



MEMORANDUM

May 5, 2010

TO: Board of Mayor and Aldermen

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

SUBJECT: Utility Installation Agreement with Mallory Valley Utility District (MVUD)

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with the information necessary to consider an agreement with MVUD to install a waterline within City right-of-way (ROW).

Background

The City of Franklin Streets Department has plans to resurface the Highgate Subdivision as part of their annual contract. They have been coordinating with local utility companies and requesting them to make any necessary repairs and/or upgrades prior to resurfacing the streets. At this time, MVUD is proposing to upgrade and relocate the existing waterline within City Streets.

MVUD has agreed to complete the following:

- A) Full backfill of all trenches located inside paved areas with TDOT No. 67 stone capped by 8-inches of crusher run stone.
- B) Binder patch of all water lines and service line trenches with 3-inches depth of Grade B-Modified asphalt binder.
- C) Abandon in place the existing 6-inch PVC water line.
- D) Install new 6-inch ductile iron water line with all appropriate appurtenances.
- E) Install new 3/4" water service lines and renew same from new water line to the existing meter box.
- F) Remove all above-ground existing valves and hydrants which are to be abandoned.
- G) Open-cut cross Franklin Road (State Route 6) in accordance with the requirements of the Tennessee Department of Transportation permit.
- H) Restore ditches to match existing conditions where disturbed by installation of the water service lines.

Financial Impact

No financial Impact

Recommendation

Approval of the proposed agreement with Mallory Valley Utility District is recommended.

**HIGHGATE SUBDIVISION ROAD RESURFACING
BY MALLORY VALLEY UTILITY DISTRICT
COF Contract No. 2010-0047**

THIS CONTRACT made and entered into by and between the **City of Franklin, Tennessee** ("City") acting through its City Engineer, and **Mallory Valley Utility District** ("Utility").

WITNESSETH:

WHEREAS, the Utility plans to replace its existing PVC water lines within the Highgate Subdivision (hereinafter called the "Project"). Project will consist of the construction of 6-inch water line from the intersection of Franklin Road and Century Oak Drive, then along Century Oak Drive approximately 2,245 LF; along Engle Way approximately 357 LF; and along Windsor Way approximately 1,200 LF located in the City in Williamson County, Tennessee; and

WHEREAS, the Project is being designed and constructed by the Utility utilizing a design Consultant and a Contractor, and the Utility 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 Utility's new water lines will be located on the City's public rights-of-way for a portion of the Project; and

WHEREAS, the installation of the Utility's new water lines will result in the removal of the asphalt on the streets within the Highgate Subdivision (hereinafter called "the resurfacing work"); and

WHEREAS, the City has installed sanitary sewer lines within the Highgate Subdivision which required the removal of asphalt on the streets within the Highgate Subdivision and desires that the Utility replace its water lines before final pavement is replaced after the City's sanitary sewer line installation project so that the streets will not have to be repaved twice; and

WHEREAS, the Utility, under normal circumstances, would be expected to provide a patch in the asphalt surface over the installed facilities in a manner that is consistent with the City's Transportation and Street Technical Standards and replace any other City assets that are damaged or removed as a result of the construction of the Utility's facilities; and

WHEREAS, the City and Utility intend to work together so that the restoration of the streets within the Highgate Subdivision is completed in a manner that is acceptable to the City and to establish their respective obligations for the resurface work; and

WHEREAS, the City has reviewed the Utility's Construction Plans and approved them on April 20, 2010; and

WHEREAS, the Utility is ready to perform the work as soon as all outstanding permits are acquired.

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 will install the new water lines in accordance with the plans prepared by the Utility as approved by TDEC and the City.

(c) Any change in the approved plans related to the resurfacing work shall require the prior written approval of the City. The City agrees to review and, if acceptable, approve such requests for a change in a timely manner, and the City agrees to cooperate with the Utility to resolve, if possible, any objections the City may have to such requested changes in the resurfacing work. The Utility shall be responsible for any cost increases due to changes of its facilities.

2. The installation of the Utility's new water facilities shall comply with the State's Rules and Regulations for Accommodating Utilities Within Highway Rights-of-way and 23 CFR 6458, and City codes and standards that are both incorporated herein by reference. The City and the Utility acknowledge possession of these laws and regulations.

3. The Utility shall be solely responsible for acquiring all utility rights-of-way outside of the available City-owned rights-of-way as may be needed to construct its new water facilities, and the Utility further agrees to acquire these rights-of-way at no cost to the City.

4. The Utility shall have the responsibility to inspect all items of installation of the Utility's new water facilities to be performed by its Contractor to ensure that the installation of the new water facilities is completed in accordance with this Contract, the approved plans, the Utility's technical specifications and all applicable specifications and safety codes.

5. The City and the Utility shall comply with all current, applicable provisions of 23 CFR 645A, which are incorporated herein by reference; provided, however, that provisions for review, approval, authorization and participation by the Federal Highway Administration set forth in 23 CFR 645A shall not apply to the extent that the Project is not a federal-aid project. The City and the Utility acknowledge possession of 23 CFR 645A.

6. 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 Utility. Said termination shall not be deemed a breach of contract by the City. Upon such termination, the Utility 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.

7. The Utility 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 to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Utility, its employees, its contractors, or any person acting for or on its or their behalf in the performance of the Utility's work relating to this Contract. The Utility 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 Utility to the City. In the event of any such suit or claim, the Utility 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 Utility written notice of any such claim or suit, and the Utility shall have full right and obligation to conduct the Utility's own defense thereof. Nothing contained herein shall be deemed to accord to the Utility, through its attorney, the right to represent the City in any legal matter, such rights being reserved by the City.

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

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

10. 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.

11. In regard to the resurfacing of Century Oak Drive, Engle CT and Windsor Way, the City agrees to provide full asphalt resurfacing (This should be "(ACS Mix (PG64-22) Grading "E" surface)") of all streets within the Highgate Subdivision affected by the Project.

12. The Utility agrees to complete the following measures in performing the resurfacing work:

- (a) Full backfill of all trenches located inside paved areas with TDOT No. 67 stone capped by 8-inches of crusher run stone.
- (b) Binder patch of all water line and service line trenches with 3-inches depth of Grade B-Modified asphalt binder.
- (c) Abandon in place the existing 6-inch PVC water line.
- (d) Install new 6-inch ductile iron water line with all appropriate appurtenances.
- (e) Install new 3/4" water service lines and renew same from new water line to the existing meter box.
- (f) Remove all above-ground existing valves and hydrants which are to be abandoned.
- (g) Open-cut cross Franklin Road (State Route 6) in accordance with the requirements of the Tennessee Department of Transportation permit.
- (h) Restore ditches to match existing conditions where disturbed by installation of the water service lines.

13. The Utility hereby agrees, warrants and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Utility on the grounds of disability, age, race, color, religion, sex, national origin, or any classification protected by the Constitution or statutes of the state of Tennessee. The Utility shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

14. The Utility shall comply with all applicable federal, state and City laws and regulations in the performance of its duties under this Contract. The parties agree that failure of the Utility to comply with this provision shall constitute a material breach of this Contract and subject the Utility to the repayment of all City funds expended, or expenses incurred, under this Contract.

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

16. TIME IS OF THE ESSENCE OF THIS CONTRACT.

17. 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 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.

18. 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.

19. The City and the Utility 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

To Utility:

Ansley Coode, General Manager
Mallory Valley Utility District
P.O. Box 936
Franklin, TN 37065

IN WITNESS WHEREOF, the parties have executed this Agreement.

MALLORY VALLEY UTILITY DISTRICT

By: _____
Ron Coker, President of the
Board of Commissioners

Date: _____

CITY OF FRANKLIN, TENNESSEE

By: _____
John C. Schroer, Mayor

Date: _____

ATTEST:

Eric Stuckey, City Administrator

Date: _____

APPROVED AS TO FORM:

By: _____
Shauna R. Billingsley, City Attorney