

## **AGREEMENT REGARDING THE CONSTRUCTION OF IMPROVEMENTS**

This Agreement Regarding the Construction of Improvements (the “Agreement”) is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, between the City of Tomball, a State of Texas home rule municipality situated in Harris and Montgomery Counties (the “City”) and the Tomball Economic Development Corporation, a State of Texas Type B non-profit economic development corporation (the “Corporation”) (with the City and the Corporation each being a “Party” and together the “Parties”), and is entered into by each Party’s governing body through the execution of this Agreement by each Party’s duly authorized representative.

### **RECITALS**

**WHEREAS**, at an election held within the City on January 15, 1994, the voters approved a proposition authorizing the levy and collection of a sales and use tax within the City at the rate of one-half of one percent (0.5%) (the “Additional Sales Tax”) as authorized by the Development Corporation Act found in Chapters 501-505 of the Texas Local Government Code (the “Act”) for economic development purposes; and

**WHEREAS**, the Corporation was formed pursuant to the Act for the purpose, among others, of financing projects authorized by the Act, and pursuant to the provisions of the Act, the City collects the Additional Sales Tax and pays it to the Corporation; and

**WHEREAS**, the City has a population of less than twenty thousand (20,000); and

**WHEREAS**, having complied with the legal prerequisites for undertaking the following project under the Act, the Parties now wish to proceed with: alleyway enhancements, including the installation of entryway monuments and related features, lighting and electrical, and pavement and flatwork (collectively, the “Project”); and

**WHEREAS**, the Corporation hereby finds, determines, and declares that the Project is an authorized project of the Corporation under the Act that will promote or develop new or expanded business enterprises that create or retain primary jobs; and

**WHEREAS**, the Parties have determined that the most economical means of financing and managing the Project is for the City to be the entity to bid the Project and manage the construction and maintenance of the Project, and for the Corporation to be the entity that provides all funding to the City related to the costs of the Project; and

**WHEREAS**, the Corporation hereby finds that this Agreement is for the benefit of the Corporation and that all payments made hereunder are for authorized project costs under the Act; and

**WHEREAS**, the Parties hereby find, determine, and declare that the respective meetings of the City Council of the City (the “Council”) and the Board of Directors of the Corporation (the “Board”) at which this Agreement was approved, were open to the public and public notice of the time, place, and subject matter of the public business to be considered and acted upon at said

meeting, including this Agreement, was given, all as required by the applicable provisions of Chapter 551, Texas Government Code, as amended.; and **NOW THEREFORE,**

**FOR AND IN CONSIDERATION OF THE RESPECTIVE PROMISES AND MUTUAL COVENANTS AND BENEFITS HEREINAFTER SET FORTH, THE PARTIES AGREE AS FOLLOWS:**

## **AGREEMENT**

### **SECTION 1. Definitions, Declarations, Findings and Determinations.**

The definitions, declarations, determinations, and findings contained in the Recitals to this Agreement are hereby found to be true and correct and are incorporated into this Agreement for all intents and purposes.

### **SECTION 2. Construction of the Project.**

(a) The Corporation agrees to prepare, or cause to be prepared, all plans and specifications required for the construction of the Project.

(b) The City agrees to contract with all individuals or entities necessary to complete the Project in accordance with the plans, specifications, and other construction documents. The City will provide all construction and contract management services in connection with the construction of the Project. The public infrastructure improvements will be owned and maintained by the City.

(c) The Corporation agrees to pay all invoices received by the City related to the Project after the City has had reasonable time to review and approve such invoices.

(d) The Corporation agrees that it will maintain an unencumbered fund balance of not less than one million dollars (\$1,000,000) at all times during the term of this Agreement.

### **SECTION 3. Representations and Warranties of the City.**

(a) The City hereby confirms the earlier levy by the City of the Additional Sales Tax, and hereby warrants and represents that the City has duly and lawfully ordered the imposition and collection of the Additional Sales Tax upon all sales, uses, and transactions as are permitted by and described in the Act throughout the boundaries of the City as such boundaries existed on the date of said election and as they may be expanded from time to time pursuant to applicable law.

(b) The City agrees to take and pursue all action permissible under applicable law to cause the Additional Sales Tax to be collected and remitted and deposited with the Corporation as required by the Act, at the earliest and most frequent times permitted by applicable law.

(c) The City agrees to do and perform, or cause to be done and performed, all acts and things required to be done or performed by or on behalf of the City under this Agreement.

### **SECTION 4. Representations and Warranties of the Corporation.**

(a) The Corporation represents and warrants that it is and will be authorized by applicable law and by its articles of incorporation and bylaws to enter into this Agreement and make the payments to the City in the manner and to the extent provided in this Agreement.

(b) The Corporation represents and warrants that the Project is an authorized project of the Corporation under the Act, and that the Corporation has taken all action and obtained all approvals required by law and the Corporation's bylaws in order to proceed with this Project and to undertake its obligations under this Agreement.

(c) The Corporation agrees to do and perform, or cause to be done and performed, all acts and things required to be done or performed by or on behalf of the Corporation under this Agreement.

(d) The Corporation represents and warrants that this Agreement constitutes a valid, legal, and binding obligation of the Corporation enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, and other similar laws and principles of equity relating to or affecting creditors' rights, and that the execution and delivery of this Agreement will not conflict with or constitute a material breach of or a default under any agreement or instrument to which the Corporation is a Party.

**SECTION 5. Term.**

This Agreement shall be in force and effect from the date of execution of this Agreement by the Parties below until the date on which all invoices or expenses related to the Project are paid in full by the Corporation.

**SECTION 6. Amendments and Supplements.**

This Agreement may be amended, supplemented, or extended by mutual agreement of the Parties.

**SECTION 7. Merger.**

This Agreement embodies the entire understanding between the Parties and there are no prior effective representations, warranties, or agreements between the Parties.

**SECTION 8. Multiple Counterparts.**

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original instrument, and each will have the force and effect of an original and all of which together constitute, and will be deemed to constitute, one and the same instrument.

**SECTION 9. Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and shall be enforceable in a court of competent jurisdiction in Harris County, Texas.

**SECTION 10. Severability.**

The provisions of this Agreement are severable, and if any provision or part of this Agreement or the application hereof 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 provision or part of this Agreement to other persons or circumstances shall not be affected thereby.

*[SIGNATURES ON FOLLOWING PAGE]*

APPROVED BY THE PARTIES AS OF \_\_\_\_\_, 2024.

**SIGNATURES**

**FOR THE CITY:**

**FOR THE CORPORATION:**

\_\_\_\_\_  
**Lori Klein Quinn, Mayor**

\_\_\_\_\_  
**Kelly Violette, Executive Director**

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
**Tracy Garcia, City Secretary**

\_\_\_\_\_  
**Bill Sumner, Jr., Board Secretary**