

RESOLUTION NO. 2012-011

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS APPROVING PROPOSED AMENDMENTS TO THE JOSHUA 4A ECONOMIC DEVELOPMENT CORPORATION'S CERTIFICATE OF FORMATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Joshua 4A Economic Development Corporation ("EDC") is a Texas non-profit corporation operating under the Development Corporation Act of 1979, codified in Subtitle C1 of Title 12 of the Texas Local Government Code, Chapters 501 through 505 (the "Act") and the Texas Non-Profit Corporation Act, as amended, and other applicable laws; and

WHEREAS, the EDC promotes economic development within the City of Joshua (the "City") to eliminate unemployment and underemployment, and to promote and encourage employment and the public welfare of, for and on behalf of the City by developing, implementing, providing, and financing projects under the Act; and

WHEREAS, as a result of the codification of the Act, the statutory description of a "4A" corporation has changed to a "Type A" corporation; and

WHEREAS, it is now necessary to change the name of the "Joshua 4A Economic Development Corporation" to the "Joshua Type A Economic Development Corporation" and to make other such amendments to the Certificate of Formation to reflect changes in the law as a result of the codification; and

WHEREAS, the EDC Certificate of Formation as currently written provides for only five (5) Directors; and

WHEREAS, the City Council and EDC Board desire to provide for two (2) additional Directors and two (2) alternate directors to better serve the citizens of Joshua; and

WHEREAS, neither the EDC Certificate of Formation, nor the EDC Bylaws, nor the Act limit the power of the Board of Directors to amend the Certificate of Formation by providing for two (2) additional Directors and two (2) alternate directors via passage of this Resolution; and

WHEREAS, pursuant to Article VII of the EDC Certificate of Formation, the EDC Board is seeking the consent and approval of the City Council regarding the proposed amendments to the Certificate of Formation.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JOSHUA, TEXAS, THAT:

SECTION 1.

The proposed amendments to the Joshua 4A Economic Development Corporation ("EDC") Certificate of Formation, attached hereto as Exhibit "A", have been reviewed by the City Council of the City of Joshua, and found to be acceptable and in the best interest of the City of Joshua and its citizens, and is hereby in all things approved.

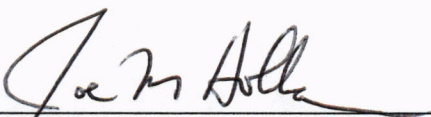
SECTION 2.

The EDC is hereby authorized to adopt the proposed amendments to the Certificate of Formation and file the amended Certificate of Formation with the Secretary of State, as required by the Development Corporation Act.

SECTION 3.

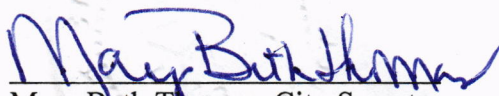
This Resolution shall become effective from and after its passage.

PASSED, APPROVED, AND EFFECTIVE THIS THE 18th DAY OF October, 2012.



Joe Hollarn, Mayor

ATTEST:



Mary Beth Thomas, City Secretary

**CERTIFICATE OF AMENDMENT
OF
JOSHUA 4A ECONOMIC DEVELOPMENT CORPORATION**

ENTITY INFORMATION:

The name of the entity is JOSHUA 4A ECONOMIC DEVELOPMENT CORPORATION. The date of formation of the entity is July 23, 2001 and the file number issued to the filing entity by the Secretary of State is 800011177. The entity is a nonprofit corporation organized under the Development Corporation Act of 1979, as amended, Title 12, Subtitle C1 of the Texas Local Government Code.

AMENDMENTS:

Delete the following provision from the certificate of formation:

“**WE, THE UNDERSIGNED**, natural persons, not less than three in number, each of whom is at least 18 years of age, and each of whom is a qualified voter of the City of Joshua, Texas, a municipal corporation established under the Texas Constitution, acting as incorporators of a public instrumentality and nonprofit development corporation (the “Corporation”) under the Development Corporation Act of 1979 (the “Act”), as amended, Article 5190.6 Section 4A, Vernon’s Texas Civil Statutes, with the approval of the City Council (the “Council”) of the City of Joshua, Texas (the “City”) as evidence by the Resolution attached as Attachment “A” and made a part of these Articles for all purposes, do hereby adopt the following Articles of Incorporation.”

Alter each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

ARTICLE I.
NAME

The name of the entity is JOSHUA TYPE A ECONOMIC DEVELOPMENT CORPORATION.

ARTICLE II.
AUTHORIZATION

The entity is a nonprofit economic development corporation (“Corporation”) created by the City of Joshua, Texas (“City”) pursuant to Section 504.003 of the Texas Local Government Code (“Code”) and is authorized to exist by the Texas legislature pursuant to the Development Corporation Act of 1979 (“Act”), as amended, Title 12, Subtitle C1 of the Code.

ARTICLE III.
DURATION

The period of the Corporation is perpetual.

ARTICLE IV.
PURPOSE, POWERS AND LIMITATIONS

- (a) The purpose of the Corporation is to promote economic development within the City and the State of Texas in order to eliminate unemployment and underemployment and to promote and encourage employment and the public welfare of the City by developing, implementing, providing and financing projects as defined in the Act.
- (b) In the fulfillment of its corporate purpose, the Corporation shall have the power to provide financing to pay the costs of projects through the issuance or execution of bonds, notes and other forms of debt instruments, and to acquire, maintain, lease and sell property and interests of property on behalf of and for the benefit of the City to accomplish its public purposes under the Act and within the meaning of the Internal Revenue Code of 1986, as amended, and any applicable federal income tax regulations promulgated thereunder.
- (c) In fulfillment of its corporate purpose, the Corporation shall have all of the powers granted by this Certificate of Formation, the Act and any other applicable law of the State of Texas.
- (d) The Corporation shall not exercise the powers of sovereignty of the City, including the power to levy taxes, except for the power to receive and use the sales and use taxes specified in the Act, and except for the power of eminent domain when authorized by the City Council of the City. However, the Corporation shall be deemed a governmental unit and its functions governmental for purposes of the Texas Tort Claims Act, Chapter 101, Texas Civil Practice and Remedies Code.
- (e) No bonds may be issued by the Corporation and no project may be financed with bond proceeds or other revenue of the Corporation unless the bonds or projects are first approved by the City Council.
- (f) No bonds, notes or other debt instruments or obligations, contracts or agreements of the Corporation shall be deemed to be or constitute the contracts, agreements, bonds, notes or other debt instruments or the lending of credit or grant of public money or thing of value of, belonging to, or by the State of Texas, the City or any other governmental entity or a pledge of the faith and credit of any of them. Any and all such obligations shall be payable solely and exclusively from the revenues and funds received by the Corporation from the sources authorized by the Act and any other lawfully available source.

ARTICLE V.
CONTRACTS AND EXPENDITURES

All contracts of the Corporation must be approved by the City Council of the City before such contracts are executed by an officer of the Corporation. After a contract of the Corporation is approved by the City Council of the City, all expenditures authorized by such contract may be made in accordance with the terms of the Contract without additional approval by the City Council of the City. Other expenditures of the Corporation require City Council approval before the expenditure is made. All programs and projects of the Corporation shall be subject to approval of the City Council. The City shall annually review the financial statements of the Corporation and shall at all times have access to the books and records of the Corporation.

ARTICLE VII.
AMENDMENTS

This Certificate of Formation may be amended or restated at any time as provided in the Act in accordance with the following procedures:

- (1) The board of directors of the Corporation may file with the City Council of the City a written application requesting approval of the proposed amendments to or restatement of the Certificate of Formation. If after consideration of the proposed amendments or restatement, the City Council approves such proposed amendments or restatement by a resolution, the board of directors of the Corporation may adopt the proposed amendments or restatement at a meeting of the board of directors and authorize the Certificate of Amendment or Restatement to be executed by the president or vice president of the Corporation and by the secretary or assistant secretary of the Corporation or by the Mayor of the City and by the City Secretary of the City; or
- (2) The City Council of the City may, at its sole discretion and at any time, amend or restate this Certificate of Formation by adopting a resolution and filing an Amended or Restated Certificate of Formation with the Secretary of State as required by the Act and may thereby 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 any limitations provided by the constitutions of the State of Texas or the United States of America).

ARTICLE VIII.
NAME AND ADDRESS OF REGISTERED AGENT

The name and address of the registered agent of the Corporation is Paulette Hartman, 101 S. Main Street, Joshua, Texas 76058.

ARTICLE IX.
BOARD OF DIRECTORS

- (a) The affairs of the Corporation shall be managed by a board of directors which shall be composed of seven (7) persons appointed by the City Council for two-year terms of office. Places 1, 3, 5, and 7 shall be appointed in odd-numbered years and Places 2, 4, and 6 shall be appointed in even-numbered years. Two (2) alternate directors shall also be appointed in odd numbered years for two-year terms. Alternate directors shall meet all qualifications of regular directors imposed by law, ordinance or resolution and shall serve only in the absence of a regular director, at the request of the presiding officer. Terms begin July 1 of each year.
- (b) Each director must be a resident of Johnson County. A majority of the entire membership of the board, including any vacancies, is a quorum. Each director shall be eligible for reappointment. Directors may be removed by the City Council at any time without cause.
- (c) The names and addresses of the directors and the dates of expiration of their terms are as follows:

Place 1: Gayle Luck
 101 S. Main Street
 Joshua, Texas 76058
 Term Expires: June 1, 2013

Place 2: Jeremy Quinn
 101 S. Main Street
 Joshua, Texas 76058
 Term Expires: June 1, 2014

Place 3: Ken Kepple
 101 S. Main Street
 Joshua, Texas 76058
 Term Expires: June 1, 2014

Place 4: Linda Gilmore Childers
 101 S. Main Street
 Joshua, Texas 76058
 Term Expires: June 1, 2014

Place 5: Daron M. Beck
 101 S. Main Street
 Joshua, Texas 76058
 Term Expires: June 1, 2013

Place 6: Barry H. Lynas
101 S. Main Street
Joshua, Texas 76058
Term Expires: June 1, 2014

Place 7: Brent Gibson
101 S. Main Street
Joshua, Texas 76058
Term Expires: June 1, 2013

- (d) The directors shall serve without compensation but, they shall be reimbursed for their actual expenses incurred in the performance of their duties as directors. Any vacancy occurring on the board of directors shall be filled by appointment of the City Council of a person who shall hold the office for the remainder of the unexpired term of the vacated place. Any director who is a member of the City Council shall cease to be a director at the moment the director is no longer a member of the City Council. The directors shall elect from among them a president, vice president, secretary/treasurer of the Corporation. The term of the president and vice president shall be for one year expiring on July 1 of each year.
- (e) Meetings of the board of directors are subject to the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and the Corporation is subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code.

ARTICLE XI. BYLAWS

- (a) The bylaws of the Corporation shall be in the form and substance approved by the City Council by resolution. Such bylaws shall be adopted by the board of directors of the Corporation and shall, together with this Certificate of Formation, govern the internal affairs of the Corporation.
- (b) The bylaws may not be amended except with the consent and approval of the City Council by resolution. The board of directors of the Corporation may make application to the City Council for the approval of any proposed amendments to the bylaws, or the City Council may take action to amend the bylaws on its own initiative.

ARTICLE XII. DISSOLUTION

- (a) The City Council may, in its sole discretion, and at any time, dissolve the Corporation subject to the provisions of this Article.

- (b) The Corporation shall not be dissolved and its business shall not be terminated by the City Council so long as the Corporation shall be obligated to pay any bonds, notes or other obligations and unless the collection of the sales and use tax authorized by the Act is eligible for termination in accordance with the provisions of the Act.
- (c) No action shall be taken by the City Council to dissolve the Corporation if such action would impair any contract, lease, right or other obligation theretofore executed, granted or incurred by the Corporation.

STATEMENT OF APPROVAL:

The City Council of the City has specifically authorized the Corporation by resolution dated Oct. 18, 2012 to approve this Certificate of Amendment. A copy of said resolution is on file with the City Secretary of the City and with the Corporation.

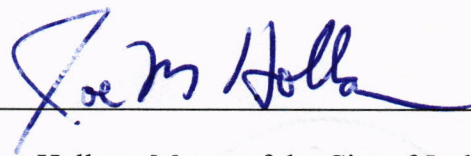
EFFECTIVENESS OF FILING:

This document becomes effective on the issuance of the certificate evidencing the filing of this certificate of amendment.

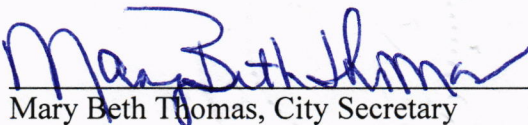
EXECUTION:

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 under the provisions of law governing the entity to execute the filing instrument.

Date: October 18, 2012



Joe Hollarn, Mayor of the City of Joshua



Mary Beth Thomas, City Secretary

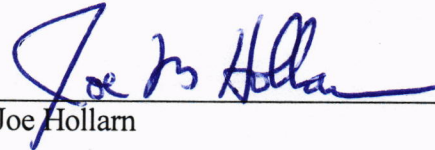
VERIFICATION

STATE OF TEXAS

§
§
§

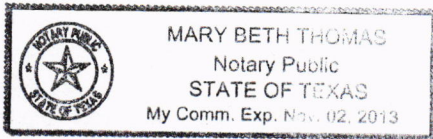
COUNTY OF JOHNSON


Before me, the undersigned Notary Public, on this day personally appeared JOE HOLLARN, who being by me duly sworn, stated upon his oath that he is the Mayor of the City of Joshua, Texas; that he is authorized to execute this Certificate of Amendment on behalf of the Corporation; that he has read the above and foregoing; and that every material statement contained herein is true and correct, to the best of his knowledge and belief.



Joe Hollarn

SUBSCRIBED AND SWORN TO BEFORE ME this 18th day of Oct., 2012.





NOTARY PUBLIC, in and for the
State of Texas