



HISTORIC
FRANKLIN
TENNESSEE

ITEM #23
BOMA
11/12/13

MEMORANDUM

November 7, 2013

TO: Board of Mayor and Aldermen

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

SUBJECT: **Consideration of Agreement (COF 2013-0144) with Mike Ford Custom Builders for the Extension of Sanitary Sewer for the Blossom Park Development**

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with information to consider an agreement with Mike Ford Custom Builders for the extension of Sanitary Sewer for the Blossom Park Development.

Background

The BOMA have determined that certain sanitary sewer improvements are necessary within the West Sanitary Sewer Basin to provide service within the City of Franklin. The Blossom Park Development will require the extension of offsite Sanitary Sewer Infrastructure to provide service. To date, the Developer and City Staff have been unsuccessful in the acquisition of the necessary easements. This agreement outlines the terms and conditions associated with the acquisition of the necessary easements for the Cities sanitary sewer infrastructure. Staff will continue to negotiate with the property owner and utilize condemnation as a last resort.

Financial Impact

No direct financial impact is expected to the City. The Developer shall be responsible for all cost to include staff time.

Recommendation

Staff recommends approval of the Agreement (COF 2013-0144) with Mike Ford Custom Builders for the Extension of Sanitary Sewer. This approval shall be subject to final review and approval of the contract terms and conditions by the City Engineer, City Administrator and City Attorney.

**AGREEMENT FOR EASEMENT ACQUISITION BETWEEN
CITY OF FRANKLIN, TENNESSEE AND MIKE FORD CUSTOM BUILDERS**
COF Contract No 2013-0144

This **AGREEMENT** is made and entered into on this the ____ day of _____, 2013, by and between the **City of Franklin, Tennessee ("City")** and **Mike Ford Custom Builders ("Developer")**.

WHEREAS, the City has determined that certain sanitary sewer improvements are necessary within the West Sanitary Sewer Basin to provide service within the City limits and the City's Urban Growth Boundary; and

WHEREAS, the City has developed sanitary sewer system basin plans (West Basin) to help evaluate expected demands and provide a general framework to provide sanitary sewer service within the City of Franklin and Urban Growth Boundary in the most efficient manner possible; and

WHEREAS, the Developer shall submit Sanitary Sewer Plans to the City for review and approval prior to the acquisition of easements, which plans are reflected on Exhibit A attached hereto and incorporated herein by reference (the "**Sanitary Sewer Plans**"); and

WHEREAS, the Developer agrees to reimburse the City for all actual and reasonable costs associated with the acquisition of the sanitary sewer easements and temporary construction easements as reflected on the Sanitary Sewer Plans (together, the "**Easements**"); and

WHEREAS, the acquisition costs shall include a reasonable allocation for staff time, third party professional services, costs of the Easement, property damages associated with the Easement, reasonable allocation for in-house attorneys' fees, actual and reasonable third party attorney fees and expenses, court costs, title opinions, lien releases, closing costs and all other reasonable and actual fees and costs associated with the acquisition of the Easements (together, the "**Condemnation Costs**"); and

WHEREAS, the Board of Mayor and Aldermen expressly find that the City has the power of eminent domain to extend public infrastructure, *see* T.C.A. §29-17-301 *et seq.*, and to acquire easements and rights-of-way necessary for the proper completion of the said public infrastructure, and that the acquisition of such easements and/or rights-of-way is for a public purpose and for a public use, and that the acquisition and encumbrance of the private property hereinafter described in Exhibit B, attached hereto and incorporated herein by reference (the "**Property**"), is necessary to accomplish said public use;

NOW, THEREFORE, in consideration of these premises and the mutual promises contained herein, 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 shall submit the Sanitary Sewer Plans to the City of Franklin Engineering Department for review and approval. The Sanitary Sewer Plans shall comply with the City's West Sanitary Sewer Basin plan and shall be designed to meet all Federal, State and Local requirements.
3. The City shall complete the acquisition of the Easements on the Property. The Developer shall pay all Condemnation Costs associated with said Easements; acquisition costs shall include a reasonable allocation for staff time, third party professional services, costs of the Easement, property damages associated with the Easement, reasonable allocation for in-house attorneys' fees, actual and reasonable third party attorney fees and expenses, court costs, title opinions, lien releases, closing costs and all other reasonable and actual fees and costs associated with the acquisition of the Easements (together, the "**Condemnation Costs**").
4. If the construction of the project impacts the Property's septic system the Developer shall be responsible to connect the existing Property to the City of Franklin Sanitary Sewer System and pay all necessary fees including but not limited to System Development Fees, Access Fees, Effluent Disposal Fess and Connection Fees as provided by Franklin Municipal Code Title 18, as may be amended.
5. The parties agree that TIME IS OF THE ESSENCE with respect to the parties' performance of all provisions of the Agreement.
6. This Agreement is made under and will be construed in accordance with the laws of the State of Tennessee. The choice of forum and venue shall be exclusively in the Courts of Williamson County, TN.
7. This Agreement together with the Exhibits supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Agreement. The terms and conditions of this Agreement may not be changed except by an amendment expressly referencing this Agreement and signed by an authorized representative of each party.

Approved by the Franklin Board of Mayor and Aldermen on November __, 2013.

By: _____
Name: Dr. Ken Moore
Its: Mayor
Date: _____, 2013

By: _____
Name: Eric S. Stuckey
Its: City Administrator
Date: _____, 2013

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 be 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.

Notary Public
My Commission Expires: _____

MIKE FORD CUSTOM BUILDERS, LLC
a Tennessee limited liability company

By: _____
Name: Mike Ford
Its: Manager
Date: _____, 2013

STATE OF TENNESSEE)
)
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared Mike Ford, 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 Manager of Mike Ford Custom Builders, LLC, a Tennessee limited liability company, and that he as such Manager executed the foregoing instrument for the purposes therein contained, by personally signing the name of the company by himself as Manager.

Witness my hand and seal this _____ day of _____, 2013.

Notary Public
My Commission Expires: _____

Approved as to form by:

Kristen L. Corn, Staff Attorney