



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #10  
CIC  
02-7-13

## MEMORANDUM

February 1, 2013

**TO:** Board of Mayor and Aldermen

**FROM:** David Parker, City Engineer/CIP Executive  
Eric Stuckey, City Administrator

**SUBJECT:** **Amendment No 1 to Extension Agreement  
South Carothers Parkway Project  
COF Contract No 2009-0012**

### **Purpose**

The purpose of this memorandum is to provide the Franklin Board of Mayor and Aldermen (BOMA) with information to consider the proposed Amendment No 1 to COF Contract No 2009-0012, the extension of South Carothers Parkway.

### **Background**

The City entered into an Extension Agreement (Agreement) with Trillium Farms, L.P. (Developer) for the roadway and bridge construction and public access for Carothers Parkway South on June 23, 2009. The Agreement spelled out various obligations of the City and the Developer concerning the construction of Carothers Parkway and other infrastructure. Since this Agreement was entered into, it has become prudent for the Developer to undertake some of the obligations that were assigned to the City in the Agreement, in particular the extension of Truman Road West and the final pavement for Ladd Road (the work). In order to facilitate a more timely completion of this work, the Developer proposes to do the work with reimbursement by the City for the work at a cost not to exceed the estimated cost for the City to do the work as provided by Sullivan Engineering, Inc. (SEI) to the City. The cost to do the extension of Truman Road West and the final paving for Ladd Road was estimated to be approximately \$500,000 as part of a City project. It is possible that the Developer can have this work accomplished less than this estimate. It is also possible that if the City includes this work in our construction bid package for Carothers Parkway South, it could cost more than the estimated \$500,000 as this estimate was provided to the City in 2009.

### **Financial Impact**

Ultimately, there is no additional cost to the City in regards to this proposed Amendment. There will, however, be a quicker payment of up to an estimated amount of \$500,000 for the extension of Truman Road West and the final pavement of Ladd Road as a reimbursement to the Developer for the completion of the work.

### **Recommendation**

Staff recommends approval of Amendment No 1 to COF Contract No 2009-0012; Extension Agreement for South Carothers Parkway Project for Roadway and Bridge Construction and Public Access as proposed.



**EXTENSION AGREEMENT**  
**FOR SOUTH CAROTHERS PARKWAY PROJECT FOR ROADWAY AND**  
**BRIDGE CONSTRUCTION AND PUBLIC ACCESS**  
**COF Contract No. 2009-0012**

THIS CONTRACT made and entered into by and between the City of Franklin, Tennessee ("City") acting through its City Engineer, and TRILLIUM FARMS, L.P., a Tennessee limited partnership ("Developer").

**WITNESSETH:**

**WHEREAS**, the City plans to construct the portion of Carothers Parkway from the Falcon Creek Subdivision across the Harpeth River to the Highlands at Ladd Park Subdivision located on the east side of the City in Williamson County, Tennessee and named South Carothers Parkway Extension (hereinafter called the "Project"); and

**WHEREAS**, the Project is being designed and constructed by the City utilizing a design Consultant and a Contractor, and the City will be responsible for managing the Project and disbursing the funds allocated for its completion and shall be bound by the terms and conditions stated therein; and

**WHEREAS**, the City desires to have the Project extended through a portion of the proposed development, The Highlands at Ladd Park Subdivision, which will allow a southern connection for the construction of said Project and provide public vehicular access north and south across the Harpeth River; and

**WHEREAS**, Sullivan Engineering, Inc. (SEI) has prepared an alignment schematic that reflects the Extension Project. The **Extension Project** includes the extension of South Carothers Parkway from the current South Carothers Parkway project under design by the City's consultant to Truman Road West, the extension of Truman Road West from the existing Truman Road West to the extended South Carothers Parkway, and the overlay of the construction route along the existing roadways of Truman Road West and Alfred Ladd Road, the general location of the Regional Stormwater Management Facility, and a Potential Greenway or Public Access Tunnel. It should be noted that the construction route terminates at Long Lane. The alignment schematic of the Project is detailed in **Exhibit A, Extension of South Carothers Parkway for Roadway and Bridge Construction and Public Access**; and

**WHEREAS**, the City would ordinarily acquire the right of way for the Project within the Highlands at Ladd Park Subdivision by purchase; and

**WHEREAS**, the City and Developer desire to have the Project extended into Highlands at Ladd Park Subdivision (Extension Project) and have reached an agreement in lieu of the usual right of way acquisition.

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

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. Within Thirty (30) days of the date of this contract, the City shall initiate the process of accepting Ladd Road and Truman Road West, and Release the bonds for these roads when fully accepted.
3. Prior to using Ladd Road or Truman Road West for an access road for construction traffic in the building of the bridge across the Harpeth River the City shall cause its Contractor to complete the extension of Truman Road West and install the 1 ½" of asphalt topping to both roads in compliance with City specifications at no cost to Developer.
4. The City's contractor will provide all work and materials necessary to complete the construction of the Project in accordance with the plans prepared by the City's consultant and approved by the City with concurrence by the Developer for that portion of the Project within Ladd Park.
5. The Developer agrees to make available, as soon as the City requires fill (borrow) for the Project, any excess suitable fill material, within its site for use in the construction of the Project at no cost to the City's contractor and to allow for reasonable access as designated by Developer to and from the dedicated right of way and easements for the transport of such fill material. The Developer agrees to identify borrow location(s) as soon as this agreement is executed. The City agrees to conduct preliminary grading of the **Extension Project** and agrees to include the grading in its bid and permit for the overall Project. The City agrees to excavate and haul the excess suitable fill material needed for the Extended Project. The Developer agrees that the City shall not be held responsible for final contours. The City agrees that the fill from the Developer will only be used for the Extended Project within Ladd Park. The City's contractor(s) shall be responsible for any damages to Developer's property and infrastructure in the performance of the City's work on the Project and further, the City's contractor(s) shall indemnify and hold harmless Developer from any claims for damages or injury by third parties, which damage or injuries results from or is the consequence of work performed by the City's contractor(s). Any waiver by the Developer of any claims against the City expressed in this Agreement or otherwise is not to be construed as a waiver of the rights the Developer may have for indemnity and recovery against any independent contractors, agents or entities performing work on the Project for the City.
6. Should the Developer desire to perform any additional work not contemplated by the approved construction plans that may affect the Project, the Developer shall submit the Plans for additional work to the City for prior approval. The City shall not be required to perform any additional work for the Developer under any contract which has not received the advance written approval of the City.
7. The Developer shall dedicate right of way and easements within the Highlands at Ladd Park Subdivision to be donated to the City sufficient for construction of the Project according to the final design plans, together with any temporary easements necessary for construction of the Project, at no cost to the City. The Developer further agrees to forego Road Impact Fee Offsets for the portion of the Highlands at Ladd Park Subdivision affected by the Project to which

Developer would otherwise be eligible as a result of contribution of the right of way, as allowed in Section 16-417 of the Franklin Municipal Code.

8. The Developer agrees to extend all utilities for the extension of Truman Road West to South Carothers Parkway's Eastern right of way.

9. The Developer agrees to modify the approved site and development plan on Highlands of Ladd Park to allow for widening the proposed right of way for South Carothers Parkway from 110 feet to 130 feet. This is to be accomplished by eliminating the frontage roads along South Carothers Parkway and modifying approved lots as necessary. A revised development plan for the areas affected will be coordinated and submitted to the City for review and approval.

10. In modifying the Land Plan for Highlands of Ladd Park, the Developer agrees to have Sullivan Engineering, Inc (SEI) perform ground surveys, set centerline, set vertical profile, edge of pavements and sidewalks, and preliminary cross-sections for South Carothers Parkway from Truman Road West to Long Lane.

11. It is requested by the Developer that Sullivan Engineering, Inc (SEI) perform the engineering work for the Developer and the City on all roads within the Highlands of Ladd Park. This will provide full continuity in the design of South Carothers Parkway and Highlands of Ladd Park.

12. The Developer shall neither release nor make available any memoranda or other information concerning the estimated cost of the proposed Project to anyone other than the City. The Developer hereby agrees, warrants and assures that any estimated cost information is confidential, and that it will not directly or indirectly disclose said estimated cost information to potential bidders.

13. Neither the Developer nor any affiliate or subsidiary thereof shall participate directly or indirectly as a bidder for any part of the Project's construction work to be performed under a contract to be awarded by the City. The Developer further agrees that no employee, officer, or agent of the Developer shall participate in the selection or in the award or administration of a contract for the performance of any part of the Project's work if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, or any member of his or her immediate family, or his or her partner, or an organization which employs or is about to employ any of the above, has a substantial financial interest, such as five-percent (5%) or greater ownership interest, or other interest in the firm selected for award of a contract to perform the construction work for this Project. Neither the Developer nor any affiliate, subsidiary, employee, officer, or agent of the developer shall solicit or accept gratuities, favors, or anything of monetary value, except an unsolicited gift having nominal monetary value, from contractors or bidders.

14. This Contract is subject to the appropriation and availability of City funds. In the event that the funds are not appropriated or are otherwise unavailable, the City reserves the right to terminate this Contract upon written notice to the Developer. Said termination shall not be deemed a breach of contract by the City. Upon such termination, the Developer shall have no right to recover from the City any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount; provided, however, that the City shall transfer to the Developer all donated right of way as described in Section 7 of this Agreement.

15. The Developer agrees to indemnify and hold harmless the City as well as its officials, employees, officers and agents from and against any and all claims, liabilities, losses, and causes

of action which may arise, accrue, or result from any third party claim that the City removed fill in excess of the preliminary grading plan, this includes the prior owner of the Property. The Developer further agrees it shall be liable for the reasonable cost of attorneys for the City in the event such services are necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Developer to the City. In the event of any such suit or claim, the Developer shall give the City immediate notice thereof, but in no event later than ten (10) days from service thereof, and shall provide all assistance required by the City in the City's defense. The City shall give the Developer written notice of any such claim or suit, and the Developer shall have full right and obligation to conduct the Developer's own defense thereof. Nothing contained herein shall be deemed to accord to the Developer, through his attorney, the right to represent the City in any legal matter, such rights being reserved by the City.

16. City shall have no liability except as specifically provided in this Contract.

17. This Contract may be modified by the parties only by a written amendment specifically citing the paragraph within this Contract to be amended.

18. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract 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 Contract shall be held to be waived, modified, or deleted except by written amendment signed by the parties hereto.

19. This Contract shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

20. **WARRANTIES/LIMITATION OF LIABILITY/WAIVER.** The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Developer to limit its liability shall be void and unenforceable.

21. This Contract 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 Developer 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.

22. If any terms, covenants, conditions or provisions of this Contract 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 Contract are declared severable.

23. The City and the Developer agree that any notice provided for in this Contract or concerning this Contract 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.

To City:

David Parker, PE  
City Engineer/CIP Executive  
P.O. Box 305  
Franklin, TN 37065-0305  
Fax (615) 790-0469  
Email: [davidp@franklintn.gov](mailto:davidp@franklintn.gov)

To Developer:  
Trillium Farms, L.P.  
317 Main Street  
Suite 201  
Franklin, TN. 37064  
Attention: Paul Arnold

As Approved By the Board of Mayor and Alderman on 23<sup>rd</sup> day of June 2009

IN WITNESS WHEREOF, the parties have executed this Contract.

TRILLIUM FARMS, L.P.

CITY OF FRANKLIN, TENNESSEE

By: 

By: 

Print Name PAUL ARNOLD


John C. Schroer, Mayor

Title PARTNER

Date: 6-29-09

Date: 6/29/09

APPROVED AS TO FORM:

By:   
Shauna R. Billingsley, Interim City Attorney

By: \_\_\_\_\_  
Richard D. Bird, Counsel for Developer

EXHIBIT A  
EXTENSION OF SOUTH CAROTHERS PARKWAY  
FOR ROADWAY AND BRIDGE CONSTRUCTION  
AND PUBLIC ACCESS

