



HISTORIC
FRANKLIN
TENNESSEE

ITEM #20
BOMA
05/24/2011

MEMORANDUM

May 19, 2011

TO: Board of Mayor and Aldermen

FROM: Eric J. Gardner, P.E., Director of Engineering
Eric S. Stuckey, City Administrator *ES*
David Parker, City Engineer

SUBJECT: **Sanitary Sewer Recovery Agreement for Rural Plains Partnership
COF Contract No. 2011-0056**

Purpose

The purpose of this memo is to provide BOMA with the information necessary to render a decision as to the approval for the proposed Sanitary Sewer Recovery Agreement for Rural Plains Partnership; a portion of the Berry Farms Development.

Background

Staff has received and reviewed the sanitary sewer recovery request submitted by Adam Ballash of Boyle Investment Company for the Rural Plains portion for the Berry Farms Development. The sanitary sewer improvements include the installation of an 18" sanitary sewer interceptor line along Gosse Creek and an 8" reclaimed line within the development. A previous review of the costs eligible for recovery for the sanitary sewer improvements was based on allowance for only the cost associated with the upsizing of the line from 8" to 18" and basically allowed for only the material cost difference in the line. Further review and discussions among City staff and the Developer point to the fact that the 18" sanitary sewer interceptor was not originally a part of the development and a plan for a different layout of an 8" sanitary sewer system would provide the service for this development. The 18" sanitary sewer interceptor was the results of an alteration of the original plan to incorporate the City's long range plan to provide sanitary sewer for the drainage basin. Also, the original submission did not account for the sanitary sewer easements being dedicated within the development. The cost that the applicant has submitted for the sanitary sewer improvements is \$503,119. The eligible costs as determined by staff for this requested sanitary sewer recovery are:

Design	\$ 74,296
Easements	\$ 41,750
Construction (Sanitary Sewer)	\$ 280,067
TOTAL	\$ 396,113

It is the opinion of staff that the costs for the reclaimed water lines are not eligible for recovery. The City has installed the reclaimed system to the Development as part of the 5-Mile Creek Interceptor Sewer Project and the reclaimed lines to be installed by the Development are for their sole benefit even if required by the City.



Options

Option 1 – Approval of the agreement for the sanitary sewer interceptor line recovery in the amount of \$396,113 as determined eligible by staff; elimination of the reclaimed water line(s) costs.

Option 2 – Approval of the agreement for the sanitary sewer improvements recovery in the amount of \$503,119 as requested by the applicant.

Option 3 – Some variation of the two above options.

Financial Impact

Depending on the option chosen by BOMA, the financial impact would be either \$396,113 or \$503,119 as a sanitary sewer recovery (paid out of sanitary sewer access fees either already collected for the development or to be collected from development within the Sanitary Sewer Recovery Area.

Recommendation

Staff recommends the approval of the Sanitary Sewer Recovery Agreement with Boyle Investment Company as per Option 1 above.

**AGREEMENT FOR REIMBURSEMENT OF COSTS
FOR SANITARY SEWER IMPROVEMENTS
COF CONTRACT NO 2011-0056**

This Agreement between THE CITY OF FRANKLIN, TENNESSEE (“City”) and **RURAL PLAINS PARTNERSHIP**, a Tennessee general partnership (“Developer”), entered into on this the 24th day of May, 2011, subject to the following premises, terms and conditions.

WHEREAS, the Franklin Municipal Planning Commission and the Board of Mayor and Aldermen have approved the concept plan and rezoning for the Berry Farms Rural Plains PUD Subdivision (the “Development”); and

WHEREAS, the Developer has been required as a condition of this approval to construct certain on-site sanitary sewer improvements which will become a part of the Franklin sanitary sewer system and will be available for the use and benefit not only of businesses and residents within the Development, but other present and future customers of the Franklin sanitary sewer system outside the Development; and

WHEREAS, in furtherance of the timely provision of sanitary sewer services to the Development, and in addition to the required sanitary sewer system improvements, the Developer has agreed to construct for the benefit of the City certain additional/upsized sanitary sewer improvements; and

WHEREAS, the Developer is therefore entitled pursuant to Section 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 FIVE HUNDRED THREE THOUSAND ONE HUNDRED NINETEEN AND NO/100 DOLLARS (\$503,119.00) in the construction of the sanitary sewer 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 cost of the installation of the upsized gravity sanitary sewer improvements as requested by the City is THREE HUNDRED NINETY-SIX THOUSAND ONE HUNDRED THIRTEEN AND NO/100 DOLLARS (\$396,113.00) and that the cost OF ONE HUNDRED THOUSAND SIX HUNDRED NINETY-FIVE AND NO/100 DOLLARS (\$100,695.00) of the reclaimed water line(s) is not eligible for recovery as these improvements are for sole benefit of the Development.

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 Developer and the City agree that the Developer shall be reimbursed as hereafter set forth for the improvements for sanitary sewers shown on those drawings prepared by Littlejohn Engineering Associates titled "Goose Creek Sanitary Sewer"; dated "Revision 3 of 5/15/09, as may be further revised (collectively, the "Sewer Improvements").

3. The total eligible costs associated with the Sewer Improvements for which Developer is eligible for reimbursement are **THREE HUNDRED NINETY-SIX THOUSAND ONE HUNDRED THIRTEEN AND NO/100 DOLLARS (\$396,113.00)**, subject to the provisions of Section 6.

4. Reimbursement for the Sewer Improvements shall be made until such time as the eligible costs have been fully reimbursed by providing (i) a credit to Developer against one hundred percent (100%) of the Sanitary Sewer Access Fees that would otherwise be due from the Developer for the sanitary sewer connections within the Development; and (ii) a payment to Developer of all Sanitary Sewer Access Fees paid by users who are hereafter provided a connection to the Sanitary Sewer Improvements and any extension thereof (see Exhibit A, "Sanitary Sewer Recovery Area").

5. The City shall pay to the Developer, within ninety (90) days of the close of the City's fiscal year, the Sanitary Sewer Access Fees collected from the Sanitary Sewer Recovery Area during each such year.

6. Prior to acceptance of the Sewer Improvements, the Developer must submit to the City of Franklin Board of Mayor and Aldermen a detailed statement of the actual eligible costs and the Board may, in its discretion, adjust the eligible costs to reflect the actual project costs.

7. The City agrees that, upon execution of this Agreement and until such time as all amounts to be reimbursed hereunder have been reimbursed, it will set up an accounting system to keep a separate record of all sanitary sewer line access credits and fees provided or paid to the Developer. These records shall be kept in the office of the City Administrator/Recorder, or such other place as may be designated by the City of Franklin Board of Mayor and Aldermen and shall be open to the public and the Developer for inspection during business hours and with reasonable prior notice. Upon the concurrence of the City and the Developer that the eligible costs have been fully reimbursed, the City shall be relieved of the obligations provided in this Section 7.

8. The parties agree that the terms and conditions contained herein shall be binding on and shall inure to their heirs, representatives, successors and assigns and that there are no understandings or agreements between them except as contained in this instrument.

9. The parties agree that, except as recited in this Agreement, the Developer has no further right of reimbursement with respect to the Sewer Improvements and the Developer

expressly releases the City from any further claim therefor. The Developer further acknowledges and agrees that the reimbursement rights provided herein do not constitute a debt of the City but only a right of offset against fees otherwise due from the Developer and a right to reimbursement from Sewer Access Fees actually paid by Reimbursement Area Users.

Approved by the Franklin Board of Mayor and Alderman on May 24, 2011.

WITNESS our hands on the dates as indicated.

DEVELOPER

Rural Plains Partnership,
a Tennessee general partnership

By: _____

Print Name: _____

Title: _____

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 bargainer, 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: _____

CITY

ATTEST

CITY OF FRANKLIN, TENNESSEE

By: _____
Dr. KEN MOORE
Mayor

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 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 on this the ___ day of _____, 2011.

Notary Public
My Commission expires: _____

Approved as to form by:

Shauna R. Billingsley
Shauna R. Billingsley, City Attorney