



**CHAPTER 380 PARTNERSHIP AGREEMENT BETWEEN THE CITY OF KAUFMAN,
TEXAS AND THE FIRST BAPTIST CHURCH OF KAUFMAN**

THE STATE OF TEXAS §

THE COUNTY OF KAUFMAN §

THIS CHAPTER 380 PARTNERSHIP AGREEMENT (“Agreement”) made and entered into as of this the 26th day of January, 2015, by and between the City of Kaufman, a political subdivision of the state of Texas, (“City”), and the First Baptist Church of Kaufman (“Developer”).

W I T N E S S E T H :

WHEREAS, The Developer by entering into this Agreement with the City desires to construct certain public improvements as generally depicted on attached Exhibit 1; and

WHEREAS, the Developer owns property (“Property”) in the City, such Property being more particularly described in attached Exhibit 1, and Exhibit 2; and

WHEREAS, the construction of public improvements (“Program”), including wastewater gravity lines, force main, lift station, manholes and related appurtenances, both on the Property and in areas generally adjacent to the Property, will result in economic development in the City, thereby increasing property values and tax revenue received by the City and other local governmental entities; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

WHEREAS, the City wishes to partner with the Developer and provide incentives to the Developer to assist in the economic development of property in the City; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in Kaufman and, as such, meets the requisites under Chapter

380 of the Texas Local Government Code and further, is in the best interests of the City and the Developer; and

WHEREAS, the Developer anticipates spending approximately \$295,000.00 for such infrastructure construction costs related to this Program; and

WHEREAS, the City intends to reimburse the Developer a total \$150,000.00 for construction of said improvements, over ten years.

NOW, THEREFORE, THE CITY AND DEVELOPER AGREE AS FOLLOWS:

1. The Developer will design & construct public infrastructure (wastewater gravity lines, force main, lift station, manholes and related appurtenances) related to this Program, as generally depicted in Exhibit 1.

2. As consideration for the agreements of the City as contained herein, the Developer agrees that it will diligently and faithfully, in a good and workmanlike manner, pursue the completion of the Public Improvements and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations. All plans for the Public Improvements will be reviewed and approved by the City.

3. The City will not perform construction inspection on a daily basis, but the Developer will provide uninterrupted access to the City staff at the job site on the Developer's property during regular working hours to perform periodic construction inspection.

4. The Developer invite the City at bid opening and preconstruction meeting, and provide the following test results: TV testing for gravity sewer line, pressure test for force main, Vacuum test for the manholes, Compaction Test for the backfill. All construction will be done as per NCTCOG -2004 Edition.

5. Since the City is participating, the bid request must be published in local newspaper for consecutive two weeks and bid shall be opened publically. Bid package including the set of plans shall be printed and provided to all parties by the Developer. After substantial completion of the project, the Developer shall invite the City for walk-thru and the Developer's engineer will provide "As-built" drawing both in PDF and DWG format to the City. The project needs to be accepted by the City Council, which will set a warranty period of two years for construction materials and labor. After 2-year warranty period, the City will accept the project and start maintaining the public infrastructure. Notwithstanding anything to the contrary contained herein, assuming the respective bidders are qualified in all respects, the Developer and the City agree that the bid will be awarded to the lowest qualified bidder.

6. The Developer agrees to and shall provide and grant to the City at no cost all necessary easements for the Public Improvements contemplated by this Agreement, which are not already in existence. Copies of all such easement documentation are attached hereto as Exhibits and incorporated by reference.

7. All construction and development undertaken by the Developer shall be consistent with all City codes and ordinances as well as any other regulations or plans relative to the Property as of the Effective Date, as hereinafter defined. Except as expressly set forth herein, this Agreement does not constitute a waiver by the City of any City construction or development ordinances or conditions. All Public Improvements contemplated by this Agreement shall be subject to the City's inspection and approval upon completion, such approval not to be unreasonably withheld or delayed.

8. The Developer shall complete construction of the aforementioned Public Improvements within a reasonable time after the Effective Date (means the date of execution of this contract by the last of the parties to do so) not to exceed twelve (12) months. For this purpose, "force majeure" shall mean any contingency or cause beyond the reasonable control of the Developer including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, governmental or de facto governmental action (unless caused by acts or omissions of the Developer), fires, explosions or floods, strikes, and action of the elements, including without limitation inappropriate temperature conditions, rainfall or other interfering precipitation or weather conditions.

9. "Eligible Costs" shall be defined as \$15,000.00 for the term of ten (10) years, awarded by the City to the Developer.

10. Upon completion of the Public Improvements, the Developer shall certify to the City Eligible Costs as defined in item number 9 of this agreement which shall be subject to reimbursement, as hereinafter provided. Upon the issuance of the first certificate of occupancy by the City for the Building on the Parcel (the "First CO"), the City's obligation to reimburse Developer for Eligible Costs shall commence.

11. Commencing on the first day of the first month following the first anniversary date of the issuance of the First CO and continuing on the same date of each year thereafter for a total of ten (10) years, the City will pay to the Developer one tenth of the Eligible Costs (\$15,000 per year).

12. Any disagreement or conflict concerning the interpretation of this Agreement which cannot be resolved by the signatories hereto shall be submitted to mediation, with both parties' attendance required, before either party is authorized to seek legal or equitable relief in a court of law.

13. No modifications or amendments to this Agreement shall be valid unless in writing and signed by the signatories hereto or their heirs, successors and/or assigns.

14. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Kaufman County, Texas. Venue for any action arising under this Agreement shall lie in Kaufman County, Texas.

15. The parties hereto shall be subject to all ordinances of the City, whether now existing or arising in the future, unless expressly waived herein. This Agreement shall confer no vested rights on the Property unless specifically enumerated herein.

16. This Agreement shall become a binding obligation on the parties 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. The Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind the Developer to the same.

17. The City Council shall authorize the City Manager of the City to execute this Agreement on behalf of the City.

18. The parties hereto specifically agree that in case any one or more of the sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any situation or circumstance should be, or should be held to be, for any reason, invalid or unconstitutional, under the laws or constitutions of the State of Texas or the United States of America, or in contravention of any such laws or constitutions, such invalidity, unconstitutionality, or contravention shall not affect any other sections, subsections, provisions, clauses, or words of this Contract or the application of such sections, subsections, provisions, clauses, or words to any other situation or circumstance, and it is intended that this Contract shall be severable and shall be construed and applied as if any such invalid or unconstitutional section, subsection, provision, clause, or word had not been included herein, and the rights and obligations of the parties hereto shall be construed and remain in force accordingly.

19. Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the City:	The City of Kaufman, Texas 209 S. Washington Kaufman, Texas 75142 Attn: City Manager's Office
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If to Developer:	First Baptist Church of Kaufman c/o Mr. Brent Gentzel 302 S. Washington Kaufman, Texas 75142
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20. In the event a party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

21. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The

provisions of this Agreement shall be construed as a whole and not strictly for or against any party.

22. Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

23. This Contract shall inure only to the benefit of the parties hereto and third persons not privy hereto shall not, in any form or manner, be considered a third-party beneficiary of this Contract. Each party hereto shall be solely responsible for the fulfillment of its respective contracts or commitments, and the City shall not be construed to be responsible for the Corporation's contracts or commitments by virtue of this Contract or any provision contained herein.

24. A tele-copied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

25. The City agrees that this Agreement is enforceable in accordance with the provisions of Tex. Loc. Gov. Code, Sections 271.151 through 271.160, as a contract for providing goods or services to the City and the City waives its sovereign immunity to suit for the limited purposes of adjudicating a claim for breach of this Agreement.

26. Notwithstanding anything to the contrary contained herein, the following shall apply, to-wit:

- The Developer feels that the cost for the aforementioned infrastructure may be completed for less than 295K. If the bids come in under budget i.e. less than 295K, the city will remain obligated for 150K. If the construction cost increases due to unavoidable field changes or any other legitimate reason (s), the City's obligation for 150,000 shall remain the same. The Developer shall not claim any additional money other than as mentioned in item 9 of this agreement in the form of reimbursement, pro-rata, remuneration, commission, or profit sharing or any other way from anybody including the City for connecting main or service line to this public infrastructure after this project is done and accepted by the City except for the \$40,000 to be received from Kaufman Neighborhood Development Organization, Inc.
- The Developer shall be solely responsible for the completion of the aforementioned Public Improvements without municipal intervention, except review and approval of construction plans, specifications, shop drawings; periodic construction inspection including traffic control, erosion control and safety procedure; monitoring construction activities; and final approval and acceptance thereof.

EXECUTED by the signatories hereto on the 15 day of January, 2015 (the "Effective Date").

First Baptist Church of Kaufman

Bill Gerkey – Trustee Bill Gerkey

Dr. William Fortner – Trustee Dr. Fortner

Shari Spitzer – Trustee Shari Spitzer

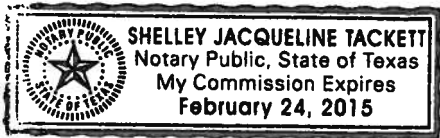
Greg Creal – Trustee Greg Creal

Address: 302 S. Washington
Kaufman, TX 75142

STATE OF TEXAS)
)
COUNTY OF KAUFMAN)

This instrument was acknowledged before me on the 15 day of January, 2015, by Bill Gerkey, Dr. Williams Fortner, Shari Spitzer and Greg Creal, Trustees of The First Baptist Church of Kaufman, a corporation, on behalf of said corporation.

Shelley Jacqueline Tackett
Notary Public, State of Texas

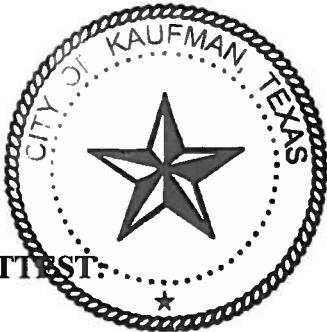


CITY OF KAUFMAN, TEXAS

By: *Curtis Snow*
Name: Curtis Snow
Title: City Manager
Date: January 26, 2015

STATE OF TEXAS)
)
COUNTY OF KAUFMAN)

This instrument was acknowledged before me on the 26th day of January, 2015, by Curtis Snow, City Manager of the City of Kaufman, Texas, on behalf of the City of Kaufman, Texas.



Sharna C. Ellis
Notary of Public, State of Texas



ATTEST:

Jo Ann Talbot
JoAnn Talbot, City Secretary

APPROVED AS TO FORM AND LEGALITY:

David Dodd, City Attorney