

From: Eckels, Robert <Robert.Eckels@huschblackwell.com>
Sent: Wednesday, February 12, 2020 3:25 PM
To: judge@co.tyler.tx.us
Cc: David, Kate; De Leon, Elizabeth
Subject: SE TX Flood Control District Revised Articles of Incorporation
Attachments: SE TX Flood Control Dist C Clerk VERIFICATION Tyler County.docx; SE TX Flood Control Dist Revised Resolution- Tyler County.docx; SETFCD Articles of Incorporation 02072020.docx; Agenda Item for posting creating SE Texas Flood Control District Inc 4811-8127-5309 v.1.docx

Judge

Attached are revised Articles of Incorporation based on our discussions at the meeting. The drainage and other district board appointments are moved from the commissioners courts to be "ex officio" appointments by the board. This will allow more flexibility for the Board to add or replace members as needed. Other changes include listing the incorporators in the form of the Articles of Incorporation and removal of IRS Code Sec 103 language relating to bond issuance we did not need. We also added language to address the comments of the TWDB relating to representing the sponsors in finance and grant applications.

This will need to be approved at your earliest convenience at a meeting of the commissioners court as was done for the earlier version.

Attached are copies as Word Documents of the Articles of Incorporation, Resolution of the Commissioners Court, County Clerk Verification and Posting Notice.

We can use the earlier signature pages from the incorporators.

As always, please let me know if you need additional information.

RAE

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STATE OF TEXAS

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COUNTY OF TYLER

TYLER COUNTY COMMISSIONERS COURT RESOLUTION

APPROVING ARTICLES OF INCORPORATION FOR A LOCAL GOVERNMENT CORPORATION TO ENGAGE IN PLANNING CONCERNING DISASTER MITIGATION AND OTHER PROJECTS OR PROGRAMS TO PROTECT THE RESIDENTS OF OUR COMMUNITY, INFRASTRUCTURE, INDUSTRY, BUSINESSES AND HOUSING AGAINST FLOODING; TO DESIGN, DEVELOP, CONSTRUCT, OPERATE, MANAGE, REPAIR, MAINTAIN, FINANCE, EQUIP, IMPROVE, ENLARGE, EXTEND, ACQUIRE AND IMPROVE INTEGRATED FLOOD DAMAGE REDUCTION SYSTEMS; AND TO CONDUCT ANY AND ALL OTHER LAWFUL BUSINESS AND PERFORM ANY OTHER RELATED FUNCTION OR OPERATION

WHEREAS, Tyler County, Texas, ("*Sponsor*"), acting through its governing body, the Tyler County Commissioners Court (the "*Commissioners Court*"), has determined that establishing a local government corporation with neighboring counties and special purpose districts in order to plan, design, develop, construct, operate, manage, repair, maintain, finance, equip, improve, enlarge, extend, acquire, and improved integrated flood damage reduction systems is desirable to protect Tyler County residents; and

WHEREAS, the Commissioners Court has considered the proposed Articles of Incorporation of a local government corporation named Southeast Texas Flood Control District, LGC (the "*Corporation*"), to act on behalf of the Sponsor and other Texas local governments; and determined that the formation of the Corporation is wise, expedient, necessary and desirable, and that the Sponsor and its residents will benefit from the Corporation engaging in planning concerning disaster mitigation and other projects or programs to protect infrastructure, industry, businesses and housing against storm surge induced flooding; designing, developing, constructing, operating, managing, repairing, maintaining, financing, equipping, improving, enlarging, extending, acquiring and improving integrated storm surge induced flood damage reduction systems; and conducting any and all other lawful business and perform any other function or operation related to any of the foregoing in all the Corporation's sponsoring counties of Jefferson, Hardin, Orange, Jasper, Newton, Chambers, Tyler and Liberty; and

WHEREAS, a majority of the Commissioners Court has adopted this Resolution and approves the form of the Articles of Incorporation, which includes persons specified as initial directors in such Articles of Incorporation as the initial directors of the Corporation for the respective terms specified in such Articles of Incorporation; and

WHEREAS, the approvals and appointments are solely for purposes of satisfying a condition to the filing of Articles of Incorporation of the Corporation with the Secretary of State of Texas and shall not be construed as a representation, warranty, or other undertaking of any kind by the Commissioners Court or the Sponsor in respect of the Corporation, and whereas no

obligation of the Corporation shall constitute an obligation of the Commissioners Court or the Sponsor or a pledge of the faith or credit of the Sponsor; and

WHEREAS, the meeting at which the Commissioners Court adopted the Articles of Incorporation was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Government Code; and

WHEREAS, the Commissioners Court finds that formation of the Corporation in accordance with the articles approved by the Commissioners Court serves a public purpose of Tyler County, Texas;

NOW, THEREFORE, BE IT RESOLVED BY THE TYLER COUNTY COMMISSIONERS COURT, THAT:

1. The Tyler County Commissioners Court hereby APPROVES the formation of the 'Southeast Texas Flood Control District, LGC' under authority of Subchapter D, Texas Transportation Corporation Act, TEX. TRANSP. CODE ANN. § 431.101 *et seq.* and Texas Local Government Code Ann § 394.001 *et seq.* and the Texas Nonprofit Corporation Act Article § 1396-101 *et seq.*, TEXAS REV. CIV. STAT. ANN., as amended, to act on behalf of the Sponsor and other Texas local governments; and
2. The Tyler County Commissioners Court hereby APPROVES and authorizes the form of the Articles of Incorporation of the Corporation attached hereto and incorporated herein for all purposes, and has determined that the approval of these forms is wise, expedient, necessary and desirable;
3. The County Judge is hereby authorized to execute the Articles of Incorporation of the Corporation and all related documents on behalf of Tyler County, Texas. The County Clerk is hereby authorized to attest to all such signatures, affix the seal of the County to all such documents and verify that the Tyler County Commissioners Court has approved same;
4. The Tyler County Commissioners Court hereby grants the authority necessary for the County Judge, as a director of the Corporation, to approve the adoption of the Articles of Incorporation in the form attached hereto; and
5. The Tyler County Commissioners Court hereby appoints the director of the Corporation for which Tyler County, Texas is the sponsor, as set forth in the Articles of Incorporation of the Corporation.

Upon Motion Duly Made and Seconded, the above Resolution is hereby ADOPTED,
by the Commissioners Court of Tyler County, on this, the ____ day of _____, 2019.

COUNTY OF TYLER, TEXAS, By:

JACQUES L. BLANCHETTE
COUNTY JUDGE

MARTIN NASH
COMMISSIONER, PRECINCT NO.1

STEVAN STURROCK
COMMISSIONER, PRECINCT NO.2

MIKE MARSHALL
COMMISSIONER, PRECINCT NO.3

CHARLES "BUCK" HUDSON
COMMISSIONER, PRECINCT NO.4

ATTEST:

DONECE GREGORY
COUNTY CLERK OF TYLER COUNTY, TEXAS

**ARTICLES OF INCORPORATION
OF
SOUTHEAST TEXAS FLOOD CONTROL DISTRICT, LGC**

Pursuant to Texas Local Government Code § 394.014, the Texas Nonprofit Corporation Act Article § 1396-101 *et seq.*, and Subchapter D of Chapter 431, Texas Transportation Code (The Act), with the approval of a majority vote of the governing body's members in office of the Texas counties of Jefferson County, Hardin County, Orange County, Jasper County, Newton County, Chambers County, Tyler County, and Liberty County (the "Sponsors"), We, the undersigned natural persons, each of whom is at least 18 years of age and a resident and qualified voter of his respective Sponsor and a citizen of the State of Texas, acting as incorporators of a corporation do adopt these Articles of Incorporation of the Southeast Texas Flood Control District, LGC.

ARTICLE ONE

NAME

The name of the Corporation is the Southeast Texas Flood Control District, LGC.

ARTICLE TWO

CHARACTER

The Corporation is a public, nonprofit local government corporation.

ARTICLE THREE

DURATION

The period of duration of the Corporation is perpetual.

ARTICLE FOUR

PURPOSE

The Corporation is formed solely to carry out the purposes of the authorizing Act and is created pursuant to Subchapter D, Texas Transportation Corporation Act, TEX. TRANSP. CODE ANN. § 431.101 *et seq.* and Texas Local Government Code Ann § 394.001 *et seq.* and the Texas Nonprofit Corporation Act Article § 1396-101 *et seq.*, TEXAS REV. CIV. STAT. ANN., as amended, which authorize the Corporation to assist and act on behalf of the Sponsors and to engage in activities in the furtherance of the purposes for its creation.

The Corporation is organized and is to be operated to aid, assist and act on behalf of the Sponsors: (a) to engage in coordinated planning with governmental entities and local communities concerning disaster mitigation and other projects or programs to protect residents, infrastructure, industry, businesses and housing within the boundaries of the Sponsors and watersheds impact areas within the boundaries of the sponsors. against flooding; (b) to apply for available financial assistance, funding and grants for the benefit of the Sponsors; (c) to design, develop, construct, operate, manage, repair, maintain, finance, equip, improve, enlarge, extend, acquire and improve integrated flood damage reduction systems within the boundaries of the Sponsors; and (d) to conduct any and all other lawful business and perform any other function or operation related to any of the foregoing. Flood damage reduction systems may include stormwater detention, drainage facilities, bulkheads,

levees, seawalls, berms, barriers, pumps, gates and other structural, nonstructural or nature-based systems to suppress flooding and storm surge or reduce rainfall and storm surge-related flood damage. Those systems may also include ancillary improvements, such as measures to protect and improve the quality of storm water or mitigate environmental effects; paved, macadamized or graveled roads; demolition of improvements or clearing of land; highway right-of-way improvements or beautification measures; utility relocation; hiking and cycling paths or sidewalks; beach replenishment measures; and parks or open space improvements.

The Corporation shall have all other powers of a like or different nature not prohibited by law which are available to nonprofit and local government corporations in Texas and which are necessary or useful to enable the Corporation to perform the purposes for which it is created.

The Corporation is created as a local government corporation pursuant to the Act and shall be a governmental unit within the meaning of Chapter 101, Texas Civil Practice and Remedies Code. The operations of the Corporation are governmental and not proprietary functions.

ARTICLE FIVE

MEMBERS

The Corporation shall have no members and no stock.

ARTICLE SIX

INITIAL REGISTERED OFFICE AND AGENT

The street address of the initial registered office of the Corporation is 1149 Pearl St., 4th Floor, Beaumont, Texas 77701. The name of the initial registered agent of the Corporation at that address is Judge Jeff Branick.

ARTICLE SEVEN

DIRECTORS AND VOTING

All powers of the Corporation shall be vested in a Board of Directors ("Board") consisting of eight (8) persons. Each Sponsor shall appoint one (1) Director. The initial Directors listed below shall serve for the term expiring three years from the date of filing of these Articles of Incorporation. Subsequent appointments shall be made by the Commissioners Court of each Sponsor, with each Director serving a three (3) year term. Any Director may be removed from office at any time, by the respective Commissioners Court who appointed them. Each Commissioners Court shall have the right to appoint a replacement for such removed Director. Any removal by a Commissioners Court shall be effective immediately and that Commissioners Court shall appoint a replacement within sixty (60) days following removal. In the event a Director is not appointed by the Commissioners Court, the County Judge shall serve as the Director for that Sponsor.

The Board may appoint non-voting "Ex Officio" members to the Board as provided in the Bylaws.

To be qualified to serve as a Director, a person must be at least eighteen (18) years old and reside within the boundaries of his appointing Sponsor.

All matters pertaining to the internal affairs of the Corporation shall be governed by the Bylaws of the Corporation, so long as such Bylaws are not inconsistent with these Articles of Incorporation and the laws of the State of Texas.

The names and addresses of the persons who are to serve as the initial Directors are as follows, each of whom resides within the boundaries of the Sponsors:

Jeff Branick
1149 Pearl Street, 4th Floor
Beaumont, Texas 77701
Jefferson County

Kenneth Weeks
110 Court Street, Room 125
Newton, Texas 75966
Newton County

Wayne McDaniel
300 West Monroe Street
Kountze, Texas 77625
Hardin County

Jimmy Sylvia
PO Box 939
Anahuac, Texas 77514
Chambers County

John Gothia
123 South 6th Street
Orange, Texas 77630
Orange County

Jacques L. Blanchette
100 W Bluff Street
Woodville Texas 75979
Tyler County

Mark Allen
121 N Austin Street, Room 106
Jasper, Texas 75951
Jasper County

Jay H. Knight
1923 Sam Houston Street
Liberty, Texas 77575
Liberty County

ARTICLE EIGHT

INDEMNIFICATION AND RELEASE

To the maximum extent authorized by applicable law, the Corporation shall indemnify each director, officer, former director, and former officer of the Corporation for expenses and costs, including attorney's fees, actually and necessarily incurred by the director or officer in connection with, and each such person is released by the Corporation from, a claim asserted against the director or officer, by action in court or other forum, because of the person's being or having been a director or officer.

ARTICLE NINE

NOT FOR PROFIT

No part of the Corporation's net earnings shall inure to the benefit of, or be distributable to, any director, officer, or other private person, but the Corporation may pay reasonable compensation for services rendered or property acquired. No part of the Corporation's net earnings remaining after payment of its liabilities and expenses in accomplishing its public purpose may benefit any person other than the Sponsors.

No substantial part of the Corporation's activities shall be carrying on propaganda or otherwise attempting to influence legislation. The Corporation shall not participate in, or intervene

(including by publishing or distributing of statements) in, any political campaign on behalf of or in opposition to any candidate for public office.

ARTICLE TEN

SPONSOR

The counties set forth below are the Sponsors of the Corporation. Each Sponsor has adopted a resolution approving the form of these Articles of Incorporation by a majority vote of its Commissioners Court, as follows:

| Sponsor | Date of Adoption |
|------------------|-------------------------|
| Jefferson County | _____ |
| Hardin County | _____ |
| Orange County | _____ |
| Jasper County | _____ |
| Newton County | _____ |
| Chambers County | _____ |
| Tyler County | _____ |
| Liberty County | _____ |

ARTICLE ELEVEN

INCORPORATORS

The names and addresses of the incorporators, each of whom resides within the boundaries of the Corporation and the respective sponsor are:

Laurie Ardoin
8385 Edgar Park Dr
Orange TX 77630
Orange County

Jacques L. Blanchette
100 West Bluff St. 105
Woodville TX 75979
Tyler County

Ken Jobe
201 Veterans Way
Woodville TX 75979
Tyler County

Miranne Pruett
1400 Shadowdale St
Bridge City TX 77611
Orange County

Mike Marshall
205 N Charlton
Woodville TX 75979
Tyler County

Kenneth Weeks
110 E Court St
Newton TX 75966
Newton County

Jeannine Denman
7503 Circle 2
Orange TX 777632
Orange County

Charles "Buck" Hudson
202 N Charlton
Woodville TX 75979
Tyler County

Philip White
110 E Court St
Newton TX 75966
Newton County

William L. Fuller
110 E Court St.
Newton TX 75966
Newton County

Wayne McDaniel
300 W Monroe St
Kountze TX 77625
Hardin County

L. W. Cooper, Jr
PO Box 1757
Silsbee TX 77656
Hardin County

Chris Kirkendall
PO Box 1436
Kountze TX 77625
Hardin County

Ken Pelt
PO Box 550
Sour Lake TX 77659
Hardin County

Alvin Roberts
PO Box 8166
Lumberton TX 77657
Hardin County

Mark W. Allen
121 N Austin St, Room 106
Jasper TX 77951
Jasper County

Charles Shofner, Jr.
121 N Austin St, Room 106
Jasper TX 77951
Jasper County

Roy Parker
121 N Austin St, Room 106
Jasper TX 77951
Jasper County

Willie Stark
121 N Austin St, Room 106
Jasper TX 77951
Jasper County

Vance Moss
121 N Austin St, Room 106
Jasper TX 77951
Jasper County

Lauren VanDeventer
PO Box 939
Anahuac TX 77514
Chambers County

Aaron Thomas
PO Box 939
Anahuac TX 77514
Chambers County

Jimmy Sylvia
PO Box 939
Anahuac TX 77514
Chambers County

Jeff Branick
1149 Pearl St, 4th Floor
Beaumont TX 77701
Jefferson County

Eddie Arnold
1149 Pearl St, 4th Floor
Beaumont TX 77701
Jefferson County

Brent A. Weaver
1149 Pearl St, 4th Floor
Beaumont TX 77701
Jefferson County

Michael S. Sinegal
1149 Pearl St, 4th Floor
Beaumont TX 77701
Jefferson County

Everette "Bo" Alfred
1149 Pearl St, 4th Floor
Beaumont TX 77701
Jefferson County

Jay H. Knight
1923 Sam Houston St
Liberty TX 77575
Liberty County

Bruce Karbowski
1923 Sam Houston St
Liberty TX 77575
Liberty County

Greg Arthur
PO Box 77
Hardin TX 77561
Liberty County

James Reaves
119 Fenner Ave.
Cleveland TX 77327
Liberty County

Leon Wilson
PO Box 88
Dayton TX 77535
Liberty County

ARTICLE TWELVE

AMENDMENTS

These Articles of Incorporation may not be changed or amended unless approved by the Commissioners Court of each of the Sponsors.

ARTICLE THIRTEEN

DISSOLUTION

Subject to any restrictions in applicable state law, if each of the Sponsors considers and approves a resolution directing the Board to proceed with dissolution or if the Board determines by resolution that the purposes for which the Corporation was formed have been substantially met and all the obligations incurred by the Corporation or on behalf of the Corporation have been fully paid, the Board shall execute a certificate of dissolution to that effect and declare the Corporation dissolved in accordance with the requirements of Section 394.026 of the Texas Local Government Code, or with applicable law.

Upon dissolution of the Corporation:

A. the assets of the Corporation shall be distributed among the Sponsors in accordance with the percentage of each Sponsor's contribution to the purchase of the assets of the Corporation; and

B. any remaining liabilities of the Corporation shall be allocated as follows:

(1) if the liability was incurred for the benefit of fewer than all of the Sponsors, the liability shall be allocated to those Sponsors for whom the benefit was incurred based on the agreement of the benefitted Sponsors; and

(2) if the liability was incurred for the benefit of all the Sponsors, the liability shall be based on the percentage of the each Sponsor's contributions to the purchase of the assets of the Corporation.

Nothing in this Certificate shall prohibit the Sponsors from agreeing to an allocation of assets and liabilities contrary to this Article, provided such allocation is not contrary to state law.

EFFECTIVENESS OF FILING

This document becomes effective upon filing by the Secretary of State.

EXECUTION

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

VERIFICATION

BEFORE ME, the undersigned authority, personally appeared Donece Gregory, Tyler County Clerk, known to me to be the person whose name is subscribed below, who, after being by me duly sworn, upon her oath, did depose and say that she is the County Clerk of Tyler County, Texas; that she has examined the foregoing Articles of Incorporation of Southeast Texas Flood Control District, LGC and that the same was approved by a majority of the Commissioners Court members in office by Resolution _____, at a meeting of the Commissioners Court of Tyler County, Texas, held on _____, 2020, and as such she is duly authorized to make this verification.

Donece Gregory, Tyler County Clerk

STATE OF TEXAS §
 §
COUNTY OF TYLER §

SUBSCRIBED AND SWORN TO BEFORE ME by Donece Gregory, Tyler County Clerk on this _____ day of _____, 2020.

Notary Public in and for the State of Texas

(Stamped or Printed Name of Notary)

My Commission Expires: