



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #14  
WRKS  
07/23/13

## MEMORANDUM

July 23, 2013

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *ES*  
Vernon Gerth, ACA-Community Development  
Kelly Dannenfelser, Principal Planner PT, AICP

SUBJECT: Resolution No. 2013-40, Establish a Standard Landscape Maintenance Agreement

### **Purpose**

The purpose of this memorandum is to outline recommendations to the Board of Mayor and Aldermen (BOMA) for establishing a standard landscape maintenance agreement between the City and various Development Associations for privately installed landscape improvements within the public right-of-way.

### **Background**

The City has been receiving and approving requests by both residential and non-residential Development Associations to make investments in improving the appearance of the public right-of-way adjacent to their development entrances and members properties. Some recent examples include Lewisburg Pike at Berry Farms Town Center, Carothers Parkway at Corporate Centre, and McEwen Drive at McEwen Town Center. When these improvements occur, agreements should be made that clearly outline the long-term maintenance responsibilities for the Associations and the City to ensure consistent expectations.

Currently, the BOMA is required to review and approve each contract. Staff is recommending a standard agreement be adopted as depicted in Attachment A. The enabling Resolution 2013-40 allows for minor revisions to be made by the City Administrator as long as the revisions do not alter the City's maintenance partnership practices regarding the Associations' utilization and continued maintenance of landscape improvements within the right-of-way.

### **Financial Impact:**

Development Associations who elect to landscape adjacent public right-of-way are enhancing the area to reflect the investment made on their member's private property(s). These improvements are typically above the minimum improvements required by the City within the public right-of-way. There are numerous examples throughout the City where Associations have improved and continue to maintain landscaping within the public right-of-way. These enhanced areas add to the street appeal and beauty of our community while helping keep the City's cost of maintaining the public right-of-way to a minimum.

### **Recommendation**

Approval of this Resolution and Agreement is recommended.

**RESOLUTION NO. 2013-40**

**A RESOLUTION TO ESTABLISH A STANDARD LANDSCAPE MAINTENANCE AGREEMENT FOR ASSOCIATIONS TO INSTALL AND MAINTAIN LANDSCAPING WITHIN THE PUBLIC RIGHT-OF-WAY**

**WHEREAS**, Development Associations sometimes desire to make investments in improving the appearance of the public right-of-way near their development entrances; and

**WHEREAS**, these privately-installed landscape improvements enhance the development and contribute to the general appearance of the streetscape while raising the standard of quality for the overall city; and

**WHEREAS**, when an Association submits and the City approves a landscape plan for public right-of-way, the City Administrator requests that an agreement be made between the City and the Association specifying maintenance responsibilities; and

**WHEREAS**, utilizing input from several Associations' representatives, the City staff has created a standard Landscape Maintenance Agreement; and

**WHEREAS**, the Board of Mayor and Aldermen desire to adopt a standard Landscape Maintenance Agreement, which will help streamline the contractual process and lay out clear and consistent expectations and responsibilities for Associations, the citizens of the City of Franklin, and the Board of Mayor and Aldermen.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE CITY OF FRANKLIN, TENNESSEE THAT:**

**SECTION 1:** The Landscape Maintenance Agreement attached to this Resolution as Exhibit A be adopted as the standard contract for installation of approved landscape improvements by private Associations within the public right-of-way.

**SECTION 2:** The City Administrator is authorized to make minor revisions to the Landscape Maintenance Agreement in terms of coverage area, titles of Associations, and further descriptive statements as long as such revisions do not change the original meaning and intent of the agreement. Substantial revisions shall be reviewed and approved by the Board of Mayor and Aldermen and shall include any change that would cause the City to modify its maintenance partnership practices with Development Associations.

**SECTION 3:** The City Administrator is authorized to execute Landscape Maintenance Agreements on behalf of the City.

ADOPTED THIS \_\_\_\_ DAY OF AUGUST 2013.

ATTEST:

CITY OF FRANKLIN, TENNESSEE

By: \_\_\_\_\_  
Eric S. Stuckey  
City Administrator/Recorder

By: \_\_\_\_\_  
Dr. Ken Moore  
Mayor

Approved as to Form:

By: \_\_\_\_\_  
Kristen Corn  
Staff Attorney



**LANDSCAPE MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND  
*(ASSOCIATION NAME)*  
COF CONTRACT NO 20*XX-XX***

**THIS AGREEMENT**, (“Agreement”), made and entered into this day of \_\_\_\_\_ 20\_\_  
by and between THE CITY OF FRANKLIN, TENNESSEE (“City”) and THE *(ASSOCIATION  
NAME)* (hereinafter “Association”).

**WITNESSETH:**

**WHEREAS**, the City Administrator has requested an Agreement to be made by the Association regarding landscaping within the City right-of-way located along *(street name)*, *(N-W-E-S)* of *(nearby street name)* and *(N-W-E-S)* of *(nearby street name)* in the general vicinity of *(development name)*; and

**WHEREAS**, when an Association makes an investment in improving the appearance of the public right-of-way adjacent to the development entrance, these landscape improvements enhance the development and raise the standard of quality for the streetscape and the overall city; and

**WHEREAS**, the City and the Association have agreed on a landscaping plan, as described in detail below; and

**WHEREAS**, the landscaping plan encompasses approximately *(number)* lineal feet (*XX* LF) of a City right-of-way known as *(street name)*, *(N-W-E-S)* of *(nearby street name)* and *(N-W-E-S)* of *(nearby street name)* in the general vicinity of *(development name)*; and

**WHEREAS**, on *(date)* the City of Franklin approved the Landscape Plan for *(project name)*; and

**WHEREAS**, the Association has agreed to maintain the landscaped median and public greenway located within the outer limits of the *(street name)* public right-of-way including, but not limited to, the grass turf, approved shrubs, flowers, trees, decorative hardscape, and irrigation systems which contribute to the general appearance of the *(street name)* streetscape and entrances into *(development name)*; and

**WHEREAS**, the median and outer limits of the right-of-way shall not be altered, expanded, or in any way modified from the level, nature and intensity of its use as contemplated in this Agreement, without the express prior written consent of the City; and

**WHEREAS**, approved signage that may be located in the City’s right-of-way shall not be altered, expanded, or in any way modified by the Association with respect to the nature and intensity of its use without the written consent of the City; and

**NOW, THEREFORE**, in consideration of the terms, conditions and mutual agreements by and between the parties as hereinafter set forth in detail, the parties do hereby mutually agree as follows:

**I. AGREEMENT OF LANDSCAPING IN THE CITY RIGHT-OF-WAY**

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. The City hereby grants the Association permission to enter upon and to utilize the rights-of-way known as *(street name)* located and situated in Franklin, TN, as depicted in Exhibit “A” for the purposes of installation, maintenance, repair, replacement and removal of existing trees, shrubbery, decorative hardscape, and irrigation systems (hereinafter “Landscaping”) approved by the City as depicted in Exhibit “A” (full size plans available for viewing in the City of Franklin Planning and Sustainability Department – see Landscape Plans for *(project name)*).
3. The Association shall not impede the flow of traffic while utilizing the right-of-way without the prior approval by the City.
4. The Association shall be responsible for the protection of all existing utilities in accordance with State and local laws while utilizing the right-of-way.
5. All improvements, uses, and activities shall comply with the policies established by the Zoning Ordinance and with the terms and conditions of the Agreement.
6. Approved Landscaping improvements shall not interfere with sight distances for the traveling public in accordance with the standards set forth in the Manual for Uniform Traffic Control Devices and the City of Franklin Transportation and Street Technical Standards. The City shall be responsible for identifying any conflict with the Manual or Standards, notifying the Association, and removing the affected Landscaping at the sole cost and expense of the City.
7. The Association solely assumes all responsibility for the maintenance and, if necessary, replacement of all Landscaping described herein and as depicted in Exhibit “A”, except as set forth herein.



8. The Association shall notify the City within three (3) business days of discovery of any conditions rendering trees defective or dangerous.
9. Barring force majeure or weather delays, the Association agrees, upon thirty (30) days written notice from the City, to remove, maintain, repair or replace all Landscaping as described herein that may require removal, maintenance, repair or replacement, subject to seasonal limitations for replacement or planting. If no remedy is made within the specified time, the City reserves the right to remove all affected Landscaping without further notice to the Association and at the sole cost and expense of the Association. The Association shall submit payment for full cost and expense incurred by the City within thirty (30) days of the date of the invoice.
10. The City reserves the right to request removal and replacement, as appropriate, of the Landscaping depicted in Exhibit "A" in the event that the City needs to utilize the property for City purposes, such as roadway widening, greenway, bike/pedestrian path, public utility installation or maintenance, drainage improvements or other public uses. The City shall endeavor to give at least sixty (60) days prior notice to the Association of any such removal.
11. If the City makes a planned physical improvement, such as a street widening or addition of a turning lane, then the City will endeavor to maintain the landscaping as planted by the Association, including working with the Association to coordinate relocation of landscape material in the planned area of disturbance prior to construction and restoring the disturbed portion of the landscaping not used for the planned physical improvement to similar condition prior to the improvement.
12. In the case of emergency situations where unplanned disturbance of landscaping occurs due to natural disaster, emergency infrastructure repairs, or public safety/emergency response, the City will attempt to minimize disturbance to the extent feasible but must act swiftly for the purposes of public safety, health and welfare. The City will bring the site back to similar condition as soon as practicable, subject to budgetary constraints; other priorities that serve the general public health, safety, and welfare; seasonal limitations for replacement or planting; and weather delays.
13. The Association agrees that only the approved Landscaping as depicted in Exhibit "A" shall be placed within the rights-of-way. Exhibit "A" may be amended as needed upon mutual written agreement of both parties.
14. The permission granted by this Agreement shall be effective as of the date of execution by both parties and shall terminate only as provided within this Agreement.

15. This Agreement is given to the Association as an accommodation to the Association with no monetary consideration. The Association acknowledges the legal title of the City to the right-of-way property described herein and agrees never to deny such title or claim title in the Association's name.
16. This Agreement is non-transferable to the successors or assigns of the Association unless the successor assumes the same obligations of the Association and the City agrees in writing to the assignment. Further, the rights, privileges and permission granted herein shall not be assignable by the Association in whole or in part unless the successor or assignee assumes the same obligations of the Association. The City shall have the right to immediately remove the landscaping for which this Agreement is granted upon assignment or transfer by the Association; subject, however, to application made by the successor for and due diligence in obtaining approval by the City of a new Agreement for the existing Landscaping to remain in the right-of-way.
17. The Association shall exercise the rights, privileges and permission granted herein at the Association's own risk. The Association shall not claim any damages from the City for any injuries or damages, including death, in connection with or on account of the exercise of such rights, privileges or permission, the condition of the right-of-way, or the use of the right-of-way, excluding gross negligence by the City. The Association shall indemnify and hold harmless the City, its Mayor, Aldermen, officers, employees, officials and agents, from and against all claims, damages, losses, including death, and expenses, including reasonable attorney's fees and costs, arising out of, resulting from, or in any way connected with the condition of right-of-way, the use of the right-of-way, the exercise of this Agreement, the failure on the part of the Association to comply with any of the provisions specified herein, or the City's removal of any landscaping depicted in Exhibit "A" or otherwise permitted by this Agreement. The City shall not be liable to the Association should the Association's use of the property be hindered or disturbed. The City will not be liable to the Association for any reason not specifically stated herein.

18. All notices required to be given by any party shall be in writing, addressed to all other parties, and delivered by certified mail or in person to:

In the case of the City:

City of Franklin  
Attn: Vernon J. Gerth, ACA  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305

In the case of Association:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. This Agreement shall be recorded with the Williamson County Register of Deeds with a copy maintained in the City Recorder's office in City Hall, Franklin, TN. Upon completion of this Agreement, the City agrees to cover the costs and responsibility associated with recording this Agreement.
20. This Agreement constitutes the entire agreement between parties. There are no further or other agreements or understandings, written or oral, in effect between the parties, relating to the subject matter hereof. This Agreement may be amended or modified only by an instrument of equal formality signed by the respective parties.

## II. GENERAL TERMS AND CONDITIONS

1. **Personal Liability.**

No member, Mayor, Alderman, official or employee of the City shall be personally liable to the Association or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to Association or successor or on any obligations hereunder.

2. **Warranties/Limitation of Liability/Waiver.**

The City reserves all rights afforded to local governments under law for all general and implied warranties. The City does not waive any rights it may have to all remedies provided by law and therefore any attempt by the Association to limit its liability shall be void and unenforceable.

3. **Severability.**

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



IN WITNESS WHEREOF the said parties have hereunto set their signatures, on this day and date first above written.

**CITY OF FRANKLIN, TENNESSEE**

**ATTEST:**

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator / Recorder  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Kristen L. Corn**  
Staff Attorney  
Date: \_\_\_\_\_

**STATE OF TENNESSEE**                   )  
  )  
**COUNTY OF WILLIAMSON**            )

Before me, \_\_\_\_\_, a Notary Public of said State and County, personally appeared, Dr. Ken Moore and Eric S. Stuckey, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and where, upon oath, Dr. Ken Moore acknowledged himself to be Mayor and Eric S. Stuckey acknowledged himself to be City Administrator of the City of Franklin, Tennessee, and that as such, being authorized to do so, have executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

Prepared by:  
City of Franklin  
109 Third Avenue South  
Franklin, Tennessee 37064

Exhibit A

***(ASSOCIATION NAME)***

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

)

COUNTY OF \_\_\_\_\_ )

Before me, \_\_\_\_\_, a Notary Public of said State and County, personally appeared, \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be \_\_\_\_\_ of *(Association name)* and that as such, being authorized to do so, he/she executed the foregoing instrument for the purposes therein contained.

Witness my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_