

FORM AGREEMENT

**COMMUNITY ASSOCIATION RIGHT-OF-WAY
MAINTENANCE AGREEMENT
(_____)**

THIS COMMUNITY ASSOCIATION RIGHT-OF-WAY MAINTENANCE AGREEMENT (“Agreement”) is dated effective _____, 20___, among the CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida (the “City”), _____ (“_____”).

****BACKGROUND FACTS**

A. City is the owner of certain public right-of-ways in _____, which includes medians, sidewalks, roundabouts and other public right-of-ways areas, as more particularly identified on Exhibit A attached hereto (collectively, the “City ROW Property”).

B. [*Describe organization and mission*] (“Community Association”).

C. Pursuant to City’s landscaping and maintenance standards, City maintains standard landscaping improvements such as trees, grass, shrubs and flowers on the City ROW Property (collectively, the “City Landscaping Improvements”).

D. The Community Associations desire to donate its in-kind services to the City and assume, at its sole expense, certain landscaping and maintenance responsibilities regarding the City ROW Property for the benefit of the City and _____ (the “Project”).

E. The parties desire to enter into this Agreement to provide for the landscaping and maintenance responsibilities of the parties with respect to the City ROW Property during the term of this Agreement as provided herein.

***Background facts will be subject to change.*

NOW THEREFORE, for and in consideration of the mutual benefits each to flow to the other, the parties covenant and agree as follows:

1. Background Facts and Capitalization. The Background Facts above are true and correct and incorporated herein by reference. All capitalized terms shall have the meanings ascribed to them in this Agreement.

2. Effective Date; Term. This Agreement shall become effective on the day and year first written above and shall continue until five (5) years thereafter, unless earlier terminated by City and _____ upon thirty (30) days advance written notice to the other parties. This Agreement may be renewed by the parties upon mutual consent for two additional five (5) year periods.

3. City ROW Property Maintenance Responsibilities.

(a) City Responsibilities Acknowledged. The Community Association acknowledges City's work and maintenance responsibilities delineated and outlined on Exhibit B. The Community Association acknowledges and agree that City's responsibilities as delineated and outlined on Exhibit B may change from fiscal year to fiscal year and are contingent upon lawful appropriations by the City Council. Further, the Community Association acknowledges and agree that City shall not be responsible for any costs associated with the _____ work and maintenance responsibilities on the City ROW Property delineated and outlined on Exhibit B.

(b) [insert party name] Responsibilities. _____, at its sole expense, shall perform the work and maintenance responsibilities on the City ROW Property delineated and outlined on Exhibit B. _____ shall be responsible for any costs associated with such work and maintenance responsibilities.

(c) Contractor Payment; No Liens. _____ shall promptly pay its contractors and subcontractors performing work on the property in connection with the maintenance responsibilities provided in this Section. _____ shall immediately after it is filed or claimed, have released (by bonding or otherwise) any mechanics', material man's or other lien filed or claimed against any or all of the City ROW Property or any other property owned by City, by reason of labor or materials provided for _____ or any of its contractors or subcontractors, or otherwise arising out of _____ use or occupancy of the City ROW Property.

(d) Disposal. The Community Association and/or its contractor(s) and subcontractor(s), at its sole expense, shall be responsible for all costs associated with removal and proper disposal of any construction, demolition or landscaping debris arising from the Community Association maintenance responsibilities in this Section.

(e) Warranties. It is the intent of the parties that City shall be the intended beneficiary of all warranties relating to any landscaping improvements, and the Community Association and its contractors and/or subcontractors shall require all warranties to designate the City. Prior to substantial completion, the Community Association shall require, at its sole expense, its contractors and/or subcontractors to give reasonable notice to the City when the installation of any new landscaping improvements are complete in order that the City Representative may participate in any inspection of the landscaping improvements. Upon completion of the landscaping improvements, the Community Association shall cause its contractors and/or subcontractors to deliver to City any and all warranties before the final inspection of the any such landscaping improvements.

(f) License; Permit. City grants to the Community Association a license on, over, and across the City ROW Property to perform the maintenance responsibilities set forth in this Section. The Community Association shall obtain all necessary permits and licenses, including a City right-of-way permit, as required by law.

4. Party Representatives. The City's Public Works Department, Mowing and Landscape Maintenance Division shall be responsible for overseeing, administering and

implementing this Agreement. The City Representative shall be Dave McDaniel. All correspondence should be directed and/or forwarded to the City Representative and said representative shall be the contact for the Community Association and/or its representatives concerning all aspects of this Agreement, including communications with the public and/or political officials. The representative for _____ shall be the presidents of each organization.

5. Indemnification. The Community Association shall adhere to the indemnification requirement contained on Exhibit C.

6. Compliance. The Community Association shall comply with, and shall require that its contractors, subcontractors, representatives and agents comply with, all federal, state and local, laws, permitting agencies, codes, rules, regulations and ordinances applicable to the installation, maintenance and construction of the City Landscaping Improvements and the Enhanced Landscaping Improvements, including, but not limited to all requirements for contractor's licenses, permits, certificates and/or registrations. The Community Association shall not commence any work under this Agreement until the Community Association provides evidence that it has all such contractor's licenses, permits, certificates and registrations required by law; or, in the alternative, provides the City Representative with a letter or opinion from its legal counsel that such licenses, permits and certificates are not required under law.

7. Default. If, at any time during the term of this Agreement, it shall come to the attention of the City that the Community Association is not performing its obligations under this Agreement, the City may, at its option, issue a written notice that a deficiency or deficiencies exist(s), by sending a certified letter to the Community Association, to place the Community Association on notice thereof. Thereafter, the Community Association shall have a period of fifteen (15) calendar days within which to correct the cited deficiencies. If said deficiencies are not corrected within this time period, the City, may at its option, proceed as follows:

- i. Correct the listed deficiencies, including completion of any incomplete landscaping maintenance obligations, and invoice the Community Association for expenses incurred for such correction or completion, in which event the Community Association shall reimburse the City for such expenses within thirty (30) days of the date of such invoice;
- ii. Terminate this Agreement in accordance with section 2 above; or
- iii. Seek any remedies provided herein or allowed by law or in equity.

8. Environmental Matters. Neither the Community Association, nor its contractors and/or subcontractors, nor suppliers shall dispose, leak, spill, discharge or release hazardous materials or substances in or around the Improvements while installing the Improvements, except in compliance with applicable law, rule or regulation. "Hazardous Materials" and "Hazardous Substances" means regulated materials and substances under environmental laws including: (1) Comprehensive Environmental Response, Compensation, and Liability Act 1980, as amended by the Superfund Amendments and Reauthorization of 1986, 42 USCA 9601 et seq.; (2) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Sold Waste Amendments of 1984,

42 USCA 6901 et seq.; (3) Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, as amended, 33 USCA 1251 et seq.; (4) Toxic Substances Control Act of 1976, as amended, 15 USCA 2601, et seq.; (5) Emergency Planning and Community Right-to-Know Act of 1986, 42 USCA 11001, et seq.; (6) Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 USCA 7401, et seq.; (7) Endangered Species Act of 1973, amended, 16 USCA 1531, et seq.; Occupational Safety and Health Act of 1970, as amended, 29 USCA 651 et seq.; (8) Safe Drinking Water Act of 1974, as amended, 42 USCA 300 (f) et seq.; and (9) any similar laws enacted by the State of Florida and the City of Jacksonville. The Community Association shall not be responsible for contaminated media or hazardous materials or substances that were on the City ROW Property before the Community Association entered into this Agreement; however, if, because of the Enhanced Landscaping Improvements, any federal, state or local regulatory or grant authority require remediation of contaminated media or hazardous materials or substances that were on site on and after the date of this Agreement, then the Community Association and/or its contractor(s) and subcontractor(s), at no additional cost to City, shall be responsible for proper removal, handling and disposal or other lawful remediation of such contaminated media or hazardous materials or substances which require removal because of the Enhanced Landscaping Improvements. The Community Association and/or its contractor(s) and subcontractor(s) shall provide the City immediate written notice of any communication from regulatory or other authorities concerning contamination, or remediation requirements, as well as any disposal, leakage, spillage, discharge or release or contaminated media or hazardous materials or substances with respect to provision, construction or installation of the Project. The Community Association shall make this Section 9 known to its contractors and/or subcontractors providing work for the Project, and the Community Association shall cause this Section 9 to be included in all contracts and subcontracts for any work on the Project.

9. Crossings. Throughout the term of this Agreement, the Community Association and/or its contractors and/or subcontractors shall, at its sole expense, maintain adequate safety precautions, as necessary and applicable, to protect the City ROW Property while the Community Association are using the City ROW Property.

10. Protection of Existing Items. The Community Association agrees to protect any existing items owned by City (or other parties approved by City) in the City ROW Property. Should such items be damaged as a result of the Community Association and/or its contractors and subcontractors, the Community Association and/or its contractors and subcontractors at its sole expense shall restore such items to the same condition such items were found immediately prior to the Community Association' work in the City ROW Property.

11. Miscellaneous.

(a) Actions by Mayor. The Mayor and Corporation Secretary shall have the authority to terminate this Agreement under any circumstances in which the City has a legal right to terminate this Agreement.

(b) Binding Effect. This Agreement shall be binding upon City and the Community Association.

(c) Notices. Any and all notices, which are permitted or required in this Agreement, shall be in writing and shall be duly delivered and given when personally served or mailed to the person at the address designated below. If notice is mailed, the same shall be mailed, postage prepaid, in the United States mail by certified or registered mail – return receipt requested. Notice shall be deemed given on the date of personal delivery or mailing and receipt shall be deemed to have occurred three (3) days after said mailing. Failure to accept certified or registered mail shall be deemed a receipt thereof within ten (10) days after the first notice of delivery of the certified or registered mail. Any entity may change its address as designated herein by giving notice thereof as provided herein or such other address either party from time to time specifies in writing to the other.

If to the City: c/o Mowing and Landscape
Maintenance Division
Public Works Department
609 St. Johns Bluff Rd., N.
Jacksonville, Florida 32225
Attn: Chief
(904) 998-5394 (Business)
(904) 996-2898 (Facsimile)

With a copy to: Office of General Counsel
117 West Duval Street, Suite 480
Jacksonville, Florida 32202
Attn: Corporation Secretary
(904) 630-1700 (Business)
(904) 630-1731 (Facsimile)

*[insert Community
Association notice]*

(d) Time is of the Essence. Should the date for the giving of any notice, the performance of any act, or the beginning or end of any period provided for herein fall on a Saturday, Sunday or other legal holiday, such date shall be extended to the next succeeding business day which is not a Saturday, Sunday or legal holiday. Time is of the essence in each party's performance of its respective obligations under this Agreement.

(e) Construction. The parties agree that they have had meaningful discussions and/or negotiations of the provisions, terms and conditions of this Agreement. Therefore, doubtful or ambiguous provisions, if any, contained in this Agreement shall not be construed against the party who prepared this Agreement. The rule commonly referred to as "Fortius Contra Proferentum" shall not be applied to this Agreement or any interpretation hereof.

(f) Entire Agreement. This writing embodies the entire agreement and understanding between the parties hereto and there are no other prior agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

(g) Assignment. This Agreement is not assignable by the City or the Community Association without the written consent of the other party, which consent cannot be unreasonably withheld, conditioned or delayed.

(h) Venue; Governing Law. This Agreement shall be governed and interpreted under the laws of the State of Florida. Venue for any action arising under this Agreement shall lie exclusively in the courts in and for Duval County, Florida.

(i) Headings. The section headings used in this Agreement are for convenience purposes only and shall not be used in the interpretation of this Agreement.

(j) Exhibits. All Exhibits attached hereto are incorporated herein by reference and made a part of this Agreement.

(k) Relationship of the Parties. The relationship of the parties is that of vendor and purchaser. Nothing contained herein is intended to create, nor shall it ever be construed to make, the Community Association or City partners or joint venturers.

(l) Severability. The provisions of this Agreement are severable, and if any provision of any part hereof or the application thereof to any person or circumstance shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provisions or part hereof to other persons or circumstances shall not be affected thereby.

(m) Waiver. The waiver by one party of the performance of any covenant or condition herein shall not invalidate this Agreement, nor shall it be considered to be a waiver by such party of any other covenant or condition herein. The waiver by either or both parties of the time for performing any act shall not constitute a waiver at the time for performing any other act or any identical act required to be performed at a later time. No waiver hereunder shall be effective unless it is in writing.

(n) Counterparts. This Agreement may be executed in a number of identical counterparts, each of which for all purposes is deemed an original, and all of which constitute collectively one (1) agreement, but in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

(o) City Council Approval. This Agreement is expressly conditioned upon approval of the Agreement by the City Council of Jacksonville, Florida.

[The Remainder Of This Page Was Intentionally Left Blank. Signature Page To Follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date set forth above.

ATTEST:

CITY OF JACKSONVILLE, a consolidated political subdivision and municipal corporation existing under the laws of the State of Florida

By: _____
James B. McCain, Jr.,
Corporation Secretary

By: _____
Lenny Curry, as Mayor

Form Approved:

By: _____
Office of General Counsel

_____, a _____

By: _____
Print Name: _____
Title: _____

EXHIBIT A

City ROW Property
(Legal Description and Maps)

[To immediately follow]

EXHIBIT B

Delineation of Landscape and Maintenance Responsibilities

[To immediately follow]

EXHIBIT C

Indemnification Requirement

The Community Association, individually (“Indemnifying Party(ies)”) shall each hold harmless, indemnify, and defend City and City’s members, officers, officials, employees and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

i. General Tort Liability. For any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services or work performed hereunder; and

ii. Environmental Liability. To the extent this Agreement contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with this Agreement; and

iii. Intellectual Property Liability. To the extent this Agreement contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the work performed by the Indemnifying Parties under this Agreement, any product generated by such work, or any part of the work as contemplated by this Agreement, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the work performed by the Indemnifying Parties under this Agreement, or any product generated by such work, or any part of the work, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within sixty (60) days, for the Indemnified Parties a license, authorizing the continued use of the disputed part of the work or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the disputed part of the work or product with a non-infringing work or product or modify such work or product in a way satisfactory to the Indemnified Parties so that the work or product is non-infringing.

If an Indemnifying Party exercises its rights under this Agreement, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at its own expense, to participate in the litigation of such claim or liability to protect its interests. **The scope and terms of the indemnity obligations herein described are separate and apart from and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

If any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with the statutes.