

WATER MAIN CONSTRUCTION AGREEMENT
CITY OF FRANKLIN, TENNESSEE
COF Contract No 2014-0326

This **AGREEMENT** is made and entered into on this the ____ day of _____, 20__, by and between the **City of Franklin, Tennessee** ("City") and **RURAL PLAINS PARTNERSHIP** ("Developer").

WHEREAS, the Developer submitted and the City approved a Concept Plan for the Berry Farms Rural Plains Tract; and

WHEREAS, said approval for the Concept Plan for the Rural Plains Tract had attached certain conditions related to the construction of water distribution infrastructure; and

WHEREAS, unpredictable circumstances associated with projects outside of the Rural Plain Development have hampered the installation of water distribution infrastructure; and

WHEREAS, the City has agreed to allow for the temporary water main infrastructure as shown in **Exhibit B** should it become necessary to provide water service to Section 4 of the Rural Plains Development prior to being able to install the permanent water main infrastructure as shown in **Exhibit A**; and

WHEREAS, the Developer and City have agreed to partner in the design, construction and permitting associated with the permanent water main infrastructure as shown in **Exhibit A**.

NOW THEREFORE, in consideration of these premises and the mutual promises contained herein, 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 Developer agrees to retain the services of a professional engineer to design the proposed twelve inch (12") and eight inch (8") water main infrastructures as shown in **Exhibit A** and **Exhibit B**.
3. The Developer agrees to pay all cost associated with the acquisition of easements associated with the proposed twelve inch (12") water main as shown in **Exhibit A**. In addition the Developer shall be responsible for the acquisition of all offsite easements.

4. The Developer agrees to coordinate the design and installation of the temporary water main with the Tennessee Department of Transportation (TDOT) and the City to ensure that there are no infrastructure conflicts with the approved I-65 and Goose Creek Project plans. The Developer shall pay all cost associated with design, construction, installation, and the cutting, capping and abandonment of the temporary water main as shown in **Exhibit B**, upon the written request from the City. Any redesign and/or relocation due to interference with TDOT's approved plans for their I-65 and Goose Creek Project shall be the responsibility of the Developer.
5. The Developer shall dedicate any easement necessary to accommodate the temporary water main as shown on **Exhibit B**, and post sureties for the construction and maintenance of the temporary water main infrastructure as conceptually shown in **Exhibit B**. Sureties shall be posted prior to the City issuing permits. The sureties associated with the permanent water main as shown in Exhibit A and temporary water main as shown on Exhibit B shall not be released or reduced until the permanent water main as shown in Exhibit A has been installed, tested and accepted by the City.
6. The City hereby acknowledges that the Developer has prior hereto, posted the necessary sureties for the construction and maintenance of the permanent water main infrastructure as shown in **Exhibit A**; therefore, permits for the permanent water main infrastructure may be issued at any time after final approval of the engineered designed plans for this twelve inch (12") water main infrastructure.
7. The City agrees to assist in the acquisition of all offsite easements associated with the proposed permanent twelve inch (12") water main. In the event the Developer with the City's assistance fails to acquire the necessary easements the City will utilize the power of eminent domain to acquire the easements necessary for proper completion of the said water main. The Developer shall pay to the City the cost of the easements at fair market value including any damages prior to the City initiating its power of eminent domain (condemnation). Fair market value and any possible damages shall be determined by an appraiser approved by the City and the Developer. The City shall pay all other costs associated with eminent domain.
8. The Developer agrees to pay all costs associated with local, state and federal permits required as part of the temporary and permanent water main projects as shown in **Exhibits A & B**. The City will be responsible

for reviewing, approving and submitting all state and federal permit applications associated with the proposed permanent twelve inch (12") water main as shown in **Exhibit A**.

9. The Developer agrees to oversee the construction and ensure compliance with all local, state and federal permits and regulations. The Developer shall be responsible for all violations associated with these permits and the Developer agrees to indemnify and hold harmless the City as well as its officials, employees, officers and agents from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Developer, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the work relating to this Contract. The Developer further agrees it shall be liable for the reasonable cost of attorneys for the City in the event such services are necessitated to enforce the terms of this Contract.
10. Severability. If any term or provision of the Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Agreement will not be affected.
11. Precedence. In the event of conflict between this Agreement or any other contract, agreement or other document to which the Agreement may accompany, the provisions of this Agreement will to the extent of such conflict take precedence unless such document expressly states that it is amending this Agreement.
12. Time of the Essence. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
13. Applicable Law; Choice of Forum/Venue. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee without giving effect to any state's choice-of-law rules. The choice of forum and venue shall be exclusively in the Courts of Williamson County, Tennessee.
14. Entire Agreement. This Agreement together with its exhibit(s) supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Agreement. The terms and conditions of this Agreement may not be changed except by an amendment expressly

referencing this Agreement by section number and signed by an authorized representative of each party.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the dates as indicated.

Approved by the Franklin Board of Mayor and Aldermen on _____, 2015.

RURAL PLAINS PARTNERSHIP, a Tennessee general partnership

By: **BNB-WCO INVESTORS, LLC**, a Tennessee limited liability company, as Managing General Partner

By: Phil Fawcett

Print Name: PHIL FAWCETT

Title: Manager

Date: 2/5/15

STATE OF TENNESSEE)
)
COUNTY OF Williamson)

Before me, Joan Hines, a Notary Public of said County and State, personally appeared Phil Fawcett, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged self to be Manager (or other officer authorized to execute the instrument) of **BNB-WCO Investors, L.L.C.**, a Tennessee limited liability company, which is a partner of **Rural Plains Partnership**, a Tennessee general partnership, and that he as such Manager executed the foregoing instrument for the purposes therein contained, by personally signing the name of the company by him self as Manager.

Witness my hand and seal, at Office in Franklin, Tennessee, this 5th day of February, 2015.



Joan Hines
Notary Public
My Commission Expires: 1-14-2018

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Eric S. Stuckey
City Administrator/Recorder

By: _____
Dr. Ken Moore
Mayor

Date: _____

Date: _____

STATE OF TENNESSEE

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COUNTY OF WILLIAMSON

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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 bargainer, 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