

STATE OF TEXAS § **PUBLIC IMPROVEMENT AGREEMENT BETWEEN CITY**
 § **OF UNIVERSITY PARK AND**
COUNTY OF DALLAS § **HIGHLAND PARK PRESBYTERIAN CHURCH**

This **Public Improvement Agreement** (“Agreement”) is made by and between the **City of University Park, Texas** (the “City”), a Texas home rule municipality, and **Highland Park Presbyterian Church**, a Texas non-profit corporation (the “Developer”) (collectively, City and Developer are referred to herein as “the Parties”), acting by and through their duly authorized representatives.

RECITALS:

WHEREAS, Developer is the owner of the Property (as defined below); and

WHEREAS, Developer desires to redevelop the Property in accordance with the provisions of City’s Development Regulations, Planned Development District 36 “PD-36”, and other applicable City Codes, ordinances and specifications, including construction of the Public Improvements in accordance with the City’s “General Conditions for Public Works Construction” which are incorporated herein by reference and made part hereof; and

WHEREAS, in the event of any conflict between the terms of this Agreement and the City’s “General Conditions for Public Works Construction”, the latter shall take precedence; and

WHEREAS, to ensure sufficient water capacity for the Property and proper traffic flow around the Property, Developer is required to construct the Public Improvements; and

WHEREAS, the Parties desire to enter this Agreement regarding the closing of a public street during construction of the Project, the construction of Public Improvements, and Developer’s payment of the Cost of Construction of the Public Improvements that are necessary because of the Project; and

WHEREAS, construction of the Project and the Public Improvements will necessitate the closing of Shannon Lane between McFarlin Blvd. and University Blvd. for the duration of construction and the temporary use of residential structures for construction and administrative purposes;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein and other valuable consideration the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term; Termination

1.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until the Parties have fully satisfied all terms and conditions of this Agreement and

until 30 days after the City has issued a Certificate of Occupancy for the new Hunt Building and the other improvements constituting the Project, unless sooner terminated as provided herein.

1.2 Termination. This Agreement shall be terminated:

- (a) upon the mutual written agreement of the Parties; or
- (b) if City elects to terminate this Agreement after Developer breaches any of the terms and conditions of this Agreement and such breach is not cured by Developer within sixty (60) days after receipt of written notice of the breach by City as such time may be extended during any event constituting a Force Majeure;
- (c) thirty (30) days after Completion of Construction of the Project and Public Improvements and issuance of a Certificate of Occupancy by the City to the Developer, if termination has not occurred by that date.

Article II Definitions

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Adjacent Water Line” shall mean a potable water main consisting of approximately 400 linear feet of 8” PVC pipe in Shannon Lane from McFarlin Blvd. to University Blvd., adjacent to the Property.

“Approved Plans” shall mean the plans and specifications for the construction of the Public Improvements, inclusive of any change orders thereto, as approved by the Director of Public Works.

“Commencement of Construction” shall mean that (i) the plans for the Public Improvements have been prepared and all approvals thereof required by applicable governmental authorities have been obtained; (ii) all necessary permits for construction of the Public Improvements pursuant to the respective plans therefor having been issued by all applicable governmental authorities and (iii) the grading and/or preparation of the Shannon Lane right-of-way for the construction of Public Improvements has commenced.

“Completion of Construction” shall mean: (i) the Public Improvements have been substantially completed in accordance with the approved plans; and (ii) the Public Improvements have been accepted by the Director of Public Works, on behalf of the City, in writing.

“Construction Cost” shall mean solely the cost of labor and materials necessary to complete the Public Improvements.

“Development Regulations” shall mean collectively (i) City’s Comprehensive Zoning Ordinance, as amended by PD-36, (ii) “Construction Standards” for Public Improvements of the City, (iii) the City’s “General Conditions for Public Works Construction”, and (iv) any other applicable Codes, ordinances, regulations and standards.

“Director of Public Works” shall mean the City’s director of public works, or his designee.

“Effective Date” shall mean the date this Agreement has been signed by authorized representatives of all the Parties.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, terrorist act, or threat thereof, riot, civil commotion, insurrection, government action or inaction (unless caused by the intentionally wrongful acts or omissions of the party), fires, earthquake, tornado, hurricane, explosions, floods, strikes, slowdowns or work stoppages.

“Payment and Performance Bonds” shall mean the surety bonds required by Chapter 2253 of the Government Code for municipal public works projects.

“Payment Request” shall mean a written request for payment prepared by or at the direction of Developer’s Contractor which sets forth the amount to be paid for the portion of the work completed on construction of the Public Improvements, inclusive of details of the types and quantities of materials installed and the costs related thereto, labor costs, and other details and costs customarily appearing on an interim construction draw request, which request is accompanied by an affidavit of bills paid by all material suppliers and subcontractors providing work and/or materials in relation to the portion of construction of the Public Improvements described in the Payment Request.

“Project” shall mean demolition of the existing Hunt Building and its replacement with a three story multi-purpose building above an underground parking garage, additions to the front and east sides of the building, and other improvements described and depicted in the PD-36 ordinance and the approved Detailed Site Plan therefor;

“Property” shall mean the property described as Lot 8R, Block B, Windsor Place, an Addition to the City of University Park, Dallas County, Texas, and commonly known as 3821 University Blvd., University Park, Texas 75205.

“Planned Development Ordinance” shall mean the City of University Park Ordinance establishing Planned Development No. 36 (PD-36), as amended to the date hereof.

“Public Improvements” shall mean the adjacent water line and the complete reconstruction to City specifications of Shannon Lane from McFarlin Blvd. to University Blvd., including standard size parking spaces and a standard City public sidewalk, on the West side of Shannon Lane, and, if necessary, the dedication of additional right-of-way by the Developer to the City for such public improvements.

Article III Development

3.1 Construction. Subject to the terms and conditions set forth herein, Developer agrees to cause the Commencement and the Completion of the Construction of the Public Improvements as set forth herein in accordance with the Approved Plans and the City’s “General Conditions for Public Works Construction.”

3.2 Development Approval. Developer understands, acknowledges, and agrees that City shall be under no obligation to accept the Public Improvements until Completion of Construction of the Public Improvements.

3.3 Project.

(a) Developer acknowledges and agrees that the development of the Project will require construction and use of the Public Improvements. Developer agrees, at its cost, to construct the Public Improvements in accordance with the Approved Plans.

(b) Construction of the Project and the Public Improvements will necessitate the temporary closing of Shannon Lane from McFarlin Blvd. to University Blvd. The date of closing and the date of reopening Shannon Lane will be determined by the Director of Public Works of the City.

(c) The residential structure at 3907 University Blvd. may be used as a temporary office by displaced Church personnel only, until 30 days after issuance of a Certificate of Occupancy by the City, provided however that no remodeling of the interior space of the structure may be done, that no construction trailers or no outside storage of materials will be permitted on the lot, and that no signs may be placed on the lot or a structure on the lot except the required street address signs.

(d) The residential structure at 3908 McFarlin Blvd. may be used as a temporary office for construction administration by Contractor personnel only, until 30 days after issuance of a Certificate of Occupancy by the City, provided however that no remodeling of the interior space of the structure may be done, that no construction trailers or no outside storage of materials will be permitted on the lot, and that no signs may be placed on the lot or a structure on the lot except the required street address signs.

(e) Construction staging may be permitted in summer months in the parking area on the West side of Park Street, and the temporary closing of any perimeter streets

or right-of-way for a limited duration as work progresses may be permitted by approval of the Director of Public Works.

(f) Contractor personnel and construction vehicles will not be permitted to park on McFarlin Blvd. during construction.

3.4 Change Orders. All change orders with respect to the design and construction of the Public Improvements must be approved by the Director of Public Works, subject to the following:

(a) ***Change Order Increases.*** City shall not be obligated to approve any change order entered by Developer with its contractor(s) constructing the Public Improvements unless and until:

(1) Said change order has been reviewed and approved by the Director of Public Works;

(2) Developer and the Director of Public Works have agreed on the change order.

(b) ***Change Order Decreases.*** Change orders relating to the Public Improvements which result in a decrease in the cost for construction and materials of the Public Improvements by more than 25% must be approved by the Contractor.

3.5 Payment. Developer agrees to pay the Construction Cost as follows:

(a) ***Payment Requests for Public Improvements.*** No payment shall be due until Developer has received a Payment Request from the Contractor for review and approval by the Director of Public Works in accordance with the City's "General Conditions for Public Works Construction," which approval shall not be unreasonably withheld, delayed or denied. If the Director of Public Works denies the Payment Request, the Director of Public Works shall provide detailed reasons for the denial. If the Director of Public Works denies a Payment Request, Developer may require the Contractor to submit an amended Payment Request, which shall be reviewed and considered for payment in the same manner as the original.

(b) ***Payment Due Date.*** Developer agrees to pay all undisputed amounts set forth in the Payment Request not later than thirty (30) days after receipt of Payment Request, and any disputed amounts resolved in favor of Developer not later than ten (10) days after resolution of such dispute.

3.6 Maintenance, Payment and Performance Bonds. Prior to commencement of construction of the Public Improvements, Developer's Contractor shall provide maintenance, payment and performance bonds to the City as Owner for the construction of the Public Improvements, in accordance with the City's "General Conditions for Public Works Construction," to ensure completion of construction of the Public Improvements and payment of

the subcontractors and suppliers of material and labor. Such bonds shall be executed with a corporate surety in accordance with Chapter 2253, Texas Government Code. The amount of such bonds shall be for 100% of the Construction Costs related to the construction of the Public Improvements and the bonds shall be on forms approved by the City Attorney.

**Article IV
Miscellaneous**

4.1 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter if sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

Attn: City Manager
City of University Park, Texas
3800 University Blvd.
University Park, Texas 75205

With a copy to:

Robert L. Dillard III
500 N. Akard
Suite 1800
Dallas, TX 75201

With a copy to:

Director of Public Works
City of University Park
3800 University Blvd.
University Park, Texas 75205

If intended for Developer:

Highland Park Presbyterian Church
Attn: Mark Story
3821 University Blvd.
University Park, TX 75205

With a copy to:

4.3 Successors and Assigns. All obligations and covenants of Developer under this Agreement shall be binding on Developer, its successors and permitted assigns.

4.4 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall be enforceable and shall be enforced as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

4.5 Governing Law. The Agreement shall be governed by the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the

application of the laws of another jurisdiction; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

4.6 Entire 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 the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

4.7 Recitals. The recitals to this Agreement are incorporated herein.

4.8 Counterparts. 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.

4.9 Covenants Run With Property. The provisions of this Agreement are hereby declared covenants running with the Property and are fully binding on Developer and each and every subsequent owner of all or any portion of the Property but only during the term of such party's ownership thereof (except with respect to defaults that occur during the term of such person's ownership). Any person who acquires any right, title, or interest in or to the Property, or any part hereof, thereby agrees and covenants to abide by and fully perform the provisions of this Agreement with respect to the right, title or interest in such Property.

4.10 Release. Upon Completion of Construction of the Public Improvements, and if this Agreement has been recorded, the City agrees to execute and record in the Real Property Records of Dallas County, Texas, a release or other appropriate document acknowledging Developer has satisfied its obligations pursuant to this Agreement.

(Signature Page to Follow)

SIGNED AND AGREED this, the ____ day of _____ 2018.

CITY OF UNIVERSITY PARK, TEXAS

By: _____

Robbie Corder, City Manager

ATTEST:

By: _____

Christine Green, City Secretary

APPROVED AS TO FORM:

By: _____
Robert L. Dillard III, City Attorney

SIGNED AND AGREED this, the ____ day of _____ 2018

HIGHLAND PARK PRESBYTERIAN CHURCH

By: _____
Title: _____

City Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority this ____ day of _____
2018, by Robbie Corder, City Manager, City of University Park, a Texas home rule municipality, for
and on behalf of said municipality.

Notary Public, State of Texas

Commission Expires:_____

Developer Acknowledgment

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Acknowledged before me, the undersigned authority this ____ day of _____
_____ 2018, by _____, _____ of
Highland Park Presbyterian Church, a Texas non-profit corporation, for and on behalf of said
corporation.

Notary Public, State of Texas

Commission Expires:_____