

STATE OF TEXAS

Performance Agreement

COUNTY OF KAUFMAN

This Performance Agreement (“Agreement”) is made by and between the City of Kaufman, Texas (Kaufman), on the one hand, and KLLM Transport Services, LLC (“KLLM”) and ITS – Equipment Leasing & Maintenance, LLC (“ITS”), on the other hand (each a “Party” and collectively the “Parties”), acting by and through their respective authorized officers. KLLM and ITS are sometimes referred to collectively in this Agreement as the “Taxpayers.”

This Agreement is authorized by the Texas Local Government Code, Chapter 380 and by Order of the City Council of Kaufman, Texas, approving this Agreement.

WITNESSETH:

WHEREAS, Kaufman is authorized under Chapter 380 of the Texas Local Government Code to make grants and loans for the purpose of promoting city development and growth; and

WHEREAS, Taxpayers are relocating their transportation “dedicated services” businesses to Kaufman and providing 35 new jobs in Kaufman, by leasing certain “Leased Premises” to be constructed on the real property known as Lot 14R-B, Kaufman Business Park, City of Kaufman, Kaufman County, Texas; and

WHEREAS, Kaufman desires to provide certain economic development grants to Taxpayers in recognition of the positive economic and community benefits that will accrue to Kaufman through the Taxpayers’ relocation of their businesses to the Leased Premises; and

WHEREAS, Kaufman believes that Taxpayer’s relocation of their businesses to the Leased Premises will contribute to the economic development of Kaufman by increasing ad valorem taxes and increasing employment; and

WHEREAS, this Agreement is determined to be a program for the making of loans and granting of money as contemplated by Chapter 380 of the Texas Local Government Code; and

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I

Term

1.1 This Agreement shall be effective on the last date of execution hereof (“Effective Date”) and shall continue until the Expiration Date (as defined herein), unless sooner terminated as provided herein (the “Term”).

Article II

Definitions

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

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within ninety (90) days after the filing thereof; provided, however, “Bankruptcy or Insolvency” shall not include an event that does not affect Taxpayers’ ability to continue to operate their businesses at the Leased Premises and otherwise to meet their obligations under this Agreement.

“Chapter 380 Payments” means the amounts paid by the City to Taxpayers under this Agreement as further described in Article III below. Each Chapter 380 Payment constitutes a grant of funds as authorized by Chapter 380 of the Texas Local Government Code.

“City” shall mean the City of Kaufman, Texas.

“Eligible Property” means the transportation assets owned by Taxpayers, which include tractor, trailers, and other revenue equipment.

“Eligible Property Tax Revenues” means, for any given calendar year, an amount of money equal to the amount of all ad valorem property taxes levied and collected by the City from each of the Taxpayers on the Eligible Property.

“FTE Position” or “FTE” means a position filled by an individual scheduled to work at the Leased Premises for a combined total of at least 2080 hours per year, including any paid time off, and receiving both (i) a salary comparable to similar employment positions in the north Texas area and (ii) full coverage health insurance commensurate with other employees of Taxpayers.

“Payment Commencement Date” means January 1, 2018.

“Taxpayers’ Affiliates” means Duff Capital Investors, LLC and all subsidiary entities of Duff Capital Investors, LLC.

Article III

Chapter 380 Payments; Term

3.1 Chapter 380 Payments to KLLM. Following the Payment Commencement Date, for a period of ten (10) years, Kaufman shall annually pay to KLLM an amount of money (each a “Chapter 380 Payment”) equal to eighty percent of the Eligible Property Tax Revenues levied for tax years 2017 through 2026 and collectible by Kaufman from KLLM on or before January 31 in years 2018 through 2027. Kaufman shall pay each Chapter 380 Payment owed to KLLM on or before the last business day of February of each tax year from 2018 through 2027.

3.2 Chapter 380 Payments to ITS. Following the Payment Commencement Date, for a period of ten (10) years, Kaufman shall annually pay to ITS an amount of money (each a “Chapter 380 Payment”) equal to eighty percent of the Eligible Property Tax Revenues levied for tax years 2017 through 2026 and collectible by Kaufman from ITS on or before January 31 in years 2018 through 2027. Kaufman shall pay each Chapter 380 Payment owed to ITS on or before the last business day of February of each tax year from 2018 through 2027.

3.3 Term. The term of this Agreement begins on the Effective Date and ends on Kaufman’s payment of the tenth Chapter 380 Payment owed by Kaufman to Taxpayers (the “Expiration Date”). No Chapter 380 Payments shall be made after December 31 of the tenth year after the Payment Commencement Date.

3.4 Performance Conditions. Notwithstanding any provision in this Agreement, Taxpayers have no obligation hereunder to relocate their businesses to the Leased Premises or to any other property in the City. If Taxpayers elect not to relocate their businesses to the Leased Premises prior to the Payment Commencement Date as contemplated by this Agreement, Taxpayers may notify the City in writing, and this Agreement and the obligations of all Parties will be deemed terminated and of no further force or effect as of the date of such notice. The following are, however, conditions that must be satisfied in order for Taxpayers to receive the Chapter 380 Payments described herein:

(a) Taxpayers must relocate their businesses to the Leased Premises in such a manner that the situs of ad valorem taxation for the Eligible Property will be at the Leased Premises from the Payment Commencement Date through the remainder of the Term;

(b) Taxpayers must render the Eligible Property for ad valorem taxation at the Leased Premises prior to the Payment Commencement Date;

(c) Taxpayers must remain current and paid on all ad valorem property taxes (real property and personal property) assessed against Taxpayers by Kaufman, subject to rights of appeal in accordance with law and subject to a right to cure any tax payment delinquency;

(d) Taxpayers and Taxpayers' Affiliates (collectively) must maintain at least 35 FTE at the Leased Premises throughout the Term; and

(e) Taxpayers and Taxpayers' Affiliates must maintain an annual payroll at the Leased Premises of at least \$1,600,000.

Article IV

Termination

4.1 Termination. This Agreement shall terminate upon any one of the following:

- (a) by written agreement of the Parties;
- (b) upon written notice, by either Party in the event the other Party breaches any of the terms or conditions of this Agreement, and such breach is not cured within thirty (30) days after the nonbreaching Party sends written notice to the breaching Party of such breach;
- (c) upon written notice, by Kaufman, if either Taxpayer suffers an event of Bankruptcy or Insolvency;
- (d) upon written notice, by either Party, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

Article V

Miscellaneous

5.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned without the express written consent of City Manager of Kaufman.

5.2 No Joint Venture. 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.

5.3 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

5.4 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or on the day actually received if sent by courier or otherwise hand delivered.

If intended for Town, to: Attn: City Manager 209 S. Washington Kaufman, TX 75142	With a copy to: David Dodd 110 W Sandy Lake, Rd, Suite 102 Coppell, TX 75019
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If intended for Taxpayers: KLLM Transport Services, LLC AND/OR ITS – Equipment Leasing & Maintenance, LLC Attn: Terry Thornton 135 Riverview Richland, Mississippi 39218	With a copy to: KLLM Transport Services, LLC AND/OR ITS – Equipment Leasing & Maintenance, LLC Attn: Cameron Sewell 9813 FM 1388 Scurry, Texas 75158
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5.5 Entire Agreement. This Agreement is the entire Agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the Parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

5.6 Governing Law. The Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action concerning this Agreement shall be in the State District Court of Kaufman County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.7 Amendment. This Agreement may only be amended by the mutual written agreement of the Parties.

5.8 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

5.10 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

5.11 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the Expiration Date of this Agreement shall survive termination.

5.12 Mutual Assistance/Good Faith. Kaufman and Taxpayers agree to act in good faith and to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist the other in carrying out such terms and provisions in order to put the other in the same condition contemplated by this Agreement.

5.13 Employment of Undocumented Workers. During the term of this Agreement Taxpayers agree not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), Taxpayers shall repay the amount of the Chapter 380 Payments and any other funds received by Taxpayers from Kaufman as of the date of such violation within 120 business days after the date Taxpayers are notified by Kaufman of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid. Taxpayers are not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of Taxpayers or by a person with whom Taxpayers contract.

[Signature page to follow]

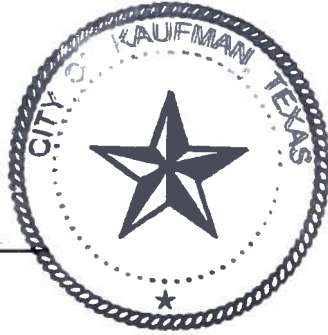
EXECUTED on this 8th day of August, 2016.

City of Kaufman, Texas

By:



Jeff Jordan, Mayor



Attest:

By:



Jo Ann Talbot, City Secretary

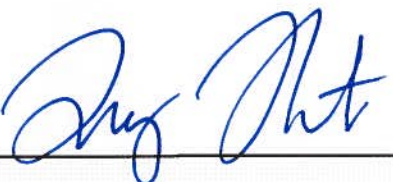
Approved as to Form:

By: _____

City Attorney

EXECUTED this the 5th day of August, 2016.

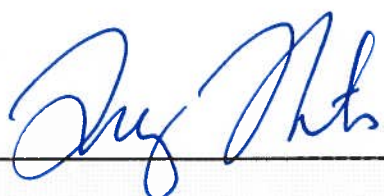
KLLM Transport Services, LLC

By: 

Name: Terry Thornton

Title: Manager and Chief Financial Officer

ITS – Equipment Leasing & Maintenance, LLC

By: 

Name: Terry Thornton

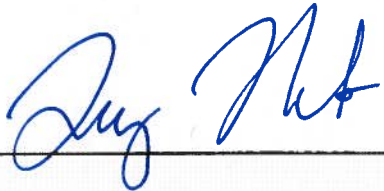
Title: Manager and Chief Financial Officer

EXECUTED this the 8th day of August, 2016.

KLLM Transport Services, LLC

By: 
Name: Terry Thornton
Title: Manager and Chief Financial Officer

ITS – Equipment Leasing & Maintenance, LLC

By: 
Name: Terry Thornton
Title: Manager and Chief Financial Officer



Meeting Date: 08-08-2016	Date: 08-04-16	Item #: 1	Dept. Admin
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(Check one)

Consent

 Action

 Discussion

SUBJECT:
 Consider Any Official Action On A 380 Agreement From A Business Prospect With Which The City Is Conducting Negotiations.

BACKGROUND:
 KLLM Transport Services, LLC and ITS-Equipment Leasing & Maintenance, LLC (ITS) are proposing to relocate their business to Kaufman to a newly constructed 10,000 sq ft office building in the Prairie Creek Crossing Business Park no later than December 31, 2016. This will create a minimum of 35 new jobs and a minimum annual payroll of \$1.6M. They have requested Council consider a Chapter 380 agreement to reimburse 80% of the ad valorem taxes on their rolling stock only (currently valued at \$9.2M). Their rolling stock is located all over the U.S. hauling refrigerated chickens primarily from coast to coast and rarely enter Kaufman County (I-20 if then). The proposed office building is a Logistics office that coordinates truck traffic – very clean operation. KEDC has sold them the property and they have requested an expedited/'fast track' permitting to ensure occupancy before year end. It is expected that the taxable value of the rolling stock will increase to approximately \$15M. The financial impact follows:

Annual GF Revenue of new building @ \$175/sq ft - \$13,602
 Annual GF Revenue of Rolling Stock @ 20% of \$15M value - \$23,318
Total Annual General Fund Revenue - \$36,920
 Trickle Down Sales Tax Revenue of 35 – 50 new employees – underdetermined

Kaufman County and Trinity Valley Community College are considering similar agreements.

Author: Mike Slye	Reviewed: Mike Slye, City Manager
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Cost: \$93,270/year for 10 years	Funds Available:	Source:
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Recommendation: Approve proposed Chapter 380 Agreement.

Safe & Secure	Business Friendly/Economic Development	Partnership & Community Involvement	Healthy & Environmentally Cons. Comm.	Financial & OPS Stewardship
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>