



HISTORIC  
FRANKLIN  
TENNESSEE

09-23-14


ITEM #5  
WRKS

## MEMORANDUM

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September 14, 2014

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator   
Brad Wilson, Project & Facilities Manager  
Joe York, Street Director

SUBJECT: Consideration of Approval to Enter Into a Landscape Maintenance Agreement between the City of Franklin and First Bank (COF 2014-0233)

### **Purpose**

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) to consider the approval for the City of Franklin to enter into an agreement with First Bank to take over the maintenance of plant beds at the Five Points area.

### **Background**

In February of 2013, the City of Franklin entered into a long-term lease agreement with First Bank to maintain and operate the Five Point Building. As result of this agreement, First Bank has establish a bank branch operation and the existing post office in the building have been upgraded. Through an investment of over \$3 million, the building has been significantly improved and a number of historic features have been restored. The building and grounds of this landmark facility have been greatly improved through this agreement and First Bank's investment in the property.

Recently, First Bank's facilities manager contacted the city to inquire if the City would be interested in entering into an agreement for the maintenance of some landscape beds located near the Five Points facility. Through the proposed agreement First Bank would take on maintenance of landscaping within the City right-of-way located along the tip of the corner of Fifth Avenue and Columbia, corner planter area located at Columbia Avenue and W. Main Street and planter area along Fifth Avenue and W. Main Street in the general vicinity of First Bank; Williamson County Historical Archives Building, Five Points and Historic Franklin Presbyterian Church Franklin.

First Bank has offered to take over the maintenance of these small landscape areas at no expense to the City. They would like to continue the "look" of the flowers and colors they have planted on the Bank property into the heavily traveled Five Points area. They will maintain these areas throughout the year with seasonal color changes. The city does have an irrigation system to the bed areas. First Bank would like to ask that the City continue this water resource so that the plantings can be maintained.

### **Financial Impact**

There is no direct financial cost to the City for material or labor to keep the beds as stated above only the water needed to help the plants thrive. Through this agreement, the City could redirect the efforts of our Streets landscape crew to other areas in downtown and throughout the community.



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### **Options**

The Board may approve, amend or modify the proposed agreement (attached).

### **Recommendation**

Approval of the proposed agreement between First Bank and the City of Franklin is recommended.

**LANDSCAPE MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF FRANKLIN AND  
FIRST BANK  
COF CONTRACT NO 2014-0233**

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

**WITNESSETH:**

**WHEREAS**, the City Administrator has requested an Agreement to be made by First Bank regarding landscaping within the City right-of-way located along the tip of the corner of Fifth Avenue and Columbia, corner planter area located at Columbia Avenue and W. Main Street and planter area along Fifth Avenue and W. Main Street in the general vicinity of First Bank; Williamson County Historical Archives Building, Five Points and Historic Franklin Presbyterian Church Franklin (see Exhibit A); and

**WHEREAS**, when First Bank 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 First Bank have agreed on a landscaping plan, as described in detail below; and

**WHEREAS**, the landscaping plan encompasses approximately 200 square feet of currently planted bedding areas of a City right-of-way known as the tip of the corner of Fifth Avenue and Columbia, corner planter area located at Columbia Avenue and W. Main Street and planter area along Fifth Avenue and W. Main Street in the general vicinity of First Bank and Five Points (Exhibit A); and

**WHEREAS**, on *June 7, 2013* the City of Franklin approved the Landscape Plan for First Bank; and

**WHEREAS**, First Bank has agreed to maintain the landscaped median and public greenway located within the outer limits of the First Bank and Five Points 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 Five Points; 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 First Bank with respect to the nature and intensity of its use without the written consent of the City.

**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 First Bank permission to enter upon and to utilize the rights-of-way known as First Bank and Five Points 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 First Bank and Five Points.
3. First Bank maintain approximately 200 square feet of currently planted bedding areas of a City right-of-way known as the tip of the corner of Fifth Avenue and Columbia, corner planter area located at Columbia Avenue and W. Main Street and planter area along Fifth Avenue and W. Main Street. First Bank will maintain these plant beds twenty (20) years from the approved date with two (2) ten-year options to follow. At which time the City of Franklin shall take over maintenance of plant beds.
4. Utilization of the right-of-way by First Bank shall not impede the flow of traffic without the prior approval by the City.
5. First Bank shall be responsible for the location and protection of all existing utilities in accordance with State and local laws while utilizing the right-of-way.
6. All improvements, uses, and activities shall comply with the policies established by the Zoning Ordinance and with the terms and conditions of the Agreement.
7. 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.
8. Frist Bank solely assumes all responsibility for the maintenance and, if necessary, replacement of all Landscaping constructed described herein and as depicted in Exhibit "A", except as set forth herein.
9. First Bank shall notify the City within three (3) business days of discovery of any conditions rendering trees defective or dangerous.

10. Barring force majeure or weather delays, First Bank 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 First Bank and at the sole cost and expense of First Bank. First Bank shall submit payment for full cost and expense incurred by the City within thirty (30) days of the date of the invoice.
11. The shall have the right to terminate this Agreement at any time, without cause, and shall endeavor to give First Bank at least thirty (30) days' notice of such termination.
12. 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 thirty (30) days prior notice to First Bank of any such removal.
13. 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 First Bank, including working with First Bank 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.
14. 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.
15. First Bank 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.
16. 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.
17. This Agreement is given to First Bank as an accommodation to First Bank with no monetary consideration. First Bank 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 First Bank's name.

18. This Agreement is non-transferable to the successors or assigns of First Bank unless the successor assumes the same obligations of First Bank and the City agrees in writing to the assignment. Further, the rights, privileges and permission granted herein shall not be assignable by First Bank in whole or in part unless the successor or assignee assumes the same obligations of First Bank. The City shall have the right to immediately remove the landscaping for which this Agreement is granted upon assignment or transfer by First Bank; 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.
19. First Bank shall exercise the rights, privileges and permission granted herein at First Bank's own risk. First Bank 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. First Bank 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 First Bank 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 First Bank should First Bank's use of the property be hindered or disturbed. The City will not be liable to First Bank for any reason not specifically stated herein.
20. 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: Eric Stuckey, City Administrator  
109 Third Ave. South  
P.O. Box 305  
Franklin, TN 37065-0305

In the case of First Bank:

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

21. 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.

22. 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 First Bank 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 First Bank 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

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

**Dr. Ken Moore**

Mayor

ATTEST:

APPROVED AS TO FORM:

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

**Eric S. Stuckey**

City Administrator / Recorder

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

**Shauna R. Billingsley**

City Attorney

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

**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 the Mayor of the City of Franklin, Tennessee 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.

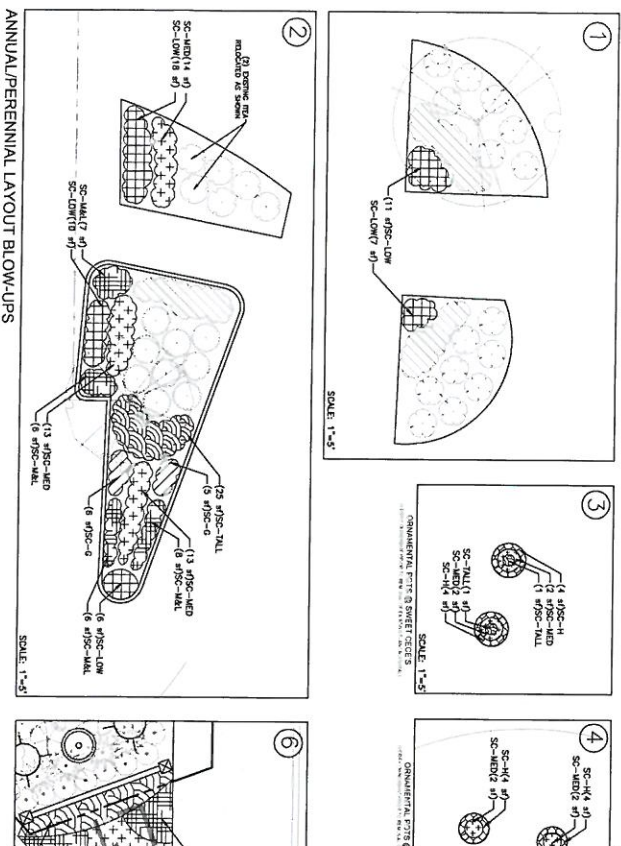
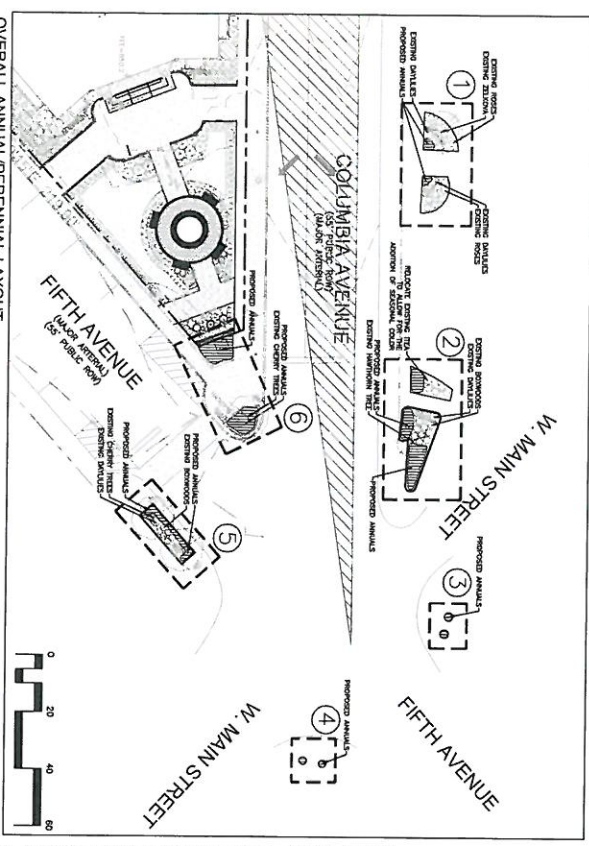
Witness my hand and seal, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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



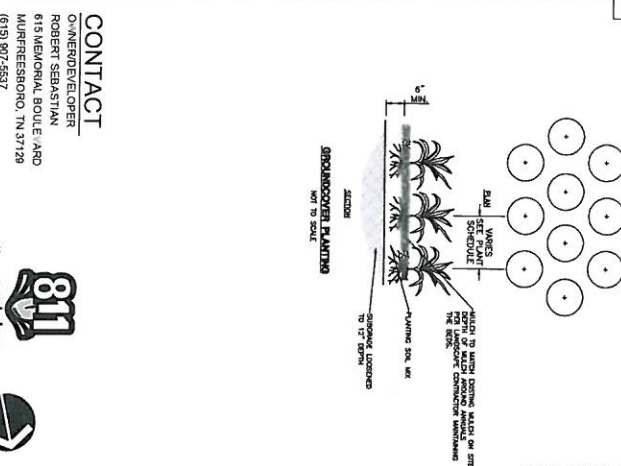




GROUND COVER	SPACING	BOTANICAL NAME / COMMON NAME	REMARKS
SC-TALL	36 SF	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL SPACING, TALL
SC-LOW	138 SF	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL SPACING, LOW
SC-MED	108 SF	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL SPACING, MEDIUM
SC-H	14 SF	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL SPACING, TALL
SC-S	22 SF	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL SPACING, SHORT
SC-L	71 SF	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL SPACING, LOW

PLANT IDENTIFICATION	PLANT NAME	PLANT TYPE	PLANT SIZE	PLANT QUANTITY	PLANT NOTES
SC-TALL	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL	TALL	36	ANNUAL/BIENNIAL SPACING, TALL
SC-LOW	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL	LOW	138	ANNUAL/BIENNIAL SPACING, LOW
SC-MED	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL	MEDIUM	108	ANNUAL/BIENNIAL SPACING, MEDIUM
SC-H	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL	TALL	14	ANNUAL/BIENNIAL SPACING, TALL
SC-S	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL	SHORT	22	ANNUAL/BIENNIAL SPACING, SHORT
SC-L	SEASONAL COLOR BY OWNER	ANNUAL/BIENNIAL	LOW	71	ANNUAL/BIENNIAL SPACING, LOW

- PLANTING NOTES**
1. ALL PLANTS TO BE PLACED IN A PARTICULAR ARRANGEMENT WILL BE RELOCATED IN NEARBY PLANTING AREAS UNLESS OTHERWISE NOTED.
  2. PLANTS SHALL BE PLACED IN ACCORDANCE WITH THE PLANTING SCHEDULE AND THE PLANTING NOTES.
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**CONTACT**  
 OWNER/DESIGNER  
 ROBERT SEBASTIAN  
 615 MEMORIAL BOULEVARD  
 MURFREESBORO, TN 37228  
 (615) 907-5537  
 RSEBASTIAN@FRSBLANKONLINE.COM



DATE	DESCRIPTION
JUNE 6, 2014 <td>REVISIONS</td>	REVISIONS

**FRANKLIN PROJECT #2716**

**FirstBank**  
 510 COLUMBIA AVENUE, SUITE 106  
 NINTH CIVIL DISTRICT, CITY OF FRANKLIN, WILLIAMSON COUNTY, TENNESSEE

**RAGAN SMITH**  
 LAND PLANNERS • CIVIL ENGINEERS  
 LANDSCAPE ARCHITECTS • SURVEYORS

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