# ROUTING SLIP
# CONTRACTS AND AGREEMENTS

Originating Department: **Landscape Management** Council Meeting Date: **4/10/2014**

Department Contact: **Joy H. McKee** Phone # **256-427-5048**

Contract or Agreement: **The Agreement for Cooperative Maintenance of Public Right of Way Between t...**

Document Name: **The Agreement for Cooperative Maintenance of Public Right of Way Between the Ala...**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number: **01-0000-3025-0000**

## Procurement Agreements

| | |
|---|---|
| **Not Applicable** | **Not Applicable** |

## Grant-Funded Agreements

| | |
|---|---|
| **Not Applicable** | **Grant Name:** |

| Department | Signature | Date |
|---|---|---|
| 1) Originating | Brian R. Walker | 3-31-14 |
| 2) Legal | Mary C Caley | 4-2-14 |
| 3) Finance | | 4/3 |
| 4) Originating | | |
| 5) Copy Distribution | | |
| a. Mayor's office (1 copies) | | |
| b. Clerk-Treasurer (Original & 2 copies) | | |
| | | |

Revised 04/15/2011

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 4/10/2014

Action Requested By:
Landscape
Management

Agenda Item Type

Resolution

Subject Matter:

The Agreement for Cooperative Maintenance of Public Right of Way Between the Alabama Department of Transportation and the City of Huntsville, Alabama.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with the Alabama Department of Transportation for the cooperative maintenance of public right-of-way.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Action is required because it allows for City of Huntsville to maintain Public right-of-ways through a contractual agreement with the Department of Transportation.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Brian R. Walker

Date: 3-31-14

revised 3/12/2012

**RESOLUTION NO. 14-_____**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama that the Mayor be and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and the Alabama Department of Transportation, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement for Cooperative Maintenance of Public Right-of-Way Between the Alabama Department of Transportation and the City of Huntsville, Alabama," consisting of seven (5) pages plus exhibit pages, and the date of April 10, 2014, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the _10th____ day of April, 2014.

_____
President of the City Council of
the City of Huntsville, Alabama

**APPROVED** this the _10th____ day of April, 2014.

_____
Mayor of the City of
Huntsville, Alabama

# ALABAMA DEPARTMENT OF TRANSPORTATION
# AGREEMENT FOR THE COOPERATIVE MAINTENANCE
# OF PUBLIC RIGHT OF WAY WITH REIMBURSEMENT

Permit No._____

DIVISION 1 DISTRICT 2

THIS AGREEMENT, entered into this the 1st day of April, 20 13, between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as the STATE and City of Huntsville, Alabama herein referred to as the APPLICANT in an effort to secure a more pleasing appearance on the roadside located on Al 1 US 431 & 231/431, Al 2 US 72, AL53 US 231, AL 255, Interstate 565

_____, the APPLICANT agrees to maintain the vegetative cover on the right-of-way by means of mowing with a flail or rotary mower and hand trimming such that a clean and attractive appearance is obtained. Mowing operations shall be conducted in accordance with the planned frequency. In the event that shrubs and/or minor trees are planted within the area, trimming around the plant materials shall be done in conjunction with mowing to obtain a clean and attractive appearance. Clippings or other incidental debris (such as branches, trash, etc.) shall be removed if mounting of the clippings or other incidental debris occurs.

In accepting the above, the STATE and the APPLICANT agree to do the following:

1. The APPLICANT will see that adequate sight distances are maintained for maximum public safety; otherwise the STATE reserves the right to remedy this situation in the most expedient manner.

2. The STATE is not responsible for the safety of the individual involved or taking part in this work during maintenance operations. All traffic control shall be the responsibility of the applicant and be in accordance with the latest version of the MUTCD currently in use by ALDOT.

3. If STATE construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of the Department of Transportation to establish a stand of vegetative cover if deemed necessary by the STATE and then the APPLICANT's responsibility to maintain the vegetative cover as stipulated herein. In the event of major construction in the subject area, this Agreement shall be voided at a time designated by the STATE.

4. The APPLICANT will provide litter pick up as needed to insure a pleasing appearance along the roadside.

5. All work shall be subject to the inspection and approval of the STATE. Description of the proposed work must accompany this and any associated proposal. If the maintenance is not conducted as specified herein, the STATE shall assume maintenance and this Agreement will be invalid. A copy of this Agreement must be kept by all parties that sign the Agreement. The State of Alabama does not grant applicant any right, title, or claim on any highway right-of-way.

6. The APPLICANT agrees to store no equipment, branches, mounds of clippings or plant debris of any kind or any other material on the shoulders of pavement and in the case of multi-lane highways, in the median. The pavement will be kept free from waste (clippings, mud and other debris) and equipment.

7. The APPLICANT shall be solely responsible for and hold harmless the STATE for any claim for damage done to existing private property, public utility, or the traveling public.

8. This Agreement is executed with the understanding that it is not valid until the APPLICANT has complied with all existing ordinances, laws and zoning boards that have jurisdiction in the county, city or municipality.

9. Failure of the APPLICANT to conform to the provisions of this Agreement will be cause to terminate this Agreement. The STATE shall provide thirty (30) days notice, in writing, of any termination.

10. The APPLICANT will be responsible at all times for all work performed under this agreement and, the APPLICANT will protect, defend, indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, the officials, officers, and employees in both their official and individual capacities, and their agents and/or assigns, from and against any and all action, damages, claims, loss, liabilities, attorney's fees or expense whatsoever or any amount paid in compromise thereof arising out of or connected with the work performed under this Agreement.

    a. By entering into this agreement, the APPLICANT is not an agent of the State, its officers, employees, agents, or assigns. The APPLICANT is an independent entity from the State and nothing in this agreement creates an agency relationship between the parties.

11. The APPLICANT agrees to provide pruning and/or trimming of plants in any existing or newly landscaped areas.

12. No new installation or removal of plantings is allowed on the right-of-way under this agreement.

13. The APPLICANT may perform adequate dressing and street sweeping on the routes included in this agreement which have curbs and gutters, maintaining a clean and attractive appearance of the roadway. If street sweeping is conducted, gutters shall be kept free of debris.

14. The APPLICANT shall provide a minimum of Five (5) mowing cycle(s) per year. Additional cycles will be at the discretion and expense of the APPLICANT. The STATE will provide payment of ($20,000) per cycle which includes all work covered by this agreement. The total payment shall not exceed the total of ($100,000) for services provided. The APPLICANT shall notify the STATE in writing at the beginning and end of each cycle including a schedule of routes to be cut. The STATE shall accept/decline the mowing cycle on each route in writing within 3 days of the APPLICANT completing that route. The first payment may be requested by the APPLICANT on or after May 1, 2014, after completion of the first mowing cycle. The final payment may be requested by the APPLICANT on or after September 1, 2014, at the completion of the final mowing cycle.

15. The routes and work limits included in this agreement are listed as follows:

| ROUTE | DESCRIPTION | MP BEGIN | MP END |
|---|---|---|---|
| AL 1 US 431 & 231/431 | Governor's Drive & North Memorial Pkwy | 325.287 | 341.647 |
| AL 2 US 72 | University Drive & 72E | 91.491 | 103.499 |
| AL 53 US 231 | South Parkway, Governor's Dr. & Jordan Lane | 306.8 | 323.623 |
| AL 255 | Research Park Blvd. | 0.00 | 10.396 |
| Interstate 565 | | 22.1 | 13.9 |
| | | | |
| | | | |

16. The city may perform any herbicide necessary to maintain the appearance of the roadside with written permission from the STATE. This includes but is not limited to concrete islands, median barriers, curbs, and other structures. Herbicide application shall conform to the STATE Vegetation Management guidelines and be applied by certified pesticide applicators. Daily application reports shall be furnished to the STATE on a weekly basis.

17. The term of this agreement shall be for a period of one year, commencing on the 1st day of April, 20 14, and ending on the 31st day of March, 20 15.

Agreement for Cooperative Maintenance of Public Right-of-Way Between the Alabama Department of Transportation and the City of Huntsville, Alabama

IN WITNESS WHEREOF, the parties hereto cause this agreement to be executed by those officers, officials and persons thereunto duly authorized, and the agreement is deemed to be dated and to be effective on the date stated hereinafter as the date of the approval of the Governor of Alabama.

SEAL

ATTEST:

CITY OF HUNTSVILLE, AL

BY: _____

City Clerk (Signature)

Mayor (Signature)

Charles E. Hagood

Type name of Clerk

Tommy Battle

Type name of Mayor

APPROVED AS TO FORM:

BY: _____

Chief Counsel, Jim R. Ippolito, Jr.

RECOMMENDED FOR APPROVAL:

_____

Division Engineer

_____

Maintenance Engineer

_____

Chief Engineer/ Deputy Director

STATE OF ALABAMA
ACTING BY AND THROUGH THE
ALABAMA DEPARTMENT OF TRANSPORTATION

_____

Transportation Director, John R. Cooper

This contract has been reviewed for and is approved as to content and Is to be paid from available State Maintenance funds.

RECOMMENDED:

_____

Director of Finance & Audits, Bill Flowers

The forgoing agreement is hereby approved by the Governor of the State of Alabama this _____Day of_____, 2014.

_____

**GOVERNOR OF ALABAMA, ROBERT BENTLEY**

Agreement for Cooperative Maintenance of Public Right-of-Way Between the Alabama Department of Transportation and the City of Huntsville, Alabama

EXHIBIT "N"

FUNDS SHALL NOT BE CONSTITUTED AS A DEBT

It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the DEPARTMENT of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this agreement shall contravene any statue or Constitutional provision of amendment, either now in effect or which may, during the course of this agreement, be enacted, then the conflicting provision in the agreement shall be deemed null and void.

TERMINATION DUE TO INSUFFICIENT FUNDS

If the agreement term is to exceed more than one fiscal year, then said agreement is subject to termination in the event that funds should not be appropriated for the continued payment of the agreement in subsequent fiscal years.

In the event of proration of the fund from which payment under this agreement is to be made, agreement will be subject to termination.