

**ACCESS AND MAINTENANCE AGREEMENT OF A WELL INSTALLED
ON CITY OF FRANKLIN PROPERTY BY AVALON SQUARED, LLC**

COF Contract No. 2011-0046

This Agreement is by and between the **City of Franklin, Tennessee** ("City"), and **Avalon Squared, LLC** ("**Developer**"), and entered into on this the _____ day of _____ **2011**.

WHEREAS, the Developer has an approved Concept Plan for a mixed use development located on both sides of Cool Springs Boulevard and north of McEwen Drive known as Avalon Square ("Development"); and

WHEREAS, the Concept Plan for the Development was approved on September 14, 2004 as part of Ordinance 2004-61; and

WHEREAS, the City and Developer entered into an Agreement ("Agreement") on April 30, 2007 for the completion of McEwen Drive from Carothers Parkway to Cool Springs Boulevard ("Project");

WHEREAS, the Developer wishes to construct a detention pond ("Detention Pond") on property owned by the City known as Tax Map 61, Parcel 2.04 ("Property") at no cost to the City; and

WHEREAS, the City approved COF Contract No. 2010-0013 on February 23, 2010 which allows the Developer to construct and maintain the Detention Pond on the Property; and

WHEREAS, the Property is located within Liberty Park; and

WHEREAS, the City dedicated a permanent drainage easement ("Easement") to the Developer for the Detention Pond; and

WHEREAS, there are no plans for park features in the location proposed for the Detention Pond; and

WHEREAS, the Detention Pond agreement previously submitted included an error in the Easement extending over an existing Mallory Valley Water Line Easement; and

WHEREAS, the Developer wishes to use the Easement for installing a water well ("Well") to meet the irrigation needs of Ashton Park and Avalon Squared, LLC; and

WHEREAS, the Developer and Ashton Park have an agreement to construct a retention pond for irrigation, contingent on obtaining water from drilling the Well that would meet the needs of both properties in the amount of 80 gallons per minute (gpm); and

WHEREAS, the City wishes to use the Well to meet the irrigation needs of Liberty Park.

NOW, THEREFORE, the City, and the Developer, their successors and assigns, do hereby agree as follows:

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. The City will dedicate the permanent drainage easement (Exhibit A) necessary for the construction of the Detention Pond and the installation of the Well to the Developer. Permanent Drainage Easement located on Property known as Map 61 Parcel 2.04.

3. The Developer will use a portion of the Easement for drilling the Well to provide irrigation water for the Ashton Park and Avalon Squared Developments. Piping will be constructed to the North side of McEwen for a detention / retention basin to hold the water. The Developer will be responsible for all installation including electrical connections and maintenance of the Well.

4. The Developer will submit construction plans to the City Engineer for the installation of the Well. Prior to the installation of the Well, the City Engineer will approve the construction plans. At the completion of the work, the Developer will submit as-built drawings to the City Engineer for the City's records.

5. The City will retain access to the Property and will inspect the installation and maintenance of the Well.

6. The Developer will be responsible for all maintenance of the Well, including all associated costs.

7. Should the Developer obtain water from the well in excess of the amount needed for Ashton Park and Avalon, the developer will expand the size of the retention pond to meet the needs of Liberty Park and will install a 2" line from the pond to connect to the existing Liberty Park irrigation lines. A pump will be required for the Liberty Park water which will be furnished by the City. After the connection has been established and accepted by both parties, the City will maintain the 2" line.

8. The value of the easement will be subtracted from the Developer's eligible Road Impact Fee Offset per the Agreement. At a time no later than the Developer first requests offsets, the Developer will have an appraisal performed by a third party contractor that is mutually acceptable to the City to determine the value of the easement.

As approved by the Franklin Board of Mayor and Aldermen on _____.

WITNESS our hands on the dates as entered.

CITY OF FRANKLIN, TENNESSEE

By: _____
DR. KEN MOORE
Mayor

ERIC S. STUCKEY
City Administrator/Recorder

Date: _____

Date: _____

AVALON SQUARED, LLC

By: _____
Gary W. Parkes
Chief Manager

Date: _____

APPROVED AS TO FORM:

By: Shauna R Billingsley
Shauna R. Billingsley, City Attorney

STATE OF TENNESSEE)
)ss:
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, 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 who, upon oath, acknowledged themselves to be the Mayor and City Administrator/Recorder, respectively, of the City of Franklin, Tennessee, the within named bargainor, a corporation, and that as such Mayor and City Administrator/Recorder executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as Mayor and City Administrator/Recorder.

WITNESS, my hand and seal on this the ____ day of _____, 2011.

Notary Public
My Commission expires:

STATE OF TENNESSEE)
)ss:
COUNTY OF WILLIAMSON)

Before me, the undersigned Notary Public of said County and State, personally appeared **Gary W. Parkes** with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the Chief Manager of Avalon Squared, LLC and that as such Chief Managers being authorized so to do, executed the foregoing instrument for the purposes therein contained.

WITNESS, my hand and seal on this the ____ day of _____, 2011.

Notary Public
My Commission expires



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

April 11, 2011

TO: Board of Mayor and Aldermen

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

SUBJECT: Contract with Avalon Squared for drilling of a well
for irrigation within Liberty Park (Contract 2011-0046)

Purpose

The purpose of this memorandum is to provide the Board of Mayor and Aldermen (BOMA) with the information to consider the proposed Agreement with Avalon Squared for drilling a well for irrigation within Liberty Park.

Background

In the original design plans for McEwen Phase III, a proposed detention pond was to be installed in a small portion of City property in Liberty Park. Prior to the start of the roadway construction the pond was redesigned and moved to a different location to account for the stormwater runoff of the roadway project. The developer at the eastern end of the project, Avalon Squared, LLC, requested to install a detention pond at this location that would provide detention for that development. BOMA approved COF Contract No. 2010-0013 on February 23, 2010 which allowed the developer to use the City property for the detention pond.

The developer would like to drill a well adjacent to the detention pond for the purpose of irrigation. They have already agreed to provide water (assuming they successfully drill the well and find water) to help Ashton Park with their irrigation. The developer has agreed that any additional water found above what is needed for Avalon Squared and Ashton Park can be used by the City for irrigation at Liberty Park. They have also agreed to install a 2" pipe that the City can use to connect from the water supply to the park irrigation system.

This is not a precedent setting agreement as there are other private developments/entities that have an agreement in place with the City to be able to use a well on City property for the purpose of irrigation. As an example, Fieldstone Farms drilled a well on City property at the softball fields.

Financial Impact

None.

Recommendation

Staff recommends the approval of the Contract 2011-0046; Agreement with Avalon Squared as presented.