

FINANCING/USE AGREEMENT

This Financing/Use Agreement (this *Financing/Use Agreement*) is made to be effective as of September 21, 2023, by and between the City of Joshua, Texas (the *City*), a duly incorporated and existing municipal corporation, home rule municipality, and political subdivision of the State of Texas and Joshua 4B Economic Development Corporation (the *Corporation*), a non-profit development corporation organized and existing under the laws of the State of Texas, including The Development Corporation Act of 1979, as amended, Article 5190.6, Vernon's Annotated Texas Civil Statutes, now codified as Chapter 505, Texas Local Government Code, as amended and to the extent applicable, Chapter 501, Texas Local Government Code, as amended (collectively, the *Act*).

R E C I T A L S

WHEREAS, the Corporation in cooperations with the City is to finance *Projects*, as defined in the Act (and with respect to such projects, associated *Costs*), including (1) constructing, acquiring, purchasing, renovating, enlarging, and improving the City's parks and recreation facilities, (2) the purchase of materials, supplies, equipment, digital signage, machinery, landscaping, land, and rights-of-way for authorized needs and purposes relating to the aforementioned improvements; and (3) payment for professional services relating to the design, construction, project management, and financing of the aforementioned projects (collectively, the *Project*); and

WHEREAS, such financing contemplates the issuance and sale of debt obligations of the City in the principal amount of \$ _____, the proceeds of which sale are to be used by the City to finance the Project; and

WHEREAS, the City will own the Project and the Corporation will transfer lawfully available proceeds of the ½ of 1% Sales Tax (the *4B Sales Tax*) belonging to the Corporation to the City to pay all or a portion of the debt service on the Certificates; and

WHEREAS, under the current policies and procedures established by the Comptroller of Public Accounts of the State of Texas (the *Comptroller*) the 1.00% sales and use tax belonging to the City (the *City Sales Tax*) and the 4B Sales Tax belonging to the Corporation are collected, commingled, and remitted directly to the City in undivided interests and without allocations or notations of ownership as between the City and the Corporation; and

WHEREAS, in order to enhance the marketability of the proposed Certificates, it is appropriate and necessary that the City and the Corporation adopt formal procedures by which the City Sales Tax and the 4B Sales Tax are collected, deposited, held, identified, allocated, and transferred to or for the benefit of the City and Corporation, and

WHEREAS, this Financing/Use Agreement is intended to constitute an interlocal cooperative agreement as authorized pursuant to the provisions of Chapter 791, as amended, Texas Government Code, and the adoption of this Financing/Use Agreement is found and determined to be in the best interest of the citizens of the City and the Corporation.

A G R E E M E N T

SECTION 1: Duties of the City; Financing of the Project: For and in consideration of the Corporation's covenants and agreements herein contained and subject to the terms contained herein, the City hereby agrees to perform the following duties:

(1) The City will issue and sell a series of obligations to be known as "City of Joshua, Texas Combination Tax and Limited Pledge Revenue Certificates of Obligation, Series 2023" (the *Certificates*), and deposit the proceeds of sale of the Certificates to a construction fund or account to be designated by the City in the ordinance (the *Ordinance*) authorizing the issuance of the Certificates, and the City and the Corporation hereby agree and covenant that all proceeds of sale deposited to the credit of such construction fund or account are to be maintained at the City's depository bank and shall be used solely to pay the Costs of the Project or otherwise expended as provided in the Ordinance. The City shall be solely responsible for making the annual payments of principal and interest on this indebtedness pursuant to the terms and conditions for the issuance of the Certificates.

(2) The City will own the Project and is responsible for all aspects of the acquisition, construction, reconstruction, improvement, and expansion of the Project and in connection therewith and shall comply with applicable law relating to the construction of public works, including, without limitation, the provisions of Chapter 2253, as amended, Texas Government Code (pertaining to public works performance and payment bonds).

(3) Any 4B Sales Tax proceeds transferred by the Corporation to the City shall not be pledged to pay any indebtedness of the City in accordance with the provisions of Section 231.506, as amended, Texas Tax Code. Upon receipt of any 4B Sales Tax proceeds from the Corporation pursuant to the terms of this Financing/Use Agreement, the City shall deposit an equal amount of unencumbered funds to the Certificate Fund (as defined in the Ordinance) to pay on an annual basis the principal and interest payments on the Certificates when they become due.

SECTION 2: Duties of the Corporation. For and in consideration of the City's agreement to undertake the actions set forth in Section 1 hereof, the Corporation hereby agrees to perform the following duties:

(1) The Corporation will, subject to the determination of the Board of Directors of the Corporation that any and all Annual Obligations (hereinafter defined) have been provided for or otherwise satisfied, transfer to the City on an annual basis lawfully available 4B Sales Tax proceeds on or before February 1 of each year (the *Annual Transfer Obligation*) in accordance with the following schedule:

(the remainder of this page intentionally left blank.)

Year	Amounts (\$)
2024	
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
Total Amount	

In the event the City defeases, refunds, or otherwise modifies or extends the term or the amount of debt service payable on the Certificates in any year, the Corporation’s Annual Transfer Obligation shall continue in accordance with the the terms of this Financing/Use Agreement unless otherwise modified pursuant to Section 9 hereof.

The term *Annual Obligations* means all payment obligations of the Corporation coming due within a fiscal year, including (but not limited to) its administrative expenses, all debt service requirements on any indebtedness issued thereby, and any funding requirements for debt service reserve or other funds created in any resolution authorizing the issuance of any Corporation indebtedness. Accordingly, any transfer of 4B Sales Tax proceeds to the City by the Corporation to satisfy its Annual Transfer Obligation shall constitute the transfer of surplus 4B Sales Tax proceeds.

(2) In any year in which the Corporation’s 4B Sales Tax receipts are insufficient to fully satisfy both its Annual Obligations and Annual Transfer Obligation, the Corporation shall transfer to the City on or before February 1 of that year an amount equal to the sum of the Corporation’s 4B Sales Tax less the Corporation’s Annual Obligations, and the amount remaining to be paid in order to satisfy the Corporation’s Annual Transfer Obligation for that year shall carry over into the immediately succeeding year, constituting an Annual Transfer Obligation for that immediately succeeding year, and be paid in addition to any amount due and owing pursuant to this Financing/Use Agreement for that immediately succeeding year until the Total Amount shown in the schedule above has been transferred by the Corporation to the City.

SECTION 3: Limitation on Use of 4B Sales Tax Proceeds. The City and the Corporation expressly recognize and covenant that any 4B Sales Tax proceeds transferred to the City by the Corporation may only be expended to pay appropriate “costs” (as defined in Section 501.152 of the Act) of the Project, or to reimburse the City for the payment of appropriate “costs” of the Project as provided in the Act and applicable law.

SECTION 4: Use of the Project. Until all the Certificates have been fully paid, discharged and retired, the upkeep, operation, and maintenance of the Project will be the responsibility of the City with respect to the operation, upkeep, leasing, and maintenance of the Project; provided,

however, that the Corporation may utilize, or transfer to the City, authorized proceeds of the 4B Sales Tax to maintain and operate the Project, in accordance with the Act.

SECTION 5: Collection and Transfer of Undivided Sales Tax Receipts. The City hereby requires and orders that all remittances of commingled sales and use tax collections belonging to the City and the Corporation in undivided interests (the *Undivided Sales Tax Receipts*) shall be deposited as received, or transmitted by the Comptroller directly, to the depository account of the City held and maintained by the City at its official depository bank (the *Depository Bank*) designated from time to time by the City Council, and the City shall request the Comptroller to transmit such funds by the earliest available and feasible means under the policies of the Comptroller in effect from time to time.

Immediately upon receipt of the Undivided Sales Tax Receipts from the Comptroller, the City Manager, or his designee shall determine the share of the Undivided Sales Tax Receipts belonging to the Corporation, in accordance with the Act. Such person shall in writing certify the determined amount to the Depository Bank, and shall, by facsimile transmission provide a copy of such certification to the Corporation.

Within twenty-four hours, or during the next succeeding business day, whichever is later, after receipt, the Depository Bank, based in reliance upon such certification, shall transfer to the Corporation, in immediately available funds for deposit in the depository bank of the Corporation, the amount of Undivided Sales Tax Receipts so certified by such person constituting the 4B Sales Tax revenues.

The Depository Bank shall not have any responsibility to verify or determine the accuracy of the amounts certified to it from time to time according to this Section.

SECTION 6: Receipt and Transfer of 4B Sales Tax Proceeds. The Corporation agrees, in cooperation with the City, to take such actions as are required to cause the 4B Sales Tax revenues received from the Comptroller for and on behalf of the Corporation to be transferred and deposited immediately upon receipt by the Corporation to the credit of the banking or monetary fund maintained at the depository designated by the Corporation.

SECTION 7: Acceptance of Depository Responsibilities. The City Manager is authorized and directed to develop procedures pursuant to which the requirements of this Financing/Use Agreement are met, including the incorporation of this Financing/Use Agreement by the City into and as part of the bidding procedures by which the City designates and selects its Depository Bank or Banks from time to time.

Each Depository Bank, by its acceptance of its designation as depository of the City, agrees to abide by the terms and provisions of this Financing/Use Agreement.

All reasonable costs, if any, of the Depository Bank associated with the administration of the terms and provisions of this Financing/Use Agreement shall be paid for by the Corporation as an administrative expense and shall be paid by the Corporation upon receipt of statements therefor from the Depository Bank. Such costs, if any, shall never constitute a cost, liability, or obligation of the City.

SECTION 8: Effect of Agreement. The City and the Corporation acknowledge that the Certificates issued under the Ordinance will be purchased in reliance upon timely and diligent compliance with the terms and requirements of this Financing/Use Agreement.

SECTION 9: Amendments and Modifications. This Financing/Use Agreement shall be binding upon the City and the Corporation and their respective successors and legal representatives and shall inure solely to the benefit of the City and Corporation and their successors and legal representatives. Furthermore, no alteration, amendment, or modification of any provision of this Financing/Use Agreement shall be effective unless (i) prior written consent of such alteration, amendment, or modification shall have been obtained from the parties hereto, and (ii) such alteration amendment, or modification is in writing and signed by the parties hereto. The City and the Corporation may amend this Financing/Use Agreement to address the construction or financing of other projects (other than the hereinbefore defined Project) upon compliance with the provisions of the Act and applicable law.

SECTION 10: Entire Agreement. This Financing/Use Agreement contains the entire agreement between the parties pertaining to the subject matter hereof and fully supersedes all prior agreements and understandings between the parties pertaining to such subject matter.

SECTION 11: Counterparts. This Financing/Use Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same agreement. It shall be necessary to account for only one such counterpart in proving this Financing/Use Agreement.

SECTION 12: Severability. If a court of competent jurisdiction determines any provision of this Financing/Use Agreement is invalid or unenforceable, the remainder of this Financing/Use Agreement shall nonetheless remain in full force and effect.

SECTION 13: Applicable Law. This Financing/Use Agreement shall in all respects be governed by, and construed in accordance with, the substantive federal laws of the United States and the laws of the State of Texas.

SECTION 14: Captions. The section headings appearing in this Financing/Use Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

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IN WITNESS WHEREOF, the parties hereto have executed this Financing/Use Agreement to be effective as of the date and year first above written.

JOSHUA 4B ECONOMIC
DEVELOPMENT CORPORATION

President, Board of Directors

ATTEST:

Secretary, Board of Directors

(CORPORATION SEAL)

CITY OF JOSHUA, TEXAS

Mayor

ATTEST:

City Secretary

(CITY SEAL)