



MEMORANDUM

September 30, 2011

TO: Board of Mayor and Aldermen

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

SUBJECT: **Tennessee Department of Transportation (TDOT)**
Contract No 110275, PIN 101202.00
General maintenance Agreement
COF Contract No 2011-0142

Purpose

The Tennessee Department of Transportation (TDOT) is requesting that the City entering into an agreement for the maintenance of those appurtenances associated with the construction of Mack Hatcher Parkway from just south of Murfreesboro Road (SR 96) to just west of Franklin Road (SR 6, US 31) outside the confines of the vehicular travel areas. The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) the information necessary to make an informed decision as to consider the proposed maintenance agreement.

Background

TDOT has contracted for the design and is contracting for the construction to widen the section of Mack Hatcher Parkway from Murfreesboro Rd. to Franklin Rd. from two (2) lanes to four (4) lanes. Prior to the design of this improvement, TDOT had gone through a Context Sensitive Solutions (CSS) or Design (CSD) process for the entire existing and proposed Mack Hatcher Pkwy loop of Franklin. The design of the widening project incorporates elements of the CSD for construction. Many of the elements found in a CSD roadway section are elements beyond those strictly necessary for vehicular travel and are not typically maintained by TDOT. Therefore, TDOT is requesting an agreement with Franklin such that Franklin would be responsible for and payment of all costs associated with maintenance and operation of those roadway appurtenances outside the vehicular traveled areas. This would include, but not necessarily be limited to, landscaping, walkways, ornamental structures, and electrically-operated or solar-powered devices such as traffic signals and street lights.

Financial Impact

It is not known at this time what the financial impact to Franklin will be in regard to this agreement. The costs will be absorbed along with the cost for similar maintenance by the Street Department.

Options

1. Approve the proposed TDOT agreement as present – Contract No 110275, PIN 101202.00, or
2. Not approve the proposed TDOT agreement which will probably result in the removal from TDOT's construction contract most if not all of the CSD elements not directly needed for vehicular travel.

Recommendation

Approval of TDOT Contract No 110275, PIN 101202.00 (COF Contract No 2011-010) as proposed is recommended.

SEP 20 AM 11:32



STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION

Local Programs Development Office
SUITE 600, JAMES K. POLK BUILDING
NASHVILLE, TENNESSEE 37243-0341
Voice: 615-741-5314
FAX: 615-741-9673

Find Information for Local Governments at <http://www.tdot.state.tn.us/local/>
Email: teresa.estes@state.tn.us

September 16, 2011

The Honorable Ken Moore
Mayor, City of Franklin
109 Third Ave. South
Franklin, TN 37064

Re: SR 397 (Mack Hatcher Parkway) from south of SR 96 (LM 2.97) to west of SR 6
(US 31) (LM 5.96)
Franklin, Williamson County
PIN: 101202.00
Federal Project No: STP-397(7)
State Project No: 94092-3227-14
Contract: 110275

Dear Mayor Moore:

I am attaching a contract providing for the maintenance of the non-paved areas of the referenced project. Please review the contract and advise me if it requires any additional explanation. If you find the contract fully satisfactory, please execute it in accordance with all rules, regulations and laws, obtain the signature of the attorney for your agency and return the contract to me. Once the contract is fully executed, we will forward a copy to you for your records.

If you have any questions or need any additional information, please contact Kip Mayton at 615-532-3183 or kip.mayton@tn.gov.

Sincerely,

Teresa Estes
Transportation Coordinator

Attachment

AGREEMENT NO: 110275
PROJECT IDENTIFICATION NO: 101202.00
FEDERAL PROJECT NO: STP-397(7)
STATE PROJECT NO: 96092-3227-14

State of Tennessee Department of Transportation

GENERAL MAINTENANCE AGREEMENT WITH LOCAL AGENCY

THIS AGREEMENT, made and entered into this _____ day of _____, 20_____ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the City of Franklin (hereinafter called the "Agency").

W I T N E S S E I T H:

WHEREAS, the Department desires to construct a State Highway within the jurisdictional limits of the Agency; and

WHEREAS, the Agency, in recognition of the benefits to be received from the installation of said State Highway, desires to cooperate with the Department such that the State Highway may be constructed and maintained; and

WHEREAS, as part of the construction, certain appurtenances will be installed on the State right-of-way outside the vehicular traveled area, to include, but not limited to, landscaping, walkways, ornamental structures, and electrically-operated or solar-powered devices such as signals and lights; and

WHEREAS, the Agency, in recognition of the benefits to be received from the installation of said appurtenances, desires to cooperate with the Department such that the appurtenances may be installed by the Department and maintained by the Agency; and

NOW THEREFORE, in consideration of these premises, the Department and the Agency hereby enter into this Agreement to provide performance of the Project as described in SECTION 1 below.

SECTION 1: The Project to be performed is described as follows:

State Route 397 (Mack Hatcher Parkway) from south of SR 96 (Log Mile 2.97) to west of SR 6 (US 31) (Log Mile 5.96)

SECTION 2: The Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all the aforesaid appurtenances.

SECTION 3 The Agency shall assume all liability for third-party claims and damages arising from the maintenance, existence, and use of the aforesaid appurtenances to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

SECTION 4: The Agency agrees to comply with all applicable federal and Tennessee laws and regulations in the performance of its duties under this Agreement. The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all funds expended, or expenses incurred, under this Agreement.

SECTION 5: This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

SECTION 6: Nothing in this Agreement, whether express or implied, is intended to confer upon any person or entity not a party to this Agreement, any rights or remedies by reason of this Agreement.

SECTION 7: The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations.

SECTION 8: The Agency 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 Agreement or in the employment practices of the Agency on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal and Tennessee constitutional or statutory law. The Agency shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

SECTION 9: The Department may terminate this Agreement without cause for any reason. Said termination shall not be deemed a Breach of Contract by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. Upon such termination, the Agency shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

SECTION 10: This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

SECTION 11: The Department shall have no liability except as specifically provided in this Agreement.

SECTION 12: The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

THE CITY OF FRANKLIN

**STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION**

By: _____

Mayor
Ken Moore

Date

By: _____

John C. Schroer
Commissioner

Date

**APPROVED AS TO
FORM AND LEGALITY**

**APPROVED AS TO
FORM AND LEGALITY**

By: _____

Attorney
Shauna Billingsley

Date

By: _____

John Reinbold
General Counsel

Date