

**380 ECONOMIC DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF BENBROOK AND BBT CROSSING, LTD.**

This 380 Economic Development Agreement (the “Agreement”) is entered into as of May 21, 2020 (the “Effective Date”) by and among the City of Benbrook (the “City”), located in the Tarrant County, State of Texas, by and through its City Manager, and BBT Crossing, Ltd. (“BBT”), a Texas limited liability company, acting by and through its duly-authorized President, Bradford H. Bowen. In consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows

ARTICLE 1.
RECITALS

WHEREAS, the City and BBT are parties to the “First Amendment to Developer Participation Agreement for Benbrook Towne Crossing Project, dated February 5, 2016 (“Underlying Agreement”) setting forth rights, duties and obligations of each party with respect to (among other things) the extension of Vista Way and the construction of Benbrook Field Drive to enhance development in the City of Benbrook; and

WHEREAS, Section V(C and D) of the Underlying Agreement requires the City, at its expense, to acquire an easement and construct an access drive; and

WHEREAS, the parties have determined that the access drive is no longer needed, and BBT is willing to waive this requirement in exchange for the City paying for the design and construction costs associated with the oversizing of an off-site drainage system as described in the attached Exhibit A (the “Project”) that will benefit BBT’s development in the City of Benbrook; and

WHEREAS, the parties intend to amend the Underlying Agreement to delete Section V(C and D) once this Agreement is executed; and

WHEREAS, the City recognizes the importance of its continued role in economic development; and

WHEREAS, Chapter 380 of the Texas Local Government Code (the “Act”) authorizes the grant of public funds and assets to promote economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the successful completion of the Benbrook Towne Crossing Project is vital to promoting economic development in the City of Benbrook; and

WHEREAS, pursuant to Section 380.001 of the Act, with this Agreement the City establishes an economic development program to continue the support of the Benbrook Towne Crossing Project (the “Program”); and

WHEREAS, the City Council finds that this Agreement will effectuate the purpose of the Program and that BBT's performance of its obligations herein will promote economic development and stimulate commercial activity in the City.

ARTICLE 1.
AUTHORIZATION

The City finds and determines that this Agreement is authorized and governed by the Act.

ARTICLE 2.
TERM

The term of this Agreement shall commence on the Effective Date.

ARTICLE 3.
COVENANTS OF BBT

BBT agrees to waive the City's obligations under Section V(C and D) of the Underlying Agreement and continue to perform its duties and obligations under that agreement.

ARTICLE 4.
INCENTIVES PROVIDED BY THE CITY TO BBT

The City agrees to pay for the design and construction costs associated with the oversizing of an off-site storm drainage system as described in the attached Exhibit A (the "Project"). The City participation shall be capped at Forty-Two Thousand Two Hundred Ten Dollars (\$42,210.00). Any costs associated with the Project over that amount shall be the responsibility of BBT.

ARTICLE 5.
AUTHORITY; COMPLIANCE WITH LAW

- 5.01 BBT hereby represents and warrants to the City that it has full lawful right, power and authority to execute and deliver and perform the terms and obligations of this Agreement and that the execution and delivery of this Agreement has been duly authorized by all necessary action by BBT and this Agreement constitutes the legal, valid and binding obligation of BBT, and is enforceable in accordance with its terms and provisions.
- 5.02 Notwithstanding any other provision of this Agreement, BBT shall comply with all federal, state, and local laws.
- 5.03 During the term of this Agreement, BBT agrees not to knowingly employ any undocumented workers at the Development, and if convicted of a violation under 8 U.S.C. Section 1324a(f), BBT shall repay the amount of the Note forgiven under this Agreement as of the date of such violation within 120 business days after the date BBT is notified by the City of such violation, plus interest at the rate Benbrook is paying on the most recent issuance of bonded indebtedness prior to BBT's violation of this Section.

ARTICLE 6.
DEFAULT AND REMEDIES

- 6.01 Default by BBT. In the event: (i) BBT fails to fulfill its obligations of this Agreement; (ii) BBT has delinquent ad valorem or sales taxes owed to the City provided that BBT retains the right to timely and properly protest and/or contest any such taxes; (iii) BBT materially breaches any of the material terms and conditions of this Agreement, then BBT after the expiration of the notice and cure periods described herein, or (iv) BBT experiences an Event of Bankruptcy shall be in default of this Agreement. In the event of such a default, City shall give BBT written notice of such breach and/or default, and if BBT has not cured such breach or default within 90 days after receipt of such notice, the City may terminate this Agreement by written notice to BBT, and the City shall have no further obligation to BBT. This Section shall survive termination of this Agreement.
- 6.02 No Waiver. No waiver or any breach of any term or condition of this Agreement shall be construed to waive any subsequent breach of the same or any other term or condition of this Agreement. Any waiver of any term or condition of this Agreement must be in writing and approved by the City.

ARTICLE 7.
VENUE AND GOVERNING LAW

This Agreement is fully performable in Tarrant County, Texas and venue of any action arising out of this Agreement shall be exclusively in Tarrant County, Texas. To the extent permitted by law, the substantive laws of the State of Texas shall apply without regard to applicable principles of conflicts of law, and the parties submit to the jurisdiction of the state courts in Tarrant, Texas.

ARTICLE 8.
FORCE MAJEURE

Performance of BBT's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and BBT's obligations shall be abated during any period of force majeure. Force majeure shall include, without limitation, damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, inability to obtain, any permit and/or legal authorization (including engineering approvals by any governmental entity), inability to obtain, governmental approvals and permits, shortage or delay in shipment of materials or fuel occasioned by any event referenced herein, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Property or this Agreement.

ARTICLE 9.
ASSIGNMENT

BBT may not assign any part of this Agreement without consent or approval by the City. If BBT elects to subdivide the Property for additional development, the Agreement shall not be terminated provided the obligations set forth in this Agreement are achieved.

ARTICLE 10.
INDEMNIFICATION

- 10.01 **BBT EXPRESSLY AGREES TO FULLY AND COMPLETELY DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, AND ITS OFFICERS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, LIABILITIES, JUDGMENTS, COSTS, AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM, DAMAGES OR LIABILITY FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ANY NEGLIGENT, GROSSLY NEGLIGENT, WRONGFUL, OR STRICTLY LIABLE ACT OR OMISSION OF BBT OR ITS AGENTS, EMPLOYEES, OR CONTRACTORS, ARISING OUT IN THE PERFORMANCE OF THIS CONTRACT.** This provision is solely for the benefit of the City, and its officers and employees, and is not intended to create or grant any rights, contractual or otherwise, in or to any other person. This Section shall survive termination of this Agreement.
- 10.02 Nothing in this Agreement shall be construed as waiving any governmental immunity available to the City under state law.
- 10.03 It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. The City (including its past, present and future officers, elected officials, directors, employees and agents of the City) does not assume any responsibility to any third party in connection with BBT's construction of the Development.

ARTICLE 11.
MISCELLANEOUS MATTERS

- 11.01 Time is of Essence. Time is of the essence in this Agreement. The parties hereto will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.
- 11.02 Agreement Subject to Applicable Law. This Agreement is made subject in accordance with the Benbrook Home Rule Charter and ordinances of City, as amended, and all applicable State and federal laws, violation of which shall constitute a default of this Agreement.

- 11.03 Interpretation. Each of the Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.
- 11.04 Counterparts Deemed Original. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 11.05 Captions. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.
- 11.06 Complete Agreement. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in the Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached and made a part of this Agreement.
- 11.07 Notice. Any notice to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be (i) delivered personally, with a receipt requested therefore; or (ii) sent by a nationally recognized overnight courier service; or (iii) delivered by United States certified mail, return receipt requested, postage prepaid. All notices shall be addressed to the respective party at its address set forth below, and shall be effective (a) upon receipt or refusal if delivered personally; (b) one business day after depositing, with such an overnight courier service or (c) two business days after deposit in the United States mails, if mailed. Any party hereto may change its address for receipt of notices by service of a notice of such change in accordance with this Subsection.

BBT: BBT Crossing, Ltd.

 Attn: _____
 Telephone: _____

With a copy to: _____

 Telephone: _____

CITY: City of Benbrook
 911 Winscott Road
 Benbrook, Texas 76126
 Attn: _____
 Telephone: (817) 249-3000

With a copy to:

Betsy Elam
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.
6000 Western Place, Suite 200
Fort Worth, Texas 76107
Telephone: (817) 332-2580

- 11.08 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.
- 11.09 Severability. In the event any section, subsection, paragraph, subparagraph, sentence, phrase, or word herein is held invalid, illegal, or unenforceable, the balance of this Agreement shall stand, shall be enforceable, and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase, or word. In the event there shall be substituted for such deleted provision a provision as similar in terms and in effect to such deleted provision as may be valid, legal and enforceable.

REMAINDER OF PAGE LEFT BLANK

EXECUTED on the respective dates of acknowledgement, to be effective as of the date first set forth above.

CITY OF BENBROOK

By: _____

Name: Andy Wayman

Title: City Manager, City of Benbrook

Date: _____

STATE OF TEXAS
COUNTY OF TARRANT

This instrument was acknowledged before me on _____, 20__ by _____, known personally by me to be the _____ of the City of Benbrook, on behalf of said City.

[Notary Seal]

Notary Public, State of Texas

APPROVED AS TO FORM AND LEGALITY:

Betsy Elam, Legal Counsel

**BBT CROSSING, LTD.,
a Texas limited liability Company**

By: _____

Name: Bradley H. Bowen

Title: President

Date: _____

STATE OF TEXAS
COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____, known personally by me to be the _____ of BBT Crossing,
Ltd., on behalf of said entity.

[Notary Seal]

Notary Public, State of Texas

Vista Way Scope of Services Agreement

Jim Hinderaker <JHinderaker@benbrook-tx.gov>

Thu 4/26/2018 11:13 AM

To: Brad Bowen <brad@trinitypartnerstexas.com>

Cc: Bennett Howell <BHowell@benbrook-tx.gov>; Heath Haseloff <hhaseloff@benbrook-tx.gov>

 1 attachments (121 KB)

Vista Way Scope of Services Amendment Agreement.pdf;

Good morning Brad,

Attached is the scope of services amendment agreement from Dunaway to the City, which includes our discussed changes related to the upsizing of the two drainage pipes crossing Vista Way and the associated outfall structures needed to eliminate any future need for detention ponds on the balance of your undeveloped commercial property located between Vista Way and Benbrook Blvd., north of Mercedes.

The reason I'm sending you a copy of this agreement is to confirm your previous verbal commitment to the City to pay for the overage cost associated with the upsizing "design and materials/construction" necessary to accommodate the increased stormwater flows.

Specifically, please refer to Item No. 1 on the Scope of Services agreement, Item No. 1 on the page titled WORK TO BE PERFORMED and all items included on the page titled Differences associated with drainage revisions:

In summary, the upsizing costs are as follows:

- Design - \$10,000
- Materials & Installation - \$32,210

Please confirm in writing (email ok) that you are in agreement with these increased costs and that you understand you are responsible for said costs and further agree to pay said costs.

Let me know if you have any questions.

Jim Hinderaker
Assistant City Manager
City of Benbrook
817.249.6005

SUPPLEMENTAL AGREEMENT #2 FOR PROFESSIONAL SERVICES SCOPE OF SERVICES

Scope of Services

The purpose of this agreement is to amend the existing agreement between the City of Benbrook and Dunaway Associates, L.P. to change in the scope of services as follows:

1. Vista Way Drainage Design Revisions and Outfall Structures. This task involves the re-design of drainage structures to accommodate the future development east of Vista Way. This consists of upsizing the pipes on Line A and Line B, and to evaluate and provide upgraded outfall structures to support the un-detained fully developed design storm.
2. Revisions and quantity updates to the TxDOT/US 377 plan set as agreed upon by email on 9/20/2017 including:
 - a. Updates and revisions to the quantities based on discussions with Gary Beck, the TxDOT project manager for the US 377 project.,
 - b. Addition of one pavement striping sheet as requested by TxDOT,
 - c. Addition of an intersection layout sheet, as requested by TxDOT.
 - d. In addition to this work, which was delivered on 10/17/2017, additional coordination has taken place to assist in finalizing the change order to secure reimbursement.
3. Cubesmart Driveway.
 - a. Relocated driveway to match revised alignment
 - b. Completed a set of plans for the intent of bidding, removed only sheets relevant to this driveway and placed them in the Vista Way set.
 - c. Provided easement document for the updated driveway location.
4. Revision to sanitary sewer horizontal and vertical alignment, and subsequent adjustments to water line and storm drain line B based on input from the developer and the Benbrook Water Authority. These revisions affected eleven pages, and generally consist of:
 - a. Realignment of the entire sanitary sewer system,
 - b. Adjustment to the water pipe to eliminate pipe changes and encasement as the sanitary sewer is no longer within nine feet of the sanitary sewer system.
 - c. Horizontal and vertical realignment of storm drain line B to eliminate a conflict that would have been created with the relocation of the sanitary sewer, and, due to deepening, an adjustment to minimize inlet depths.

WORK TO BE PERFORMED

1.	Vista Way Drainage Design Revisions and Outfall Structures:	\$ 10,000.00
2.	TxDOT/US 377 Revisions: And additional coordination:	\$ 4,000.00 \$ 1,500.00
3.	Cubesmart Driveway Relocation:	\$ 3,000.00
4.	Revisions to Sanitary Sewer Sheets and affected Storm Drain Sheet	\$ 14,500.00
	Total Additional Services:	\$ 33,000.00

This agreement only changes the scope of services as stated above.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on this the _____ day of _____, 2018.

CITY:
CITY OF BENBROOK, TEXAS

CONSULTANT:
DUNAWAY ASSOCIATES, L.P.
a Texas limited partnership



By: _____

By: Tom Galbreath, ASLA

Title: _____

Title: President



XXXXXX
4/23/2018

Differences associated with drainage revisions:
LAST UPDATED: 4/17/2018

Vista Way Paving and Drainage Improvements			100% QTY (3/20/18)			90% QTY (7/12/17)		Difference:
1	24" RCP	LF		105.00		48	\$ 5,040.00	
2	36" RCP	LF		130.00		93	\$ 12,090.00	
3	42" RCP Class III	LF	137	150.00	\$20,550.00	113	\$ 16,950.00	
4	48" RCP Class III	LF	158	180.00	\$28,440.00			
5	48" End Cap	EA	1	1,500.00	\$1,500.00			
6	48" Safety End Treatment	EA	1	5,500.00	\$5,500.00			
7	36" Safety End Treatment	EA		4,000.00		1	\$ 4,000.00	
8	12" Tnk Gabion Mattress	SY	79	275.00	\$21,725.00	27	\$ 7,425.00	
DRAINAGE SUBTOTALS					\$77,715.00		\$45,505.00	\$32,210.00

RE: Vista Way Scope of Services Agreement

Brad Bowen <Brad@trinitypartnerstexas.com>

Mon 5/7/2018 1:54 PM

To: Jim Hinderaker <JHinderaker@benbrook-tx.gov>

Cc: Bennett Howell <BHowell@benbrook-tx.gov>; Heath Haseloff <hhaseloff@benbrook-tx.gov>; 'Henry Peek (henrypeek@tx.rr.com)' <henrypeek@tx.rr.com>

Jim this email will confirm that we (BFIP Partners, Ltd.) are in agreement with the stated increased costs of engineering design work in the amount of \$10,000 and cost associated with the upsizing of the drainage facilities necessary to increase storm water flows in the amount of \$32,210 and we acknowledge that we are responsible for said costs and further agree to pay said costs.

Thanks.

Brad Bowen

Brad Bowen

Managing Partner

Trinity Partners Commercial Real Estate

Office: 817-778-4711

Cell: 214-693-7424

Mailing Address:

P.O. Box 96011

Southlake, TX 76092

Physical Address:

450 N Kimball Ave

Suite 100

Southlake, TX 76092

[www.trinitypartnerstexas.com]www.trinitypartnerstexas.com



From: Jim Hinderaker <JHinderaker@benbrook-tx.gov>

Sent: Thursday, April 26, 2018 11:14 AM

To: Brad Bowen <Brad@trinitypartnerstexas.com>

Cc: Bennett Howell <BHowell@benbrook-tx.gov>; Heath Haseloff <hhaseloff@benbrook-tx.gov>

Subject: Vista Way Scope of Services Agreement

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