

2023-06-8

ADOPTION AGREEMENT BETWEEN THE CITY OF DIAMONDHEAD AND A DESIGNATED GROUP OF RESIDENTS (Group)

The agreement, between the City of Diamondhead and the individuals or interested party (herein called the "Group") of an area specified as:

CULDESAC ON KAWAHANA KOA PL

The effective date of this agreement is NOV 3, 2022 and shall continue until canceled by either party. The Group wishes to improve their neighborhood by accomplishing the following activities:

MAINTAIN CULDESAC ; (CUT, EDGE) AND MAINTAIN
A FLAGPOLE IN THE CENTER OF CULDESAC WITH AMERICAN
FLAG. THE POLE AND FLAG WILL BE AT A SAFE
DISTANCE FROM POWER LINES.

The City agrees to cooperate and coordinate its activities, which may overlap or duplicate activities listed with the Group but does not waive its responsibility or authority to perform any functions. The Group agrees to work toward a more attractive Diamondhead, supporting City ordinances and encouraging individual property beautification. The Group further agrees not to take any action to remove existing features, trees, plants or shrubs or add plantings or other features without written approval from the City.

City Manager

Date

*Jeff Walker
Pae Shuh*

Group

03 NOV 22

Date

ARTICLE I. - IN GENERAL

Secs. 26-1—26-18. - Reserved.

ARTICLE II. - ADOPTION OF RIGHTS-OF-WAY

Sec. 26-19. - Adoption agreement for right-of-way maintenance.

Upon recommendation of the city manager, an adoption agreement may be entered into between the city and a private or public entity for the maintenance and landscaping of the right-of-way of a public street or roadway by said private or public entity, subject to approval by the mayor and council.

(Ord. No. 2012-028, § 1, 12-3-2012)

Sec. 26-20. - City duties.

The city shall have the following duties:

- (1) Grant unto the private or public entity a non-exclusive right of ingress and egress upon the adopted right-of-way between the shoulder lines and the right-of-way lines on both sides of the roadway, including the median area.
- (2) Retain the specific right to enter upon the adopted right-of-way to maintain and perform work commensurate with good road maintenance practices.
- (3) Retain all maintenance rights, duties, and responsibilities within the adopted right-of-way from shoulder line to shoulder line, including the roadway, shoulders, drainage, storm drains, signing, and striping.
- (4) Retain all rights and responsibilities for control of access, outdoor advertising, and other uses of the adopted right-of-way other than those specifically granted to the private or public entity.
- (5) Erect a sign acknowledging the private or public entity that has adopted the right-of-way for maintenance and landscaping.

(Ord. No. 2012-028, § 2, 12-3-2012)

Sec. 26-21. - Duties of private or public entity entering into agreement.

The entity shall have the following duties:

- (1) Provide all funds necessary for the initial planting and continual maintenance, including mowing of all sod and litter control, on the adopted right-of-way.
- (2) Provide all funds necessary for the initial planting and continual maintenance of shrubs and other types of flora on the adopted right-of-way.
- (3) Provide equipment and labor necessary for mowing, edging, and trimming sod and perform same within the adopted right-of-way, and provide for trimming of all bushes, trees, and shrubs. Said services will be provided in a manner and at such times so as not to create a hazardous condition or restrictions to the traveling public.
- (4) Purchase any and all fertilizer, seed, additional labor, or equipment necessary for proper maintenance within the limits specified.
- (5) Provide work area signage in accordance with current standards set out in the Manual on Uniform Traffic Control Devices for Streets and Highways.
- (6) Assume total responsibility for the safety and liability of its operations within the limits described, and shall hold the city harmless on any and all claims arising from work performed.
- (7) Submit to the city's designated agent for approval any plans to significantly change the general character or overall appearance of the landscaping along the adopted right-of-way. Such approval shall not be required in relation to the planting of flowers, shrubs, bushes, trees, etc., where such planting does not significantly change the general character or overall appearance of the landscaping along the adopted right-of-way.

(Ord. No. 2012-028, § 3, 12-3-2012)

Sec. 26-22. - Agreements by both parties.

It is mutually agreed between the city and other entities:

- (1) That no right or responsibility other than those specifically listed hereinabove is granted or implied, and that all rights not specifically conveyed herein are retained by the city.
- (2) That in the event the city finds that any bush, tree or shrub blocks or obscures the vision of motorists in the adopted right-of-way or otherwise constitutes a traffic hazard or threat to public safety, it shall notify the private or public entity's designated agent in writing of the modification necessary to correct the hazard or threat. If the private or public entity fails to correct the hazard or threat within 48 hours, the city shall have the right to take corrective action.
- (3) That the city reserves the right to make the necessary improvements or modifications within the designated limits of this agreement at any

time it deems necessary to upgrade this facility to meet transportation demands, without payment or other compensation for removal or destruction of the shrubbery or other improvements made by the private or public entity under this agreement.

(4) That the city executes its orders and directives through the ordinances of the city. All notices and correspondence with the city shall be directed to the designated agent. Similarly, the private or public entity executes all of its orders and directives through its president or board of directors. All notices and correspondence with the private or public entity shall be directed to the agent shown identified in the agreement. All notices and correspondence shall be considered delivered upon receipt at the locations or telephone numbers listed in the agreement. All modifications to this agreement must be submitted in writing through the designated agents and signed by the parties before they can take effect. Oral agreements cannot serve to modify this agreement.

(Ord. No. 2012-028, § 4, 12-3-2012)

Sec. 26-23. - Cancellation of agreement.

The agreement referred to in section 26-19 may be canceled by either party upon notification to the other party 90 days prior to the date of cancellation, except when in the opinion of the city an unsafe condition exists, in which situation, this agreement may be terminated without prior notice.

(Ord. No. 2012-028, § 5, 12-3-2012)