

AMENDMENT NO. 1 (COF CONTRACT NO. 2014-0344)
ROAD IMPACT FEE OFFSET AGREEMENT
Revised 9-7-2016

This Amendment is entered into between THE CITY OF FRANKLIN, TENNESSEE (“City”) and Harpeth Associates LLC, (“Developer”), on this the _____ day of _____, 2016, pursuant to Title 16, Chapter 4 of the Franklin Municipal Code (“FMC”).

WHEREAS, the Developer has previously submitted to the Franklin Municipal Planning Commission the Harpeth Square PUD Subdivision, Development Plan Project No. 4713, for approval (the “Development Project”); and

WHEREAS, the City has required the Developer to design and construct certain arterial roadway improvements, including the dedication of arterial right-of-way, the engineering design of non-site related arterial improvements and/or the construction of certain non-site related arterial improvements as a requirement of the Development Project; and

WHEREAS, the City is requiring improvements, as part of the Development Project, to the arterial roadways of 1st Ave. N. and Bridge St., Franklin Rd / E. Main St., Signal Modifications at E. Main St. and 1st Ave., and Traffic Signal Improvements at 2nd Ave and Bridge Street; and

WHEREAS, the Developer has made application to offset a portion of the costs of construction of these improvements against any Road Impact Fees due from the Development Project, and the estimated amount of such eligible costs, and potential offset, was determined by the Road Impact Fee Administrator (City Engineer) on December 22, 2014, to be One Million Two Hundred Eighty-Three Thousand Three Hundred Fifty-Five and No/100 Dollars (\$1,283,355.00) as shown in Exhibits A1 and A2.

NOW THEREFORE, the City and the Developer, their successors and assigns, do hereby agree as follows:

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. The Agreement (COF Contract No. 2014-0344) dated March 16, 2015 is hereby deleted in its entirety and replaced with this Amendment.
3. The Developer has submitted reliable information related to the costs of construction of the arterial roadway improvements as conceptually shown on Exhibit A1 and A2.
4. The total estimated cost of right-of-way, engineering/design and the cost of labor, equipment, supplies and material used to construct the arterial roadway improvements is **One Million Five Hundred Seventy Thousand Six Hundred Forty-Six and No/100 Dollars (\$1,570,646.00)**, and the estimated total Road Impact Fees anticipated from the Development are **Eight Hundred Fifty-Six Thousand Five Hundred Forty-Four and 93/100 Dollars (\$856,544.93)**.

5. In lieu of updating the pavement markings on Franklin Road (Exhibit A2), the Developer shall contribute **Twenty Nine Thousand Six Hundred Twenty-Three and No/100 Dollars (\$29,623.00)** in Road Impact Fees to the City.
6. Following acceptance of the Arterial Roadway Improvements as shown in Exhibit A1, the City shall reimburse the Developer, based on the actual construction cost (arterial improvements only), and in an amount not to exceed the actual Road Impact Fees generated by the development, plus an additional **Two Hundred Fifty-Six Thousand Five Hundred Seventy-Eight and No/Dollars (\$256,578.00)**. The Developer may submit periodic invoices, no more frequently than every (90) days, to the City during the course of construction. Said invoices shall be payable within thirty (30) days after approval by the City Engineer, subject to the collection of Road Impact Fees generated by the Development.
7. The Developer agrees to extend the sidewalk, curb and gutter, drainage, landscaping and lighting along the frontage of 144, 142 and 134 2nd Ave and to include the milling/paving for 100% of 2nd Ave. as shown in Exhibit B. The City agrees to reimburse the Developer for the total cost of right-of-way, engineering/design and the cost of labor, equipment, supplies and materials for the work, as shown in Exhibit B, for an amount not to exceed **Three Hundred Thirty Thousand Six Hundred Ninety-Three and No/100 Dollars (\$330,693.00)**. Funding for these improvements shall be paid from the City's General Fund or other approved funding source. The Developer may submit periodic invoices, no more frequently than every (90) days, to the City during the course of construction. Said invoices shall be payable within thirty (30) days after approval by the City Engineer. Invoices shall include copies of contracts and vendor invoices associated with the improvements. Proof of payment, such as copies of cancelled checks, shall also be provided.
8. The City agrees to reimburse the Developer, based on the actual construction cost associated with streetscape improvements, in an amount not to exceed **Two Hundred Ten Thousand One Hundred Sixteen and No/100 Dollars (\$210,116.00)** for streetscape items as conceptual shown in Exhibit C.
9. Within sixty (60) days of completion and acceptance of the Improvements, the Developer and the City shall settle on a final billing. The Developer will provide reasonable documentation for all costs and provide notarized release of liens.
10. The City and Developer agree that the terms and conditions contained herein shall be binding and shall ensure to their heirs, representatives, successors, and assigns and that there are no understandings or agreements between them except as contained in this instrument.
11. The City shall have no liability except as specifically provided in this Agreement.
12. Applicable Law/Choice of Forum and Venue. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to that state's choice of law rules. The parties' choice for forum and venue shall be exclusively in the courts of Williamson County, Tennessee.

13. Entire Agreement. This Amendment and Agreement together with its exhibit(s) constitutes the entire agreement between the parties and may not be modified except as by a written agreement by both parties.

WITNESS our hands on the dates as indicated.

DEVELOPER

Harpeth Associates LLC

By: _____

Print Name: _____

Title: _____

STATE OF TENNESSEE)

COUNTY OF _____)

Before me, _____, a Notary Public of said County and State, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged _____ self to be _____ (or other officer authorized to execute the instrument) of _____, the within named bargainer, a _____, and that _____ as such _____ executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal on this ___ day of _____, 20__.

Notary Public

My Commission Expires: _____

CITY

CITY OF FRANKLIN, TENNESSEE, a
municipality

By: _____

DR. KEN MOORE
Mayor

Date: _____

By: _____
ERIC S. STUCKEY
City Administrator

Date: _____

STATE OF TENNESSEE)
)
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared DR. KEN MOORE and ERIC S. STUCKEY, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged themselves to be the Mayor and City Administrator, respectively, of the City of Franklin, Tennessee, the within named bargainor, a municipality, and that as such Mayor and City Administrator executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by themselves as Mayor and City Administrator.

Witness my hand and seal this _____ day of _____, 20____.

Notary Public
My Commission Expires: _____

Approved as to form by:

Shauna R. Billingsley, City Attorney