

John J. Tecklenburg
Mayor



Randall Keith Benjamin, II
Director

City of Charleston
South Carolina
Department of Traffic & Transportation

Traffic & Transportation Committee
Conference Call #1-929-205-6099
Access ID: 556524367
Tuesday, May 12, 2020 Time: 2:00 p.m.

Chair, Councilmember Michael Seekings
Vice-Chair, Councilmember Karl L. Brady, Jr.
Councilwoman Marie Delcioppo
Councilwoman Carol Jackson
Mayor John J. Tecklenburg

AGENDA

- | | |
|--|---------------------|
| 1. Invocation | Councilmember Brady |
| 2. Approval of Minutes | April 14, 2020 |
| 3. Clements Ferry Road Phase II Maintenance Agreement for Approval | Keith Benjamin |
| 4. Folly/Albemarle Maintenance Agreement for Approval | Keith Benjamin |
| 5. Update on towing contract | Gary Cooper |
| 6. Director's Update | Keith Benjamin |
| 7. Discussion | |

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.

Maintenance Agreement & Contract
Between the
South Carolina Department of Transportation
and the
City of Charleston

THIS AGREEMENT is made this _____ day of _____, 20__ by and between the South Carolina Department of Transportation (hereinafter referred to as "SCDOT") and the City of Charleston (hereinafter referred to as "City") (collectively "the Parties") for the below described Project.

WITNESSETH THAT:

WHEREAS, SCDOT and Berkeley County (hereinafter "County") have entered into a Cooperative Intergovernmental Agreement for the design, right-of-way acquisition, and construction for Phase II of the Clements Ferry Road Widening Project; and

WHEREAS, the Clements Ferry Road Widening Project will incorporate improvements and enhancements that do not fall within SCDOT's normal maintenance standards; and

WHEREAS, SCDOT and City want to enter into this Agreement to grant a continuous license to City to enter SCDOT's right-of-way to conduct maintenance of the non-standard improvements and enhancements associated with Phase II of the Clements Ferry Road (S-33) Widening Project in Berkeley County; and

WHEREAS, SCDOT is an agency of the State of South Carolina with the authority to enter into contracts necessary for the proper discharge of its functions and duties; and

WHEREAS, City is a body politic with all the rights and privileges of such including the power to contract as a necessary and incidental power to carry out its functions covered under this Agreement; and

WHEREAS, City has agreed to undertake maintenance responsibilities for the non-standard improvements and enhancements described herein;

NOW THEREFORE, in consideration of the several promises to be faithfully performed by the Parties hereto as set forth herein, SCDOT and City do hereby agree as follows:

I. PROJECT DESCRIPTION:

This Agreement is for the maintenance of enhancements and special features incorporated into Phase II of the Clements Ferry Road Widening Project to include: a multi-use path, lighting,

landscaping, and irrigation systems. The scope of this Agreement covers Clements Ferry Road from Jack Primus Road (S-119) to SC 41.

Maintenance of the lighting system will be perpetual with the total cost, including operational cost, being the responsibility of City. SCDOT shall incur no costs. City will have sole responsibility for periodic inspections to determine that all luminaries are operational. All maintenance will be performed in such a manner as to provide for the safe, orderly, and efficient flow of traffic and in conformity with SCDOT traffic control guidelines.

EXHIBIT "A," attached hereto and specifically made a part of this Agreement, represents additional Project details and a map depicting the Project area.

This Agreement shall not impose on City any additional signal maintenance responsibilities for the Clements Ferry Road Widening Project, nor shall it modify any existing signal maintenance agreements between the Parties.

Maintenance is defined as the preservation of the functionality and appearance of the improvements and enhancements.

II. PERIOD OF PERFORMANCE:

The effective date of this Agreement is the date of execution by the Parties hereto. This Agreement will remain in effect unless terminated pursuant to Section VI. f.: Termination.

III. SCDOT WILL:

- a. Assign an SCDOT employee to serve as liaison and contact between the Parties hereto.
- b. Assist City in the preparation and securing of appropriate Encroachment Permits.
- c. Grant to City licenses to enter onto SCDOT right-of-way at the area identified by the Encroachment Permits. The purpose of these licenses to enter is limited to routine maintenance to the improvements and enhancements identified herein. Such entry will be limited to the scope of work identified in the Encroachment Permits. No additional encroachment beyond that contemplated by the original Encroachment Permits is allowed. If additional maintenance, enhancement, or beautification efforts, different from the original scope of work identified in the Encroachment Permits, is requested, the requestor will be required to submit a new Encroachment Permit identifying the new scope of work. Entry onto SCDOT right-of-way pursuant to this Agreement requires notice to SCDOT.

IV. CITY WILL:

- a. Accept responsibility for the maintenance of the ~~identified~~ improvements and enhancements ~~identified herein~~ on both City's and SCDOT's right-of-way within the Project boundaries.
- b. Secure appropriate Encroachment Permits outlining any maintenance efforts on SCDOT rights-of-way that may include any special or non-standard features, such as the ~~above identified~~ improvements and enhancements ~~identified herein~~, which may be incorporated into Phase II of the Clements Ferry Widening Project. Encroachment Permits shall be obtained after the Widening Project is complete and before incorporation into the state system, if not already included in the state system.
- c. Post all necessary traffic control devices and take all necessary precautions in conformance with SCDOT traffic control standards and as required by SCDOT along SCDOT right-of-way prior to and during the performance of any maintenance efforts.
- d. Within the limitations of the South Carolina Tort Claims Act (S.C. Code Sections 15-78-10 *et seq.* (as amended)), City will be responsible for any loss resulting from bodily injuries (including death) or damages to property, arising out of any act or failure to act on City's part, or the part of any employee or agent of City in performance of the work undertaken under this Agreement.
 1. Pursuant to S.C. Code Section 57-5-140 (2006), SCDOT shall not be liable for damages to property or injury to persons, as otherwise provided for in the South Carolina Tort Claims Act, as a consequence of any negligence by City in performance of maintenance work by City.
- e. Insert an indemnification clause into all contracts with contractors and subcontractors which requires the contractor and subcontractor to indemnify and hold harmless City, the State of South Carolina, and SCDOT from any liability, claims, or damages which may arise from the performance of work on or within SCDOT right-of-way.

V. FUNDING:

- a. City is responsible for funding any maintenance activities described by this Agreement. SCDOT will not fund these maintenance activities.

VI. GENERAL:

- a. DISPUTES. All claims or disputes shall be filed with the SCDOT District Engineering Administrator. All Parties will meet to attempt to resolve the dispute or claim. If unable to resolve the dispute with the District Engineering Administrator, the Parties may appeal the claim or dispute to the appropriate SCDOT Deputy Secretary. The Deputy Secretary's decision in the matter shall be final and conclusive for all Parties.
- b. NOTICES. All notices and other correspondence will be officially delivered as follows:

1. As to SCDOT:

South Carolina Department of Transportation
SCDOT – District 6
Berkeley County Resident Maintenance Engineer
436 Highway 52 North
Moncks Corner, SC 29461

2. As to City of Charleston:

City of Charleston

- c. COMPLIANCE WITH LAWS. The Parties hereto agree to conform to all of the SCDOT, State, Federal, and local laws, rules, regulations, and ordinances governing agreements or contracts relative to the acquisition, design, construction, maintenance and repair of roads and bridges, and other services covered under this Agreement.
- d. AMENDMENTS. CITY, or its authorized agents, shall agree to hold consultations with SCDOT as may be necessary with regard to the execution of supplements, modifications, or amendments to this Agreement during the course of this PROJECT for the purpose of resolving any items that may have been unintentionally omitted from this Agreement. Such supplements, modifications, and amendments shall be subject to the approval and proper execution of the Parties hereto. No supplement, modification, or amendment to this Agreement shall be effective or binding on any Party hereto unless such supplement, modification, or amendment has been agreed to in writing by all Parties hereto.
- e. REVIEWS/APPROVALS. Any and all reviews and approvals required of the Parties herein shall not be unreasonably denied, delayed, or withheld.
- f. TERMINATION. This Agreement may be terminated by SCDOT in the event of substantial failure by City to properly maintain the improvements and enhancements incorporated into this project. In the event of Termination, City shall be responsible for any cost associated with SCDOT performing the required maintenance or removing the special features of nonstandard improvements and enhancements from SCDOT's right-of-way.
- g. FUTURE CONSTRUCTION PROJECTS. City acknowledges SCDOT's resurfacing program and other construction programs do not account for the cost of protecting or replacing improvements and enhancements. These costs are the sole responsibility of

City. SCDOT will notify City prior to resurfacing or construction and provide a time period for City to provide the additional funding for one of the following:

1. The additional cost to protect the improvements and enhancements; or
2. The cost for SCDOT to replace the improvements and enhancements.

Failure of City to provide the additional funding within the time period specified by SCDOT will result in SCDOT's milling and resurfacing the improvements and enhancements or removing the improvements and enhancements. City may replace the improvements and enhancements at City's expense after resurfacing or construction by obtaining necessary Encroachment Permits from SCDOT after resurfacing is complete.

VII. SUCCESSORS AND ASSIGNS.

- a. SCDOT and City each bind themselves, their respective successors, executors, administrators, and assigns to the other with respect to these requirements, and also agrees that neither Party shall assign, sublet, or transfer their interest in the Agreement without the written consent of the other Party.
- b. This Agreement is made and entered into for the sole protection and benefit of SCDOT, City, and their respective successors and assigns. No other persons, firms, entities, or parties shall have any rights, or standing to assert any rights, under this Agreement.

VIII. EXECUTION IN COUNTERPARTS.

- a. This Agreement may be executed and delivered in counterparts, and if so executed, shall become effective when a counterpart has been executed and delivered by both Parties hereto. All counterparts taken together shall constitute one and the same Agreement and shall be fully enforceable as such. Delivery of counterparts via facsimile transmission or via email with scanned attachment shall be effective as if originals thereof were delivered.

IX. ENTIRE AGREEMENT.

- a. This Agreement with attached Exhibit(s) and/or Certification constitutes the entire Agreement between the parties. The Agreement is to be interpreted under the laws of the State of South Carolina.

[Signature Blocks on Next Page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on their behalf

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

CITY OF CHARLESTON

Witness

By: _____
(Signature)

Title: _____

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

Witness

By: _____
Deputy Secretary for Engineering or
Designee

RECOMMENDED BY:

Deputy Secretary or Designee

REVIEWED BY:

Title: _____

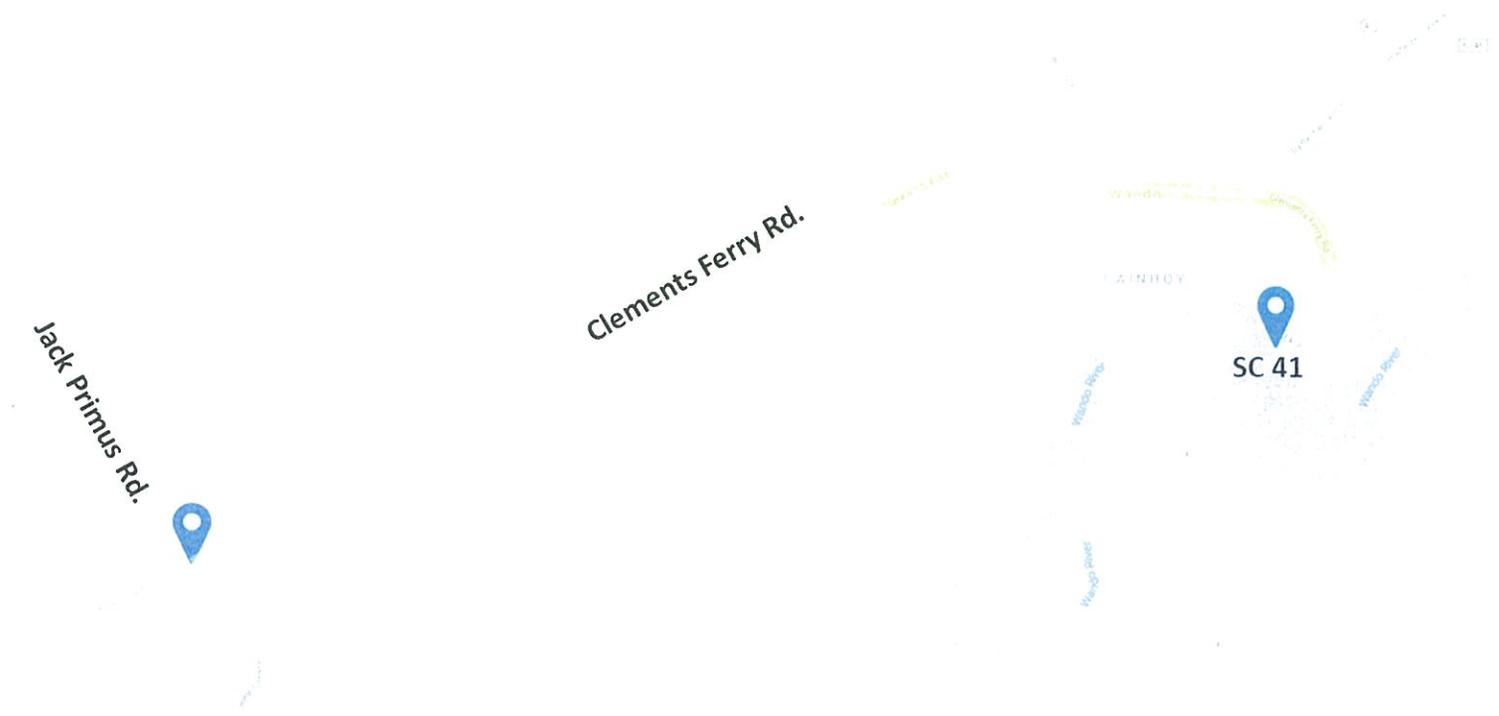
PROFESSIONAL SERVICES CONTRACTING

By: _____
Chief Procurement Officer or Designee

EXHIBIT A

EXHIBIT A

Clements Ferry Road Widening Phase 2 From Jack Primus Road to SC 41 Berkeley County, South Carolina



Additional Project Details

The Clements Ferry Road Phase 2 Widening Project involves widening Clements Ferry from 2 lanes to 4/5 lanes from Jack Primus Road to SC 41 a distance of approximately 4.5 miles. Some sections of the project will have a landscaped median, while other sections will have a center turn median. The landscaped median will have irrigation installed and plantings that have been reviewed and approved by the City of Charleston and SCDOT. Additionally, a multiuse path and associated street lighting will be incorporated into the project.

11. APPENDICES

APPENDIX 1 – MAINTENANCE PARTNERSHIP AGREEMENT

2/17/00

THIS AGREEMENT is entered this 31st day of March, 2020, by and between The City of Charleston Parks Department (hereinafter "Non-SCDOT Entity") and the South Carolina Department of Transportation (hereinafter "SCDOT").

WHEREAS, in accordance with Sections 57-3-110 (1) and (10), 57-3-650, 57-23-10, 57-23-800(E), 57-25-140, and the SCDOT's Policy of Vegetation Preservation on SC Highways, SCDOT is authorized to allow landscaping and beautification efforts on SCDOT right of ways;

WHEREAS, Non-SCDOT Entity has previously obtained a SCDOT Encroachment Permit for the one-time right to access SCDOT's right of way for landscaping, beautification and/or enhancement. Said encroachment permit is described as follows:

Permit Number: 233869

Date Issued: April 24, 2020

Location Intersection of Folly Road Blvd. and Albemarle Road (Traffic Island);

WHEREAS, SCDOT and Non-SCDOT Entity are desirous of entering into this Agreement to grant a continuous license to the Non-SCDOT Entity to enter the SCDOT's right of way to conduct routine maintenance of landscaping, beautification and/or enhancements permitted by the aforesaid encroachment permit;

NOW THEREFORE, in consideration of mutual promises, SCDOT and Non-SCDOT Entity agree to the following:

1) SCDOT grants Non-SCDOT Entity a license to enter onto the SCDOT right of way at the area defined by the encroachment permit. The purpose of the license to enter is limited to routine maintenance of the encroachment permit area. Such entry will be limited to the scope of the work identified in the encroachment permit. No additional encroachment beyond that contemplated by the original encroachment permit is allowed. If additional maintenance, enhancement and/or beautification efforts, different from the original scope of work identified in the encroachment permit, is requested, Non-SCDOT Entity will be required to submit a new encroachment permit identifying the new scope of work. Entry onto SCDOT right of way pursuant to this agreement may be without notice to the SCDOT.

2) Non-SCDOT Entity agrees to post all necessary traffic control devices and take all necessary precautions in conformance with SCDOT traffic control standards and as required by the SCDOT, along the SCDOT right of way prior to and during the performance of any routine maintenance, enhancement and/or beautification efforts.

3) Non-SCDOT Entity agrees that no work shall be accomplished from the mainline side of the highway. Ingress and egress from the work area shall be made from private property as identified on the encroachment permit.

4) Non-SCDOT Entity agrees to indemnify and hold harmless the SCDOT from any and all claims, damages and liability arising or resulting from the Non-SCDOT Entity's presence on and use of the SCDOT right of ways for routine maintenance, enhancement and/or beautification. If Non-SCDOT Entity is a local government, it agrees to be responsible for all claims or damages arising from the work performed within the limits of the SC Tort Claims Act. In addition, Local government shall insert a hold harmless and indemnification clause in its contract with all contractors and subcontractors which requires the contractor and subcontractor to indemnify and hold harmless the local government and the State of South Carolina, specifically the SCDOT, from any liability, claims or damages which may arise from the performance of the work on SCDOT right of way. Further, municipalities agree that they are subject to S. C. Code Section 57-5-140, which provides that SCDOT shall not be liable for damages to property or injuries to persons, as otherwise provided for in the Torts Claims Act, as a consequence of the negligence by a municipality in performing such work within the State highway right of way.

MAINTENANCE PARTNERSHIP AGREEMENT, PAGE 2

5) This Agreement shall not be modified, amended or altered except upon written consent of the parties. Neither party shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

6) This Agreement may be terminated upon thirty days' written notice to the other party; however, in cases where the Non-SCDOT Entity is not performing in accordance with this Agreement, SCDOT shall give written notice to Non-SCDOT Entity of the failure in performance and, if the Non-SCDOT Entity does not correct or cure the performance within three days of receipt of the notice, SCDOT shall have the option to terminate this license immediately, and shall, thereafter, give written notice of such termination to the Non-SCDOT Entity.

IN WITNESS WHEREOF, the above parties have hereunto set their hands and seals.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION

By: Juleigh B. Fleming

Its: District Permit Engineer

Recommended by: Fleming, Juleigh B. Digitally signed by Fleming, Juleigh B.
Date: 2020.04.24 10:45:41 -04'00'

Non-SCDOT Entity

By: KEVJ

Its: Deputy Director of Permits