

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

**LIGHTING MAINTENANCE AGREEMENT
BETWEEN THE CITY OF FRANKLIN AND,
CHARLTON GREEN, SECTIONS II & III, HOME OWNERS ASSOCIATION, INC.
COF CONTRACT NO 2016-0053**

THIS AGREEMENT, (“Agreement”), is made and entered into this ____ day of _____
_____ 20__ by and between **THE CITY OF FRANKLIN, TENNESSEE** (“City”) and, **THE
CHARLTON GREEN, SECTIONS II & III, HOME OWNERS ASSOCIATION, INC.**

WITNESSETH:

WHEREAS, the City Administrator has requested an Agreement be made by the Charlton Green, Sections II & III, Homeowners Association, Inc. regarding the installation and maintenance of four (4) decorative gas lights and meter and an electric meter and conduit within the City right-of-way located along portions of Watercress Drive that is located solely within the Charlton Green Subdivision; and

WHEREAS, the Charlton Green, Sections II & III, Homeowners Association, Inc. together with the Charlton Green Homeowners’ Association, Inc. (which serves solely Section 1 and is a separate homeowners association), jointly maintain the landscaping, guard house, and related improvements to the Charlton Green Subdivision entrance of which a portion is located within the public right-of-way; and

WHEREAS, the Charlton Green, Sections II & III, Homeowners Association, Inc. desires to incur all expenses associated with installation, maintenance, and operation of four (4) decorative gas lights located on Watercress Drive, specifically on the existing masonry walls that span the existing stream located approximately 600 feet south of the entrance to the Charlton Green Subdivision. Additionally, the Association desires to extend electric service to the median located immediately south of the stream within the Watercress Drive right-of-way and, an electric meter to be located on the east side of Watercress Drive in close proximity to this median; and

WHEREAS, the Charlton Green Homeowners’ Association, Inc. will have no responsibility with the installation, maintenance, and operation of four (4) decorative gas lights located on Watercress Drive, specifically on the existing masonry walls that span the existing stream located approximately 600 feet south of the entrance to the Charlton Green Subdivision including the proposed electric service that will serve the median located immediately south of the stream within the Watercress Drive right-of-way.

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 LIGHTING AND LANDSCAPING IN THE CITY RIGHT-OF-WAY

1. The foregoing recitals are incorporated into this Agreement and made a part thereof.
2. The City acknowledges the Charlton Green Subdivision consists of two Homeowners Associations known as the Charlton Green Homeowners' Association, Inc. (which serves solely Section 1) and the Charlton Green, Sections II & III, Homeowners Association, Inc.
3. The City acknowledges Charlton Green Homeowners' Association, Inc. and Charlton Green, Sections II & III, Homeowners Association, Inc. have historically and continue to share in the maintenance, repair, replacement and removal of existing trees, shrubbery, entrance monuments, and decorative hardscape on the east and west sides of the Charlton Green Subdivision entrance which includes the guard house and landscaping within the median as depicted in Exhibit "A".
4. The City hereby grants the Charlton Green, Sections II & III, Homeowners Association, Inc. permission to enter upon and install, maintain, and operate, at their sole expense, four (4) decorative gas lights on the existing masonry walls within the Watercress Drive right-of-way that cross the stream located approximately 600 feet south of Murfreesboro Road south on Watercress Drive and, to extend electric power within the first median located immediately south of the stream crossing including any associated metering. This responsibility also includes paying monthly natural gas and electric utility invoices for the aforementioned improvements whose location is as depicted in Exhibit "B". Furthermore, the Charlton Green, Sections II & III, Homeowners Association, Inc. shall be solely responsible for the improvements described herein and as illustrated on Exhibit "B" which does not require the Charlton Green Homeowners' Association, Inc. to incur any maintenance and cost responsibility of said Exhibit "B" improvements.
5. Utilization of the right-of-way by the Charlton Green, Sections II & III, Homeowners Association, Inc. shall not impede the flow of traffic without the prior approval by the City.

6. The Charlton Green, Sections II & III, Homeowners Association, Inc. 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.
7. All improvements, uses, and activities within the public right-of-way shall comply with the policies established by the Zoning Ordinance and with the terms and conditions of the Agreement.
8. Approved "Lighting" 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 Charlton Green, Sections II & III, Homeowners Association, Inc., and removing the affected "Lighting" at the sole cost and expense of the City.
9. The Charlton Green, Sections II & III, Homeowners Association, Inc. assumes all responsibility for the maintenance and, if necessary, replacement of all "Lighting" described herein and as depicted in Exhibit "B".
10. The Charlton Green, Sections II & III, Homeowners Association, Inc. shall notify the City within three (3) business days of discovery of any conditions rendering trees defective or dangerous.
11. Barring force majeure or weather delays, the Charlton Green, Sections II & III, Homeowners Association, Inc. agrees, upon thirty (30) days written notice from the City, to remove, maintain, repair or replace all "Lighting" as described herein that may require removal, maintenance, repair or replacement. If no remedy is made within the specified time, the City reserves the right to remove all affected "Lighting" without further notice to the Charlton Green, Sections II & III, Homeowners Association, Inc. and at the sole cost and expense of the Charlton Green, Sections II & III, Homeowners Association, Inc. The Charlton Green, Sections II & III, Homeowners Association, Inc. shall submit payment for full cost and expense incurred by the City within thirty (30) days of the date of the invoice.
12. The City reserves the right to request removal and replacement, as appropriate, of the "Lighting" depicted in Exhibit "B" 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 Charlton Green, Sections II & III, Homeowners Association, Inc. 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 "Lighting" as installed by the Charlton Green, Sections II & III, Homeowners Association, Inc.
14. In the case of emergency situations where unplanned disturbance of "Lighting" 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.
15. 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.
16. This Agreement is given to the Charlton Green, Sections II & III, Homeowners Association, Inc. as an accommodation to the Charlton Green, Sections II & III, Homeowners Association, Inc. with no monetary consideration. The Charlton Green, Sections II & III, Homeowners Association, Inc. 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 Charlton Green, Sections II & III, Homeowners Association, Inc.'s name.
17. This Agreement is non-transferable to the successors or assigns of the Charlton Green, Sections II & III, Homeowners Association, Inc. 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 Charlton Green, Sections II & III, Homeowners Association, Inc. in whole or in part unless the successor or assignee assumes the same obligations of the Charlton Green, Sections II & III, Homeowners Association, Inc.
18. The City shall have the right to immediately remove the "Lighting" for which this Agreement is granted upon assignment or transfer by the Charlton Green, Sections II & III, Homeowners Association, Inc.; 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 "Lighting" to remain in the right-of-way.

19. 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 "Lighting" depicted in Exhibit "B" 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.
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: Vernon J. Gerth, ACA
Third Ave. South
P.O. Box 305
Franklin, TN 37065-0305

In the case of Charlton Green, Sections II & III, Homeowners Association, Inc.

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 the Charlton Green, Sections II & III, Homeowners Association, Inc. 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 Charlton Green, Sections II & III, Homeowners Association, Inc. 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.

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

CITY OF FRANKLIN, TENNESSEE

ATTEST:

APPROVED AS TO FORM:

By: _____
Eric S. Stuckey
City Administrator / Recorder
Date: _____

By: _____
Shauna Billingsley
City Attorney
Date: _____

STATE OF TENNESSEE)
)
COUNTY OF WILLIAMSON)

Before me, _____, a Notary Public of said State and County, personally appeared, Eric S. Stuckey, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and where, upon oath, 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

CHARLTON GREEN, SECTIONS II & III, HOMEOWNERS ASSOCIATION, INC.

By: Harris Pearce
Name: HARRIS PEARCE
Title: President
Date: 5/16/16

STATE OF Tennessee)
)
COUNTY OF Williamson)

Before me, V. Sherwood Kelly, a Notary Public of said State and County, personally appeared, HARRIS PEARCE, 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 President of Charlton Green, Sections II & III, Homeowners Association, Inc. 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 16 day of May, 2016.

V. Sherwood Kelly
NOTARY PUBLIC

My Commission Expires: March 20, 2018



Charlton Green Subdivision

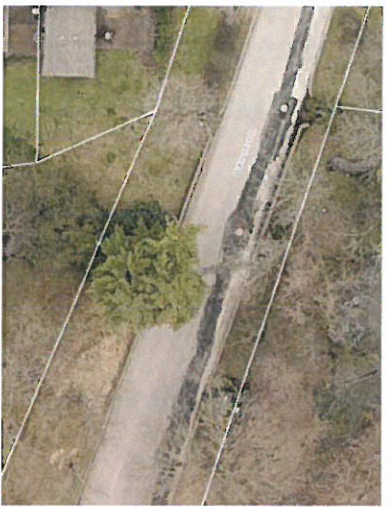
Exhibit A



Subdivision Entrance, North Median, and Guard House



Charlton Green Subdivision
Exhibit B



Stream Crossing, Location of (4)
Gas Lights

South Median, Location
of Electric Service &
Meter

