

RESOLUTION NO. 26-99

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE STATE OF TEXAS FOR PROVIDING MAINTENANCE IN AREAS OF LANDSCAPE IMPROVEMENTS OF THE RIGHTS-OF-WAY OF INTERSTATE 30 AT BIG TOWN BOULEVARD AND HIGHWAY 80 AT BIG TOWN BOULEVARD.

WHEREAS, the City of Mesquite through its Parks and Recreation/Building Services Department provides landscape maintenance services; and

WHEREAS, the City of Mesquite has committed to be responsible for all maintenance of the landscape improvements upon completion of the Landscape Development project wherein such landscape improvements have been constructed by the State of Texas within the rights-of-way of Interstate 30 at Big Town Boulevard and Highway 80 at Big Town Boulevard; and

WHEREAS, the initial term of this agreement shall be a period of five (5) years from the City assumption of maintenance responsibilities and the agreement shall automatically renew annually unless terminated as provided in the agreement.

SECTION 1. That the terms and conditions of the agreement attached hereto as Exhibit "A", having been reviewed by the City Council of the City of Mesquite, found to be acceptable, and in the best interests of the City of Mesquite and its citizens are hereby in all things approved.

SECTION 2. That the City Council of the City of Mesquite authorizes Mike Anderson, Mayor of the City of Mesquite, to execute an agreement with the State of Texas for providing maintenance in areas of landscape improvements of the rights-of-way of Interstate 30 at Big Town Boulevard and Highway 80 at Big Town Boulevard.

SECTION 3. That this resolution shall take effect from and after its passage.

DULY RESOLVED by the City Council of the City of Mesquite, Texas, on the 6th day of July, 1999.



Mike Anderson
Mayor

ATTEST:

APPROVED:



Ellen Williams
City Secretary



B.J. Smith
City Attorney

Landscape Maintenance Agreement

State of Texas

County of Travis

This AGREEMENT made by and between the State of Texas, hereinafter referred to as the "State", and the City of Mesquite, Dallas County, Texas, acting by and through its duly authorized officers as evidenced by Resolution or Ordinance attached as Exhibit A, hereinafter called the "City".

WITNESSETH

WHEREAS, The State operates a highway system including IH 30 & US 80 for the use and benefit of vehicular traffic in the City; and

WHEREAS, The State and the City have entered into a municipal agreement wherein the City has agreed to maintain those portions of the right-of-way as detailed in the Municipal Maintenance Agreement dated July 21, 1994 which is incorporated herein by reference; and

WHEREAS, The State has proposed to provide landscape improvements, such as but not limited to tree and shrub plantings, hardscape improvements, and irrigation systems, to be provided through State projects performed by State's contractor(s), for the some of the areas between the main lanes and frontage roads of IH 30 & US 80 between their intersections and Big Town Blvd.; and

WHEREAS, The City has committed to be responsible for all maintenance of the landscape improvements upon completion of the Landscape Development project;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed, it is agreed as follows:

AGREEMENT

Article 1. Term of Agreement

This Agreement becomes effective when finally executed (signed) by the State. The initial term of this Agreement shall be for the period of five (5) years from the City's assumption of the maintenance responsibilities and the Agreement shall automatically renew annually each year thereafter unless terminated as otherwise provided below in Article 10.

Article 2. Amendments

The parties agree that this Agreement may be amended. Such amendments, to be effective, must be in writing and signed by both parties.

Article 3. Project Funding

The design, installation, and inspection of the landscape improvements along IH 30 & US 80 shall be funded by the State using the Construction Landscape Program funds. The ongoing maintenance (beyond the initial establishment period described below) shall be the sole responsibility of the City, using any appropriate funding method available to the City.

ARTICLE 4. Responsibility of the Parties.

A. The City agrees to:

1. Provide regularly scheduled maintenance of the landscape improvements provided in the landscape development in a manner acceptable to the State. This maintenance shall include the following:

PLANT MAINTENANCE: All possible means shall be employed to preserve the trees in a healthy and vigorous growing condition. Plant maintenance shall include proper watering, pruning, fertilization, mulching, and plant basin maintenance.

MOWING AND TRIMMING: Mowing shall be accomplished by using suitable riding or push-type mowers on all turf areas within the project limits covered by the irrigation system. Tractor-mounted mowers shall only be permitted in those areas sufficiently removed from the landscape development to ensure no mower-inflicted damage occurs. Mowing throughout the year shall be in a manner that will give a clean, weeded and maintained appearance. The City also may elect to mow those areas that have not yet been improved with landscape development projects. In those areas not yet improved, that the City does not mow, the State will continue to mow those areas using their most current vegetation management policies.

IRRIGATION SYSTEM OPERATION AND MAINTENANCE: The irrigation system shall be operated to ensure application of a minimum of one inch of water per week in the growing season.

2. Be solely liable for all damages and claims arising out of or resulting from the acts and/or deeds of its respective officials, officers, employees and agents in the performance of its obligations under this Agreement.
3. Furnish, erect and maintain any barricades, signs and traffic handling devices, in accordance with the latest Manual of Uniform Traffic Control Devices, and to the satisfaction of the State, as may be required to protect the safety of the traveling public while performing any work on the project under this agreement.

B. The State agrees to:

1. Obligate State funds that will be used to execute a construction contract that will provide for the installation of the landscape development at IH 30 & US 80 between their intersection and Big Town Blvd.
2. Maintain any landscape development (through its contractor) for the initial 90-day establishment period, and direct its contractor to correct deficiencies and/or discrepancies (in accordance with the plans and specifications) found during this period.
3. Invite the City to the walk through inspections upon completion of the planting and at the end of the 90-day maintenance period. The City may direct any of its concerns to the Engineer, and the Engineer shall address these concerns as described above.
4. Notify the City, in writing, upon completion of the contract, that the landscape maintenance responsibilities have become the City's.
5. Cooperate with the City to determine requirements for barricades, signs and traffic handling devices to be used by the City during the maintenance of the Project.

Article 5. Disputes.

Should disputes arise as to the party's obligations under this Agreement, such disputes shall be settled in accordance with Title 43, Texas Administrative Code, Section 9.2 et. seq. & Section 1.21 et. seq.

Article 6. Successors and Assigns.

The State and the City shall not assign or otherwise transfer its rights and obligations under this Agreement except with prior written consent of the other party, and any prohibited assignment or transfer shall be null and void.

Article 7. Remedies.

Violation or breach of contract terms shall be grounds for termination of the Agreement, and any increased cost arising from the defaulting party's breach of contract or violation of terms shall be paid by the defaulting party. This Agreement shall not be considered as specifying the exclusive remedy for any default, but all remedies existing at law and in equity may be availed of by either party and shall be cumulative.

Article 8. Insurance.

Prior to performing any work on this project, the City shall provide the State the required insurance documentation for attachment to each Agreement counterpart.

If the City is a self-insured entity and performs any work on the Project with City Forces, the City shall extend the protection of its self-insurance to the State for any and all damages and injuries arising from the City's performance under this Agreement.

If the City is not a self-insured entity and performs any work on the Project with City Forces, the City shall furnish the State with a completed Certificate of Insurance (TxDOT Form 1560), and label such documentation EXHIBIT B.

If the City performs any work on the Project through a contractor or contractors selected through the City's low-bid procedure, the City shall require its contractor or contractors to furnish the State with a completed Certificate of Insurance, (TxDOT Form 1560), and shall insure the contractors maintain such insurance during the term of the Agreement.

Article 9. Gratuities.

Texas Transportation Commission policy mandates that employees of the Department shall not accept any benefits, gifts or favors from any person doing business or who reasonably speaking may do business with the State under this contract. The only exceptions allowed are ordinary business lunches and items that have received advanced written approval of the Texas Department of Transportation Executive Director. Any person doing business with or who may reasonably speaking do business with the State under this contract may not make any offer of benefits, gifts or favors to Departmental employees, except as mentioned hereabove. Failure on the part of the City to adhere to this policy may result in the termination of this contract.

Article 10. Termination.

This Agreement may be terminated by any of the following conditions:

- A. *By mutual agreement and consent of both parties.*
- B. *By either party upon thirty days written notice to the other party.*
- C. *By either party, upon the failure of the other party to fulfill its obligations as set forth in this Agreement.*
- D. *By satisfactory completion of all services and obligations described herein.*

Should the City terminate this Agreement, as prescribed hereabove, the City shall, at the option of the State, reimburse any reasonable costs incurred by the State. These costs shall include but not be limited to the remainder of the first five years of landscape maintenance costs related to the landscape development completed under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures.

STATE OF TEXAS

ATTEST:

Certified as being executed for the purpose of activating and/or carrying out the orders, established policies, or work program heretofore approved and authorized by the Texas Transportation Commission under the authority of Minute Order No. 100002.

City of Mesquite

By _____

By _____

Mike Anderson
Mayor

Jay R. Nelson, P. E.
Dallas District Engineer

Date

Date