ROUTING SLIP
CONTRACTS AND AGREEMENTS

Originating Department: **Landscape Management** Council Meeting Date: 2/11/16

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: 1000-52-00000-425163-00000000 — ✓ **01-0000-3025-0000**

Procurement Agreements

Not Applicable	**Not Applicable**

Grant-Funded Agreements

Not Applicable	**Grant Name:**

Department	Signature	Date
1) Originating	Joy H. McKee	1-26-16
2) Legal	Melissa C. Cates	2-1-16
3) Finance	M Sayer	2-2-16
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: Feb 11, 2016

Action Requested By: Landscape Management

Agenda 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: Jay H McKee

Date: 1-26-2016

RESOLUTION NO. 16-_____

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 five (5) pages, and the date of February 11th, 2016, 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 11th day of February, 2016.

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

APPROVED this the 11th day of February, 2016.

_____
Mayor of the City of
Huntsville, Alabama

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

County Madison

Permit Number

Milepost See item 15.

Route Number See item 15.

Resolution Number 16-

Associated Permits and/or Documents N/A

THIS AGREEMENT, entered into this the 1st day of April, 2016, between the Alabama Department of Transportation acting by and through its Transportation Director hereinafter referred to as ALDOT and City of Huntsville, AL herein referred to as the APPLICANT in an effort to secure a more pleasing appearance on the roadside between

See item 15.

on Route See item 15 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 when the height of the vegetative cover reaches 8 inches and rescheduled 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, ALDOT and the APPLICANT agree to do the following:

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

2. ALDOT 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 ALDOT construction (repair of drainage and traffic structures, crossovers and other minor construction) is done in the subject area, it will be the responsibility of ALDOT to establish a stand of vegetative cover if deemed necessary by ALDOT 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 ALDOT.

4. Any proposed work, whether being performed or accomplished, that is described within or with any associated proposal is subject to the inspection and approval of ALDOT. Should the APPLICANT fail to conform to the provisions of the Agreement, such failure shall be grounds for termination and shall be cause for ALDOT to assume the maintenance at the APPLICANT's expense and/or remove the work and restore the right-of-way to ALDOT's discretion at the expense of the APPLICANT. The APPLICANT agrees to pay ALDOT all such costs as a result. ALDOT shall provide thirty (30) days notice, in writing, or any termination.

5. 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. 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.

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

9. The APPLICANT may perform any herbicide treatments necessary to maintain the appearance of the roadside with written permission from ALDOT. This includes but is not limited to concrete islands, median barriers, curbs, and other structures. Herbicide treatments shall conform to the guidelines found in the current edition of *Chapter IV: ALDOT Herbicide Treatment Recommendations*. Treatments shall be applied by an individual in possession of a current Commercial Applicator Permit (ROW category) issued by the Alabama Department of Agriculture & Industries. Daily application reports shall be made available for review by ALDOT upon request.

10. Indemnification Provisions. Please check the appropriate type of applicant:

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.

__X__ If the applicant is an incorporated municipality or gas district then:
Subject to the limitations on damages applicable to municipal corporations under Ala. Code § 11-47-190 (1975), the APPLICANT shall defend, indemnify, and hold harmless the State of Alabama, ALDOT, its

officers, officials, agents, servants, and employees, in both their official and individual capacities, from and against (1) claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of, connected with, resulting from or related to the work performed by the APPLICANT, or its officers, employees, contracts, agents or assigns (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the APPLICANT pursuant to the terms of this Agreement, or (3) any damage, loss, expense, bodily injury, or death, or injury or destruction of tangible property (other than the work itself), including loss of use therefrom, and including but not limited to attorneys' fees , caused by the negligent, careless or unskillful acts of the APPLICANT its agents, servants, representatives or employees, or the misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the APPLICANT, its agents, servants, representatives or employees, or anyone for whose acts the APPLICANT may be liable.

_____ If the applicant is county government then:

The APPLICANT shall be responsible at all times for all of the work performed under this agreement and, as provided in Ala. Code § 11-93-2 (1975), the APPLICANT shall protect, defend, indemnify and hold harmless the State of Alabama, The Alabama Department of Transportation, its officials, officers, servants, and employees, in both their official and individual capacities, and their agents and/or assigns.

For all claims not subject to Ala. Code § 11-93-2 (1975), the APPLICANT shall indemnify and hold harmless the State of Alabama, the Alabama Department of Transportation, the officials, officers, servants, 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, connected with, or related to the (1) work performed under this Agreement, (2) the provision of any services or expenditure of funds required, authorized, or undertaken by the APPLICANT pursuant to the terms of this agreement, or (3) misuse, misappropriation, misapplication, or misexpenditure of any source of funding, compensation or reimbursement by the APPLICANT, its agents, servants, representatives, employees or assigns.

_____ If the applicant is a state governmental agency or institution then:

The APPLICANT shall be responsible for damage to life and property due to activities of the APPLICANT of employees of APPLICANT in connection with the work or services under this Agreement. The APPLICANT agrees that its contractors, subcontractors, agents, servants, vendors or employees of APPLICANT shall possess the experience, knowledge and skill necessary to perform the particular duties required or necessary under this Agreement. The APPLICANT is a state institution and is limited by the Alabama Constitution in its ability to indemnify and hold harmless another entity. The APPLICANT maintains self-insurance coverage applicable to the negligent acts and omissions of its officers and employees, which occur within the scope of their employment by the APPLICANT. The APPLICANT has no insurance coverage applicable to third-party acts, omissions or claims, and can undertake no obligation that might create a debt on the State Treasury. The APPLICANT agrees ALDOT shall not be responsible for the willful, deliberate, wanton or negligent acts of the APPLICANT, or its officials, employees, agents, servants, vendors, contractors or subcontractors. The APPLICANT shall require, its contractors and its subcontractors, agents, servants or vendors, as a term or its contract with the APPLICANT, to include ALDOT as an additional insured in any insurance policy providing coverage for the work to be performed pursuant to and under this Agreement and to provide the APPLICANT a copy of the insurance policy declaration sheet confirming the addition of ALDOT thereto.

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. ALDOT will provide payment of $20,000.00 per cycle which includes all work covered by this agreement. The total payment shall not exceed the total of $100,000.00 for services provided. The APPLICANT shall supply ALDOT a schedule of cycle dates for the proposed routes listed in item #15. In addition, the APPLICANT shall notify ALDOT in writing 2 days prior to commencement of cycle and within one day of the completion of a cycle. ALDOT 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, 2016, after completion of the first mowing cycle. The final payment may be requested by the APPLICANT on or after September 1, 2016, 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 Dr. & N. Memorial	325.287	341.647
AL 2 US 72	University Dr. & US 72E	91.491	103.499
AL 53 US 231	South Pkwy, Governor's Dr. & Jordan Ln.	306.8	323.623
AL 255	Research Park Blvd.	0.00	10.396
Interstate 565		22.1	13.9

16. The term of this Agreement shall be for a period of one year, commencing on the 1st day of April, 20 16, and ending on the 31st day of March, 20 17.

This Agreement is deemed to be executed on the date hereinabove set forth by the parties hereto in their respective names by those persons and officials thereunto duly authorized. Witness our hands and seals, this the _____ day of _____, 20_____.

SEAL

ATTEST:

_____
Signature

_____
Typed or Printed Name

_____
Title

APPLICANT: _____

BY: _____
Signature

_____
Typed or Printed Name

_____
Title

THIS AGREEMENT HAS BEEN LEGALLY REVIEWED AS TO CONTENT AND FORM:

BY: _____ _____
Chief Counsel, Jim R. Ippolito, Jr. Date

RECOMMENDED FOR APPROVAL:

_____ _____
District Manager Date

_____ _____
Area Operations Engineer Date

_____ _____
Region Engineer Date

_____ _____
Maintenance Engineer Date

_____ _____
Deputy Director, Operations Date

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

_____ _____
Transportation Director Date

The forgoing agreement is hereby approved by the Governor of the State of Alabama this _____Day of _____, 20____.

_____
GOVERNOR OF ALABAMA