

RCS# 6725
6/06/05
3:17 PM

Atlanta City Council

Regular Session

05-R-0608

RIGHT OF WAY MOWING & MAINTENANCE AGRMNT
W/DOT CERTAIN PORTIONS OF MORELAND AVE
FILE

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	NV Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	B Sheperd	NV Borders

05-R-0608

A RESOLUTION

BY COUNCILMEMBER NATALYN MOSBY ARCHIBONG

Natalyn M. Archibong
Debi Starnes

AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION CONCERNING CERTAIN PORTIONS OF MORELAND AVENUE (STATE ROUTE 42), AND AN AGREEMENT WITH TREES ATLANTA, INC. TO ASSUME THE CITY'S OBLIGATIONS AS SET FORTH IN THE RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT; AND FOR OTHER PURPOSES.

WHEREAS, the development of certain real property owned by The Sembler Company is located in the City of Atlanta at Moreland Avenue between Hardee Street and Caroline Street; and

WHEREAS, Moreland Avenue is a state route under the control of the Georgia Department of Transportation ("GDOT"); and

WHEREAS, a commercial driveway permit is required from GDOT for the construction and maintenance for certain points of ingress and egress serving portions of this property on Moreland Avenue, including landscape medians to be located in the GDOT right-of-way; and

WHEREAS, as a condition of allowing the landscape medians, GDOT requires that the City enter into a Right-of-Way Mowing and Maintenance Agreement for these landscape medians; and

WHEREAS, in return for the City's agreement to enter into such agreements with GDOT, Trees Atlanta has agreed to undertake the City's obligations under the Right-of-Way Mowing and Maintenance Agreement at no cost to the City; and

WHEREAS, the construction and maintenance of these medians is consistent with the City's transportation plan for this area.

NOW THEREFORE, be it resolved by the Council of the City of Atlanta as follows:

SECTION 1. That the Mayor is hereby authorized to execute on behalf of the City of Atlanta, a Right-of-Way Mowing and Maintenance Agreement, substantially in the form attached as Exhibit A, provided that an agreement with a third party to undertake the City's obligation is first executed.

SECTION 2. That the Mayor is hereby authorized to execute on behalf of the City of Atlanta an agreement with Trees Atlanta, or a third party designated by Trees Atlanta that is acceptable to the City, that is substantially in the form attached as Exhibit B, and which will provide for Trees Atlanta or its designee to undertake the City's obligations under the Right-of-Way Mowing and Maintenance Agreement as set forth in the document attached as Exhibit A.

SECTION 3. The City Attorney be and hereby is directed to negotiate, prepare and/or review the agreements necessary to effect the intent of this resolution provided that such agreements are in compliance with the conditions set forth herein and provided that there is no cost to the City.

SECTION 4 That all resolutions and parts of resolutions in conflict herewith be and are hereby waived.

EXHIBIT A

RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT

By and Between

THE

GEORGIA DEPARTMENT OF TRANSPORTATION

AND

THE CITY OF ATLANTA

REFERENCE: COMMERCIAL DRIVEWAY PERMIT # 03-2004-012-089
SR 42, MORELAND AVENUE, DEKALB COUNTY – THE SEMBLER COMPANY

THIS AGREEMENT made and entered into this ____ day of _____, 20 ____
by and between the **DEPARTMENT** of Transportation, an agency of the State of Georgia,
hereinafter alternately referred to as “**DEPARTMENT**” or “**LICENSOR**”, and APPLICANT
hereinafter referred to as “**LICENSEE**”.

WHEREAS, the **DEPARTMENT** desires to enter into a public/private partnership to
perform certain services relating to mowing and trimming within **DEPARTMENT’S** right of
way, hereinafter called the “**PROJECT**”, and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that, if such
permission is granted to the **LICENSEE**, **LICENSEE** shall bear all costs and liability associated
with the **PROJECT**; and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that they are
qualified and experienced to provide such services and the **DEPARTMENT** has relied upon
such representations;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:

ARTICLE I
SCOPE OF PROJECT

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The **PROJECT** location and concept as well as the duties and responsibilities of the **LICENSEE** are defined and set forth in Article XI **WORK PLAN** of this Agreement, and further enumerated and described in Exhibit A – Application and Permit for Special Encroachment. This document is attached hereto and incorporated by reference as if fully set out herein. The required Special Encroachment permit is to be approved and issued by the **DEPARTMENT**.

Should the **LICENSEE** desire that these maintenance services be performed by a third party, **LICENSEE** and the third party shall enter into subsequent agreement, whereby the **LICENSEE** shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in Article XI **WORK PLAN**. The Agreement between **LICENSEE** and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the **DEPARTMENT**, and all liability associated with the **PROJECT** shall be borne by **LICENSEE** and any third parties, as set forth in Article VIII, herein.

ARTICLE II
EXECUTION OF CONTRACT AND AUTHORIZATION
TIME OF PERFORMANCE

Time is of the essence in this agreement. The **LICENSEE** shall execute this Agreement and return it to the **DEPARTMENT** within ten (10 days) after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement within thirty days after receiving a signed and executed copy of the Agreement.

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, trim, and maintain that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall be indefinite unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

ARTICLE III
SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that **LICENSEE** shall not engage in any activities or conduct any work which would

be considered to be outside the scope of the permission granted to **LICENSEE** by the **DEPARTMENT**. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

ARTICLE IV
ASSIGNMENT

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in Article I, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

ARTICLE V
CONTRACT DISPUTES

This Agreement shall be deemed to have been executed in Fulton County, Georgia and all questions of interpretation and construction shall be governed by the laws of the State of Georgia.

ARTICLE VI
INSURANCE

Prior to beginning work, the **LICENSEE** shall obtain and certify to the **DEPARTMENT** that it has the following minimum amounts of insurance coverage:

- (a) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
- (b) Public Liability Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$300,000) on an account of any one occurrence, or proof of self insurance.
- (c) Property Damage Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000), or proof of self insurance.
- (d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the **PROJECT**.

Insurance shall be maintained in full force and effect during the life of the **PROJECT**. The **LICENSEE** shall furnish annually to the **DEPARTMENT**, certificates of insurance evidencing such coverage. These certificates shall also provide that the insurance will not be modified or canceled without a 30 day prior written notice to the **DEPARTMENT**. Failure by the **LICENSEE** to procure and maintain the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The **LICENSEE** shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with the **DEPARTMENT**.

ARTICLE VII

COMPENSATION

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any and all issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such change shall only be permitted by a supplemental agreement as set forth in Article III herein. Any supplemental agreements involving compensation shall be subject to the review of the **DEPARTMENT'S** Legal Affairs Administrator, and must be approved in writing by the **DEPARTMENT**. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE VIII

RESPONSIBILITY FOR CLAIMS AND LIABILITY

LICENSEE NOT AGENT OF DEPARTMENT

LICENSEE, and all successors and assigns thereto, shall save harmless the **DEPARTMENT**, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the performance of work assigned to **LICENSEE** under this Agreement. **LICENSEE** further agrees that they shall be fully responsible for injury or damage to landscaping within the right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, if **LICENSEE** causes the damage. These indemnities shall not be limited by reason of the listing of any insurance coverage.

It is further understood and agreed that **LICENSEE**, or any successor or assigns thereto, in the conduct of any work involved in the **PROJECT**, shall not be considered the agent of the **DEPARTMENT** or of the State of Georgia.

ARTICLE IX

TERMINATION OF CONTRACT

The **DEPARTMENT** may terminate this contract for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this contract to terminate upon the date specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in Article VII up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this contract at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

ARTICLE X

COMPLIANCE WITH APPLICABLE LAW

The undersigned certify that:

A. This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.

B. The provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State have been complied with in full.

C. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full.

The covenants herein contained shall, except as other wise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

ARTICLE XI

WORK PLAN

Routine maintenance of planted median islands on Moreland Avenue between Hardee Street and Caroline Street.

Scheduled Work:

seasonal maintenance of trees and plants

replacement of dead or diseased trees and plants

replacement of mulch

regular removal of trash and debris in planted islands

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

Signed, Sealed, and Delivered this _____ day of _____, 2004.

GEORGIA DEPARTMENT OF TRANSPORTATION

Commissioner or designee
ATTEST:

Treasurer

LICENSEE:

(Title)

Sworn to before me this
_____ day of _____, 20____.

NOTARY PUBLIC
My commission expires _____, _____.

#1

05-R-0608

(Do Not Write Above This Line)

RESOLUTION BY COUNCIL MEMBER NATALYN MOSBY ARCHIBONG

AUTHORIZING THE MAYOR TO EXECUTE A RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION CONCERNING CERTAIN PORTIONS OF MORELAND AVENUE (STATE ROUTE 42), AND AN AGREEMENT WITH TREES ATLANTA INC. TO ASSUME THE CITY'S OBLIGATIONS AS SET FORTH IN THE RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT; AND FOR OTHER PURPOSES.

FILED BY CITY COUNCIL JUN 06 2005

AS AMENDED

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred 03/21/05
 Referred To: City Utilities
 Date Referred 4-18-2005
 Referred To: City Utilities
 Date Referred
 Referred To:

Committee _____
 Date _____
 Chair _____
 Referred To _____

City Committee
 Date 5/25/05
 Chair [Signature]

Action
 Fav, Adv, Hold (see rev. side)
 Other [Signature]

Members
 [Signature]
 [Signature]

Refer To _____
 Committee _____
 Date _____
 Chair _____

Action
 Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____

Refer To _____

First Reading

City Committee
 Date 6/16/05
 Chair [Signature]

Action
 Fav, Adv, Hold (see rev. side)
 Other [Signature]

Members
 [Signature]

Refer To _____
 Committee _____
 Date _____
 Chair _____

Action
 Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____

Refer To _____

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
 Consent V Vote RC Vote

CERTIFIED

JUN 06 2005

CEM
 JUN 06 2005
 MUNICIPAL CLERK

MAYOR'S ACTION