

TRAFFIC SIGNAL CONSTRUCTION AND INSTALLATION AGREEMENT
Branch Creek Crossing

COF Contract No. 2016-0081

THIS AGREEMENT, is made and entered into this 25TH day of August, 2016, by and among the City of Franklin, Tennessee Board of Mayor and Alderman, a municipality incorporated under the laws of the State of Tennessee ("City") and BCC Investments, LLC ("Developer").

WHEREAS, the Developer is developing land known as the Branch Creek Crossing located at 574 and 580 Franklin Road in Franklin, TN, and specifically the proposed site access will be located on the east side of Franklin Road approximately 890 feet south of the intersection of Franklin Road and Moores Lane/Lynwood Way ("Development"); and

WHEREAS, the Developer desires to develop a mixed-use development with approximately 48 condominium units and 36,000 square feet of office space; and

WHEREAS, the Developer completed a Traffic Impact Study for Branch Creek Crossing, which included among other things a future Traffic Signal at Phase 2, to be installed at the intersection of Franklin Road and Davenport Boulevard/Branch Creek Crossing Access upon completion of the proposed additions to the Development; and

WHEREAS, the estimated cost associated with the design, construction and installation of the traffic signal is \$350,000; and

WHEREAS, this Agreement is to set forth the obligations of the Developer necessary to complete that portion of the construction, installation, and activation of the Traffic Signal that serves the Development.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereto, for themselves, their successors and assigns, agree as follows:

I. The above recitals are incorporated herein by reference.

II. Project Description:

This project entails the planning, design, construction, and inspection of Traffic Signalization at the intersection of Franklin Road and Davenport Boulevard/Branch Creek Crossing Access upon completion of the proposed additions to the Development.

III. Developer Responsibilities:

- A. The Developer shall be responsible for sixty percent (60%) (\$210,000) of the cost of the Traffic Signal and the installation of said Traffic Signal.
- B. The Developer agrees to dedicate, at no cost to the City, all future easements and right-of-way necessary for the installation, operations and maintenance of the traffic signal and signal equipment. The Developer shall record this agreement at the Williamson

County Registers office and the dedication of right-of-way and easements shall be deemed and treated as a covenants running with the land and shall bind the heirs, successors, assignees, and legal representatives of the parties hereunto.

- C. The Developer shall remit cash or check to the City for sixty percent (60%) (\$210,000) of the cost of the Traffic Signal and the installation of said Traffic Signal. Payment must be received by the City prior to pulling any permits associated with Phase 2 as shown on the approved Development Plan.
- D. Full and Final Release of Obligation: Upon the receipt by the City of the \$210,000, Developer shall be fully and totally released from any obligation for the traffic signal at Phase 2 at the intersection of Franklin Road and Davenport Boulevard/Branch Creek Crossing.

IV. City Responsibilities:

- A. The City shall be responsible for the design, permitting and installation of the Traffic Signal at a time to be specified by the Board of Mayor and Aldermen.

V. Future Ownership and Maintenance of Traffic Signal:

The City will accept ownership, operation, and maintenance of the Traffic Signal including all costs associated with the electrical energy usage.

VI. Miscellaneous:

A. Indemnification & Hold Harmless.

As additional consideration for the above mentioned payment, the Developer hereby promises and agrees to indemnify and hold forever harmless the City from any and all further actions, causes of actions, suits, rights, judgments, claims, demands, damages, costs, expenses, loss of services, liens, known or unknown, brought or claimed by any person or entity against the City relating to obligations of the Developer referenced in this Agreement or any actions or inactions taken by the Developer related to the construction of the intersection improvements by the Developer. The Developer understands and agrees that such promise shall, in addition, include the obligation to provide a defense and/or to pay such costs or defense arising out of any such further or any other claims, demands, cross-claims, third-party claims, liens and/or causes of action of any kind whatsoever. The Developer further agrees it will not join or attempt to join the City, their insurers, successors or assigns in any capacity in any action that is or may be brought against the Developer arising out of the Developer's obligations referenced in this Agreement or any actions or inactions taken by the Developer related to the construction of the intersection improvements by the Developer.

B. Independent Counsel and Fairness of Agreement.

Both Parties expressly acknowledge that they are satisfied with and understand the terms of this Agreement. Each party is entering into this Agreement freely, voluntarily, and with full knowledge that this Agreement constitutes a binding contract. Both Parties acknowledge that this Agreement is not the result of any fraud, duress or undue influence exercised by either party upon the other, or by any person or persons upon either party.

C. Representations and Warranties.

The Parties represent and warrant that they have received such approvals necessary to approve the making of this Agreement. The Parties represent and warrant that they will, should the issue arise, cooperate in demonstrating to a court, governmental body or arbitrator that this Agreement was negotiated, executed and implemented in good faith, that no promise, representation or inducement has been offered or made except as herein set forth, and that this Agreement is executed without reliance upon any statement or representation by any other party.

D. Assignment.

This Agreement is limited to matters involving the provisions of the Traffic Signal improvements for the Development and the Developer acknowledges that all development rights and other matters respecting the development of the Property are governed by the City's Municipal Code, Zoning Ordinance , and related regulations.

Developer's rights under this Agreement may be assigned to the entity formed by Developer for the ownership and development of the Development. Developer must communicate the assignment to the City in writing prior to the assignment and Developer agrees that it or its affiliates will have an ownership interest in the assigned entity.

E. Laws of Tennessee.

This Agreement was made and entered into in the State of Tennessee and is to be governed by and construed under the laws of the State of Tennessee.

F. Recitals.

The Recitals are hereby incorporated into this Agreement as substantive provisions.

G. Headings.

The headings herein are inserted only as a matter of convenience and do not in any way define, limit, construe or describe the scope of intent of this Agreement.

H. Entire Agreement: Modification.

This Agreement constitutes the entire agreement and understanding of the Parties. There are no other promises or other agreements, oral or written, express or implied between the Parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing and signed by authorized representatives of both Parties.

I. Severability.

If any provision of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

J. Waiver.

No waiver by a party hereto of the other party's breach of any term or condition contained in this Agreement shall be deemed a waiver of any subsequent breach of the same or any other term, covenant, or condition in this Agreement.

Approved by the Board of Mayor and Aldermen this the 25th day of August, 2016.

WITNESS our hands on the dates as entered.

BCC Investments, LLC

By: [Signature]
Title: manager LLC

Date: 8-25-16

Approved as to form by:

[Signature]
Tom White
Counsel for Developer

City of Franklin, Tennessee

Attest By:

Dr. Ken Moore
Mayor

Eric Stuckey
City Administrator

Date: _____

Approved as to form by:

Shauna R. Billingsley
City Attorney