



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #15  
WRKS 08/28/2012

## MEMORANDUM

August 20, 2012

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator  
David Parker, P.E., CIP Executive/City Engineer  
Paul Holzen, P.E., Director of Engineering  
Jonathan Marston, P.E., Staff Engineer 2

SUBJECT: Consideration of Utility Easement Acquisition Agreement for SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project (COF Contract No.: 2012-0134).

### **Purpose**

The purpose of this memorandum is to provide information for the Board of Mayor and Aldermen (BOMA) to consider the Utility Easement Acquisition Agreement for SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project (COF Contract No.: 2012-0134)

### **Background**

City staff has been working with our consultant and multiple utility companies to finalize the construction drawings for the SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project. While finalizing the plans, it was determined that we would need to relocate Milcrofton Utility District's water line facilities. These facilities are located within private easements, making the City responsible for all financial cost associated with their relocation. The City will bid out the water line construction as part of the project but will need to obtain private exclusive easements for Milcrofton, prior to bidding the project. This agreement will allow for Milcrofton to handle the acquisition for all necessary easements associated with their waterline. The estimated cost to acquire the necessary easements is \$44,000.

### **Financial Impact**

The **estimated** financial cost to acquire the necessary water line easements is approximately \$44,000.

### **Recommendation**

Approval of Utility Easement Acquisition Agreement for SR 252 (Wilson Pike) & McEwen Drive Intersection Improvements Project (COF Contract No.: 2012-0134) is recommended. This approval shall be contingent upon City Engineer's and City Attorney's approval of the final contract.

**UTILITY EASEMENT ACQUISITION AGREEMENT  
FOR S.R. 252 (WILSON PIKE) & McEWEN DRIVE INTERSECTION IMPROVEMENTS  
PROJECT  
COF Contract No.: 2012-0134**

THIS AGREEMENT is made and entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the **City of Franklin, Tennessee** ("City") and **Milcrofton Utility District** ("Utility").

**WITNESSETH:**

**WHEREAS**, the City plans to construct roadway improvements at the intersection of Wilson Pike (S.R. 252) and McEwen Drive (the "Project"), as shown on right-of-way plans prepared by Alfred Benesch & Company dated May 22, 2012(COF Contract No. 2010-0152); and

**WHEREAS**, the Utility owns and maintains water lines and related facilities (the "Water Facilities") on and under a twenty feet (20') exclusive easement as shown on Deed Book 3919, Pages 649 - 664, Register's Office of Williamson County (the "Easements"); and

**WHEREAS**, the Water Facilities must be relocated to accommodate the Project (the "Relocation"), and

**WHEREAS**, the Relocation is being designed and constructed by the City utilizing a Design Consultant and a Contractor; and

**WHEREAS**, the Utility is willing to acquire new exclusive easements outside of the Project's proposed right-of-way (the "Acquisition Services"), provided the City reimburses the Utility's actual cost of the same; and

**WHEREAS**, the City has provided necessary descriptions and exhibits of the new exclusive easement(s) attached hereto as "Exhibit A" (the "Plans"), and the Utility has provided an estimate for the Acquisition Services attached hereto as "Exhibit B" (the "Estimate").

**NOW THEREFORE**, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. (a) The foregoing recitals are incorporated by reference as if fully stated herein.
- (b) The Utility shall be solely responsible for acquiring all utility easements outside of the available State or City-owned rights-of-way as may be needed to construct its Utility facilities, and the City will reimburse the Utility for the cost of the Acquisition Services, regardless of whether such costs are more or less than the Estimate.

- (C) The Utility shall have the responsibility to inspect all items of installation of the Utility's new facilities to be performed by its Contractor to ensure that the installation of the new facilities is completed in accordance with this Agreement, the approved plans, the Utility's technical specifications and all applicable specifications and safety codes.
4. This Agreement is subject to the appropriation and availability of City funds. In the event that the funds are not appropriated or are otherwise unavailable or the City cancels the project for any reason, the City reserves the right to terminate this Agreement upon written notice to the Utility. Said termination shall not be deemed a breach of contract by the City. Upon such termination, the City will reimburse the Utility for the cost, incurred through the date of termination, of the Acquisition Services only if the Utility provides reasonable documentation for all such cost.
  5. This Contract may be modified by the parties only by a written amendment specifically citing the paragraph within this Agreement to be amended.
  6. The Utility shall comply with all applicable federal, state and City laws and regulations in the performance of its duties under this Agreement. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Agreement and subject the Utility to the repayment of all City funds expended, or expenses incurred, under this Agreement.
  7. The Utility will acquire new exclusive easement(s) in accordance with the Plans as approved by the Utility and provided by the City.
  9. The Utility may submit periodic invoices to the City during the course of the Relocation (not more frequently than every thirty (30) days), which invoices shall be payable within thirty (30) days after receipt of same by the City. Within sixty (60) days of completion of the Acquisition Services, the Utility and the City shall settle on a final billing. The Utility will provide reasonable documentation for all such costs.
  12. The Utility will complete the Acquisition Services using in-house labor, third-parties, or a combination of both.
  13. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term, covenant, condition or provision of this Agreement shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.
  14. TIME IS OF THE ESSENCE OF THIS CONTRACT.

15. BREACH. It shall constitute a major breach of contract if the Utility fails to timely procure the necessary easements and approval of the Plans and such failure directly or indirectly result in a loss of funds for all or a portion of the entire Project.
16. 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 of forum and venue shall be exclusively in the courts of Williamson County, Tennessee. The Utility acknowledges and agrees that any rights or claims against the City of Franklin or its officials, contractors, agents or employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available to the City under law.
17. If any terms, covenants, conditions or provisions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms, covenants, conditions and provisions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Agreement are declared severable.
18. The City and the Utility agree that any notice provided for in this Agreement or concerning this Agreement shall be in writing and shall be made by personal delivery, by certified mail (return receipt requested), by nationally recognized overnight delivery service (such as FedEx or UPS), or by facsimile transmission (provided that notice shall also be given in one of the other methods prescribed herein) addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

**IN WITNESS WHEREOF**, the parties have executed this Agreement.

**The CITY OF FRANKLIN, TENNESSEE**

**Milcrofton Utility District**

By: \_\_\_\_\_  
 Dr. Ken Moore  
 Mayor  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Print: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Attest:**

\_\_\_\_\_  
 Eric S. Stuckey  
 City Administrator

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

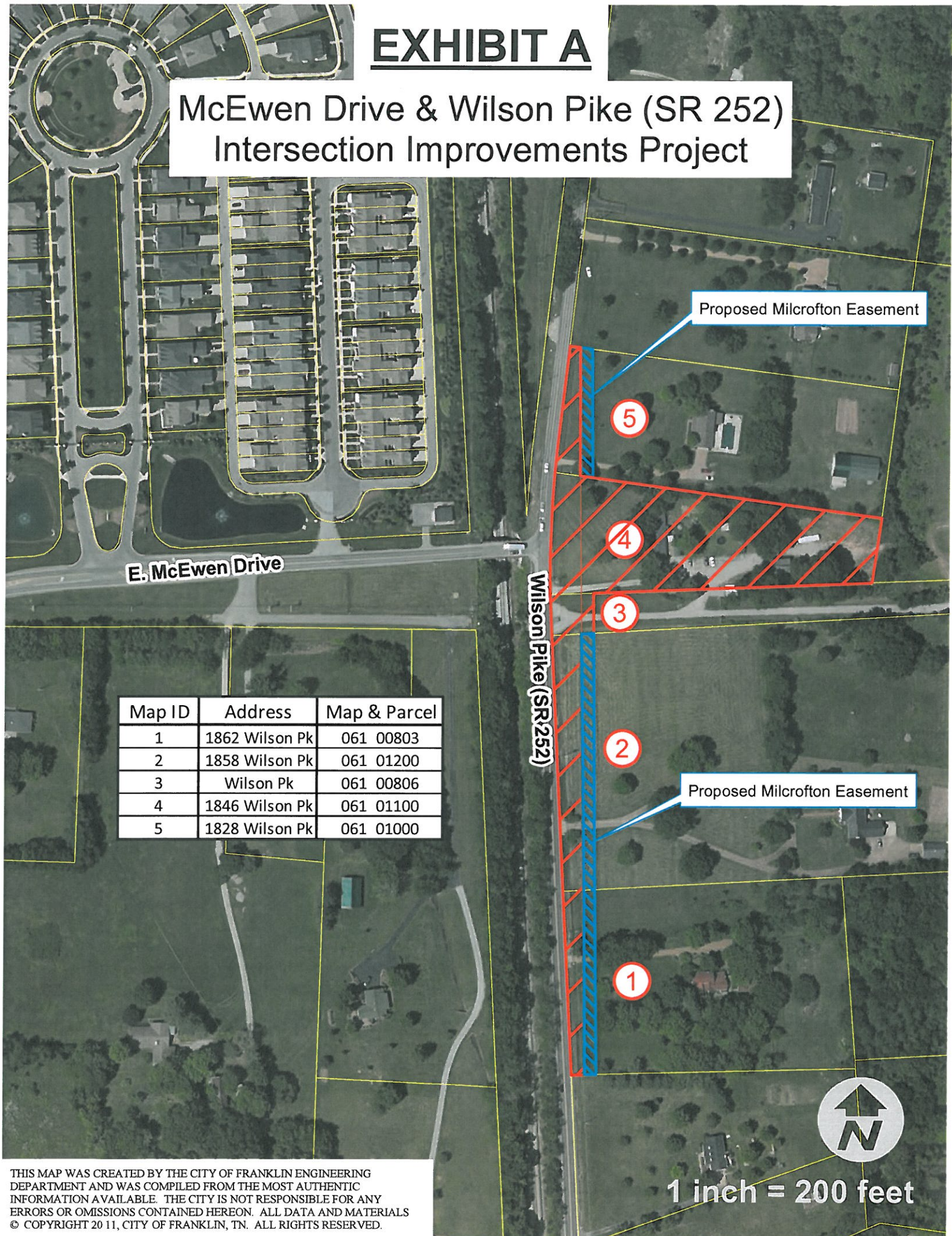
**Approved as to form:**

\_\_\_\_\_  
Shauna R. Billingsly, City Attorney

DRAFT

# EXHIBIT A

## McEwen Drive & Wilson Pike (SR 252) Intersection Improvements Project



Proposed Milcrofton Easement

E. McEwen Drive

Wilson Pike (SR252)

Map ID	Address	Map & Parcel
1	1862 Wilson Pk	061 00803
2	1858 Wilson Pk	061 01200
3	Wilson Pk	061 00806
4	1846 Wilson Pk	061 01100
5	1828 Wilson Pk	061 01000

Proposed Milcrofton Easement



1 inch = 200 feet

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## EXHIBIT B

Estimated Easement Acquisition Costs for Milcrofton Utility District (MUD) Water Line:

Title Search:	\$ 1,200.00
Appraisals:	\$ 3,000.00
Review Appraisals:	\$ 2,400.00
Closing:	\$ 10,000.00
MUD Fees to Acquire:	\$ 2,000.00
Physical Easement:	<u>\$ 25,200.00</u>
<b>TOTAL:</b>	<b>\$ 43,800.00</b>