

**COST PARTICIPATION AGREEMENT BETWEEN
JOHNSON COUNTY SPECIAL UTILITY DISTRICT AND THE
CITY OF JOSHUA, TEXAS**

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

THIS AGREEMENT is made and entered into by and between the City of Joshua, hereinafter referred to as the "City," and Johnson County Special Utility District, hereinafter referred to as "JCSUD."

WHEREAS, the City is engaged in participating in the JCSUD project in the City of Joshua, Johnson County, Texas, commonly known as the 16-inch Joshua Main Street project (the "Project"); and

WHEREAS, JCSUD is a political subdivision of the State of Texas, as authorized by Article XVI, Section 59 of the Texas Constitution, and the laws of the state, and owns and operates a water facilities system that supplies potable water for human consumption and other domestic uses to customers within its defined service area; and

WHEREAS, the City is a home-rule city acting under its charter adopted pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code, as amended.

THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That for and in consideration for the mutual promises hereinafter expressed, and other good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the City and JCSUD hereby agree as follows:

1. The City agrees to participate financially in the Project according to the agreed-upon methodology. The cost of the 16-inch Joshua Main Street project from the elevated storage tank on Main Street to the intersection of SH 174 (Broadway) and Main Street will be split 50% to each entity. Further, the Parties acknowledge that the Project will enhance economic development opportunities in the City and therefore, the Parties agree that the apportionment of Project costs to future end users of the services contemplated by this Agreement will be based upon a mutually agreeable formula between JCSUD and the City for such apportionment of costs.
2. Based on the actual bid price of \$3,489,256, the City will participate in an amount not to exceed \$1,750,000.
3. The City will issue payment to JCSUD as follows:
 - a. 25% of the actual bid price (\$872,314) will be submitted to JCSUD prior to the start of construction, as set in the pre-construction meeting with the contractor.
 - b. Prior to JCSUD issuing a Final Letter of Completion, all participation amounts shall be paid in full, not to exceed \$1,750,000.
4. Effect of Force Majeure.
In the event either party is rendered unable by force majeure to carry out any of its obligations under this Agreement, in whole or in part, then the obligations of that party, to the extent affected by the force majeure event, shall be suspended during the continuance of the inability; provided, however, that due diligence is exercised to resume performance at the earliest practical time. As

soon as reasonably possible after the occurrence of the force majeure event relied upon to suspend performance, the party whose contractual obligations are affected thereby shall give notice with full details of the force majeure event to the other party. The cause, as far as possible, shall be remedied with all reasonable diligence. The term "force majeure" includes acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, orders of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and civil disturbances, explosions, breakage, or accidents to equipment, pipelines, or canals, partial or complete failure of water supply, unreasonable supply chain delays caused by a pandemic or other uncontrollable forces and any other inability of either party, whether similar to those enumerated or otherwise, that are not within the control of the party claiming the inability and that could not have been avoided by the exercise of due diligence and care. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party if the settlement is unfavorable to it in the judgment of the party having the difficulty.

5. Notices.

Any notice to be given hereunder by either party to the other party shall be in writing and may be affected by personal delivery or by sending said notices by registered or certified mail, return receipt requested, to the address set forth below. Notice shall be deemed given when deposited with the United States Postal Service with sufficient postage affixed.

Any notice mailed to JCSUD shall be addressed:

Peter Kampfer, General Manager
Johnson County Special Utility District
P.O. Box 1390
Joshua, TX 76058

Any notice mailed to the City shall be addressed:

Mike Peacock, City Manager
The City of Joshua
101 South Main Street
Joshua, TX 76058

Either party may change the address for notice to it by giving written notice of such change in accordance with the provisions of this paragraph.

6. Rights-of-Way/Easements.

JCSUD hereby acknowledges that there is existing rights-of-way and/or easements for the construction of the Project. In the event that JCSUD has not acquired or otherwise obtained sufficient rights-of-way and/or easements for the construction of the Project, JCSUD shall be responsible for the costs of acquisition of sufficient right-of-way and/or easements for the construction of the Project.

7. Authority to Execute.

The Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. JCSUD warrants and represents that the individual executing this Agreement on behalf of JCSUD has full authority to execute this Agreement and bind JCSUD to the same.

8. Mediation.

In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation.

9. Miscellaneous Drafting Provisions.

This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

10. No Third Party Beneficiaries.

Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the Parties do not intend to create any third party beneficiaries by entering into this Agreement.

11. Applicability of City Ordinances.

The signatories hereto shall be subject to all applicable construction ordinances of the City, whether now existing or in the future arising.

12. Severability.

The provisions of this Agreement are severable, and if any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to other persons or circumstances shall not be affected thereby, and this Agreement shall be construed as if such invalid or unconstitutional portion had never been contained therein.

13. Entire Agreement.

This Agreement, including any exhibits attached hereto and made a part hereof, constitutes the entire Agreement between the parties relative to the subject matter of this Agreement. All prior agreements, covenants, representations, or warranties, whether oral or in writing, between the parties are merged herein.

14. Amendment.

No amendment of this Agreement shall be effective unless and until it is duly approved by each party and reduced to a written signed by the authorized representatives of JCSUD and the City, respectively, which amendment shall incorporate this Agreement in every particular not otherwise changed by the amendment.

15. Governing Law.

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties are expressly deemed performable in Johnson County, Texas, and shall be construed as though jointly drafted by both parties.

16. Venue.

Venue for any suit arising hereunder shall be in Johnson County, Texas.

17. Successors and Assigns.

This Agreement shall be binding on and shall inure to the benefit of the heirs, successors, and assigns of the parties.

18. Assignability.

The rights and obligations of the City hereunder may not be assigned without the prior written consent of JCSUD. The rights and obligations of the City hereunder may be assigned to the United States Department of Agriculture, Rural Development, or any other successor agency without the prior consent of JCSUD.

19. Effective Date.

This Agreement shall be effective from and after the date of due execution by all parties.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative in multiple copies, each of equal dignity, on the date or dates indicated below.

Executed this _____ day of _____, 2022.

JOHNSON COUNTY SPECIAL UTILITY DISTRICT:

by Peter Kampfer, General Manager

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

THIS AGREEMENT was acknowledged before me by Peter Kampfer on this _____
day of _____, 2022.

Notary Public in and for the State of Texas

CITY OF JOSHUA, TEXAS:

by Mike Peacock, City Manager

THE STATE OF TEXAS §

COUNTY OF JOHNSON §

THIS AGREEMENT was acknowledged before me by Mike Peacock on this _____
day of _____, 2022.

Notary Public in and for the State of Texas