



HISTORIC
FRANKLIN
TENNESSEE

ITEM #26
BOMA
05/24/2011

MEMORANDUM

May 2, 2011

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *ES*
David Parker, City Engineer/CIP Executive
Shauna Billingsley, City Attorney

SUBJECT: **Amendment No 1 to Agreement for McEwen Dr. Extension
East of Wilson Pike with Brentwood
COF Contract No 2011-0030**

Purpose

The purpose of this memorandum is to present to the Franklin Board of Mayor and Aldermen (BOMA) information needed to consider the proposed Amendment No 1 to the Agreement Concerning Adjustment of Boundaries of Franklin and Brentwood South of Split Log Road and North of the Proposed McEwen Drive Extension.

Background

In September of 2007, the City of Franklin and the City of Brentwood entered into an agreement in order to settle a dispute (lawsuit) concerning the boundary between the two cities and the right of Brentwood to complete the property purchases necessary for their proposed improvements to Split Log Road. The agreement essentially revised the cities' boundary in the area east of Wilson Pike establishing the boundary between the two cities as the north right-of-way for McEwen Drive. This agreement, upon approval by both Franklin and Brentwood, was then approved through an Agreed Final Order by Judge Bivens in the Chancery Court for Williamson County. The Agreement as approved by all parties specifies that the McEwen Drive Extension project east of Wilson Pike be completed "for public use no later than December 31, 2012."

Since the approval of the agreement between Franklin and Brentwood was finalized, only the preliminary engineering for the McEwen Drive extension east of Wilson Pike has been completed. The agreement further stated how funding for this project was to come from the developments that are to benefit from its completion. However, as the economy has slowed during the past several years, the proposed developments in the area have not been finalized; therefore, no funding for the project has been received by the City.

As stated above, the agreement dictates that the completion of McEwen Drive east of Wilson Pike to be December 31, 2012. Since funding for the project has not be established beyond the preliminary design, development in the area has not occurred as originally anticipated, and the project will take a few years to complete from where we now stand with it, staff has approached Brentwood staff concerning an amendment to the Agreement to alter the timeline for completion of the road. The proposed amendment is as attached; "Amendment No 1 to Agreement Concerning Adjustment of Boundaries of Franklin and



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Brentwood South of Split Log Road and North of the Proposed McEwen Drive Extension.” The amendment provides for the completion of the project to be driven by development and the receipt of at least 50% of the funding from the private developers (contributing properties) by the City of Franklin. Upon the receiving the contribution, the City of Franklin would be responsible for completion of the road within 24 months.

Upon approval by BOMA, this Amendment No 1 will be presented to the Brentwood Commission for approval. After both cities have approved the Amendment, it will have to be approved by the Chancery Court of Williamson County.

Financial Impact

There are no additional financial impacts to either city due to this proposed Amendment No 1. However, by not amending the agreement the City will be responsible for construction by December 31, 2012, a project no currently included in the City’s Capital Investment Plan.

Recommendation

Approval of COF Contract No 2011-0030; Amendment No 1 to Agreement Concerning Adjustment of Boundaries of Franklin and Brentwood South of Split Log Road and North of the Proposed McEwen Drive Extension is recommended.

**AMENDMENT NO. 1 TO
AGREEMENT CONCERNING ADJUSTMENT OF
BOUNDARIES OF FRANKLIN AND BRENTWOOD
SOUTH OF SPLIT LOG ROAD AND
NORTH OF THE PROPOSED McEWEN DRIVE EXTENSION
COF Contract No. 2011-0030**

THIS AMENDMENT is made and entered into by and between the City of Franklin, Tennessee (“Franklin”) and the City of Brentwood (“Brentwood”) for the purpose of adjusting the completion date of proposed McEwen Drive Extension Improvements from Wilson Pike to the Taramore Subdivision (“Project”).

WITNESSETH:

WHEREAS, Franklin and Brentwood entered into the Agreement Concerning Adjustment of Boundaries of Franklin and Brentwood South of Split Log Road and North of the Proposed McEwen Drive Extension (“Agreement”) dated the 11th day of September, 2007; and

WHEREAS, said Agreement was presented to the Williamson County Chancery Court as an Agreed Final Order and was executed by Judge Bivins on September 22, 2007; and

WHEREAS, said Agreement established December 31, 2012 as the completion date for public use for the Project; and

WHEREAS, said Agreement established Contributing Properties as properties to contribute funding towards the alignment study, design, engineering and construction of the Project upon development of the properties; and

WHEREAS, due to the lack of development on said Contributing Properties, funding for the design and construction for the Project has not been established by Franklin.

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. Paragraph 5 of the Agreement is hereby deleted in its entirety and replaced with the following:

The Project will be constructed pursuant to the design prepared by Sullivan Engineering, Inc. under the Professional Services Agreement between Franklin and Sullivan Engineering, Inc. dated September 11,

2007; provided that the Project is to initially be constructed as a two lane roadway with design completed as a four lane roadway. Franklin will allow access to McEwen Drive from the Drees/Morgan tract and the larger JSP Properties tract, as identified on Exhibit A of the Agreement. Brentwood will coordinate with Franklin to ensure proper alignment and consistency in roadway design as McEwen Drive enters Brentwood in the Taramore Subdivision. Franklin shall complete construction of the Project for public use no later than twenty-four (24) months after Franklin has received fifty percent (50%) of the funding from the Contributing Properties.

3. Waiver. Neither party's failure nor delay to exercise any of its rights or powers under this Amendment will constitute or be deemed a waiver or forfeiture of those rights or powers. For a waiver of a right or power to be effective, it must be in writing signed by the waiving party. An effective waiver of a right or power shall not be construed as either (a) a future or continuing waiver of that same right or power, or (b) the waiver of any other right or power.

4. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

5. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

6. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

7. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment; and

(c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

8. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

9. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement dated September 11, 2007, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

CITY OF FRANKLIN

CITY OF BRENTWOOD

By: _____
Dr. Ken Moore
Mayor

By: _____
Paul L. Webb
Mayor

Date: _____

Date: _____

Attest:

Eric S. Stuckey
City Administrator

Michael W. Walker
City Manager

Date: _____

Date: _____

Approved as to form:

Shauna R. Billingsley
Franklin City Attorney

Roger Horner
Brentwood City Attorney