



Texas Department of Transportation

P.O. BOX 6868 • FORT WORTH, TEXAS 76115-0868 • (817) 370-6500

April 22, 1999

Mowing Agreement, SH 10

Mr. Mack Lee, Project Coordinator
City of Hurst
700 Mary Drive
Hurst, Texas 76053

Dear Mr. Lee:

Enclosed is one original signed agreement between the State and City of Hurst permitting the City to perform mowing activities on SH 10. This original agreement is for the City's records.

If you should have any questions concerning this matter, please contact this office at (817) 370-6844

Sincerely,

Ronald T. Perry
Landscape Architect
Fort Worth District

RTP

cc: Mr. Glenn Elliott, P.E. - *filed in Municipal Maint Agmt file*
Mr. Mark Schluter, P.E.
Mr. Robert Hooks

Enclosure

**MOWING AGREEMENT
ON STATE OWNED RIGHT-OF-WAY**

**THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §**

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Hurst, hereinafter called the "City".

W I T N E S S E T H

WHEREAS, the State owns and maintains a system of highways, including State Highway 10 in Tarrant County, Texas for public use and benefit; and

WHEREAS, the City of Hurst has requested permission to provide right-of-way mowing, at its sole cost and expense along State Highway 10 from Loop 820 eastward to the east city limits through the City of Hurst, hereinafter called the "Project" or "Project Area"; and

WHEREAS, the State has indicated its willingness to approve the City's offer to provide mowing services on the above identified highway right-of-way conditioned that the City will enter into this agreement with the State; and

WHEREAS, it is understood that the State, by execution of this agreement does not impair or relinquish the State's right to use such land for right-of-way purposes when it is required for the construction or reconstruction of the traffic facility for which it was acquired, nor shall use of the right-of-way under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes; and

WHEREAS, right-of-way mowing is a governmental function which serve the public health and welfare and in which both State and City are mutually interested

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto be by them respectively kept and performed as hereinafter set forth, the State and the City do mutually agree as follows:

A G R E E M E N T

ARTICLE 1. Parties.

When used herein, the term "State" and the term "City" shall include the officers, agents, employees, successors, and assigns of each of the parties respectively.

ARTICLE 2. Term of Agreement.

This Agreement becomes effective when signed by the City and finally by the State. The term of this Agreement shall be for a minimum period of two years and shall be renewable thereafter as long as the City chooses to continue such mowing operations.

If the City should decide to not renew the agreement at any point, the City shall inform the State of its intention not to renew in order that the State may have time to rebudget and resume its normal mowing operations.

ARTICLE 3. Amendments

Changes in time frame, character, cost or obligations herein shall be enacted by written amendment. All amendments to this Agreement must be executed by both parties within the period specified in Article 2.

ARTICLE 4. Responsibilities of the Parties.

A. The State agrees to:

1. Permit the City to provide right-of-way mowing, at its sole cost and expense along State Highway 10 from Loop 820 eastward to the east city limits within the City of Hurst.
2. Cooperate with the City to determine requirements for barricades, signs and traffic handling devices to be used by the City during the mowing activities.

B. The City agrees to:

1. Provide all labor, equipment, material and incidentals as may be required to mow the right-of-way within the project limits in a manner consistent with State and District mowing policy.

2. Provide, erect and maintain barricades, signs and traffic handling devices as may be determined necessary by the State to protect the safety of the traveling public while performing any mowing activities. All placement of barricades, signs and traffic handling devices must conform with the Texas Manual on Uniform Traffic Control Devices (TMUTCD).
3. Cooperate and not impede the progress of any State contract or contracts within the limits of the project area.
4. Indemnify and save harmless the State, its agents and employees, from all suits, actions or claims and from all liability and damage for any and all injuries sustained by any person, or by any abutting, adjoining or other property in consequence of any neglect in the performance or failure of performance of the City, its agents and employees under this Agreement.
5. Indemnify, defend and hold the State harmless from any and all claims and lawsuits by third parties arising from or incident to the performance, or failure of performance of the City of Hurst, its officers, employees or agents under this Agreement. The City of Hurst shall defend all suits brought upon all such claims and lawsuits and pay all costs and expenses incidental thereto, but the State shall have the right, at its option and expense, to participate in the defense of any suit, without relieving the City of Hurst of any obligation hereunder. The State shall provide written notification to the City of Hurst of any suit, action, claim or demand or expense covered by the indemnities set forth herein.

ARTICLE 5. Independent Contractor:

The parties hereto covenant and agree that each such party is an independent contractor and not an officer, agent, servant or employee of the other party; that each shall have exclusive control of and exclusive right to control the details of the portion of work that each such party is performing hereunder and all persons performing same on behalf of each party respectively, and that each party shall be responsible for the acts and omissions of its respective officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating a partnership or joint enterprise between City and State.

ARTICLE 6. 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 1.68 et. Seq. & Section 9.2 et. Seq.

ARTICLE 7. Successors and Assigns.

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

ARTICLE 8. Termination and Remedies.

It is understood and agreed between the parties hereto that should City fail to properly fulfill its obligations as herein outlined, the State may terminate this agreement upon thirty (30) days written notice. This agreement may be terminated without cause by either party upon thirty (30) days written notice.

Violation or breach of contract terms by the City shall be grounds for termination of the Agreement. Any increased in cost arising from the City's breach of contract or violation of terms shall be paid by the City. 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 9. Insurance.

At the time of execution (signature) of the Agreement by the City, the City shall furnish the State with the required insurance documentation by attaching the required documentation to the Agreement.

If the City is a self-insured entity and performs any work on the highway right-of-way 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 highway right-of-way with City Forces, the City shall furnish the State with a completed Certificate of Insurance (TxDOT Form 20.102), and label such documentation EXHIBIT A.

If the City performs any work on the highway right-of-way 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 20.102), and shall insure the contractor or contractors maintain such insurance during the term of the Agreement.

ARTICLE 10. 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 Agreement.

ARTICLE 11. Severability.

In the event that any portion of this agreement shall be found to be contrary to law, it is the intent of the parties hereto that the remaining portions shall remain valid and in full force and effect to the extent possible.

ARTICLE 12. Immunity.

It is expressly understood and agreed that, in the execution of this Agreement, neither party waives, nor shall be deemed hereby to have waived any immunity or defenses that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the parties do not create any obligations, express or implied, other than those set forth herein, and this Agreement shall not create any rights in parties not signatories hereto.

ARTICLE 13. Authority.

The undersigned officer and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto.

IN WITNESS WHEREOF, the State and the City have signed duplicate counterparts of the Agreement.

THE CITY OF HURST

By: W. Alan Weegar
(Signature)

W. ALAN WEEGAR
(Typed Name and Title) CITY MANAGER

Date: 04-13-99

THE STATE OF TEXAS

Certified as being executed for
the purpose and effect of
activating and/or carrying out
the orders, established policies
or work programs heretofore
approved and authorized by the
Texas Transportation Commission

By: STEVEN E. SIMMONS P.E.

Steven E. Simmons, P.E.
District Engineer,
Fort Worth District
Texas Department of Transportation

Date: 4-20-99

ACORD. CERTIFICATE OF INSURANCEDATE (MM/DD/YY)
March 30, 1999**PRODUCER**J&H MARSH & McLENNAN OF ILLINOIS, INC.
500 WEST MONROE STREET, SUITE 2300
CHICAGO IL 60661-3630THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.**COMPANIES AFFORDING COVERAGE****COMPANY****A** ZURICH INSURANCE COMPANY**COMPANY****B** AMERICAN GUARANTY & LIABILITY INSURANCE COMPANY**COMPANY****C** AMERICAN-ZURICH INSURANCE COMPANY**COMPANY****D****INSURED**TRUGREEN L.P.
DBA MINOR'S LANDSCAPE SERVICES
P.O. BOX 17167
MEMPHIS, TN 38187**BRANCH #** 6058**COVERAGES**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	GLO834388802	04/01/98	04/01/00	GENERAL AGGREGATE \$ \$50 MILL
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG \$ 1,000,000
	<input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/> OWNER'S & CONT PROT				EACH OCCURRENCE \$ 1,000,000
					FIRE DAMAGE (Any one fire) \$ 1,000,000
					MED EXP (Any one person) \$ 5,000
A	AUTOMOBILE LIABILITY	BAP8343900-02(AOS)	04/01/98	04/01/00	COMBINED SINGLE LIMIT \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO	BAP8343897-02(VA)			BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	TAP8343892-02(TX)			BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE \$
	<input type="checkbox"/> HIRED AUTOS				
	<input type="checkbox"/> NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
					AGGREGATE \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	<input type="checkbox"/> UMBRELLA FORM				AGGREGATE \$
	<input type="checkbox"/> OTHER THAN UMBRELLA FORM				\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC8343880-02(AOS)*	04/01/98	04/01/00	<input checked="" type="checkbox"/> STATUTORY LIMITS
C		WC8343878-02(IL)*	OR RENEW	NUMBERS	EACH ACCIDENT \$ 1,000,000
B	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE:	WC8343870-02(CA)*	THEREOF		DISEASE - POLICY LIMIT \$ 1,000,000
A		WC8343864-02(OR,WI)*			DISEASE - EACH EMPLOYEE \$ 1,000,000
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS (LIMITS MAY BE SUBJECT TO RETENTIONS)

CERTIFICATE HOLDERCity of Hurst
Attn: Mack Lee
700 Mary Drive
Hurst TX 76053

Fax 817/788-7222

CANCELLATIONSHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Stern & Kueger

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