

**AMENDMENT NO. 1 (COF CONTRACT NO. 2014-0345)**  
**AGREEMENT FOR REIMBURSEMENT OF COSTS**  
**FOR SANITARY SEWER AND WATER DISTRIBUTION IMPROVEMENTS**

Revised 10-7-2016

This Agreement between THE CITY OF FRANKLIN, TENNESSEE (“City”) and Harpeth Associates LLC, (“Developer”), entered into on this the \_\_\_ day of \_\_\_\_\_, 2016, subject to the following premises, terms and conditions.

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

**WHEREAS**, the Developer has been required, as a condition of approval, to construct certain off-site sanitary sewer improvements (“Sewer Improvements”) and water distribution improvements (“Water Improvements”) that will become a part of the Franklin sanitary sewer and water distribution systems and will be available for the use and benefit, not only of businesses and residents within the Development, but also for other present and future customers of the Franklin sanitary sewer and water distribution systems that are located outside the Development; and

**WHEREAS**, the Developer is therefore entitled, pursuant to Sections 18-108 and 18-208 of the Franklin Municipal Code, to be reimbursed for a portion of the costs of construction of the said Improvements as described herein; and

**WHEREAS**, the Developer has incurred or, based upon reasonable estimates of the City Engineer, will incur, costs of THREE HUNDRED FIFTEEN THOUSAND NINE HUNDRED EIGHT AND NO/100 DOLLARS (\$315,908.00) in the construction of the Water Improvements, including labor, equipment, supplies, materials, engineering design, supervision, inspection, legal and acquisition costs for easements and right-of-way, including without limitation the costs, including attorney fees, of eminent domain proceedings associated therewith. Of these costs, the City Engineer has determined that the additional cost of upsizing the Water Improvements, as requested by the City, is THREE HUNDRED FIFTEEN THOUSAND NINE HUNDRED EIGHT AND NO/100 DOLLARS (\$315,908.00); and

**WHEREAS**, the determination as to eligible cost reimbursement is generally based upon the difference in sizing and capacity of the lines and other facilities needed for the Development and that needed or required by the City for water distribution systems as a whole (e.g. the “cost of upsizing”); and

**WHEREAS**, the City may, in its discretion, consider other factors necessary for an equitable sharing of costs.

**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 2014-0345) dated March 16, 2015 is hereby deleted in its entirety and replaced with Amendment No. 1.
3. The City agrees to be responsible for the necessary offsite Sewer Improvements required, as a condition of approval, of the Harpeth Square PUD Subdivision. The Developer is not entitled to any sanitary sewer recapture or reimbursement associated with Sewer Improvements.
4. The total estimated cost of the Water Improvements is \$315,908.00. The Development is estimated to generate a total of \$69,771.00 in Water Access Fees. The City agrees to provide an additional, not to exceed, reimbursable amount of \$112,158.00 for the Water Improvements.
5. Reimbursement for the Water Improvements shall be made until such time as the eligible costs have been fully reimbursed by providing a reimbursement to the Developer against the Water Line Access Fees paid by users, who are hereafter provided a connection to the Water Improvements as shown in Revised Exhibit B, located within the Water Recovery Area as shown in Revised Exhibit C.
6. The Developer may submit periodic invoices, no more frequently than every ninety (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 collected Water Access Fees. Invoices shall include copies of contracts and vendor invoices associated with the Water Improvements. Proof of payment, such as copies of cancelled checks, shall also be provided.
7. Within sixty (60) days of completion and acceptance of the Water Improvements, the Developer and the City shall settle on a final billing. The Developer will provide reasonable documentation for all such cost and provide notarized release of liens.
8. The parties agree that, except as recited in this Agreement, the Developer has no further right of reimbursement with respect to the Water Improvements, and the Developer expressly releases the city from any further claim.

9. 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.

10. The City shall have no liability, except as specifically provided in this Agreement.

11. 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.

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

**Approved by the Franklin Board of Mayor and Alderman on \_\_\_\_\_, 2016.**

**WITNESS** our hands on the dates as indicated.

**DEVELOPER**

Harpeth Associates LLC

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

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 RURAL PLAINS PARTNERSHIP, the within named bargainor, a general partnership, and that \_\_\_\_\_ as such \_\_\_\_\_ executed the foregoing instrument for the purposes therein contained, by personally signing the name of the general partnership by \_\_\_\_\_ self as \_\_\_\_\_.

Witness my hand and seal, at Office in \_\_\_\_\_, Tennessee, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

DRAFT

**CITY**

CITY OF FRANKLIN, TENNESSEE

By: \_\_\_\_\_  
Dr. KEN MOORE  
Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
ERIC S. STUCKEY  
City Administrator/Recorder

Date: \_\_\_\_\_

STATE OF TENNESSEE )

)ss:

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 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 on this the \_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

Approved as to form by:

DRAFT