

**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: 556 524 367**  
**Tuesday October 13, 2020 Time: 3:00 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   | Councilwoman Delcioppo |
| 2. Approval of Minutes  | September 22, 2020     |
| 3. Glenn McConnell Parkway Maintenance Agreement  | Keith Benjamin         |
| 4. Folly Road Maintenance Agreement   | Keith Benjamin         |
| 5. Resolution for Approval: To establish the Johnson Street quiet zone at the highway rail grade crossing known as Johnson Street (USDOT Crossing ID 841159R) and to authorize the Mayor to execute a Memorandum of Agreement (“MOA”) and other necessary documents between the City of Charleston and all necessary parties to govern the funding, design, permitting, construction, installation, repair, and maintenance of necessary improvements to establish the Johnson street quiet zone upon approval of the final form of the MOA and other necessary documents by Corporation Counsel and the Director of the City’s Department of Traffic and Transportation. | Chip McQueeney         |
| 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](mailto: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, Charleston County (hereinafter “County”) has undertaken a project to widen Glenn McConnell Parkway (SC 461) and construct a multi-use path alongside the road from Bees Ferry Road to Magwood Drive (hereinafter referred to as “Project”); and

WHEREAS, the 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 the Project in Charleston 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 Glenn McConnell Parkway Widening Project to include: a multi-use path (MUP), lighting, mast arms, landscaping, grassing under the MUP handrails, and irrigation systems. The scope of this

Agreement covers Glenn McConnell Parkway from Bees Ferry Road (S-57) to Magwood Drive (S-1863).

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.

Mast arm maintenance includes maintaining the cross arm, signal support, and related equipment. Mast arm maintenance will follow SCDOT's "Engineering Directive Memorandum Number 33," SCDOT's "Mast Arm Specifications," and any amendments or modifications thereto, all incorporated herein by reference. This memorandum may be found at: <http://info2.scdot.org/ED/ED/ED-33.pdf>.

This Agreement shall not impose any additional signal maintenance responsibilities on City, 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.

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

## 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 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, ~~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  
Charleston County Resident Maintenance Engineer  
2401 Maintenance Way  
North Charleston, SC 29406

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: \_\_\_\_\_

EXHIBIT A



The scope of the project shall include ongoing maintenance of the intermittent green bike lane striping that is to be installed as a part of the Folly Road Bike/Pedestrian Improvement Project and will be strategically placed at high-volume intersections and driveways from Ellis Creek to Wilton Rd. on the Folly Road Corridor.

The specified material is known as Durable Liquid Pavement Markings (DLPM) that is an epoxy/resin or MMA – acrylic based resin substance. The skid resistant and retro-reflective material is very durable and is expected to need little to no maintenance for 5 years. The application can be spot treated for higher wear and tear areas. The recommended maintenance plan should include allocated funds for annual spot treatment and funds for a full re-application every 6 years.

II. PERIOD OF AGREEMENT:

The effective date of this Agreement is the date of its execution, and this Agreement shall continue for two years. Thereafter it will extend automatically until terminated by either party giving the other a written two-month minimum termination notice.

III. THE TOWN AGREES:

- a. Provide administration and management of the procurement, permitting and coordination of the maintenance contract.
- b. Provide to the City correspondence concerning project changes in schedules, routine communication, or any other such activities that may impact the Project.
- c. Provide access to the Project records during and after the project to enable the City to review and make proposed changes to the Project.
- d. Request approval from the City regarding pay requests relating to the Project prior to payment of any invoices, along with notice of any change orders, which affect the cost of the Project. Pay requests shall be provided to each Party's staff representative within 48 hours of the Town receiving a pay request for review.

IV. THE CITY AGREES:

- a. Provide timely review comments on the project scope.
- b. Provide to the Town correspondence concerning project design changes, routine communication, or any other such activities that may impact the Project.
- c. To report any known maintenance issues to the Town.

V. COMPENSATION AND PAYMENT TERMS:

The Town will advance payment to the Contractor. The City agrees to pay the Town for 30% share of the project costs.

This share is subject to change upon any change or amendment to the project scope.

The City further agrees that Pay requests shall be remitted to the Town within thirty (30) days of receipt of a Pay request. The City shall designate in writing to the Town a staff representative and email address for the purpose stated in this Paragraph.

VI. TERMINATION:

*For convenience:* The City reserves the right to terminate this Maintenance Agreement when it is in best interest of the City. If this Agreement is so terminated, the City shall provide the Town with fifteen (15) days written notice of such termination. No costs or damages shall be allowed for a termination of convenience.

*For default:* If the Town fails to comply with the terms of this Agreement, the City shall notify the Town in writing with the specifics regarding such noncompliance. If the Town fails to cure the noncompliance within (7) days of the notice, the City shall terminate this Agreement by written notice to the Town within fifteen (15) days thereafter. Town shall not be entitled to any costs or damages resulting from termination for default.

VII. GENERAL PROVISIONS:

- a. Nothing contained in this Agreement shall be construed to require the Town to undertake or complete the Project or any phase thereof. Those obligations shall be solely governed by the actions of the Town of James Island Town Council.
- b. Nothing contained in this Agreement shall be construed to require the Town to undertake or complete any subsequent project for green bike lanes. Those obligations shall be solely governed by the actions of the Town of James Island.
- c. The Town and City agree to conform to all Federal, State and local laws, rules and regulations governing agreements or contracts relative to the conduct of the work covered by this Agreement.
- d. Any and all reviews and approvals required of the Town and the City shall not be unreasonably denied, delayed, or withheld.
- e. The Town and the City each binds itself, its successors executors, administrators, and assigns to the other party with respect to these requirements, and also agrees that neither party shall assign, sublet, or transfer its interest in the Agreement without the written consent of the other.

f. The laws of the State of South Carolina shall govern this Agreement. All litigation arising under this Agreement shall be litigated in the Circuit Court in the Ninth Judicial Circuit of Charleston County, South Carolina.

VIII. AMENDMENTS: This Agreement constitutes the entire agreement between the parties; no amendment or modification changing its scope shall have any force or effect unless in writing and signed by all Parties.

IX. NOTICES: All notices or other communications hereunder shall be deemed properly given when delivered in person, or mailed by certified mail, return receipt requested, postage prepaid, addressed as follows, or to such other places may be designated in writing by the Parties:

AS TO THE TOWN:

Ashley Kellahan  
Town Administrator  
1122 Dills Bluff Rd  
James Island, SC, 29412

Bill Woolsey, Mayor  
1122 Dills Bluff Rd  
James Island, SC, 29412

Bonum S. Wilson III (Bo), Esq.  
James Island Counsel  
924 Folly Rd  
Charleston, SC 29412

AS TO THE CITY:

Keith Benjamin  
Director of Traffic & Transportation  
180 Lockwood  
2<sup>nd</sup> Floor  
Charleston, SC 29403

John J. Tecklenburg, Mayor  
80 Broad Street  
Charleston, SC 29401

Janie Borden  
Asst. Corporation Counsel  
50 Broad Street  
Charleston, SC 29401

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the date indicated above.

Signed, sealed and executed for the TOWN.

WITNESS:

Town of James Island

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Signed, sealed and executed for CITY.

WITNESS:

City of Charleston

\_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_



**A RESOLUTION**

**TO ESTABLISH THE JOHNSON STREET QUIET ZONE AT THE HIGHWAY RAIL GRADE CROSSING KNOWN AT JOHNSON STREET (US DOT CROSSING ID 841159R) AND TO AUTHORIZE THE MAYOR TO EXECUTE A MEMORANDUM OF AGREEMENT (“MOA”) AND OTHER NECESSARY DOCUMENTS BETWEEN THE CITY OF CHARLESTON AND ALL NECESSARY PARTIES TO GOVERN THE FUNDING, DESIGN, PERMITTING, CONSTRUCTION, INSTALLATION, REPAIR, AND MAINTENANCE OF NECESSARY IMPROVEMENTS TO ESTABLISH THE JOHNSON STREET QUIET ZONE UPON APPROVAL OF THE FINAL FORM OF THE MOA AND OTHER NECESSARY DOCUMENTS BY CORPORATION COUNSEL AND THE DIRECTOR OF THE CITY’S DEPARTMENT OF TRAFFIC AND TRANSPORTATION.**

**WHEREAS**, the City of Charleston wishes to provide its citizens with a tranquil living environments; and,

**WHEREAS**, the City of Charleston is concerned about highway rail grade crossing safety; and,

**WHEREAS**, highway rail grade crossing safety protocols have traditionally required the sounding of horns at all such intersections; and,

**WHEREAS**, the Federal Railroad Administration amended its rules to commit certain quiet zones to be established where it can be demonstrated that alternative safety measures can be taken to alleviate the need for horn sounding; and,

**WHEREAS**, the City of Charleston has proposed a quiet zone in the vicinity of Johnson Street; and,

**WHEREAS**, the City of Charleston desires to formally designate this quiet zone and to give notice of its enactment.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF CHARLESTON, IN COUNCIL ASSEMBLED:

Section 1. That, subject to the remaining terms and conditions of this resolution, the City of Charleston hereby creates the Johnson Street Quiet Zone, which shall be in effect twenty-four (24) hours per day, at one rail crossing, designated as Johnson Street (US DOT CROSSING ID 841159R).

Section 2. That nothing in this Resolution shall commit the City to provide funding or financial contribution towards the design, permitting, construction, installation, maintenance, and/or repair of any necessary improvements for the Johnson Street Quiet Zone.

Section 3. That this Resolution shall become effective upon the execution of a Memorandum of Agreement (“MOA”) and other necessary documents between the City and other necessary parties governing the funding, designing, permitting, construction, installation, maintenance, and/or repair of any necessary improvements for the Johnson Street Quiet Zone, copies of which are attached hereto and incorporated herein by reference as Exhibit A.

Section 4. That, upon the approval of Corporation Counsel and the Director of the City’s Department of Traffic and Transportation as to the final form of the attached MOA, the Mayor is authorized, without further action by City Council, to execute the MOA and other necessary documents between the City and other necessary parties governing the design, permitting, construction, installation, maintenance, and/or repair of any necessary improvements for the Johnson Street Quiet Zone; provided, however, the City shall not be authorized to contribute financially or in-kind to the design, permitting, construction, installation, repair, and/or maintenance of any necessary improvements without approval by City Council.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

By: \_\_\_\_\_  
John J. Tecklenburg  
Mayor, City of Charleston

ATTEST: \_\_\_\_\_  
Jennifer Cook  
Interim Clerk of Council