

**Resolution Authorizing the Friends of the Garden to Adopt the Maluhia Garden on Diamondhead Drive East at the Intersection with Alawai Avenue**

Whereas, the City of Diamondhead received the park area known as the Maluhia Garden from the Diamondhead Property Owners' Association on January 7, 2013; and

Whereas, the Mayor and Council of the City of Diamondhead have established the concept and procedures for private citizens or groups to adopt city property as outlined in Ordinance 2012-28, Adoption of Right-of-Way, adopted on December 3, 2012; and

Whereas, the Diamondhead Community Garden Fund has funded the construction and maintenance, and provided volunteers to accomplish all construction and upkeep; and

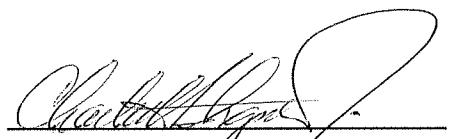
Whereas, the Friends of the Garden have indicated a desire to adopt the Maluhia Garden as described in the attached Adoption Agreement which Agreement the Mayor and Council here by approve; and

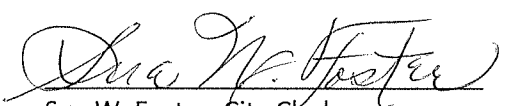
Whereas, the Mayor and Council of the City of Diamondhead find that the adoption by the Friends of the Garden of the Maluhia Garden on Diamondhead Drive East at Alawai Avenue is consistent with the Deed of Dedication of January 7, 2013, that it is in the best interest of the City of Diamondhead that the Friends of the Garden adopt the Maluhia Garden as described in the attached adoption agreement; and, that it is for the public convenience and necessity of the City of Diamondhead that the Friends of the Garden adopt the Maluhia Garden.

Now Therefore, BE IT RESOLVED, that the Mayor and Council approve the form of the attached Maluhia Garden adoption agreement. BE IT FURTHER RESOLVED that the Mayor and Council approve the adoption of the Maluhia Garden by the Friends of the Garden; and BE IT FURTHER RESOLVED that the Mayor of the City of Diamondhead be and he is hereby authorized to execute the attached adoption agreement; and, a copy of the executed agreement will be spread upon the Minutes.

Approved by the Mayor and Council of the City of Diamondhead, Hancock County, Mississippi on this the 1st day of April, 2013.

	Aye	Nay	Absent
Councilmember Ackerman	<u>✓</u>	_____	_____
Councilmember Holcomb	_____	_____	<u>✓</u>
Councilmember Knobloch	<u>✓</u>	_____	_____
Councilmember Rech	<u>✓</u>	_____	_____
Councilmember Roberson	<u>✓</u>	_____	_____
Mayor Ingraham	<u>✓</u>	_____	_____

  
 \_\_\_\_\_  
 Charles H. Ingraham, Jr. Mayor

  
 \_\_\_\_\_  
 Sue W. Foster, City Clerk

**Adopt Maluhia Garden Agreement**

This Agreement is made and entered into by and between The City of Diamondhead, Mississippi (“City”) and the Friends of the Garden, 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 Friends of the Garden desire to make certain improvements to the aesthetic beauty of The City of Diamondhead, specifically to the Maluhia Garden and

WHEREAS, Friends of the Garden agrees to assume all responsibility for the safety of its employees and volunteers working in the Maluhia Garden, 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 Friends of the Garden a non-exclusive right of ingress and egress upon the Maluhia Garden.
2. Retain the specific right to enter upon the Maluhia Garden to maintain and perform work commensurate with good grounds maintenance practices.
3. Retain all maintenance rights, duties, and responsibilities within the Maluhia Garden, including the road shoulders, drainage and storm drains.
4. Retain all rights and responsibilities for control of access, outdoor advertising, and other uses of the Maluhia Garden other than those specifically granted to the Friends of the Garden.
5. Retain responsibility to provide and fund water and power to the Maluhia Garden.
6. Be responsible for grass cutting, edging and sod maintenance in accordance with grounds maintenance standards for the City of Diamondhead.

7. Be responsible for the maintenance and repair and/or reconstruction of the Diamondhead POA constructed bridge from Diamondhead Drive East leading to the western walking path.
8. Remove all organic and inorganic matter collected during the maintenance and police of the Maluhia Garden. Such material will be bagged where possible and/or piled adjacent to Alawai Avenue.

THE FRIENDS OF THE GARDEN SHALL:

1. Provide all funds necessary for the initial planting and continual maintenance of shrubs and other types of flora in the Maluhia Garden.
2. Provide equipment and labor necessary 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 public. When necessary, the Friends of the Garden will request tree or bush trimming support from the city. All organic or inorganic matter resulting from maintenance or police of the Maluhia Garden will be bagged where possible and/or neatly piled along Alawai Avenue.
3. Purchase any and all fertilizer, seed, additional labor, or equipment necessary for proper maintenance within the limits specified.
4. 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.
5. Submit to the City's designated agent for approval any plans to significantly change the general character or overall appearance of the landscaping in the Maluhia Garden. 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 in the Maluhia Garden.
6. Install and maintain irrigation and electrical systems from a point beginning at the water and electrical meters.
7. Construct and maintain all necessary planting areas, structures, bridges, fences, maintenance facilities, walking paths, seating areas, signs and meeting areas.

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 maintenance demands, without payment or other compensation for removal or destruction of the shrubbery or other improvements made by the Friends of the Garden 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 Friends of the Garden executes all of its orders and directives through the Board of Friends of the Garden. All notices and correspondence with the Friends of the Garden 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  
5000 Diamondhead Circle  
Diamondhead, MS 39525  
Telephone: (228) 222-4626

FRIENDS OF THE GARDEN:

Susan Holcomb, Registered Agent  
Friends of the Garden  
8429 Makiki Drive  
Diamondhead, MS 39525  
Telephone: (228) 255-8690

4. That this Agreement may be canceled by either party upon notification to the other party thirty (30) 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 1st day of April, 2013, Minute Book \_\_\_\_\_, Page \_\_\_\_\_ and executed this 1st day of April, 2013.

  
\_\_\_\_\_  
Mayor

Authorized by the Board of Friends of the Garden, Diamondhead, Mississippi, on the  
1<sup>st</sup> day of April, 2013, executed this 1<sup>st</sup> day of  
April, 2013.

Susan Welcomb  
Registered Agent

ATTEST:

Dina W. Foster  
City Clerk  
The City of Diamondhead, Mississippi