

## MEMORANDUM

---

TO: Capital Investments Committee

FROM: Lisa R. Clayton, Parks Department  
Joe York Streets, Director  
Vernon, Gerth, ACA Community & Economic Development

DATE: April 6, 2010

SUBJECT: Agreement between the City of Franklin and the HOA of Carriage Park

### **Purpose**

Request the City Administrator to enter into a formal agreement with the Home Owners Association (HOA) of Carriage Park regarding landscaping improvements and maintenance within the City of Franklin (COF) right-of-way by private citizens.

### **Background**

In the fall of 2009, the HOA of Carriage Park approached the City of Franklin to enhance the current landscaping in the existing right-of-way.

### **Financial Impact**

The City of Franklin Tree Commission agreed to pay for the initial cost of supplying (46) Crepe myrtles with tree bank funding and replace up to 10% of tree material due to loss within (1) one year of planting. The COF Streets/City Arborist agreed to install the approved trees purchased by the Tree Commission for the project. The HOA agrees to purchase, install and maintain the landscaped median(s) including but not limited to an approved list by the COF of shrubs, flowers and trees within the median, which contributed to the general appearance of the entrance to the HOA subdivision.

Tree Commission Minutes from October 26, 2009: *The request to use Tree Bank Funds for the Carriage Park tree planting, estimated cost \$2,500 for 50 Natchez Crepe Myrtles, to be planted by City staff with the Carriage Park HOA assuming maintenance responsibility. Approved 6-0.*

### **Liability**

The agreement shall state which party is responsible for the different components of the project.

### **Recommendation**

The Street/Parks Department recommends entering into a signed agreement.

**AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND THE  
HOMEOWNER ASSOCIATION OF CARRIAGE PARK  
COF CONTRACT NO 2010-0031**

**THIS AGREEMENT**, (hereinafter "AGREEMENT"), made and entered into this 27th day of April, 2010 by and between THE CITY OF FRANKLIN, TENNESSEE (hereinafter "COF") and THE CARRIAGE PARK HOMEOWNERS ASSOCIATION (hereinafter "HOA.")

**WITNESSETH**

**WHEREAS**, the City Administrator of the CITY OF FRANKLIN has requested authorization to execute an AGREEMENT regarding improvements within the COF right-of-way by private citizens, homeowners associations, and developers, located at Carriage Park Subdivision; and

**WHEREAS**, the COF and the HOA have agreed on an improvement plan, as described in detail below, which is within the intent of the established City policy; and

**WHEREAS**, the improvement plan encompasses part of a COF right-of-way known as Carriage Park Drive located within the Carriage Park Subdivision, a 66,084- square foot median area of the COF right-of-way; and

**WHEREAS**, the COF Tree Commission agrees to pay for the initial cost of supplying forty-six (46) Crepe myrtles with tree bank funding and replace up to ten percent (10%) of tree material due to loss within one (1) year of planting; and

**WHEREAS**, COF agrees to install the approved trees purchased by the Tree Commission for the said project; and

**WHEREAS**, HOA agrees to purchase, install and maintain the landscaped median including but not limited to an approved list by the COF of shrubs, flowers and trees within the median, which will contribute to the general appearance of the entrance to the HOA subdivision; and

**WHEREAS**, the median and materials planted within shall be not be changed by HOA without express prior written consent of the COF. The median 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 COF.

**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 COF hereby grants the HOA permission to enter upon and to utilize the right-of-way known as Carriage Park Drive located and situated in Franklin TN, as depicted in Exhibit "A" for the purposes of installation, maintenance, repair, replacement and removal of existing trees and shrubbery (hereinafter "improvements") approved by the COF as depicted in Exhibit "A".
3. All improvements, uses, and activities shall comply with the policies established by the Zoning Ordinance and with the terms and conditions of the AGREEMENT.
4. The HOA jointly and severally assumes all responsibility for the maintenance and, if necessary, replacement of all improvements described herein and as depicted in Exhibit "A".
5. The HOA agrees, upon thirty (30) days written notice from the COF, to maintain, repair or replace all improvements which require maintenance, repair or replacement. If no remedy is made within the specified time, the COF reserves the right to remove all improvements without further notice to the HOA and at the sole cost and expense of the HOA. The HOA shall submit payment for the full cost and expense incurred by the COF within fourteen (14) days of the date of the invoice.
6. The COF reserves the right to request removal of the improvements depicted in Exhibit "A" in the event that the COF needs to utilize the property for City purposes, such as road, greenway, bike path, public utility installation or maintenance, drainage improvement or other public uses. The COF shall endeavor to give at least thirty (30) days prior notice to the HOA. If the improvements are not removed within the time specified by the COF or in cases where emergency work by the COF becomes necessary the COF may remove or cause to be removed the improvements without any liability to the COF or obligation to replace same upon completion of the COF project.
7. The HOA agrees that no improvements shall be made except as depicted in Exhibit "A" or subsequently approved amendments thereto. However, improvements may be maintained, repaired, replaced and removed.

8. The permission granted by the AGREEMENT shall be effective during the period from the date of execution by both parties until terminated in accordance with the provisions specified herein.
9. Any party may terminate this AGREEMENT upon giving thirty (30) days prior written notice to the other party which time this AGREEMENT shall be of no force or effect. Upon termination by any party, the COF shall have the option of requiring all improvements to be removed or abandoned, by the HOA or the COF has the option to maintain the improvements in their present state without further right or obligation by the HOA. If the HOA is voluntarily or involuntarily dissolved or ceases to function in accordance with the articles of incorporation and by-laws of such corporation, or HOA terminates this AGREEMENT or otherwise fails to remain in good standing and in compliance with this AGREEMENT, the COF shall not be obligated to either maintain or repair the improvements and the COF shall not be liable for either undertaking or failing to maintain or repair the improvements.
10. This AGREEMENT is given to the HOA as an accommodation to the HOA without any consideration. The HOA acknowledges the legal title of the COF to the right-of-way property described herein and agrees never to deny such title or claim title in the HOA's name.
11. This AGREEMENT is personal to the HOA and shall not be transferable to the successors or assigns of the HOA. Further, the rights, privileges and permission granted herein shall not be assignable by the HOA in whole or in part. The COF shall have the immediate right to remove the improvements for which this AGREEMENT is granted; subject, however, to application made by the successor property for and due diligence in obtaining approval by the COF of a new AGREEMENT for the existing improvements to remain in the right-of-way.
12. The HOA shall exercise the rights, privileges and permission granted herein at the HOA's own risk. The HOA shall not claim any damages from the COF for any injuries or damages in connection with or on account of the exercise of such rights, privileges or permission, the condition of the COF's property, or the use of the property. The HOA shall indemnify and hold harmless the COF, its Mayor, Aldermen, officers, employees and agents, from and against all claims, damages, losses and expenses, including reasonable attorney's fees and costs, arising out of, resulting from, or in any way connected with the condition of the COF's property, the use of the property, the exercise of the AGREEMENT granted by this HOA's AGREEMENT, the failure on the part of the HOA to comply with any of the provisions specified herein, or the COF's removal of any improvements depicted in Exhibit "A" or otherwise permitted by this AGREEMENT. The COF shall not be liable to the HOA should the HOA's use of the property be hindered or disturbed.

13. 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 Gerth, ACA  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305

In the case of HOA:

---

---

---

---

---

14. This AGREEMENT shall be recorded with the Williamson County Register of Deeds with a copy maintained in the COF Recorder's office in City Hall, Franklin, TN. Upon completion of this AGREEMENT, the HOA agrees to pay the COF an amount equal to the applicable cost of recording this AGREEMENT.
15. 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, Aldermen, official or employee of the COF shall be personally liable to HOA, or any successor in interest, in the event of any default or breach by CITY OF FRANKLIN, or for any amount which may become due to HOA or successor or on any obligations hereunder.
2. **Warranties/Limitation of Liability/Waiver.**  
COF reserves all rights afforded to local governments under law for all general and implied warranties. COF does not waive any rights it may have to all remedies provided by law and therefore any attempt by HOA to limit its liability shall be void and unenforceable.
3. **Severability.**  
If any term or provision of the Contract is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Contract 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**

**CARRIAGE PARK  
HOMEOWNERS ASSOCIATION**

\_\_\_\_\_  
**John C. Schroer, Mayor**

\_\_\_\_\_  
President

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

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

**ATTEST:**

\_\_\_\_\_  
**Eric S. Stuckey, City Administrator**

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

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

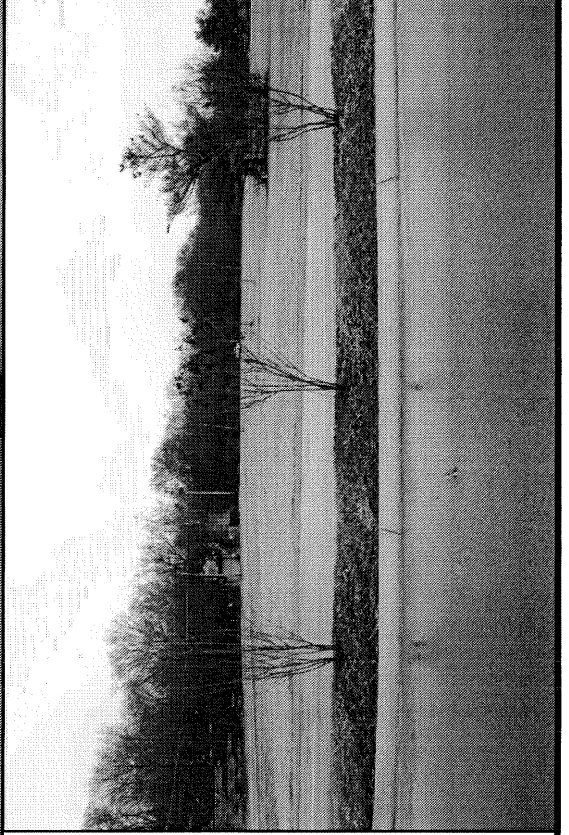
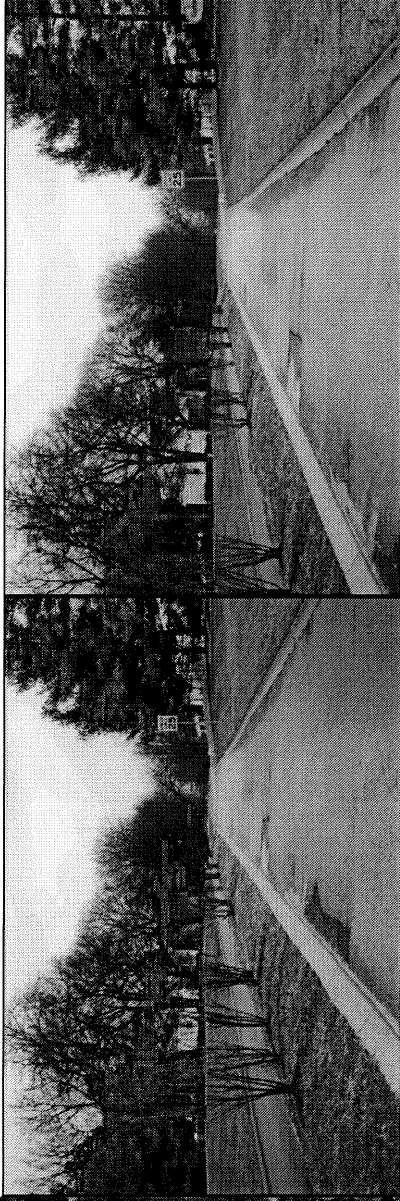
Date: \_\_\_\_\_

Approved as to form by

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney

# Carriage Park Subdivision Exhibit "A"

**Who:** Carriage Park HOA Request  
**When:** Landscape Median Replacement Project -2009  
**Type:** Crepe Myrtle Plantings (46) Total  
**Budget:** City Tree Fund(s) - \$2,320.00  
**Department:** Streets & Parks Department Employees



# Carriage Park Subdivision Exhibit "B"

