidate for public office.

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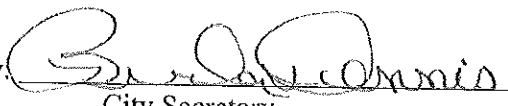
Dated this 5<sup>th</sup> day of February, 2013.

CITY OF SCHERTZ ECONOMIC  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Secretary

CITY OF SCHERTZ, TEXAS

By: \_\_\_\_\_  
City Secretary

# ACKNOWLEDGEMENT

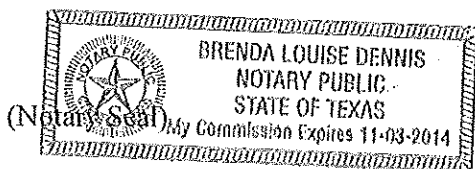
THE STATE OF TEXAS §

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COUNTY OF GUADALUPE §

On this the 21<sup>st</sup> day of January, 2013, before me, the undersigned Notary Public, personally appeared Mr. [Signature], who acknowledged to me that he/she is the President of the City of Schertz Economic Development Corporation, and that he/she, as such official, being duly authorized to do so, executed the foregoing Amended and Restated Certificate of Formation of the City of Schertz Economic Development Corporation by signing his name in such capacity.

IN WITNESS WHEREOF, I have hereon to set my hand and official seal.



[Signature]  
Notary Public of the State of Texas

# ACKNOWLEDGEMENT

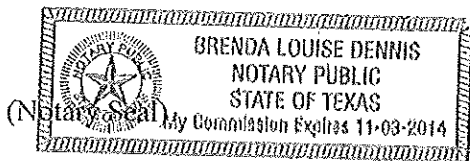
THE STATE OF TEXAS §


§

COUNTY OF GUADALUPE §

On this the 21<sup>st</sup> day of January, 2013, before me, the undersigned Notary Public, personally appeared Rosemary Scott, who acknowledged to me that he/she is the Secretary/Treasurer of the City of Schertz Economic Development Corporation, and that he/she, as such official, being duly authorized to do so, executed the foregoing Amended and Restated Certificate of Formation of the City of Schertz Economic Development Corporation by signing his name in such capacity.

IN WITNESS WHEREOF, I have hereon to set my hand and official seal.



  
Notary Public of the State of Texas

ACKNOWLEDGEMENT

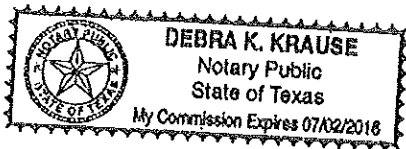
THE STATE OF TEXAS           §

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COUNTY OF GUADALUPE       §

On this the 1<sup>st</sup> day of February, 2013, before me, the undersigned Notary Public, personally appeared Brenda Dennis, who acknowledged to me that she is the City Secretary of the City of Schertz, Texas, and that she, as such official, being duly authorized to do so, executed the foregoing Amended and Restated Certificate of Formation of the City of Schertz, Texas by signing her name in such capacity.

IN WITNESS WHEREOF, I have hereon to set my hand and official seal.



(Notary Seal)

Debra K. Krause  
Notary Public of the State of Texas

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**EXHIBIT A**  
**AMENDED AND RESTATED CERTIFICATE OF FORMATION**  
(see Attached)

**EXHIBIT B**  
**AMENDED AND RESTATED BYLAWS**

(see Attached)