

**ORDINANCE FOR THE ADOPTION OF RIGHT-OF-WAY
FOR THE CITY OF
DIAMONDHEAD, MISSISSIPPI**

WHEREAS, the Mayor and City Council of the City of Diamondhead, Mississippi, find that a need exists to establish rules and regulations regarding adoption of right-of-ways within public streets for maintenance and landscaping by private or public organizations within the municipal boundaries of the City;

WHEREAS, the Mayor and City Council are authorized to establish said rules and regulations pursuant to Mississippi Code Ann. Section 21-19-1, et seq.;

AND WHEREAS, that authority granted by statute to the Mayor and City Council is for the purpose to secure the general health and welfare of the community,

BE IT, THEREFORE, ORDAINED BY THE MAYOR AND CITY COUNCIL
as follows:

1. 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. Attachment 1 is an example of the adoption agreement.

2. THE CITY SHALL:
 - a. 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.
 - b. Retain the specific right to enter upon the Adopted Right-of-Way to maintain and perform work commensurate with good road maintenance practices.
 - c. 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.
 - d. 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.
 - e. The City shall erect a sign acknowledging the private or public entity that has adopted the right-of-way for maintenance and landscaping.

3. PRIVATE OR PUBLIC ENTITY SHALL:

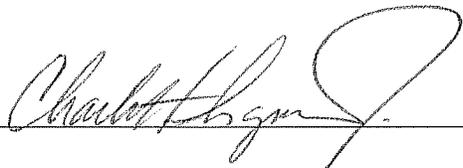
- a. Provide all funds necessary for the initial planting and continual maintenance, including mowing of all sod and litter control, on the Adopted Right-of-Way.
- b. Provide all funds necessary for the initial planting and continual maintenance of shrubs and other types of flora on the Adopted Right-of-Way.
- c. 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.
- d. Purchase any and all fertilizer, seed, additional labor, or equipment necessary for proper maintenance within the limits specified.
- e. Provide work area signage in accordance with current standards set out in the Manual on Uniform Traffic Control Devices for Streets and Highways.
- f. 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.
- g. 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.

4. IT IS FURTHER MUTUALLY AGREED AS FOLLOWS:

- a. That no right or responsibility other than those specifically listed herein above are granted or implied, and that all rights not specifically conveyed herein are retained by the City.
- b. 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 private or public entity fails to correct the hazard or threat within 48 hours, the City shall have the right to take corrective action.

- c. 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.
 - d. That the City executes its orders and directives through the Ordinances of The City of Diamondhead. 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.
5. That the Agreement may be canceled by either party upon notification to the other party ninety (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.

Authorized by the Mayor and City Council of the City of Diamondhead, Mississippi, on the 3rd day of December, 2012, Minute Book _____, Page _____ and executed this 3rd day of December, 2012.



Mayor



City Clerk

Attachment 1: Example

Adopt a Right-of-Way Agreement

This Agreement is made and entered into by and between The City of Diamondhead, Mississippi (“City”) and the [“Private or Public Entity”], effective as of the date of latest execution shown below, and shall remain in effect until canceled by one of the parties as provided below.

WHEREAS, the “Private or Public Entity” desires to make certain improvements to the aesthetic beauty of The City of Diamondhead, specifically to that part of _____ and

WHEREAS, “Private or Public Entity” agrees to assume all responsibility for the safety of its employees and volunteers working in the Adopted Right-of-Way, and further agrees to save the City harmless on any and all claims arising from work performed under this Agreement; and

WHEREAS, the City is authorized to enter into such agreements by authority granted by the Mayor and City Council of the City of Diamondhead and is desirous of so doing.

NOW THEREFORE, for and in consideration of the stated premises and for the mutual covenants and agreements of the parties as herein contained, it is agreed as follows:

THE CITY SHALL:

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”.

“PRIVATE OR PUBLIC ENTITY” SHALL:

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.

IT IS FURTHER MUTUALLY AGREED AS FOLLOWS:

1. That no right or responsibility other than those specifically listed herein above are granted or implied, and that all rights not specifically conveyed herein are retained by the City.
2. 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.
3. That the City executes its orders and directives through the Ordinances of The City of Diamondhead. All notices and correspondence with the City shall be directed to the designated agent shown below. Similarly, the "Private or Public Entity" executes all of its orders and directives through the President or Board of Directors. All notices and correspondence with the "Private or Public Entity" shall be directed to the agent shown below. All notices and correspondence shall be considered delivered upon receipt at the locations or telephone numbers listed

below. 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.

The designated agents for the parties

CITY:
Mayor Charles H. Ingraham, Jr.
City of Diamondhead
5300 Diamondhead Circle
Diamondhead, MS 39525
Telephone: (228) 222-4626

“Private or Public Entity”:
_____, President
Name of “Private or Public Entity”
Street Address
Diamondhead, MS 39525
Telephone: (228) XXX-XXXX

- 4. That this Agreement may be canceled by either party upon notification to the other party thirty (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.

Authorized by the Mayor and City Council of the City of Diamondhead, Mississippi, on the ___ day of ___, 20XX, Minute Book ____, Page ____ and executed this _____ day of _____, 20XX.

Mayor

Authorized by the Board of Directors of the “Private or Public Entity”, Diamondhead, Mississippi, on the ___ day of _____, 20XX, executed this ___ day of _____, 20XX.

President

ATTEST:

City Clerk
The City of Diamondhead, Mississippi