RESOLUTION NO. 2019-R-064

A RESOLUTION OF THE CITY OF LAREDO, TEXAS, AUTHORIZING THE CITY'S CREATION OF THE LAREDO CENTER FOR URBAN AGRICULTURE AND SUSTAINABILITY, A LOCAL GOVERNMENT CORPORATION; APPROVING THE FORM OF THE CERTIFICATE OF FORMATION AND BYLAWS; CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EFFECTIVE DATE.

WHEREAS, Chapter 431 of the Texas Transportation Code ("Chapter 431") authorizes the creation of a local government corporation to aid and act on behalf of a local government to accomplish any governmental purpose of the local government; and

WHEREAS, Chapter 431 requires that a local government corporation be created in accordance with Chapter 394 of the Texas Local Government Code ("Chapter 394"); and

WHEREAS, Chapter 394 provides that three or more persons (the "Incorporators," each of whom must be at least eighteen years old, residents of the local government, and citizens of the State of Texas) may incorporate a local government corporation by signing a Certificate of Formation (the "Certificate") and filing the Certificate with the Secretary of State of Texas; and

WHEREAS, Chapter 394 further requires, as a condition of the filing of the Certificate, the governing body of the local government first to adopt a resolution finding the creation of a local government corporation to be wise, expedient, necessary or advisable, and approving the form of the Certificate; and

WHEREAS, the City Council of the City of Laredo finds that the creation of a local government corporation for the purpose of developing and implementing policies and programs that support the growth of urban agriculture and environmental sustainability practices in the City of Laredo (the "City") is wise, expedient, necessary and advisable, and will accomplish an important governmental purpose, namely, to enhance the welfare of the public; and

WHEREAS, the City Council desires to create the Laredo Center for Urban Agriculture and Sustainability, a local government corporation, to aid and act on behalf of the City to accomplish the said governmental purpose; and

WHEREAS, as prescribed by Section 394.011 of the Texas Local Government Code, the Incorporators have filed with the City a written application (the "Application," an accurate copy of which is attached hereto as Exhibit A) for approval of the Certificate in the form attached hereto as Exhibit A-1; and;

WHEREAS, the City Council desires to approve the Application and the form of the Certificate, specifically including the Corporation's initial Board of Directors named in the Certificate.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAREDO:

1. The City Council hereby authorizes the creation and incorporation of the Laredo Center for Urban Agriculture & Sustainability Local Government Corporation (the "Corporation") pursuant to Chapter 431, Texas Transportation Code.

2. The Corporation shall be governed by the Certificate of Formation attached hereto as **Exhibit A-1,** and the bylaws attached hereto as **Exhibit B,** both of which the City Council hereby approves.

3. The City Council affirms the appointment of the initial directors of the Corporation, who are named as initial directors in the Certificate of Formation attached hereto as **Exhibit A-1.**

4. The City Council authorizes the performance of any act deemed necessary by the City Manager to carry out the terms and provisions of this Resolution.

PASSSED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR, this 6 **day of** May **2019.**

PETE SAENZ
MAYOR

ATTEST:

JOSE A. VALDEZ, JR.
CITY SECRETARY

APPROVED AS TO FORM:

KRISTINA L. HALE
CITY ATTORNEY

BY: _____
CRISTIAN ROSAS-GRILLET
ASSISTANT CITY ATTORNEY

CERTIFICATE OF FORMATION
LAREDO CENTER FOR URBAN AGRICULTURE AND SUSTAINABILITY

The undersigned natural persons, each of whom is at least eighteen (18) years of age or more, a majority of which are residents and qualified voters of the City of Laredo, Texas (the "City") and a citizen of the State of Texas, acting as incorporators of a corporation under the provisions of Subchapter D, Chapter 431, Texas Transportation Code ("Chapter 431") and Chapter 22, Business Organizations Code ("Chapter 22") do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE I
Corporation Name

The name of the corporation is Laredo Center for Urban Agriculture and Sustainability (the "Corporation").

ARTICLE II
Nature of Corporation

The Corporation is a public non-profit local government corporation created and operated in accordance with Chapter 431 of the Transportation Code and other applicable laws.

ARTICLE III
Duration of Corporation

The period of the duration of the Corporation shall be perpetual.

ARTICLE IV
Corporate Purpose and Authority

4.01 The Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the City of Laredo (the "Local Government") to accomplish their governmental purpose in the performance of its governmental functions to promote the common good and general welfare of the City, including, without limitation:

A. Create and promote an urban food system for the City of Laredo by increasing access to local fresh food for low income citizens and the community at large;
B. Offer educational programs for farmers, growers, gardeners and consumers from all parts of the city to actively learn and participate in the development of local and regional food systems by supporting urban agriculture, community gardens, home gardens, farmer's markets, and farm to school as economic generators for local food security;

C. Provide entrepreneurial opportunities for urban farmers by developing Community Supported Agriculture, employee-owned cooperative programs, and other revolving financing structures that support local income expansion;
D. Cultivate water, soil, and air sustainability opportunities;
E. Facilitate the Laredo Food Policy Council in order to provide a city-wide food security comprehensive plan;
F. Develop policy and incentives for the local food industry; and
G. Achieve a strong and sustainable local food system through the development of partnerships with local public, private, academic and philanthropic sectors to ensure economic, environmental, and social sustainability relying on ecological principles, preserving natural resources, and reducing the impact created by food deserts in our urban environment.

4.02 The Corporation is formed pursuant to the provisions of the Act as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purposes for its creation.

4.03 To accomplish said goals and purpose, the Corporation shall be authorized to:

A. Contract with persons, and with governmental, for-profit and non-profit entities for the procuring of services and supplies and the hiring of personnel;
B. Acquire and hold title to and interests in real and personal property;
C. Accept funds and property appropriated by the Local Governments and by other entities;
D. Apply for grants of funds, services, and things of value and to accept awards of such grants;
E. Accept donations of funds, services and things of value;
F. Issue bonds, notes, and other debt obligations as necessary for the accomplishment of the governmental purpose stated above, provided that the Corporation shall not incur debt without the consent of the governing body of the Local Government, as evidenced by approval of an ordinance, order or resolution; and
G. Engage in other lawful activities to accomplish the governmental purpose stated above.

4.04 The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Nonprofit Corporation Law (Tex. Bus. Org. Code, Chapters 20 and 21 and the provisions of Title I thereof to the extent applicable to non-profit corporations, as amended) or their successor.

4.05 The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (3), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not

proprietary functions for all purposes of the Texas Torts Claims Act, Section 101.001, et. seq., Texas Civil Practice and Remedies Code.

4.06 The Corporation shall comply with all applicable provisions of the Texas Open Meetings Act (Chapter 551, Texas Government Code) and the Texas Public Information Act (Chapter 552, Texas Government Code).

4.07 References herein to consent or written consent by the City shall refer to an ordinance, resolution or order of the governing body of the City.

ARTICLE V
No Members or Shareholders

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

ARTICLE VI
Board of Directors

6.01 All powers of the Corporation shall be vested in a Board of Directors ("Board") consisting of the following eleven (11) Directors subject to the oversight of the City and as otherwise provided in the Bylaws:

1. A current City of Laredo Health Department representative;
2. A current City of Laredo Parks & Leisure Services Department representative;
3. A current City of Laredo Environmental Services Department representative;
4. A current Planning & Zoning Department representative;
5. A local Economic Development & Incentives Advisor;
6. A local Sustainable Restaurateur;
7. A local Private Sector Food System representative;
8. A local Urban Livestock Advocate or local Urban Agriculture & Sustainability Advocate;
9. A local Farmer Market's Executive Director or local Urban Agriculture & Sustainability Advocate;
10. A local Apiculturist or local Urban Agriculture & Sustainability Advocate;
11. A current Academic sector food sustainability representative;

6.02 Directors 1-5 (as numbered above) and their successors will be nominated by City Manager of the City of Laredo ("City Manager") and will be confirmed by the Laredo City Council. Directors 6-11 (as numbered above) will be nominated by the Board and will be confirmed by the Laredo City Council. The initial directors of the Corporation ("Director" or "Directors") shall be those persons named in Article VII, below. With respect to the initial Board, the terms of the initial Directors shall commence on the date the Secretary of State has issued the certificate of incorporation for the Corporation.

6.03 A prescribed by Section 431.102(c), Texas Transportation Code, a majority of the Directors shall be residents of the City.

6.04 The initial term of Director Nos. 1-5 shall expire on September 30, 2021. The initial term of Director Nos. 6-11 shall expire on September 30, 2020. After completion of the first term, the term of each Director shall be three years. Each Director shall serve a three-year term or until his or her successor is appointed, unless such Director has been appointed to fill an unexpired term, in which case the term of such Director shall expire on the expiration date of the term of the Director who he or she was appointed to replace. Initial Directors and succeeding Directors may serve up to five consecutive terms.

6.05 Vacancies on the Board that occur before the end of the Director's term shall be filled in the same manner as appointments made pursuant to Article 6.02.

6.06 The Directors may be removed at any time, with or without cause, in the same manner as appointments made pursuant to Article 6.02.

6.07 Director 2 shall serve as chair of the Board until September 30, 2020. Annually thereafter, a chair shall be elected by majority vote of the entire Board.

6.08 A Director may choose to resign at any time if he/she feels unable to fulfill the responsibilities of the position. Written notice must be made to the Chair via mail, email, electronic notice. Resignations will be announced and made official at the following regular Board Meeting.

6.09 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
Initial Directors

The initial Directors of the Corporation shall be as follows:

POS. NO. & NAME	
1. Guillermo Walls	2600 Cedar Ave., Laredo, Texas 78040
2. Berman Rivera	2201 Piedra China St., Laredo, Texas 78043
3. John Porter	619 Reynolds St., Laredo, Texas 78040
4. James Kirby Snideman	1120 San Bernardo Ave. #2, Laredo, Texas 78040
5. Roger Garcia	1312 Houston St., Laredo, Texas 78040
6. Roberto Gonzalez	1515 E. Lane St., Laredo, Texas 78040
7. Gabriela Fernandez	6950 McPherson Rd. Ste. C, Laredo, Texas 78041
8. Landen Gulick	7209 E. Saunders St. Ste. 5, Laredo, Texas 78041
9. Priscila Iglesias	1000 Zaragoza St. #107, Laredo, Texas 78040
10. Cecilia Cisneros	5214 Brewster Dr., Laredo, Texas 78043
11. Marcela Uribe	5201 University Blvd. #ZSC-223C, Laredo, Texas 78041

ARTICLE VIII
Registered Office and Agent

The street address of the initial registered office of the Corporation is c/o City Manager, 1110 Houston St., Laredo, Texas 78040, which is within the city limits of the City, and the name of its initial registered agent at such address is _____, the City Manager, and a resident of the State of Texas.

ARTICLE IX
Incorporators

The names and addresses of the incorporators, each of whom is more than eighteen (18) years of age and a resident of the state of Texas, are:

Roberto Gonzalez	1515 E. Lane St. Laredo, Texas 78040
Cecilia Cisneros	5214 Brewster Dr., Laredo, Texas 78043
Roger Garcia	1312 Houston St., Laredo, Texas 78040

ARTICLE X
Approval of Certificate of Formation

Resolution No. 2019-R-___ approving the form and substance of this Certificate of Formation was adopted by the Laredo City Council on May 6, 2019.

ARTICLE XI
Director Liability

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
Limits on Use of Corporate Assets; Income of Corporation

In accordance with the provisions of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Internal Revenue Code"), and regardless of any other provisions of these Articles of Incorporation or the laws of the State of Texas, the Corporation: (i) 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); (ii) shall not direct any of its activities to attempting to influence legislation by propaganda or otherwise; (iii) 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 (iv) shall not attempt to influence the outcome of any election for public office or to carry on, directly or indirectly, any voter registration drives. The Local Government shall, at all times, have an unrestricted right to receive any income earned by the Corporation, exclusive of amounts needed to cover reasonable expenditures and reasonable reserves for future activities. Any income of the Corporation received by the Local Governments shall be deposited into such accounts or funds as determined by the governing body of the Local Government. No part of the Corporation's income shall inure to the benefit of any private interests.

ARTICLE XIII
Dissolution

13.01 If the Board of Directors or the Laredo City Council determines by resolution that the purposes for which the Corporation was formed have been substantially met and all obligations incurred by the Corporation have been fully paid or provision made for such payment, the Board shall execute a certificate of dissolution which states those facts and declares the Corporation dissolved in accordance with the applicable law then in existence, provided that no certificate effecting a dissolution of the Corporation shall be executed without the prior consent of the City Council, as evidenced by a resolution approved by a majority vote.

13.02 Upon the dissolution of the Corporation, the title to all assets shall be transferred to the Local Government that created the Corporation. The Board of Directors shall notify the Local Government of such dissolution.

ARTICLE XIV
Public Instrumentality

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 Local Governments 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 Local Government 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 XV
Amendments

These Articles of Incorporation may be amended in either of the following manners: (i) the Board may file with the Local Government an application in writing requesting permission to amend the Articles of Incorporation, specifying in the application the amendment proposed to be made, and the governing body of the Local Government, after considering the application and each finding and determining that it is wise, expedient, necessary, or advisable that the proposed amendment be made, may authorize by resolution or ordinance that the proposed amendment be made, and then the Board may amend the Articles of Incorporation by adopting the amendment by resolution at a meeting of the Board and filing the amendment with the Office of the Texas Secretary of State, or (ii) the Local Government may at any time, alter or change the structure, organization, programs, activities, or duration of the Corporation, subject to any limitations on the impairment of contracts entered into by the Corporation, by adopting an amendment to the Articles of Incorporation of the Corporation and filing the amendment with the Office of the Texas Secretary of State.

ARTICLE XVI
Effective Date; Authorization to File

This Certificate 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.

CITY OF LAREDO

_____
Incorporator

_____
Incorporator

_____
Incorporator

ACKNOWLEDGMENTS

CITY OF LAREDO
This instrument was acknowledged before me on this _____ day of _____ 2019, by x x, being sworn on his oath that he is an individual residing in the City of Laredo, Webb County, Texas.

Given under my hand and seal of office this ____ day of _____, 2018.

_____
Notary Public State of Texas

BYLAWS OF THE LAREDO CENTER FOR URBAN AGRICULTURE AND SUSTAINABILITY

A Texas Non-Profit Local Government Corporation created by and on behalf of the City of Laredo, Texas.

ARTICLE I
Corporation Name and Location

The name of the corporation is Laredo Center for Urban Agriculture and Sustainability (the "Corporation"). The principal location of the Corporation is 2600 Cedar Avenue, Laredo, Texas 78040. In the alternative, the Corporation shall meet at 1415 Chihuahua Street, Laredo, Texas 78040 and legally described as Lots 1 through 6, Block 792, Eastern Division, City of Laredo.

ARTICLE II
Organizational Policy

The Corporation is local government corporation and shall be operated under the provisions of Subchapter D, Chapter 431, Texas Transportation Code ("Chapter 431") and Chapter 22, Business Organizations Code ("Chapter 22").

ARTICLE III
Purpose and Authorization

3.01 The Corporation is organized for the purpose of aiding, assisting, and acting on behalf of the City of Laredo (the "Local Government") to accomplish their governmental purpose in the performance of its governmental functions to promote the common good and general welfare of the City, including, without limitation:

A. Create and promote an urban food system for the City of Laredo (the "City") by increasing access to local fresh food for low income citizens and the community at large;
B. Offer educational programs for farmers, growers, gardeners and consumers from all parts of the City to actively learn and participate in the development of local and regional food systems by supporting urban agriculture, community gardens, home gardens, farmer's markets, and farm to school as economic generators for local food security;
C. Provide entrepreneurial opportunities for urban farmers by developing Community Supported Agriculture, employee-owned cooperative programs, and other revolving financing structures that support local income expansion;
D. Cultivate water, soil, and air sustainability opportunities;
E. Facilitate the Laredo Food Policy Council in order to provide a city-wide food security comprehensive plan;
F. Develop policy and incentives for the local food industry; and
G. Achieve a strong and sustainable local food system through the development of partnerships with local public, private, academic and philanthropic sectors to ensure economic,

environmental, and social sustainability relying on ecological principles, preserving natural resources, and reducing the impact created by food deserts in our urban environment.

3.02 To accomplish said goals and purpose, the Corporation shall be authorized to:

A. Contract with persons, and with governmental, for-profit and non-profit entities for the procuring of services and supplies and the hiring of personnel;
B. Acquire and hold title to and interests in real and personal property;
C. Accept funds and property appropriated by the Local Governments and by other entities;
D. Apply for grants of funds, services, and things of value and to accept awards of such grants;
E. Accept donations of funds, services and things of value;
F. Issue bonds, notes, and other debt obligations as necessary for the accomplishment of the governmental purpose stated above, provided that the Corporation shall not incur debt without the consent of the governing bodies of the Local Governments, as evidenced by approval of an ordinance, order or resolution; and
G. Engage in other lawful activities to accomplish the governmental purpose stated above.

3.03 *Local Government Corporation.* The Corporation is formed pursuant to the provisions of Subchapter D of Chapter 431, Texas Transportation Code (the "Act"), as it now or may hereafter be amended, and Chapter 394, Texas Local Government Code, which authorizes the Corporation to assist and act on behalf of the City and to engage in activities in the furtherance of the purposes for its creation.

3.04 *Non-Profit Corporation.* The Corporation shall have and exercise all of the rights, powers, privileges, and functions given by the general laws of Texas to non-profit corporations incorporated under the Act including, without limitation, the Texas Nonprofit Corporation Law or their successor.

3.05 *Governmental Entity* for *Immunity.* The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Subdivision (3), Section 101.001, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions for all purposes, including for purposes of the Texas Tort Claims Act, Section 101.001, et seq., Texas Civil Practice and Remedies Code.

ARTICLE IV
LIMITATION OF METHODS

The Corporation shall be nonpartisan, non-sectarian, and non-discriminatory regardless of religious, educational, and/or cultural backgrounds, as well as gender and/or sexual orientation.

ARTICLE V

BOARD OF DIRECTORS

5.01 *Powers Vested in Board.* All powers of the Corporation shall be vested in a Board of Directors consisting of eleven (11) Directors (the "Board") subject to the oversight of the City of Laredo and as otherwise provided in these Bylaws. The qualification, selection, terms, removal, replacement, and resignation of the members of the Board of Directors of the Corporation ("Director" or "Directors") shall be governed by Article VI of the Certificate of Formation ("Certificate").

5.02 *Initial Board and Transition.* The initial directors of the corporation ("Director" or "Directors") shall be those persons named in Article VII of the Certificate. To provide for terms which end at the end of a calendar month, each initial Director named in Article VII of the Certificate shall serve for the term prescribed in the Certificate. With respect to the initial Board, the terms of the initial Directors shall commence on the date the Secretary of State has issued the certificate of incorporation for the Corporation. Upon the expiration of the terms of office of the initial Directors, the subsequent Directors shall be appointed for a three (3) year term, or until his or her successor is appointed by the entity authorized to appoint the Director; provided, however, upon the death, resignation or removal of a Director, the entity responsible for that Director's appointment shall appoint a replacement Director to serve for the unexpired term of office of the replaced Director.

5.03 *Governing Documents.* All other matters pertaining to the internal affairs of the Corporation shall be governed by these Bylaws, so long as these Bylaws are not inconsistent with the Certificate or the laws of the State of Texas.

5.04 *Voting Rights.* All Directors shall have full and equal voting rights. All references herein to an act, resolution or vote of the Directors shall refer to a vote of the Directors entitled to vote on the matter as provided herein.

5.05 *Meetings of Directors.* The Directors may hold their meetings and may have an office and keep the books of the Corporation at such place or places within Webb County, Texas, as the Board may from time to time determine; provided, however, in the absence of any such determination, such place shall be the registered office of the Corporation in the State of Texas. The Board shall meet in accordance with and file notice of each meeting of the Board for the same length of time and in the same manner and location as is required under Chapter 551, Texas Government Code (the "Open Meetings Act"); provided that the notice of each meeting of the Board shall be posted on the official bulletin board designated by the City of Laredo for the posting of meetings of the Laredo City Council. The Corporation, the Board, and any committee of the Board exercising the powers of the Board are subject to Chapter 552, Texas Government Code (the "Public Information Act").

5.06 *Regular Meetings.* The Board shall have a minimum of eight (8) and a maximum of twelve (12) regular meetings each fiscal year at times at places as shall be designated, from time to time, by the Board.

5.07 *Special and Emergency Meetings.* Special and emergency meetings of the Board shall be held whenever called by the Chair of the Board, the Secretary of the Board, the Treasurer of the Board, or by any two (2) of the Directors who are serving duly appointed terms of office at the time the meeting is called. A majority of the Board must be present for any special called or emergency meeting.

5.08 *Attendance.* After three unexcused absences, a Director is subject to removal from the Board of Directors. An absence is excused only if: (a) the absent member informed the Chair of his/her absence in advance, and (b) the Corporation votes to excuse the absence.

5.09 *Quorum.* A majority of the entire Board (six (6) Directors) shall constitute a quorum for the consideration of matters pertaining to the purposes of the Corporation. No action of the Board shall be valid or binding unless adopted by the affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater.

5.10 *Assent Presumed Without Express Abstention or Dissent.* A Director who is present at a meeting of the Board at which any corporate action is taken shall be presumed to have assented to such action unless such person's dissent or abstention shall be entered in the minutes of the meeting or unless such person shall file written dissent or abstention to such action with the person acting as the secretary of the meeting before the adjournment thereof. Such right to dissent or abstain shall not apply to a Director who voted in favor of the action.

5.11 *Compensation of Directors.* Directors, as such, shall receive no salary or compensation for their services as Directors; provided, however, Directors may be reimbursed for reasonable and necessary expenses incurred in carrying out the Corporation's purposes. The Corporation will reimburse any Director who used his/her own money for Corporation purposes once it is approved by the affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater. Any receipt presented to Board containing personal or other purchases will not be approved for reimbursement.

5.12 *Conduct of Business.* At the meetings of the Board, matters pertaining to the purpose of the Corporation shall be considered in such order as the Board may from time to time determine. At all meetings of the Board, the Chair shall preside, and in the absence of the Chair, the Vice Chair shall preside. The Secretary of the Corporation shall act as secretary of all meetings of the Board, but in the absence.

5.13 *Director's Reliance on Consultant Information.* A Director shall not be liable if, while acting in good faith and with ordinary care, such person relies on information, opinions, reports or statements, including financial statements and other financial data, concerning the Corporation or another person that were prepared or presented by:

(a) one or more other officers or employees of the Corporation;
(b) an employee of a City;
(c) legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or,
(d) a committee of the Board of which the Director is not a member.

5.14 *Executive Director.* The Board is authorized to hire an Executive Director who shall serve at the pleasure of the Board. The Executive Director shall be the chief executive officer of the Corporation and shall have the duties and powers as set forth in Article X of these Bylaws. The Board shall establish the compensation, and may establish duties and responsibilities of the Executive Director in addition to those prescribed by Article X of these Bylaws. The hiring and/or removal of the Executive Director shall be by the affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater.

5.15 *Attorneys and Consultants.* The Board may employ attorneys, auditors, certified accountants engineers, and such other professionals and consultants as may be required for the purposes of the Corporation from time to time.

ARTICLE VI
OFFICERS

6.01 *Titles and Term of Office.* The officers of the Corporation shall be a Chair, a Vice Chair, a Secretary, a Treasurer, and such other officers as the Board may from time to time elect or appoint. Each officer shall be a current Director. One person may hold more than one office, except the Chair shall not hold the office of Secretary. The term of office for each officer shall be one (1) year and shall serve from October 1 through the following September 30, except that such office shall terminate on the earlier of: (a) the date that the officer is replaced by the Board; or (b) the date that the officer is no longer a member of the Board.

All officers shall be appointed and subject to removal at any time, with or without cause, by affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater.

A vacancy in any office elected pursuant to this Article VI shall be filled by the affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater.

6.02 *Powers and Duties of the Chair.* The Chair shall preside the meetings of the Board and shall perform all duties incumbent upon his office; to authenticate, by his/her signature, when necessary, all the acts, orders, and proceedings of the meetings; to appoint all committees and committee chairs, and select topic and discussion material.

6.03 *Powers and Duties of the Vice Chair.* The Vice-Chair shall perform the duties of the Chair in his/her absence and shall perform such other duties as are levied. He/she shall provide leadership to the Corporation and assistance to all other Directors as needed.

6.04 *Powers and Duties of the Secretary.* The Secretary shall keep the minutes of all meetings of the Board; shall attend to the giving and serving of all notices; shall keep accurate records of Board actions, including sending out meeting announcements, distributing copies of minutes and agendas to each Director, and assuring that corporate records are maintained. The Secretary shall turn over to the successor all official records and documents of the Corporation.

6.05 *Powers and Duties of the Treasurer.* The Treasurer shall have custody of all the funds and securities of the Corporation which come into possession of the Corporation and shall safely keep the funds and securities. When necessary or proper, the Treasurer (i) 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; (ii) may sign all receipts and vouchers for payments made to the Corporation, either alone or jointly with such other officer as is designated by the Board. The Treasurer shall enter or cause to be entered regularly in the books of the Corporation to be kept by such person for that purpose full and accurate accounts of all moneys received and paid out on account of the Corporation. The Treasurer must maintain a file of supporting documents open for examination by the Directors and present financial reports at meetings and when needed. The Treasurer shall turn over to the successor all the financial records of the Corporation.

6.06 *Compensation.* Officers shall serve without compensation for their duties, but are entitled to receive reimbursement for their reasonable expenses only in performing their functions in accordance with any policies that may be adopted by the Board. The Corporation will reimburse Officers who used his/her own money for Corporation purposes once it is approved by the affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater. A receipt containing only purchases for the Corporation will be required for reimbursement to take place. Any receipt presented to Board containing personal or other purchases will not be approved for reimbursement.

ARTICLE VII
Financial Responsibilities

7.01 *Audit.* Not later than one hundred twenty (120) days after the close of each fiscal year, the Board shall have an annual audit prepared by an independent auditor who is duly licensed or certified as a public accountant in the State of Texas of the financial books and records of the Corporation. The Corporation shall provide a copy of the completed audit to the City not later than fifteen (15) days after its receipt by the Corporation.

7.02 *Fiscal Year.* The Fiscal year of the Corporation shall begin on October 1 of each year.

7.03 *Annual Budget.*

(a) No later than ninety (90) days prior to the beginning of each fiscal year, the Board or the Executive Director (if the Corporation has employed an Executive Director) shall prepare, or cause to be prepared, and approve a budget (the "Budget") for the fiscal year. The Budget must be approved by the affirmative vote of five Directors or the majority of the Directors present at a meeting at which a quorum is present, whichever is greater. After approval by the Board, the Budget shall be submitted to each City for approval. Failure of a City to reject, to ask for additional information regarding, or to request modification of, the Budget approved by the Board on or before the thirtieth (30th) day after submission of the Budget to the City shall be

deemed an approval of the Budget by that City (and a request for additional information or for modification may be provided by an employee of a City).

(b) If the Board fails to approve the Budget, or if the Budget is not approved by the City, then the Budget for the prior fiscal year shall be deemed approved.

7.04 *Appropriations and Grants.* The Corporation shall have the power to request and accept any appropriations, grant, contribution, donation, or other form of aid from the federal government, the State, any political subdivision, or municipality in the State, or from any other source.

ARTICLE VIII
CONTRACTS, CHECKS, and LOANS

8.01 *Contracts and Other Writings.* Except as otherwise provided by resolution of the Board or board policy, all contracts, deeds, leases, mortgages, grants, and other agreements of the Corporation shall be executed on its behalf by the Treasurer or other persons to whom the Corporation has delegated authority to execute such documents in accordance with policies approved by the Board.

8.02 *Checks, Drafts.* All checks, drafts, or other orders for payment of money, notes, or other evidence of indebtedness issued in the name of the Corporation, shall be signed by such Director, agent or agents, of the corporation and in such manner as shall from time to time be determined by resolution of the Board.

8.03 *Deposits.* All funds of the Corporation shall be deposited to the credit of the Corporation in such banks, trust companies, or other depository as the Board may select.

ARTICLE IX
Indemnification of Directors and Officers

9.01 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article IX and the Certificate, each person who was or is made a party, is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "proceeding"), or any appeal in such a proceeding or any inquiry or investigation that could lead to such a proceeding, by reason of the fact that he or she, or a person of whom he or she is the legal representative, is or was a Director or officer of the Corporation shall be indemnified by the Corporation to the fullest extent permitted by the Texas Nonprofit Corporation Law, 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 the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlement and reasonable expenses (including, without limitation, attorneys' fees) actually incurred by such person in connection with such proceeding, and indemnification under this Article IX shall continue as to a

person who has ceased to serve in the capacity which initially entitled such person to indemnity hereunder. The rights granted pursuant to this Article IX shall be deemed contract rights, and no amendment, modification or repeal of this Article IX shall have the effect of limiting or denying any such rights with respect to actions taken or proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article IX could involve indemnification for negligence or under theories of strict liability.

9.02 *Advance Payment.* The right to indemnification conferred in this Article IX shall include the right to be paid in advance or reimbursed by the Corporation the reasonable expenses incurred by a person of the type entitled to be indemnified under Section 9.01 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of a written affirmation by such Director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article IX and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified person is not entitled to be indemnified under this Article IX or otherwise.

9.03 *Non-exclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article IX shall not be exclusive of any other right which a Director or officer may have or hereafter acquire under any law (common or statutory), provision of the Certificate or these Bylaws, agreement or disinterested Directors or otherwise.

9.04 *Insurance.* The Corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was serving as a Director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a Director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic corporation, partnership, joint venture, proprietorship, employee benefit plan, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article IX.

9.05 *Notification.* Any indemnification of or advance of expenses to a Director or officer in accordance with this Article IX shall be reported in writing to the members of the Board with or before the notice of the next regular meeting of the Board and, in any case, within the ninety (90) day period immediately following the date of the indemnification or advance notification.

9.06 *Savings Clause.* If this Article IX or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Director, officer or any other person indemnified pursuant to this Article IX as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, to the full extent permitted by any applicable portion of this Article IX that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE X
Executive Director; Employees

10.01 *Powers and Duties of the Executive Director*

(a) *Chief Executive*. The Executive Director shall be the chief executive officer of the Corporation and, subject to the control of the Board, shall be in general charge of the properties and affairs of the Corporation. The Executive Director has management and control of the properties and operations of the Corporation, including the powers of a general manager. The Executive Director will be responsible for implementing all orders and resolutions of the Board, and all other powers that are not specifically reserved to the Directors or the City will be executed by the Executive Director within the general guidelines and policies of the Board and the City.

(b) *Responsible for hiring and supervision of Employees*. The Executive Director shall be responsible for hiring and terminating the employees of the Corporation. All employees hired by the Executive Director shall be terminable at-will and not be provided any term or promise of employment.

(c) *Spending Authority*. The Executive Director is authorized to approve expenditures, make purchases, and enter into contracts on behalf of the Corporation which require an expenditure not to exceed $500 without Board approval as long as funds are budgeted and are available for the expenditure.

(d) *Annual Budget*. The Executive Director is responsible for the preparation of the Corporation's annual budget.

(e) *Annual Business Plan*. The Executive Director shall prepare a Corporation business plan (the "Business Plan") on an annual basis for review and approval by the Board. The Business Plan shall include such items and matters required by the Board and, at a minimum, shall include the following: (i) performance measures and benchmarks; and (ii) possible future activities.

10.02 *Corporation Employees*.

(a) The Executive Director shall be a full time employment position of the Corporation, except that the Board may contract with a person or entity as an independent contractor to serve as an Executive Director.

(b) The Corporation may contract with the City for utilization of employees of the City. The Corporation may, without compensation, use the services of employees of a City with the prior written consent of the City Manager. The Board is authorized to employ or contract for project-specific personnel to manage or operate a service provided by the Corporation.

ARTICLE XI
Compliance

11.01 It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices; that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

11.02 All directors, officers, and employees shall abide by the local and state civil and criminal laws regarding ethics, conflict of interest, official misconduct and other regulations and restrictions involving their official duties.

ARTICLE XII
Miscellaneous

12.01 *Seal.* The seal of the Corporation shall be such as may be from time to time approved by the Board. The seal of the Corporation shall not be required to be placed on a document in order for the document to be considered a valid act or agreement of the Corporation.

12.02 *Gender.* References herein to the masculine gender shall also refer to the feminine in all appropriate cases and vice versa.

12.03 *Books and Records.* The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of all meetings of its Board, a record of all actions taken by the Board, and a record of all actions taken by committees of the Board. In addition, the Corporation shall keep a copy of the corporation's Certificate of Formation and Bylaws as amended to date.

12.04 *City Access to Records of Corporation.* Notwithstanding the provisions of the Public Information Act or any exceptions contained therein to disclosure and the rights or limitations thereof regarding the review of records of Texas non-profit corporations, the City shall have a special right to review and obtain copies of the records of the Corporation, regardless of format, upon reasonable notice and during regular business hours of the Corporation; provided, however, such special right of access to the City shall not apply to records to which law or regulation expressly prohibit disclosure to third parties that would by definition include the City.

12.05 *Amendments*. A proposal to alter, amend or repeal these Bylaws shall be made by the affirmative vote of a majority of the entire Board at any annual or regular meeting, or at any special meeting if notice of the proposed amendment be contained in the notice of said special meeting. However, any proposed change or amendment to the Bylaws must be approved by resolution of the City Council to be effective.

City Council-Regular
Meeting Date: 05/06/2019
Staff Source: Cristian Rosas-Grillet, Assistant City Attorney

SUBJECT

2019-R-64 A Resolution of the City of Laredo, Texas, authorizing the City's creation of the Laredo Center for Urban Agriculture and Sustainability, a local government corporation; approving the form of the certificate of formation and bylaws; containing other provisions relating to the subject; and declaring an effective date.

PREVIOUS COUNCIL ACTION

On April 2, 2018, City Council approved a motion to fund a service agreement with an organization to be created for the implementation of goals, services, and tasks for urban agriculture and sustainability programs as well as the facilitation of the Laredo Food Policy Council. On September 13, 2018, the City Council approved a motion allocating funding for the organization to facilitate the Food Policy Council and propagate endemic shade tree species throughout the City of Laredo.

BACKGROUND

Chapter 431 of the Texas Transportation Code ("Chapter 431") authorizes the creation of a local government corporation to aid and act on behalf of a local government to accomplish any governmental purpose of the local government. Chapter 431 requires that a local government corporation be created in accordance with Chapter 394 of the Texas Local Government Code ("Chapter 394"). Chapter 394 provides that three or more persons (the "Incorporators," each of whom must be at least eighteen years old, residents of the local government, and citizens of the State of Texas) may incorporate a local government corporation by signing a Certificate of Formation (the "Certificate") and filing the Certificate with the Secretary of State of Texas. As prescribed by Section 394.011 of the Texas Local Government Code, the Incorporators have filed with the City a written application for approval of the Certificate.

COMMITTEE RECOMMENDATION

N/A

STAFF RECOMMENDATION

Staff recommends that City Council approve this Resolution.

Attachments