



MEMORANDUM

October 10, 2013

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *Eric*
David Parker, City Engineer/CIP Executive
Paul P. Holzen, Director of Engineer

SUBJECT: **Consideration of Amendment 1 (COF Contract No 2013-0016) to the Road Impact Fee Offset Agreement with Trillium Farms, L.P.**

Purpose

The purpose of this memorandum is to provide the Franklin Board of Mayor and Aldermen (BOMA) with the information to consider Amendment 1 to the Road Impact Fee Offset Agreement with Trillium Farms, L.P.

Background

On May 7th, 2013 the Board of Mayor and Aldermen approved a Road Impact Fee Offset Agreement with Trillium Farms, L.P. for the acquisition and construction of certain non-site related road improvements identified in the City's Major Thoroughfare Plan generally consisting of improvements to Carothers Parkway from the proposed intersection of Carothers Parkway and Long Lane. As part of this agreement the City and Developer agreed to offset a portion of the cost of acquisition and construction in the amount of 50%. The total estimated amount of construction at the time of the agreement was \$876,102.00. At this time the developer has received bids for the improvements as outlined in the agreement dated May 7, 2013 and is requesting an additional \$139,346.10 be added to the eligible cost. This would bring the total eligible cost to \$1,015,448.10. In addition the Developer is requesting that \$440,085.86 be used as offset for building permits are obtained in Section J and that an amount not to exceed \$575,362.24 to be paid in cash from impact fees already collected.

Financial Impact

The financial impact would be an additional \$139,346.10 (\$1,015,448.10 - \$876,102.00) paid out of Road Impact Fees. The total financial impact to include the original agreement would be \$1,015,448.10.

In addition it should be noted that the developer, or persons purchasing lots from the developer, have already paid \$576,087 (as of August 1, 2013) in road impact fees. Based upon the current concept plan it is anticipated that an additional \$3,330,000 in road impact fees will be collected.

Recommendation

Staff recommends approval of Amendment 1 (COF Contract No 2013-0016) to the Road Impact Fee Offset Agreement with Trillium Farms, L.P.

**AMENDMENT NO. 1
ROAD IMPACT FEE OFFSET AGREEMENT
COF CONTRACT NO 2013-0016**

This contract between THE CITY OF FRANKLIN, TENNESSEE (“City”) and TRILLIUM FARMS, L.P., a Tennessee limited partnership (“Developer”), entered into on this the ____ day of _____ 2013, pursuant to Section 16, Chapter 4 of the Franklin Municipal Code.

WHEREAS, the City and the Developer entered into an agreement, dated May 7, 2013, (the “Agreement”) for the offset of Road Impact Fees in the amount of \$876,102.00 for the construction of Carothers Parkway from the proposed intersection of Carothers Parkway and Long Lane; and

WHEREAS, the above said Agreement described the Development Project for which the offset was to apply; and

WHEREAS, the Developer, or persons purchasing lots from the Developer, have already paid \$576,087.00 (as of August 1, 2013) in road impact fees within the Development Project and it is anticipated that, based upon the current concept plan an additional \$3,330,000.00 is expected to be collected within the Development Project; and

WHEREAS, the City has requested that the Developer perform additional work not included in the original Agreement; and

WHEREAS, the Developer has agreed to perform the additional work under the terms and conditions set forth herein; and

WHEREAS, the Developer has provided to the City a reliable estimate of the cost of the said Carothers Parkway and Long Lane as noted in Exhibit A.

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

1. The foregoing recitals are incorporated into this Amendment 1 and made a part thereof.
2. Developer has submitted updated information related to the costs of construction of the improvements as outlined in the agreement dated May 7, 2013.
3. The City agrees with the estimate as noted in Exhibit A and shall reimburse the developer based on the requirements as outline in the agreement dated May 7, 2013.
4. Paragraph 4 of the Agreement is hereby deleted in its entirety and replaced with the following:

Pursuant to the ordinance and guidelines, the reimbursement and offset shall be credited or repaid to Developer in the following manner:

 - a. The City shall reimburse the Developer one hundred percent (100%) of the Total Cost incurred by Developer in completing the Improvements and the City shall pay in cash an amount not to exceed \$575,362.24 to the Developer within thirty (30) days of the completion and acceptance of the Improvements by the City. The remaining \$440,085.86 shall be applied to the total impact fees due for Section J of the current development plan prior to issuance of the building permit to the Developer.

- b. In the event the Developer has already entered into contacts with a builder or any other person (“Developer’s Successor”) or enters into such contracts in the future with respect to those lots shown in Section J of the current development plan requiring the payment of road impact fees by Developer’s successor to the City for the Total Cost, then payment for any future fees required by Developer’s Successor with respect to the lots in Section J may be offset by Developer’s Successor by use of the Credits in an amount not to exceed the Total Cost. Developer’s Successor shall be deemed to be a third party beneficiary to the terms and conditions of this Agreement for the limited purpose of obtaining the benefits contained in this Paragraph.
 - c. In the event that the eligible Credits as specified in this Agreement in Paragraph 4b are not exhausted by the Developer or Developer’s Successor and the Developer has not assigned subsequent or remaining Credits in writing to the City to another specified Developer’s Successor, road impact fees shall be paid to the City pursuant to the Road Impact Fee Ordinance in affect at the time with reimbursements to the developer on a semi-annual basis until all Credits are exhausted.
 - d. The City Agrees that to the extent the Developer provides the dedication and/or construction of additional non-site related arterial street improvements at the City’s request that the Developer shall be eligible for reimbursed and/or off-sets for the cost of such improvements pursuant to Section 16-418 (2) of the Franklin Municipal Code in accordance with a road impact off-set agreement negotiated prior to the start of the additional improvements.
 - e. If at any time total credits stipulated under this Agreement with the City for eligible improvements are exhausted, the City through it Building and Codes Official will notify the Developer or its successor in interest and road impact fees payment will be come due on further development within the Development Project.
5. The City agrees that the project shall be considered substantially complete upon installation of the asphalt binder service allowing building permits to be issued. In the event installation of the final asphalt riding surface is not funded, and delayed to coincide with other work in the area, this action shall not prohibit issuance of Certificate of Occupancy to homes using this roadway as a point of access. Final pavement markings and signing shall be installed at the appropriate time as deemed by City Staff.
 6. The Total additional eligible costs to the Agreement (COF Contract No 2013-0016) dated May 7, 2013, for the construction/installation and necessary right of way or easements required for the improvements to Carothers parkway from the proposed intersection of Carothers Parkway and Long Lane are **ONE HUNDRED THIRTY NINE THOUSAND THREE HUNDRED FORTY SIX AND 10/100 DOLLARS (\$139,346.10)**.
 7. All other provisions of the Agreement dated May 7, 2013, are unchanged and remain in full force and effect.

Approved by the Franklin Board of Mayor and Alderman on _____, 2013.

WITNESS our hands on the dates as indicated.

DEVELOPER

TRILLIUM FARMS, L.P, a Tennessee limited partnership

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF TENNESSEE)

)ss:

COUNTY OF WILLIAMSON)

Before me, the undersigned 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 himself to be the _____ of TRILLIUM FARMS, L.P, a Tennessee limited partnership, the within named bargainor and that he as such _____ being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the limited liability company as general partner of TRILLIUM FARMS, L.P, in its capacity as General Partner of the within named bargainor, and on its behalf.

WITNESS, my hand and seal on this the _____ day of _____, 2013.

Notary Public

My Commission expires: _____

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 the 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 _____, 2013.

Notary Public
My Commission expires: _____

APPROVED AS TO FORM:

By: _____
Shauna R. Billingsley, City Attorney

Exhibit A
BUDGET SUMMARY

TABLE 1

ORIGINAL BUDGET				
TASK				ESTIMATED COST
SUB-TOTAL ENGINEERING CONSTRUCTION ESTIMATE				\$711,519.75
CONSTRUCTION ENGINEERING INSPECTION				\$27,000.00
ENGINEERING/SURVEY		10.00%		\$71,151.97
SUB-TOTAL ROADWAY ENGINEERING CONSTRUCTION ESTIMATE (1, 2)				\$782,671.72
RIGHT-OF-WAY ACQUISITION	S.F.	130000	\$0.75	\$97,500.00
TOTAL ROADWAY ENGINEERING CONSTRUCTION ESTIMATE (1)				\$880,171.72

NOTE:

(1) City Agreement 2013-016 approved a contract ceiling of \$876,102.00

TABLE 2

ADJUSTED BUDGET	
TASK	LOW BID RECEIVED
8-INCH WATER SYSTEM (PER MILCROFTON UTILITY DISTRICT STANDARDS)	\$94,450.00
SANITARY SEWER STEEL CASING PIPE, (16" INSIDE DIA., INCLUDES AS-BUILT PLANS)	\$22,700.00
STORM DRAINAGE SYSTEM (CASTINGS TO HAVE A SOLID BACK, INCLUDES AS-BUILT PLANS)	\$99,850.00
EXCAVATION & EMBANKMENT (INCLUDES, BUT NOT LIMITED TO, ALL FORMS OF GRADING, CLEARING AND GRUBBING)	\$211,350.00

CURBS, AGGREGATE BASE & ASPHALT BASE/BINDER SYSTEM (INCLUDES TEMPORARY PAVEMENT MARKINGS)	\$229,000.00
FINAL ASPHALT RIDING SURFACE (OWNER RESERVES THE OPTION TO PROVIDE THIS AT A LATER DATE. UNIT COST TO BE ADJUSTED PER TDOT'S BITUMINOUS INDEX (AUGUST 2013 BASE) IF NOT INSTALLED AS PART OF THE ORIGINAL CONTRACT)	\$48,000.00
TRAFFIC CONTROL SYSTEM	\$5,100.00
EROSION CONTROL SYSTEM	\$39,835.00
ROADWAY LIGHTING SYSTEM	\$61,000.00
PERMANENT SIGNING	\$1,800.00
PERMANENT PAVEMENT MARKING (THE OWNER RESERVES THE OPTION TO PROVIDE THIS AT A LATER DATE)	\$12,115.00
TOPSOIL AND SLOPE STABILIZATION	\$34,700.00
PAYMENT AND PERFORMANCE BOND	\$6,600.00
Sub-Total BID	\$866,500.00
CONTINGENCY ALLOWANCE	\$25,000.00
FUNDING CARRY CHARGE (3%+/-)	\$25,995.00
CONSTRUCTION ENGINEERING INSPECTION	\$27,000.00
ENGINEERING/SURVEY	\$79,300.00
RIGHT-OF-WAY (3.36 Ac @ \$.075/Sq. Ft.)	\$108,803.10
Slope Easement (1.54 Ac @\$0.75/Sq. Ft.)	\$0.00
Const. Easement (0.54 Ac @\$0.75/Sq. Ft.)	\$0.00
ADJUSTED BUDGET	\$1,132,598.10
NET BUDGET IMPACT	
DEVELOPER COST	
8-INCH WATER SYSTEM (PER MILCROFTON UTILITY DISTRICT STANDARDS)	\$94,450.00
SANITARY SEWER STEEL CASING PIPE, (16" INSIDE DIA., INCLUDES AS-BUILT PLANS)	\$22,700.00
SUB-TOTAL DEVELOPER COST	\$117,150.00
BUDGET IMPACT LESS DEVELOPER COST	\$1,015,448.10
Approved Budget	\$876,102.00
TOTAL BUDGET ADJUSTMENT	\$139,346.10
Difference in approved budget including deduct of payment bond (1)	\$132,746.10

NOTE:

- 1) The project construction duration is sixty days. With such a short duration of the contract it is not felt the performance and payment bonds are required. Prior to closure of the contract a release of liens will required of all parties associated with construction activities.