

NO ARBITRAGE AND TAX CERTIFICATE

This Certificate is given for the benefit of all persons interested in the Joshua Economic Development Corporation Series 2022 Note (the “Issue” or the “Note”). There are sections herein dealing with:

1. The Issue
2. Proceeds of the Issue and How They Are Used
3. Issue Not “Private Activity Bonds”
4. General Restrictions on Tax-exempt Bonds
5. Issue Not Arbitrage Bonds
6. Rebate
7. Miscellaneous

The Issue is being issued by Joshua Type A Economic Development Corporation, the “Issuer.” The Issuer is a Texas Economic Development Corporation, corporation created under Chapter 504 of the *Texas Local Government Code* (formerly Article 5190.6, Section 4A, Texas Rev. Civ. Stat.).

The Issuer is a duly constituted authority acting on behalf of the City of Joshua, Texas, for purposes of federal tax law related to the issuance of tax exempt bonds pursuant to Revenue Ruling 57-187. Reference is made to the following chart which shows the requirements of Revenue Ruling 57-187, and those provisions of the *Texas Local Government Code* regarding the Issuer which meet such requirements:

57-187 requires:

Governmental body approving incorporation	504.003
Specific law, not just nonprofit act	Chpt. 504
Board elected by governmental body	504.051(b)
General “project” powers	504.151
City not liable on debt	501.207
Both the board and its bonds are exempt from state tax	501.075
Nonprofit	501.053(a)
No earnings inure to any private person	501.053
Property to city on dissolution	504.354

The Issuer hereby certifies that the following are its reasonable expectations as of the Issue date of the Issue regarding the amount and use of the gross proceeds of the issue. The section on “Rebate” is not based on reasonable expectations but on the actual facts that occur with regard to the Issue, and is included solely to help the Issuer determine its rebate liability, if any.

1. What is the Issue?

(a) The Issue is not to be aggregated with any other issue. There is no other issue of obligations being sold at substantially the same time, pursuant to the same plan of financing, and reasonably expected to be payable from substantially the same source of funds. [Reg. 1.150-1(c)]

(b) No other issue of obligations will be, or has been, sold by the Issuer within fifteen (15) days of the date of sale of the Issue. [Reg. 1.150-1(c)(i)]

2. Proceeds of the Issue and How They Are Used.

(a) The following are the proceeds of the issue:¹

(1)	Sale Proceeds [Reg. 1.148-1(b)]	\$1,393,461.00
(2)	Investment Proceeds [Reg. 1.148-1(b)]	\$0
(3)	Transferred Proceeds [Reg. 1.148-1(b)]	\$0
(4)	Replacement Proceeds [Reg. 1.148-1(c)]	\$0

“Replacement proceeds” are included in determining “gross proceeds.”

(b) The proceeds are to be used as follows:

(1) \$0.00 is to be used to pay costs of issuance.

(2) \$0 of the proceeds are to be deposited into a bona fide debt service fund. Payments of the Issue shall be used to achieve a proper matching of such payment with principal and interest payments due on the Issue during each year, to be depleted at least once each bond year except for a reasonable carryover amount not to exceed the greater of (i) the earnings on such fund for the immediately preceding bond year or (ii) 1/12th of the principal and interest payments on the issue for the immediately preceding bond year. [Reg. 1.148-1(b)]

(3) \$0 is to be placed in a reserve fund, reasonably expected to be used directly or indirectly to pay principal or interest on the issue. [Reg. 1.148-1(c)(2)] [There is no reserve fund.]

(4) \$1,393,461.00 is to be used to purchase certain real property (the “Project”) in the City of Joshua, Texas (the “City”).

¹As further defined in Section 5(d) hereof.

The amounts received from the sale of the Issue or from the investment thereof do not exceed the anticipated costs of acquiring the Project, and the costs of issuing the Issue.

3. Issue Not a Private Activity Bond. The project financed with the proceeds of the note will be owned and operated by the Issuer. The sole users of the proceeds of the Issue will be the Issuer, the City and members of the public. There is no management contract for the Project and the City will manage the Project. No person has any obligation whatsoever in regard to repayment of the Issue other than the Issuer. In particular:

(a) Not more than ten percent (10%) of the proceeds of the Issue are to be used for any private business use, being a trade or business carried on by any person other than a governmental unit. [Section 141(b)(1) and 141(b)(6)] For purpose of this section, any activity carried on by any person other than a natural person shall be treated as a trade or business. [Section 141(b)(6)(B)]

(b) The project is not being leased to anyone, or being occupied by anyone other than the Issuer.

(c) The payment of the principal of, or the interest on, more than ten percent (10%) of the proceeds of the Issue is not directly or indirectly secured by any interest in property used or to be used for any private business use, payments in respect of such property, or to be derived from payments (whether or not such payments are made to the Issuer) in respect of property, or borrowed money, used or to be used for a private business use. The payment of principal and interest shall be paid solely from the sales tax revenues of the Issuer. [Section 141(b)(2)]

(e) Not more than five percent (5%) of the proceeds of the Issue are to be used for any unrelated private business use, or any disproportionate business use. [Section 141(b)(3)]

(f) Not more than the lesser of (i) five percent (5%) of the proceeds of the Issue, or (ii) \$5,000,000 are being used to make loans to persons other than governmental units. [Section 141(c)]

(g) There is no private business that has a special legal entitlement to beneficial use of the Project (Reg. 1.141-3(b)(7)(i)).

(h) There is no special economic benefit derived by any private business from use of the Project (Reg. 1.141-3(b)(7)(ii)).

(Examples of special economic benefit include (i) a functional relationship or physical proximity of the Project to other private business use property; (ii) a small number of private businesses receiving the special economic benefit; and (iii) the cost of the Project being depreciable by a private business.)

(i) For the project, the amount of non-permitted private business use is anticipated to be 0%.

4. General Requirements Applicable to All Tax Exempt Obligations.

(a) The Issue is not required to be in registered form, being a Note which may only be sold to financial institutions and not sold or offered for sale to members of the general public. [Section 149(a)]

(b) The Issue is not federally guaranteed. In particular, (i) payment of the principal or interest with respect to such Issue is not guaranteed, either directly or indirectly, in whole or in part by the United States or any agency or instrumentality thereof; (ii) five percent (5%) or more of the proceeds of the Issue are not to be used in making loans the payment of principal or interest with respect to which are to be guaranteed in whole or in part by the United States or any agency or instrumentality thereof; and (iii) five percent (5%) or more of the proceeds of the Issue are not to be invested, directly or indirectly, in federally insured accounts. [Section 149(b)]

(c) The Issuer agrees to file the information reporting requirements (Form 8038-G) required by Section 149(e) no later than the 15th day of the second calendar month after the close of the calendar quarter in which the Issue are issued.

(d) The Issue is not “pooled financing bonds.” Not more than \$5,000,000 of the proceeds of the Issue are reasonably expected at the time of issuance to be used (or are intentionally used) directly or indirectly to make or finance loans to two or more ultimate borrowers. [Section 149(f)]

(e) The Issue is not a hedge bond. The Issuer reasonably expects that eighty-five percent (85%) of the spendable proceeds of the Issue will be used to carry out the governmental purposes of the Issue within the three (3) year period beginning on the date the Issue is issued, and not more than fifty percent (50%) of the proceeds of the issue are invested in non-purpose investments having a substantially guaranteed yield for four (4) years or more. [Section 149(g)]

5. Issue Not Arbitrage Bonds.

(a) Issue Price.

The “Issue price” of the Issue, being the price paid for the Issue in a privately placed sale is set forth on the Issue Price Certificate of Purchaser attached hereto as Exhibit A.

(b) Yield. The “yield” on the Issue, being the discount rate that, when used in computing the present value as of the issue date of all unconditionally payable payments of principal, interest and fees for qualified guarantees on the Issue, and amounts reasonably expected to be paid as fees for qualified guarantees on the Issue, produces an amount equal to the present value, using the same discount rate, of the aggregate issue price of the Bonds, of the issue as of the issue date is 4.900 per annum. [Reg. 1.148-4(a) and (b)]

(c) What Is “Materially Higher” Yield? The amount by which yield on the acquired obligations (i.e., those in which the gross proceeds of the Issue are invested) may exceed the yield on the Issue is 1/8th of one percent (1%). [Reg. 1.148-2(d)(2)(i)]. For replacement proceeds, “Materially higher” means 1/1000 of one percent (1%). [Reg. 1.148-2(d)(2)(ii)]

(d) What Are the “Gross Proceeds” Subject to Arbitrage Restriction? [Reg. 1.148-2(a)]

(1) Sale Proceeds of the Issue, being all amounts actually or constructively received from the sale of the Issue, including amounts used to pay costs of issuance and accrued interest are \$1,393,461.00. [Reg. 1.148-1(b)]

(2) Transferred Proceeds. This is not a refunding so there are no transferred proceeds. [Reg. 1.148-9]

(3) Investment Proceeds, being all amounts actually or constructively received from investing proceeds of an Issue, are estimated to be \$0 as the sale proceeds will be expended immediately for the purchase of the Project. [Reg. 1.148-1(b)]

(4) Replacement Proceeds, being amounts that have a sufficient direct nexus to the issue or the governmental purpose of the Issue to conclude that such amounts would have been used for the governmental purpose of the Issue if the Issue were not used or to be used for such purpose, are \$0. [Reg. 1.148-1(c)] Such amounts include all sinking funds, pledge funds or other such funds held by or derived from a “substantial beneficiary of the issue,” to the extent reasonably expected to be used, [Id.] for example:

(i) debt service funds (payments are only made on the Note when due)

(ii) redemption funds (none)

(iii) reserve funds (none)

(iv) funds which are pledged directly or indirectly to pay principal or interest on the issue. (none)

Mere availability or preliminary earmarking of amounts to fund the Project do not, in themselves, establish sufficient nexus to cause those amounts to be replacement proceeds.

There are no negative pledges related to the Issue. No amounts are pledged to pay principal or interest on the Issue and held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders of the Issue. [Reg. 1.148-1(c)(3)(ii)]

The Issue is not outstanding too long, thereby giving rise to “other replacement proceeds” under Reg. 1.148-1(c)(4). The weighted average maturity of the Issue does not exceed 120% of the average reasonably expected economic life of the Project.

(e) The Issuer hereby represents that none of the gross proceeds of the Issue are reasonably expected to be invested in materially higher yield “investment type property” other than as part of a reasonably required reserve or replacement fund or for a “Temporary Period” as defined below.

(1) Reserve Fund. [See Reg. 1.148-2(f)] There is no reserve fund for the Issue.

(2) Bona Fide Debt Service Fund. Payments on the Note will only be made when due.

(3) Proceeds of the Note will be used at closing to finance the purchase of the project.

(f) No Overissuance or Other Abusive Device. The Issuer certifies it has taken no action to enable it to exploit the difference between taxable and tax-exempt interest rates to obtain a material financial advantage, or to overburden the tax-exempt bond market. [Reg. 1.148-10(a)(2)] In particular, the Issuer has not issued a larger Issue, issued the Issue earlier, or allowed the Issue to stay outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Issue, based on all the facts and circumstances. [Reg. 1.148-10(a)(4)] The proceeds of the Bonds are not reasonably expected to exceed by more than a “minor portion” (the lesser of 5% of the sale proceeds or \$100,000) the amount necessary to accomplish the governmental purposes of the Issue. [Id.; Reg. 1.148-2(g)]

6. Rebate. To the extent required by applicable law, the Issuer agrees to rebate to the United States of America the excess of amounts earned on all non-purpose investments over the amounts that would have been earned if those investments had a yield equal to the yield on the Issue, plus any income attributable to such excess. [Section 148(f), Reg. 1.148-3(a) and (b)]

7. Miscellaneous.

(a) The Issuer is executing and delivering this Certificate pursuant to Sections 103 and 141 through 150 of the Internal Revenue Code of 1986 as amended to the date hereof, and Treasury Regulations Sections 1.103-13, 1.103-14, 1.103-15, 1.148-0 through 1.148-11, 1.149(d)-1, and 1.150-1 (the “Regs”). The Issuer hereby elects to apply the Regs to the Issue.

(b) This Certificate is based on the facts and estimates described herein in existence on this date, which is the date of delivery of the Issue against the payment by the initial purchasers thereof. On the basis of such facts and estimates, I expect that the future events described herein will occur. To the best of my knowledge and belief, the expectations set forth herein are reasonable.

(c) No receipts from the sale of the Issue or amounts received from the investment thereof will be used to pay the principal of or interest on any presently outstanding obligations of the Issuer other than the Issue.

(d) Approximately \$0 of the proceeds of the Note will be used to reimburse the Issuer for Project expenditures made by it from its own funds prior to the date hereof. With respect to such reimbursement, if any, the Issue adopted an official intent for the original expenditures (except possibly for “preliminary expenditures” as defined in section 1.150-2(f)(2) of the Regulations) not later than 60 days after payment of the original expenditures, and a copy of the Issuers official intent is attached to this No Arbitrage and Tax Certificate. Except for expenditures meeting the preliminary expenditures exception set forth in section 1.150-2(f)(2) of the Regulations, the Note is being issued and the reimbursement allocation is hereby being made not later than 18 months after the later of (i) the date the original expenditures were paid, or (ii) the date the Project is placed in service or abandoned. The original expenditures were capital expenditures, and in connection with this allocation, the Issuer has not employed any abusive arbitrage device under section 1.148-10 of the Regulations to avoid the arbitrage restrictions or to avoid restrictions under section 142 through 147 of the Code.

(e) The Issuer hereby designates the Issue as a bank qualified tax exempt obligation under Section 265 of the Code. The anticipated amount of tax exempt obligations to be issued during calendar year 2022 by the Issuer and the City of Joshua, Texas and its subordinate entities shall not exceed \$10,000,000.

JOSHUA TYPE A ECONOMIC DEVELOPMENT
CORPORATION
(THE “ISSUER”)

By: _____
Name: _____
Title: _____

DATE: _____, 2022

EXHIBIT A
ISSUE PRICE CERTIFICATE

\$1,393,461.00
JOSHUA TYPE A ECONOMIC DEVELOPMENT CORPORATION
SERIES 2022 NOTE

CERTIFICATE OF PINNACLE BANK

The undersigned, on behalf of Pinnacle Bank (the “Purchaser”), hereby certifies as set forth below with respect to the purchase of the above-captioned obligations (the “Note”).

1. ***Purchase of the Note.*** On the date of this certificate, the Purchaser is purchasing the Note for the amount of \$1,393,461.00. The Purchaser is not acting as an Underwriter with respect to the Note. The Purchaser has no present intention to sell, reoffer, or otherwise dispose of the Note (or any portion of the Note or any interest in the Note). The Purchaser has not contracted with any person pursuant to a written agreement to have such person participate in the initial sale of the Note and the Purchaser has not agreed with the Issuer pursuant to a written agreement to sell the Note to persons other than the Purchaser or a related party to the Purchaser.

2. ***Defined Terms.***

(a) ***Public*** means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(b) ***Underwriter*** means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Note to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Note to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Note to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the No Arbitrage and Tax Certificate and with respect to compliance with the federal income tax rules affecting the Note, and by Naman Howell Smith & Lee, bond counsel, in connection with rendering its opinion that the interest on the Note is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Note.

PINNACLE BANK, as Purchaser

By: _____

Name: _____

Dated: _____, 2022