A RESOLUTION BY
CITY UTILITIES COMMITTEE

11-R-0922

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO A RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR MOWING AND MAINTENANCE SERVICES ALONG PORTIONS OF GLENWOOD AVENUE, SE WHICH ARE UNDER THE CONTROL OF THE GEORGIA DEPARTMENT OF TRANSPORTATION; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") is installing landscaping, sidewalks, and signage along State Route 260 ("Glenwood Avenue") as part of the East Atlanta Village Streetscape Project ("Project"); and

WHEREAS, the Project will extend along Glenwood Avenue from Joseph Avenue, SE to Flat Shoals Avenue, SE; and

WHEREAS, Glenwood Avenue is under the control of the Georgia Department of Transportation ("GDOT"); and

WHEREAS, GDOT requires execution of a Right-of-Way Mowing and Maintenance Agreement ("Agreement") for the City to mow and maintain portions Glenwood Avenue that are under the control of GDOT.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor, or his designee, is authorized to enter into a Right-of-Way Mowing and Maintenance Agreement (hereto attached as Exhibit "A") with the Georgia Department of Transportation for mowing and maintenance services on Glenwood Avenue from Joseph Avenue, SE to Flat Shoals Avenue, SE, which is under the control of GDOT.

BE IT FINALLY RESOLVED, that this Agreement will not become binding upon the City and the City shall incur no obligation or liability hereunder until the same has been approved by the City Attorney, or her designee, as to form, executed by the Mayor, attested to by the municipal clerk and delivered to the Georgia Department of Transportation.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: CANDACE L. BYRD**

Dept.'s Legislative Liaison: Soraya Belgrave

Contact Number: (404) 330-6002

Originating Department: Department of Public Works

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: May 27, 2011

Anticipated Committee Meeting Date(s): June 14, 2011

Anticipated Full Council Date: June 20, 2011

Legislative Counsel's Signature: Saul Schultz

Commissioner's Signature:

Chief Information Officer Signature (*for IT Procurements*) _____

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO A RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR MOWING AND MAINTENANCE SERVICES ALONG PORTIONS OF GLENWOOD AVENUE, SE WHICH ARE UNDER THE CONTROL OF THE GEORGIA DEPARTMENT OF TRANSPORTATION; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)
Mayor's Staff Only

Received by CPO: _____ (date) **Received by LC from CPO:** _____ (date)

Received by Mayor's Office: _____ (date) **Reviewed by:** _____ (date)

Submitted to Council: _____ (date)

EXHIBIT

DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA

INTERDEPARTMENT CORRESPONDENCE

OFFICE Maintenance
DATE September 3, 2010

FROM Bill Wright for Eric Pitts, State Maintenance Engineer

TO Mike Lobdell, District 7 Traffic Operations
CC Scott Lee, District 7 Design Engineer
James Mickey McGee, District 7 Construction Engineer
Kevin Cowan, District 7 Preconstruction
Andre Netterville, District 7 Preconstruction

SUBJECT **Request for review of the East Atlanta Village streetscape landscape on S. R. 260 (U.S. 23) in Dekalb County (District7) P.I. 0006717**

The applicant proposes trees in tree pits, under-planted with Liriope, as an extension to previously developed streetscapes in the area.

Our office has reviewed the landscape plans and offers the following comments:

1. The applicant will be required to maintain the R/W from edge of paving to R/W line by execution of a Mowing and Maintenance Agreement. A recommended work plan for the project's agreement is attached to this review and the agreement must be signed before the project is let.

2. The proposal includes a Gateway Sign and benches as well as a brick column with an interpretive panel within the right of way. If East Atlanta is not incorporated, they must make an official request to Traffic Operations to be allowed to have the sign.

3. The proposed brick columns appear to be right at the edge of the curb. We recommend Traffic Operations review the plans for this issue.

4. The proposed interpretive panel is also within the clear zone and is set on 3 x 3" steel posts set in concrete footings. We recommend Traffic Operations review the plans for this issue.

5. Place the planting schedule in the Detailed Estimate section of the plan set rather than on the Landscape plan sheets.

6. The tree pit detail indicates the street trees are to be located a minimum of 4 feet from the face of the curb. The tree pits on the landscape sheets, however, appear to be only 5 feet wide, which would place the trees only 3 feet from the face of the curb. By placing the trees 4 feet from the curb, the trees would not be centered in the tree pits as needed. Are there parallel parking spaces adjacent to the landscape strip? If so, the traveled way is located beyond the face of the curb and a tree centered in the tree pit will meet the minimum horizontal clearance.

7. Three Fringe Trees are proposed underneath a Bosque Elm. This is too many trees for the restricted space. We recommend omitting either the Elm or the three Fringe Trees.

8. The ooze tube in the planting details is a proprietary item. It will need to be specified in a more general form.

9. The notes on the landscape sheets indicate the Landscape Architect is the sole judge of the quality of the plants used. The notes need to be revised to say "the Engineer" shall approve items.

10. A Special Provision Section 702 must be provided for the project. It includes maintenance responsibilities for the contractor for a typical period of two growing seasons. This time period must be modified to fit the specific needs of the project, and dates for monitoring and plant replacement can be spelled out in the Special Provision 108 Prosecution and Progress Section.

Please contact this office if we can answer any further questions.

EP:db

ARTICLE XI

EXHIBIT A MAINTENANCE WORK PLAN/LANDSCAPE MAINTENANCE AGREEMENT

For all maintenance activities, at a minimum, abide by the Federal Manual of Uniform Traffic Control Devices (MUTCD) standards, current edition, for temporary traffic control. Move equipment or materials on or across a traveled way in a manner as not to unduly interfere with traffic.

Watering

- Provide adequate water to maintain healthy plant material
- Water in a manner that it does not endanger pedestrian or vehicular traffic
- Water according to the state or local government restrictions

Seasonal Color (Annuals and Herbaceous Perennials)

- Install and maintain plant material at a height that does not interfere with clear sight lines for both pedestrians and vehicular traffic according to the Department's sight distance criteria
- Maintain bare areas in seasonal beds with a minimum 3 inch cover of mulch
- Cut back perennials each year after they are spent to keep the beds free of vegetative debris

Ornamental Grasses

- Trim away dead foliage from ornamental grass clumps in February.

Pruning

- Remove dead or diseased planted vegetation.
- Prune trees, shrubs and ground covers to maintain the health of the plants and to maintain in the intended design character of the plant (no stump pruning or lollipop/ball shapes)
- Prune trees, shrubs, and ground covers as needed to remove damage by storm or accident events and to prevent safety hazards. Prune to maintain open sight distances, clear zone areas and traffic sign visibility. Provide clearance for pedestrian and vehicular traffic mobility.
- Prune according to American National Standards Institute, latest edition, A300 Part 1 pruning standards

Plant Replacement

- Replacement of dead or diseased vegetation of planted material within the project limits is the responsibility of the LICENSEE
- Replacement plant material must be according to the Department's landscaping policy 6755-9 and Special Provision Section 702.

Weeding

- Maintain right of way free of weeds, exotic and invasive pest plants, undesired vegetation and other noxious weeds
- All Pesticide/Herbicide use shall be under the direct supervision of someone with the appropriate Commercial Category 27 (right of way use) license.
- When pesticides/herbicides are being applied the person applying shall have in their possession all labeling associated with the pesticide/herbicide and their license/certification.
- Post warning signs for pesticide/herbicide use as required by state code.

Mulching

- Replace mulch in plant beds as needed to maintain an attractive, fresh look at a 2-3" depth
- Maintain mulch so that it will not spread or wash on to pedestrian paths or traveled lanes

Litter

- Completely remove all litter and debris and other objectionable material on site.
- Do not deposit or blow litter, debris and vegetation into gutters or drainage structures.
- Make disposal in accordance with local and state laws.
- Remove all graffiti within project limits

Installed Sidewalks and Site Furniture

- Maintain and repair sidewalks according to the Americans With Disabilities Act (ADA)
- Maintain signs and sight furniture in good repair.

NOTE:

All major maintenance repair activities and activities that may interfere with traffic or pedestrian flow within the right of way project limits, such as travel lane/walkway closures, require the LICENSEE notify the Department at least 48 hours prior to the activity to coordinate and gain Department approval.

Rev: September 13, 2010

RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT

By and Between

THE

GEORGIA DEPARTMENT OF TRANSPORTATION

AND

APPLICANT

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 the 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 maintenance 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 maintenance duties and responsibilities of the **LICENSEE** are defined and set forth in Article XI – **MAINTENANCE WORK PLAN** of this Agreement, and further enumerated and described in Exhibit 'A' – Application and Permit for Special Encroachment with approved drawings or final working drawings for a Department-approved construction **PROJECT**. Exhibit 'A' is attached hereto and incorporated by reference as if fully set out herein. The **PROJECT** location shall be defined or delineated as part of Exhibit 'A'. The required Special Encroachment Permit and/or the construction **PROJECT** final working drawings are to be approved or 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 - **MAINTENANCE 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 thirty (30) days after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement immediately after receiving a signed and executed copy of the Agreement (unless noted otherwise in Exhibit A or upon **PROJECT** construction completion).

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, edge, and maintain, as set forth in Article XI- **MAINTENANCE WORK PLAN**, that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall not exceed fifty years from the date above first written 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 __DeKalb__County, Georgia, without reference to its choice of law doctrine, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia. Any litigation arising out of this contract shall be commenced within the State of Georgia. The foregoing provisions shall not be construed as waiving any immunity to suit or liability, including without limitation, sovereign immunity which may be available to the Department.

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 for anyone that will be working on the right of way:

(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**.

(e) Insurance shall be maintained in full force and effect during the life of the **PROJECT**.

The **LICENSEE** shall furnish upon request 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 **DEPARTMENT** review and approval.

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, landscape related items, and any other non-standard and decorative elements installed by or for the **LICENSEE** 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.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** allow the **LICENSEE** to terminate the agreement, the termination, unless determined otherwise in writing by the **DEPARTMENT**, shall be contingent upon the following:

A. The **LICENSEE,** at the discretion of the **DEPARTMENT**, removing the planted landscaping, landscape related items, and any other non-standard and decorative elements that were installed by or for the **LICENSEE** at no cost to the **DEPARTMENT**.

B. The **LICENSEE** restoring the removed landscape areas to their original condition or a condition that meets federal standards and is acceptable to the **DEPARTMENT**.

C. The **LICENSEE** restoring the removed non-standard and decorative elements with standard **DEPARTMENT** elements that meet federal and state requirements.

D. The **LICENSEE** reimbursing the **DEPARTMENT** in full any state and/or federal funds used to purchase and install the landscaping, landscape related items, and other non-standard and decorative elements that are no longer to be maintained by the **LICENSEE**.

E. No reimbursal is required for termination of agreements for Mowing Only.

The **DEPARTMENT** and the **LICENSEE** agree that, should the **LICENSEE** fail to perform the maintenance, as set forth in Article XI - **MAINTENANCE WORK PLAN**, the **DEPARTMENT** may require the **LICENSEE** to remove, restore, and reimburse according to items "A", "B", "C", and "D" above, as applicable, and then terminate the agreement.

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.

ARTICLE XI

MAINTENANCE WORK PLAN

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.

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

GEORGIA DEPARTMENT OF TRANSPORTATION

_____
Commissioner or designee

ATTEST:

_____
Kate Pfirman
Treasurer

LICENSEE:

_____
(Title)

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

_____
NOTARY PUBLIC
My commission expires _____, _____.

EXHIBIT 'A'

(Attach the Application and Permit for Special Encroachment with approved drawings or the final working drawings for a Department-approved construction)

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO A RIGHT-OF-WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR MOWING AND MAINTENANCE SERVICES ALONG PORTIONS OF GLENWOOD AVENUE, SE WHICH ARE UNDER THE CONTROL OF THE GEORGIA DEPARTMENT OF TRANSPORTATION; AND FOR OTHER PURPOSES.

Council Meeting Date: June 20, 2011

Requesting Dept.: Department of Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legisaltion is to enter into a Right-of-Way Maintenance Agreement with the Georgia Department of Transportation along portions of Glenwood Avenue that are under the control of GDOT.

2. Please provide background information regarding this legislation.

3. <u>If Applicable/Known:</u>

(a) Contract Type (e.g. Professional Services, Construction Agreement, etc):

(b) Source Selection:

(c) Bids/Proposals Due:

(d) Invitations Issued:

(e) Number of Bids:

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:**

4. **Fund Account Center:**

5. **Source of Funds:**

6. **Fiscal Impact:**

7. **Method of Cost Recovery:**

This Legislative Request Form Was Prepared By: