

MEMORANDUM

TO: Board of Mayor and Aldermen

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

SUBJECT: Amendment No. 2 for the Utility Installation Agreement with Mallory Valley Utility District COF contract No 2009-0039.

Purpose

The purpose of this memo is to provide BOMA with the information necessary to render a decision for the proposed Amendment No 2 to the Mallory Station Road Resurfacing Agreement COF contract No 2009-0039.

Background

The City of Franklin and MVUD entered into a contract dated August 8, 2009 allowing MVUD to construct a water transmission line from the intersection of Franklin Road and Moore's Lane to approximately 1,200 LF south of Baker's Bridge Road on Carothers Parkway. The Board of Mayor and Alderman agreed to Amendment No 1 dated October 26th, 2010, requiring the utility to install and relocate the Academy Sports water meter in accordance with the plans prepared by the utility as approved by TDEC and the City of Franklin. The estimated cost to install the waterline was \$110,670.00. As part of this amendment the City of Franklin was responsible for the "actual costs incurred by the utility". The work is now completed and 70LF of 10" DIP was added to the contract as a field change to avoid utility conflicts. The final cost for the Meter Relocation was \$121,505.00. As part of the original agreement MVUD was required to overlay approximately 700LF of Nichol Mill Lane. Staff would like this work to be done as part of the Nichol Mill Lane project to avoid construction damage and pavement joints. This work would have cost MVUD \$13,065.00 and they have agreed to compensate the City allowing the work it to be done with the Nichol Mill Lane Project.

Financial Impact

Actual Construction Cost: \$121,505.00

Nichol Mill Lane Overlay Refund: \$13,065.00

Final Cost: \$108,440.00

Recommendation

Staff recommends the approval of Amendment No2 with Mallory Valley Utility District as presented.

**AMENDMENT NO. 2 TO
MALLORY STATION ROAD RESURFACING
AGREEMENT
COF Contract No 2009-0039**

THIS AMENDMENT is made and entered into on this the ____ day of _____, 2011, by and between the **City of Franklin, Tennessee** ("City") and **Mallory Valley Utility District** ("Utility").

WITNESSETH:

WHEREAS, the City and the Utility entered into a Contract dated August 8, 2009, setting for the rights and obligations of the parties in connection with the Utility's plans to construct a water transmission line from the intersection of Franklin Road and Moore's Lane to approximately 1,200 L.F. south of Baker's Bridge Road on Carothers Parkway located in the City in Williamson County, Tennessee and named as The Franklin Road Transmission Line Project (hereinafter called the "Project"); and

WHEREAS, the City has reviewed the Utility's Construction Plans and approved them on June 23, 2009; and

WHEREAS, The City and the Utility entered into Amendment No 1 dated October 26, 2010, requiring the Utility to install and relocate the Academy Sports water meter in accordance with the plans prepared by the utility as approved by TDEC and the City. Upon the completion of the Project, the City agreed to reimburse the Utility for the actual cost incurred by the Utility to relocate the water meter.

WHEREAS, the Utility is contractually responsible to repair/ full width overlay a portion of Nichol Mill Road. The estimate cost of performing the full width overlay is \$13,065.00.

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. Section 20 of the COF Contract No 2009-0039 is amended as follows:
 20. The Utility agrees to obtain a change order from its contractor for the Project for the cost to relocate the Utility's water meter for Academy Sports and to provide the City a copy of this change order before the Utility's contractor performs the water meter relocation work. In the event the Utility's contractor

requests and increase in the cost to relocate the water meter set forth in this change order, the Utility shall inform the City of the cost increase before approving the change order for the cost increase. Upon the completion of the Project, the City agrees to reimburse the Utility for the actual costs incurred by the utility to relocate the water meter. The Utility agrees to credit the City \$13,065.00 as part of the actual cost. In exchange for this credit the City will not require the Utility to construct a full width overlay on a portion of Nichol Mill Road as shown on the approved construction dated June 23, 2009

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 November 9, 2010, are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

The CITY OF FRANKLIN, TENNESSEE

MALLORY VALLEY UTILITY DISTRICT

By: _____
Dr. Ken Moore
Mayor
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Attest:

Eric S. Stuckey
City Administrator
Date: _____

Approved as to form:

Shauna R. Billingsley, City Attorney



100% Employee Owned

6401 Centennial Boulevard Nashville, Tennessee 37209 (615) 350-7975 / fax (615) 350-6067

June 20, 2011

Mr. Keith Davis, P.E.
Hethcoat & Davis, Inc.
278 Franklin Road, Suite 200
Brentwood, TN 37027

Re: Mallory Valley Utility District
Franklin Road Transmission Line
Academy Sports Meter Relocation

Dear Mr. Davis:

Due to changes in the field, Garney Construction requests an addition to our change order for the Academy Sports Meter Relocation as follows:

DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	EXTENSION
10" CL 350 DIP	70	LF	\$73.00	\$5,110.00
10" Gate Valve w/ box	1	EA	\$3,000.00	\$3,000.00
8" Gate Valve w/ box	1	EA	\$1,500.00	\$1,500.00
3" Gate Valve w/ box	1	EA	\$750.00	\$750.00
			TOTAL	\$10,360.00

This adjustment includes one extra 10" Gate Valve, one 10" connection, one 8" connection, one 3" connection, and deletes the 2" Irrigation connection. This change will bring the total Academy Sports Meter Relocation cost to \$121,030.00.

If you have any questions, please contact me at (615) 350-7975.

Sincerely yours,

Youral Winegeart
Project Manager