

**WATERLINE COST REIMBURSEMENT AGREEMENT
COF CONTRACT NO 2011-0107**

This contract is between THE CITY OF FRANKLIN, TENNESSEE (“City”) and BRISTOL DEVELOPMENT GROUP, LLC (“Developer”), and is entered into on this the _____ day of _____, 2011, pursuant to Title 18, Chapter 1 of the Franklin Municipal Code.

WHEREAS, the Developer has previously submitted to the Franklin Municipal Planning Commission for approval specific site development plans for the development of the below described properties (the “Development Project”):

Jamison Station PUD Subdivision - Sections 2 & 3 dated 7/28/11 (**Exhibit A**).

WHEREAS, the City has required the Developer to construct an off-site water main extension to connect the Development Project located east of The Factory at Franklin property and the CSX railroad right-of-way, to existing infrastructure located in the Harpeth Industrial Park at the end of Harpeth Industrial Court, for the purpose of creating a loop connection to increase water pressure, redundancy, quality, and system reliability in the general area; and

WHEREAS, said off-site water main extension will become part of the Franklin Water System and will be available for the use and is a benefit of other customers of the Franklin Water System; and

WHEREAS, the Developer has produced to the City a reliable estimate of the costs of ONE HUNDRED TWENTY FIVE THOUSAND ONE HUNDRED THREE AND 33/100 DOLLARS (\$125,103.33) related to the construction of the off-site water main extension, including estimated construction, easements and required permits, all of which costs the City Engineer has determined are reasonable; and

WHEREAS, the Developer has made application to seek reimbursement for a portion of the cost of construction of the off-site water main extension improvement to be paid from revenue generated from the Waterline Access Fee account, and the estimated eligible reimbursement of SIXTY-TWO THOUSAND FIVE HUNDRED FIFTY-ONE AND 67/100 DOLLARS (\$62,551.67) is based on a construction cost equally shared between the City and the Developer, as determined to be appropriate for this water main extension by the City Administrator and Assistant City Administrator for Community and Economic 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. Developer has submitted reliable information related to the costs of construction of the following project, (“Water System Improvements”):

8” water main extension and associated appurtenances to connect the Development Project to existing infrastructure; limits of

improvements more specifically described as from the beginning of the water main bore on the east side of the CSX right-of-way, to tie into the existing water main located at the end of Harpeth Industrial Court, as shown on the plans including drawings prepared by Barge Cauthen Associates; plans titled “Jamison Station PUD Subdivision – Sections 2 & 3” (see Exhibit A).

3. The estimated total eligible costs of construction, permits, and easement/right-of-way of the above improvements are ONE HUNDRED TWENTY FIVE THOUSAND ONE HUNDRED THREE AND 33/100 DOLLARS (\$125,103.33) and the estimated total reimbursement to the Developer to be applied to Waterline Access Fees due the City is SIXTY-TWO THOUSAND FIVE HUNDRED FIFTY-ONE AND 67/100 DOLLARS (\$62,551.67) for the Development Project which is one-half of the estimated total cost.
4. This offset shall be applied to the total Waterline Access Fees due or that become due in the Development Project known as Jamison Station PUD Subdivision – Sections 2 & 3, as shown on **Exhibit B** attached hereto, prior to issuance of the building permit to the Developer or its successors in interest upon start of construction for the different phases of the Project. Any Waterline Access Fees already paid within the Development Project area shall be reimbursed within thirty (30) days. Pursuant to the ordinance, Section 18-108 of the Franklin Municipal Code.
5. Reimbursement for the Water System Improvements shall be made until such time as the eligible costs have been fully reimbursed by providing (i) a reimbursement to Developer of Water Access Fees collected within the Recovery Area (Exhibit B) from the time of the approval of this Agreement; and (ii) upon approval of this Agreement, a credit to Developer against one hundred percent (100%) of the Water Access Fees that would otherwise be due from the Developer for the water connections within the Development; and (iii) a payment to Developer of all Water Access Fees paid by users who are hereafter provided a connection to the Water System Improvements (“Recovery Area Users”).
6. The City agrees that, upon execution of this Agreement and until such time as all Water Access Fees to be credited hereunder have been credited, it will set up an accounting system to keep a separate record of all water main Water Access Fee credits used by Developer or its assignees. These records shall be kept in the office of the City Administrator/Recorder, or such other place as may be designated by the City Administrator/Recorder and shall be open to the public and Developer for inspection during business hours and with reasonable prior notice. Upon the determination of the City and Developer that the credits granted hereunder have been fully used by Developer, the City shall be relieved of the obligations provided in this Agreement
7. The City agrees that the Water Access Fee credits provided to Developer hereunder shall be assignable by Developer to any assignee of Developer but only to the extent that the credits shall be applied against Water Access Fees for improvements in the reimbursement area set forth on the map attached hereto as Exhibit B (the “Recovery Area”). Developer agrees to provide the City with written notice of any such assignment within the Recovery Area.

8. The parties agree that the terms and conditions contained herein shall be binding on and shall inure to their 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, Developer has no further right of reimbursement with respect to the Water Improvements and Developer expressly releases the City from any further claim therefor. Developer further acknowledges and agrees that the reimbursement rights provided herein do not constitute a debt of the City but only a right of credit for Access Fees due from the Developer for the Development Project.
10. 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.
11. Entire Agreement. This Agreement together with its exhibit(s) constitutes 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 _____, 2011.

WITNESS our hands on the dates as indicated.

BRISTOL DEVELOPMENT GROUP, LLC,
a Tennessee Limited Liability Company

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF TENNESSEE)
)
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 BRISTOL DEVELOPMENT GROUP, LLC, the within named bargainor, a limited liability company, and that _____ as such _____

executed the foregoing instrument for the purposes therein contained, by personally signing the name of the company by _____ self as _____.

Witness my hand and seal, at Office in _____, Tennessee, this ____ day of _____, 20__.

Notary Public
My Commission Expires: _____

ATTEST:

CITY OF FRANKLIN, TENNESSEE:

By: _____
Eric S. Stuckey
City Administrator/Recorder

By: _____
Dr. Ken Moore
Mayor

Date: _____

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 this ____ day of _____, 20__.

Notary Public
My Commission Expires: _____

Approved as to form by:

Shauna R. Billingsley, City Attorney



MEMORANDUM

August 11, 2011

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator
David Parker, P.E., City Engineer
Vernon J. Gerth, Assistant City Administrator
Micky Dobson, Staff Engineer

SUBJECT: Waterline Cost Reimbursement Agreement for Jamison Station PUD Subdivision
Sections 2 & 3; COF Contract No. 2011-0107.

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider the proposed Waterline Cost Reimbursement Agreement for the Jamison Station PUD Subdivision Sections 2 & 3.

Background

Staff has received and reviewed the waterline cost reimbursement requests submitted by Charles Carlisle of Bristol Development Group, LLC. The waterline improvements include installation of an off-site 8" water main extension from the development project to existing infrastructure located in the Harpeth Industrial Park at the end of Harpeth Industrial Court, for the purpose of creating a loop connection to increase water pressure, redundancy, quality, and system reliability for the benefit of the general area. Improvements that become part of the Franklin Water System and are available for use and benefit the customers of the Franklin Water System are eligible for reimbursement of a portion of the costs of construction of said improvements. The above described improvements are, therefore, eligible for cost recovery as established by Title 18 Chapter 1 Sec. 18-108 of the Franklin Municipal Code.

The expenses for the requested off-site waterline are:

Easements	\$ 10,185.00
Required Permit Fees	\$ 5,125.00
Construction (Water Main)	<u>\$109,793.33</u>
TOTAL	\$125,103.33

While the Code allows for the Board of Mayor and Aldermen to consider other factors and use its discretion, typically eligible costs are those that are for "up-sizing" that goes above what is necessary for the development. In this case, staff views the off-site water main extension to be a necessary item to the development project as well as a benefit to the Franklin Water System. Therefore, staff has determined a 50/50 cost split to be fair and eligible for cost reimbursement.

The eligible costs for this requested waterline cost reimbursement are:

Easements	\$ 5,092.50
Required Permit Fees	\$ 2,562.50
Construction (Water Main)	\$ 54,896.67
TOTAL	\$ 62,551.67

The Board may use its reasonable discretion to consider such other factors as necessary for an equitable sharing of costs of any system improvements. Prior to dedication and acceptance of the improvements by the City, the individual requesting reimbursement must present to the Board a detailed statement of the actual eligible costs and the Board in its discretion may amend the Agreement, and the reimbursement amount, to reflect the actual project costs.

Options

Option 1 – Approval of the Waterline Cost Reimbursement Agreement in the amount of \$62,551.67 (**50/50 cost split**). Approve COF Contract No 2011-0107 as presented.

Option 2 – Approval of the Waterline Cost Reimbursement Agreement in the amount of \$125,103.33 (**total cost of easements, required permit fees, and construction of water main**). Amend COF Contract No 2011-0107 to reflect this reimbursement cost.

Option 3 – Some variation of options 1 and/or 2. COF Contract No 2011-0107 will be require amending to reflect variation as approved.

Option 4 – Deny (not accept) the requested agreement for reimbursement for the water main Disapprove COF Contract No 2011-0107.

Financial Impact

Should BOMA decide to choose either Option 1 or 2 above, the financial impact would be either \$62,551.67 or \$125,103.33 respectively applied to Waterline Access Fees due the City. Option 4 does not have any financial obligation of the City, placing all financial responsibility for the system improvements on the developer.

Recommendation

The majority of staff recommends Option 1 (COF Contract No 2011-0107 as written) the 50/50 split option of the Waterline Cost Reimbursement Agreement for Jamison Station PUD Subdivision Sections 2 & 3 with Bristol Development Group, LLC.