

RESOLUTION NO. 22-003

A RESOLUTION OF THE CITY COUNCIL FOR THE CITY OF MARLIN, TEXAS AUTHORIZING AND APPROVING THE CREATION OF THE MARLIN 4-B ECONOMIC DEVELOPMENT CORPORATION AS A TYPE B ECONOMIC DEVELOPMENT CORPORATION; AUTHORIZING AND APPROVING OF THE CERTIFICATE OF FORMATION FOR THE CREATION OF THE MARLIN 4-B ECONOMIC DEVELOPMENT CORPORATION; AND PROVIDING FOR OPEN MEETINGS, AND EFFECTIVE DATE CLAUSES.

WHEREAS, the City Council for the City of Marlin (City Council") desires to authorize the creation of a 4-B economic development corporation pursuant to Chapter 505 of the Texas Local Government Code to promote the development of industrial and manufacturing enterprises, to promote and encourage employment and the public welfare of the City of Marlin, and to promote the economic development of the City in order to promote and support the development of authorized projects as defined in and pursuant to Chapter 505 of the Texas Local Government Code;

WHEREAS, the creation of the Marlin 4-B Economic Development Corporation shall further a public purpose of the promotion and development of enterprises to promote and encourage employment and to benefit the public welfare; and

WHEREAS, the incorporation of the Marlin 4-B Economic Development Corporation under the Development Corporation Act and as a Type B economic development corporation subject to Chapter 505 of the Texas Local Government Code, will promote economic development within the City of Marlin and the State of Texas in order to eliminate unemployment and underemployment, and will promote and encourage employment and the public welfare of, for, and on behalf of the City of Marlin by developing, purchasing, leasing, implementing, providing, and financing Projects under the Act and as "Projects" is defined in Chapter 505 of the Texas Local Government Code; and

WHEREAS, for the reasons set forth above, the City Council for the City of Marlin has determined that the creation of the Marlin 4-B Economic Development Corporation is advisable.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARLIN, TEXAS, that:

Section 1. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Public Purpose. The creation of the Marlin 4-B Economic Development Corporation shall further a public purpose of the promotion and development of enterprises to promote and encourage employment and the public welfare, all as provided in the Development Corporation Act and specifically, Chapter 505 of the Texas Local Government Code. The City Council authorizes the creation of the Corporation to act on the City's behalf to further the public purposes as identified in this resolution and the attached Certificate of Formation.

Section 3. Creation of Corporation is Advisable. The creation of the Marlin 4-B Economic Development Corporation is advisable.

Section 4. Creation of Marlin 4-B Economic Development Corporation. The City Council for the City of Marlin, Texas, approves of and authorizes the creation of the Marlin 4-B Economic Development Corporation to promote the economic development of the City and to promote and support the development of those authorized projects pursuant to Chapter 505 of the Texas Local Government Code.

Section 5. Approval of Certificate of Formation. The City Council for the City of Marlin approves of the Certificate of Formation attached to this Resolution as Exhibit "A", approves of the appointment of the initial directors of the Marlin 4-B Economic Development Corporation, and authorizes the City Manager to sign the Certificate of Formation as the organizer and to file the Certificate of Formation with the Texas Secretary of State as provided for under Chapter 505 of the Texas Local Government Code. The City Council further authorizes the payment of any required filing fees.

Section 6. Authorization to Further Public Purposes of Corporation. The City Council authorizes the Marlin 4-B Economic Development Corporation to act on the City's behalf to further the public purposes of the Corporation as set forth in this Resolution and the Certificate of Formation, subject, however, to the restrictions and approvals required by the Certificate of Formation.

Section 7. Effective Date. This Resolution shall become effective from and after the date of its passage in accordance with the Texas Local Government Code and the City Charter.

Section 8. Open Meetings. That the City Council has found and determined that the meeting at which this Resolution is considered is open to the public and that notice thereof was given in accordance with the provisions of the Texas Open Meetings Act, Texas Government Code, Chapter 551, as amended, and that a quorum of the City Council was present.

RESOLUTION PASSED AND APPROVED on this the 8 th day of February, 2022

ATTEST:

CITY OF MARLIN, TEXAS


Maryann Waddle, City Secretary

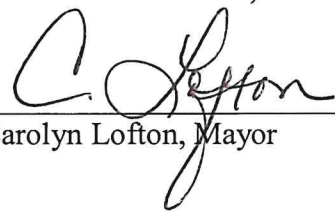

Carolyn Lofton, Mayor

EXHIBIT "A"

CERTIFICATE OF FORMATION

OF

THE MARLIN 4-B ECONOMIC DEVELOPMENT CORPORATION

ARTICLE 1 — ENTITY NAME AND TYPE

The name of the Corporation is the Marlin 4-B Economic Development Corporation, a Texas Non-profit Corporation (the "Corporation").

ARTICLE 2 — AUTHORIZATION

This Corporation is a Type B Corporation. The Corporation is a nonprofit corporation. The Corporation is an economic development corporation governed by Chapter 505, Type B Corporations, of the Texas Local Government Code.

ARTICLE 3 — DURATION

The period of the Corporation's duration is perpetual.

ARTICLE 4 — PURPOSE AND LIMITATIONS

The purpose of the corporation is to promote economic development within the City of Marlin in order to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for, and on behalf of the City of Marlin by developing, purchasing, leasing, implementing, providing, and financing Projects under the Act and as "Projects" is defined in Chapter 505 of the Texas Local Government Code. The Corporation may exercise all rights and powers with respect to a Project as are allowed by law and the Act.

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ARTICLE 5 — FINANCING

(a) In the exercise of the powers of the Corporation may issue bonds and/or enter into any loans, lease, trust, or other agreement authorized by the Act that is necessary or convenient for the fulfillment of the public purpose of the Corporation. All of such agreements, and the specific uses and methods of withdrawal and expenditure of the proceeds of the bonds, notes, or other debt instruments proposed to be issued by the corporation, will be stated and described in the proceedings authorizing such agreements or the bonds, notes, or other debt instruments, and must be included as a part of the approval process of the City Council of the City of Marlin (the “City Council”) as required below for contracts and expenditures in connection with the issuance of its obligations, the corporation will select bond counsel and financial advisors acceptable to the City Council.

(b) In the exercise of the powers of the Corporation, the corporation may not issue bonds or 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 interest in any property owned by the City of Marlin. Any agreement entered into by the Corporation must contain language substantially to the effect that any grant, conveyance, transfer, mortgage, encumbrance, pledge or assignment of property owned by the City of Marlin is prohibited

ARTICLE 6—MEMBERS

The Corporation has no members and is a nonstock corporation.

ARTICLE 7—CONTRACTS AND EXPENDITURES

All contracts of the Corporation must be approved by the City Council before the contract is executed by the officers of the Corporation. After a contract is approved by the City Council, expenditures made in accordance with the terms of that contract do not require additional City

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Council approval. Expenditures of the Corporation unrelated to approved contracts require City Council approval before the expenditure is made by the Corporation.

ARTICLE 8—AMENDMENTS TO THE CERTIFICATE OF FORMATION

This Certificate of Formation may be amended or restated at any time as provided in the Act. Any amendment or reinstatement may only be accomplished in either of the following manner:

(a) The members of the Board may file with the City Council a written application requesting approval of amendments to the Certificate of Formation, specifying the amendments proposed to be made. The City Council shall consider the application and, if it determines that it is advisable that the proposed amendments be made and approves the proposed amendments by resolution, then the Board may amend the Certificate of formation by adopting the approved amendments at a meeting of the Board and delivering the Certificate of Formation or restatement to the Secretary of State.

(b) The City 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 the Constitution and laws of the State of Texas and the United States of America on the impairment of contracts entered into by the Corporation). The City Council may, at its sole discretion take such action by written resolution adopting the amendment or restatement of the Certificate of Formation, or by the adoption of a Certificate of Termination at a meeting of the City Council, and delivering the certificate of amendment, restatement, or termination to the Secretary of State, as provided in the Act.

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ARTICLE 9 — REGISTERED ADDRESS AND REGISTERED AGENT

The street address of the initial registered office of the Corporation is 101 Fortune Street, Marlin, Texas 76661, and the name of its initial registered agent at such address is Cedric Davis.

ARTICLE 10 — BOARD OF DIRECTORS

(a) All powers of the Corporation shall be vested in, and the affairs of the Corporation will be managed by, a board of directors (the "Board") which will be composed of seven (7) persons appointed by the City Council of the City for a two (2) year term of office each. Places 1, 3, 5, and 7 will be appointed in even numbered years and places 2, 4, and 6 will be appointed in odd-numbered years. Terms begin on January 1 of each year.

(b) Each director must be a resident of the City, at least three of the directors must not be employees or officers of the City of City of Marlin, or members of the City Council. A majority of the then current membership of the Board constitutes a quorum. The Board will conduct all meetings within the boundaries of the City and in accordance with the Act.

(c) The names and addresses of the persons who are to serve as the initial Board of Directors, and the dates of expiration of their initial terms as directors, are as follows:

Place	Names	Addresses	Term Expires
1.	John Barrett	433 Agnes Ave. Marlin, TX	12/31/23
2.	Kathleen Barrett	433 Agnes Ave. Marlin, TX	12/31/22
3.	Wannika Muhammed	912 E. Calhoun Waco, TX	12/31/23
4.	Chuck Whisenand	784 Westwood Dr. Marlin, TX	12/31/22
5.	Lottie Lofton	821 Lucas St. Marlin, TX	12/31/23
6.	Hermetta Paul	303 Durr St. Marlin, TX	12/31/22
7.	Rhonda Milton	906 Capps St. Marlin, TX	12/31/23

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Each director must be a qualified voter of the City of Marlin. Each director, including each initial director, is eligible for reappointment. Directors are removable by the City Council at any time without cause.

(d) The directors will serve without compensation, but directors will be reimbursed for their actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the Board will be filled by appointment by the City Council of a person who will hold such position until the expiration of the term. A director who is a member of the City Council will cease to be a director upon ceasing to be a member of the City Council. The directors will elect a president, vice-president, secretary, and treasurer of the Corporation, as more specifically provided in the Corporation's bylaws and the Act. The term of office for each officer will be for a period of one (1) year, expiring on the 31st day of December of each year.

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

ARTICLE 11 — NON-PROFIT PURPOSE

No dividends shall ever be paid by the Corporation and no part of its net income or earnings shall inure to the benefit or be distributable to any director, officer, or other private person, except for the retirement of indebtedness and for the purposes authorized by the Act; provided that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes as set forth in these Articles; and provided that, in the event the Board of Directors of the Corporation shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other

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obligations of the Corporation issued to finance its public purposes, then, in that event, any net earnings of the Corporation thereafter accruing may be paid to the City.

ARTICLE 12 — CITY COUNCIL APPROVAL

The City Council for the City of Marlin has specifically authorized the Corporation by Resolution to act on the City's behalf to further the public purpose of the Corporation as stated in the Resolution and this Certificate of Formation. By the same Resolution, the City Council has approved of this Certificate of Formation. A copy of the authorizing Resolution is attached to this Certificate of Formation and is made part of them for all purposes.

ARTICLE 13 — RESTRICTIONS

(a) No dividends shall ever be paid by the corporation and no part of its net earnings remaining after payment of its expenses shall be distributed to or inure to the benefit of its director or officers of the Corporation or any individual, firm, corporation, or association.

(b) No substantial part of the Corporation's activities shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and it shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

(c) The Corporation shall not discriminate against any person because of race, creed, color, nationality, sex, or place of origin.

(d) The Corporation shall not engage in any activities that are unlawful under applicable federal, state, or local laws.

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ARTICLE 14 — DISSOLUTION AND MANNER OF DISTRIBUTION

Upon dissolution of the Corporation the Board of Directors shall, subject to the directions of the governing body and after paying or making provision for the payment of all liabilities, dispose of all the assets of the Corporation for and consistent with the purposes of the Corporation, and in such manner or to such organization or organizations organized and operated exclusively for purposes as shall at that time qualify as an exempt organization or organizations under the Internal Revenue Code of 1986, or corresponding provisions of subsequent federal laws. Subject to the foregoing, such disposition shall be in the discretion of the Board of Directors acting with the approval and consent of the City Council. Save and except as specifically and lawfully authorized by a majority vote of the governing body, and absent such specific authorization otherwise, the Board of Directors shall, after making provision for the satisfaction of all debts, liabilities, and claims, transfer all the remaining assets of the Corporation to the City.

ARTICLE 15 — ORGANIZER

The name and address of the organizer is:

<u>Name</u>	<u>Address</u>
Cedric Davis	101 Fortune Street Marlin, Texas 76661

ARTICLE 16 — NO DIRECTOR LIABILITY

To the fullest extent allowed by law, a director of the Corporation shall not be personally liable to the Corporation for monetary damages for any act or omission in his capacity as a director, except to the extent otherwise expressly provided by a statute of the State of Texas. Any repeal or modification of this Article shall be prospective only and shall not adversely affect any limitation of the personal liability of a director of the Corporation existing at the time of the

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repeal or modification.

ARTICLE 17 — DIRECTOR INDEMNIFICATION

Each person who acts as a director of the Corporation shall be indemnified by the corporation, and such indemnity shall be mandatory, to the fullest extent allowed by law, including without limitation as provided for by the Act, any costs, expenses and liabilities which may be imposed upon or reasonably incurred by the director in connection with any civil or criminal action, suit, or proceeding in which he may be named as a party defendant by reason of him or her being or having been such a director or by any reason of any action alleged to have been taken or omitted by him or her in such capacity, and any person who, at the request of the Corporation, acts as a director of any of its subsidiary or affiliate corporations shall likewise be indemnified by the Corporation against any such costs, expenses, and liabilities. The right of indemnification herein provided for shall inure to each of the directors of the Corporation, whether or not the respective director is acting as such at the time such costs, expenses, or liabilities are imposed or incurred. Any repeal or modification of this Article shall be prospective only, and shall not limit the obligation of the corporation to indemnify a director of the corporation serving at or prior to the time of the repeal or modification

ARTICLE 18 — EFFECTIVE DATE OF FILING

This certificate of formation becomes effective when the document is filed by the Texas Secretary of State.

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ARTICLE 19 — 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.

Date: February 8, 2022



Cedric Davis