

APPROVED AS TO FORM

20M  
Office of the City Attorney

Prepared By: GB

Requested: FINANCE CMTE

Presentation on: 6-11-13

Suspension of Rules: ~~Yes~~ No

RESOLUTION

RESOLUTION AUTHORIZING FUNDING AGREEMENT WITH TUSCALOOSA COUNTY PARK AND RECREATION AUTHORITY (A13-0487)

BE IT RESOLVED BY THE TUSCALOOSA CITY COUNCIL that the Mayor be, and is hereby, authorized to execute a funding agreement with the Tuscaloosa County Park and Recreation Authority for various improvements within city parks in an amount not to exceed \$5,617,000.00, subject to availability and receipt of the following funds:

- \$2,000,000 Alabama Trust funds
- \$1,275,000 CDBG-DR2 funds
- \$1,842,000 Rebuilding Budget funds
- \$ 500,000 PARA insurance proceeds

and the City Clerk is authorized to attest the same.

FUNDING REQUIRED:  Yes  No

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\_\_\_\_\_

By: \_\_\_\_\_  
Finance Director

COUNCIL ACTION

Resolution ✓  
 Ordinance \_\_\_\_\_  
 Introduced \_\_\_\_\_  
 Passed 6-11-13  
 2<sup>nd</sup> Reading \_\_\_\_\_  
 Unanimous \_\_\_\_\_  
 Failed \_\_\_\_\_  
 Tabled \_\_\_\_\_  
 Amended \_\_\_\_\_  
 Comments: \_\_\_\_\_

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )  
CITY OF TUSCALOOSA )

**MUNICIPAL AGENCY FUNDING CONTRACT**  
(A13-0487)

THIS AGREEMENT made and entered into on this the 27 day of June, 2013, by and between the CITY OF TUSCALOOSA, a Municipal Corporation, of the State of Alabama (hereinafter sometimes referred to as "City" or "the City"), and Tuscaloosa County Park & Recreation Authority, (hereinafter sometimes referred to as the "Agency"):

**W-I-T-N-E-S-S-E-T-H:**

**WHEREAS**, the Agency has requested that the City of Tuscaloosa appropriate funds for its use for the benefit, either directly or indirectly, of the residents of the City; and,

**WHEREAS**, the City of Tuscaloosa desires to have the Agency perform certain services during the 2013-14 fiscal year; and,

**THEREFORE**, in consideration of the benefits moving each to the other, it is mutually agreed by and between the City and the Agency as follows:

**I. AUTHORITY**

Agency represents and warrants to City that it is authorized by law to receive funding from City and that such funding will not be in violation of Article IV, Section 94, or amendments thereto, of the Constitution of Alabama, 1901, or any other constitutional or statutory provision.

If Agency has specific statutory authority to receive funding from City or statutory authority for the City to perform the services or otherwise contract for the same, please specify: Alabama Code Section 11-86A-1

Agency further warrants that funding from the City will only be used to perform public services and/or acts which the City is otherwise authorized to perform itself or to fund.

**II. SERVICES**

The Agency shall provide the following public services within the Corporate Limits of the City of Tuscaloosa:

Capital Improvements to parks and recreation centers within the City limits as presented to the City Council Public Projects Committee on May 7, 2013 and City Council Finance Committee on May 14, 2013 including:

1. Rosedale Park: Playground Unit—Large, Replacement of Lions Club, 2 Pavilions—One on each side of road, Fencing, Gravel Parking, Walking Path.
2. Jaycee Park: Replace outdoor basketball court moved by tennis complex, Permanent cover for Pomegranate Shelter, Benches/Trash cans, Bike/Skate Bowls, Add playground unit.
3. McDonald Hughes Center: Storm shelter match, New Roof, New Interior Storage, Remodel Old Gymnasium, Remodel Entrance of Center, Rewire for more Exercise Equipment, Redesign Interior Office Space for better building control, upgrade restrooms, retile floors, scrolling marquee sign, new exercise equipment, move community room sign to front entrance, field upgrades (irrigation, turf equipment and storage), add window to replace garage door.
4. Springbrook Park: Picnic tables and Park Signage.
5. Freeman Park: New Play Unit and Park and Pool Signage.
6. Rock Quarry Park/Boat Launch: Sea Wall and Backfill to Stop Lake Erosion, Boardwalk and Canoe Launch Pier, Replace Main Pier—Grant Match Money, Clivus Moltrum Composting Toilet, Landscaping.
7. Riverview Boat Launch: New Boat Pier, Parallel Style—Grant Match Money.
8. Bowers Pool: Add Large Slides, Add Kids Spray/Play Features.
9. Palmore Park: Build skate park and birding pavilion/boardwalk.
10. Phelps Center: Exercise Equipment, Electrical Upgrades for Exercise Equipment, Landscaping and fencing.
11. Sokol Park: "Will May" Dog Park, Pump Track Park, Mountain Bike Feature, Outdoor Exercise Equipment, (2) Playground units and (2) Shelters.
12. Snow Hinton Park: Widen Walking Path, Landscaping, Benches/Trash cans, Multiple Playground Units and Large Pavilion.
13. McAbee Center: Senior Oriented Exercise Equipment, Electrical Upgrades for Exercise Equipment and McAbee Center Sign.
14. Belk Center: New Exercise Equipment and Electrical Upgrades for Exercise Equipment.

Costs to be allocated as follows:

Rosedale Park	\$ 1,050,000
Jaycee Park	\$ 205,000
Hughes Center	\$ 1,617,000
Springbrook Park	\$ 10,000
A.L. Freeman Park	\$ 90,000
Rock Quarry Boat Launch	\$ 300,000
Riverview Boat Launch	\$ 40,000
Bowers Pool	\$ 355,000
Palmore Park	\$ 480,000
Phelps Center	\$ 125,000
Sokol Park	\$ 385,000
Snow Hinton Park	\$ 825,000
McAbee Center	\$ 55,000
Belk Center	\$ 80,000
<b>Total</b>	<b>\$ 5,617,000</b>

If Agency provides public services both inside and outside the Corporate Limits of the City, then, if requested by the City or its representative, it shall submit an audit report demonstrating that services by the Agency, at least to the extent of the funding herein, shall be and were provided within the Corporate Limits of the City, including an identification of the number of City residents served by said agency.

### **III. APPROPRIATION**

The City shall appropriate funds to the Agency for the 2013-14 fiscal year in an amount not to exceed \$5,617,000.00, subject to availability and receipt of the following funds: \$2,000,000 of Alabama Trust funds; \$1,275,000 of CDBG-DR2 funds; \$1,842,000 of Rebuilding Budget funds; and \$ 500,000 of PARA insurance proceeds (which are already in possession of PARA), pursuant to a method determined by the Finance Director of the City. The Finance Director of the City or his designee shall be the representative of the City for the administration and implementation of the provisions hereof on behalf of the City and the agency shall refund to the City any funds in excess of that needed for the architectural and/or engineering services, and/or, at the City's option, apply such funds to the construction of the facility.

### **IV. SEPARATE AGREEMENTS**

The City shall be under no obligation to the Agency except to the extent set out expressly in this Agreement. Provided; however, in the event there is a separate valid written agreement between the City and Agency, then this Funding Agreement is supplemental thereto and in the event of a conflict the terms of the latest written agreement shall prevail.

### **V. TERM; TERMINATION**

The terms of this Agreement shall commence as of the 1st day of October, 2012, and shall continue in force until the 30th day of September, 2014, unless sooner terminated. Provided; however, in the event a new contract is not executed by the commencement of the new fiscal year, the City may elect to continue funding if appropriated by budget or budget continuation provisions and if so, the Agency agrees to remain bound by the terms of this Agreement and to continue to provide all services hereunder until a new funding contract is executed, the contract is otherwise terminated as set forth herein or the official City budget does not contain an appropriation for the Agency. Either party to this Agreement may, with or without cause, terminate this Agreement as to the first day of any month by giving the other party no less than thirty (30) days written notice thereof. In event of termination by either party, the Agency shall refund to the City an amount equal to the excess of the total amount appropriated over an amount which bears the same ratio to the total amount appropriated as the month(s) actually performed bear to the total months covered by this Agreement.

### **VI. NON-DISCRIMINATION AND COMPLIANCE**

The Agency hereby covenants and agrees that in performing its responsibilities and obligations hereunder, the Agency, its officers, agents and employees will not, on the grounds of race, color, sex, religion, national origin, or disability, discriminate or permit discrimination against any person or group of persons, in any manner. The Agency further agrees to comply with all applicable state and federal ordinances and regulations, including but not limited to the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Civil Rights Act of 1964, and any regulations promulgated thereunder. The Agency further agrees to appoint an ADA coordinator. Said coordinator will be responsible for ensuring that the Agency is in compliance

with the Americans with Disabilities Act and will advise the City of Tuscaloosa ADA Coordinator for services and programs as to the Agency's state of compliance with the Americans with Disabilities Act.

## **VII. INDEPENDENT CONTRACTOR**

It is agreed between the City and the Agency that the Agency is an independent contractor. Neither the City nor its officers, agents or employees shall be liable for damages, claims, actions, or causes of action, brought against the Agency, or for the activities of the Agency.

Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no financial interest in the business of Agency, and shall not be liable for any debts or obligations incurred by Agency, nor shall the City be deemed or construed to be partner, joint adventurer or otherwise interested in the assets of Agency, or profits earned or derived by Agency, nor shall Agency at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies, or other thing or things whatsoever.

Agency in the performance of its operations and obligations hereunder shall not be deemed to be the agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense as City may from time to time request to indicate that it is an independent contractor. City does not and will not assume any responsibility for the means by which or manner in which services by Agency, provided for herein, are performed, but on the contrary, Agency shall be wholly responsible therefor.

## **VIII. INDEMNITY**

The Agency hereby covenants with the City that it will indemnify and hold the City and its officers, agents and employees harmless for or on account of any claim, suit, cause of action or judgment arising out of or in any manner associated with this Agreement or services provided or performed by Agency or any of its officers, agents or employees.

## **IX. NO THIRD PARTY BENEFICIARIES**

It is the intent of the parties to this Agreement that they be the only parties to the Agreement and to expressly exclude third party beneficiaries; no person not a party to the Agreement may claim benefits under the Agreement.

## **X. SERVICE AREA**

Agency shall submit, if requested by the City, to the Office of the Finance Director of the City, a written monthly report of the Agency's activities and expenditures, including, but not limited to, information demonstrating that services by the Agency within the Corporate Limits of the City at least equal, if not exceeding, the funding from the City for that month. Should the City determine at any time during the term of this Contract that Agency is not providing services within the City Corporate Limits at least equal to the funding herein, then the City may terminate this Agreement immediately. Upon such termination, Agency may be, at the sole discretion of the City, required to refund any funds deemed by the City not to have been appropriately expended within the Corporate Limits.

## **XI. BOOKS AND RECORDS/REPORTS**

Agency shall, at the request of the City, throw open and provide, at a time and place designated by the City, all books, records, accounts, statements and other documents as needed by the City to enable it to conduct a financial and/or operational review or audit of agency operations and/or finances. If Agency refuses to honor the City's request within ten (10) days, it shall refund to the City all funds appropriated to it during the term of the contract. All reports, evaluations and audits required of Agency pursuant to Article IV of Chapter 2 of the City Code shall also be provided by Agency to any person appointed by the City or the Mayor to the Agency's governing body.

## **XII. AUDIT**

The City may require Agency to have its financial records audited by an independent CPA firm. A copy of the audited financial statements will be mailed to the City's Finance Director as soon as possible after the statements are issued.

## **XIII. OPEN MEETINGS, PUBLIC RECORDS, COMPETITIVE BIDS AND OTHER APPLICABLE LAWS**

A. As Agency is receiving public funds and/or other things of public value, including inkind services, use of City employees and/or equipment from the City pursuant to this agreement, Agency agrees as follows:

1. To the same and like extent as is applicable to the City of Tuscaloosa, all meetings of the governing or controlling body of the Agency or any committee or subcommittee thereof shall be open to the public when any issue or matter involving or relating directly or indirectly to this agreement is discussed or considered and when there is any discussion or consideration of the use of public funds or things of value provided to the Agency by or through the City.
2. Public Records. To the same and like extent as is applicable to the City of Tuscaloosa pursuant to State law, all records, documents, letters, minutes, memoranda, etc., of the Agency shall be open to public inspection and copying when the same pertain to any issue or matter involving or relating directly or indirectly to the performance by Agency of this agreement or the use of public funds or other things of value provided to the Agency by or through the City.
3. Expenditure of Public Funds. To the same and like extent as is applicable to the City pursuant to State law, all expenditures or disbursements of funds received by the Agency, whether directly or indirectly, from the City shall be subject to competitive bidding.

B. Agency shall comply with all applicable laws, ordinances and codes. The provisions of Chapter 2, Article IV "Agency Funding" of the Code of Tuscaloosa, as amended are adopted herein by reference and shall be complied with by Agency to the extent applicable. The City shall administer and appropriate funds to Agency in accordance with and subject to the provisions of Chapter 2, Article III "Budgetary Procedure" of the Code of Tuscaloosa, as amended to the extent applicable.

#### XIV. SEVERABILITY

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, or otherwise appears to both parties to be invalid, the invalidity of any such covenant, condition or provision herein contained, shall not affect other remaining and valid covenants or conditions herein unless such invalidity renders performance of the essential elements of the contract impossible.

#### XV. MISCELLANEOUS CLAUSES

**Capacity:** Each Party to this Agreement represents and warrants to the other as follows:

- A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- B. That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- C. That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.
- D. That each Party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of this Agreement by such representative fully and completely binds the Party to the terms and conditions hereof.
- E. That absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the Party and to the extent that the execution of Agreement is limited to a manager, managing partner or specific member then the person so executing this Agreement is duly authorized to act in such capacity for the Party.
- F. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.

- G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.
- H. Each party represents and warrants that the execution and delivery of this agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of, or constitute (upon notice or lapse of time, or both) a default under the laws of the State of Alabama, any resolution, agreement, or other contract agreement, or instrument to which a party is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the party.
- I. This agreement constitutes the legal, valid and binding obligation of each party and is enforceable against each party in accordance with its terms, except in so far as the enforceability thereof may be limited by:
- (1) Bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights
  - (2) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.
- J. Neither party will enter into any agreement to do anything prohibited in this agreement or enter into any agreement or take any action which would in any way impair the ability of the other party to faithfully and fully perform its obligations hereunder.
- K. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.

**Ownership of Contract Documents:** The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract Document, and copies of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorneys' fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

**Waiver:** Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

**Prohibition on Assignment and Delegation:** No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Final Integration:** This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

**Force Majeure:** Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

**Amendment in Writing:** This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Captions:** The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

**Construction:** This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

**Mandatory and Permissive:** "Shall", "will", and "agrees" are mandatory; "may" is permissive.

**Governing Laws:** The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

**Liability of the City or City Officials.** Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City, City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

**Fines and Penalties:** The Contractor shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Contractor which are related to the Contractor's operations. The Owner shall deduct the amount of the levied fine or penalty from the Contract amount.

**Agreement Date/Counterparts:** The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**Use of Words and Phrases:** The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

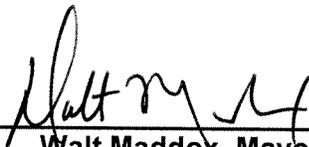
The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

### XVI. COMPLIANCE WITH IMMIGRATION LAW

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and date first set forth above.

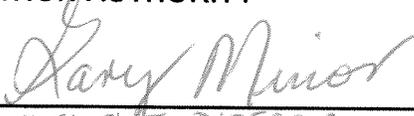
**CITY OF TUSCALOOSA, A Municipal Corporation**

By:   
Walt Maddox, Mayor

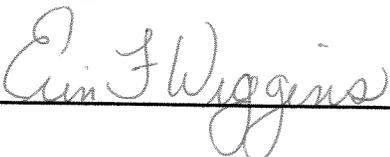
**ATTEST:**

  
City Clerk

**TUSCALOOSA COUNTY PARK AND RECREATION AUTHORITY**

By:   
TITLE: EXECUTIVE DIRECTOR

**WITNESS:**



# OFFICE OF THE CITY ATTORNEY

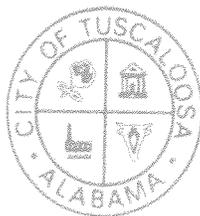
## CITY OF TUSCALOOSA

CITY ATTORNEY  
TIMOTHY H. NUNNALLY

SENIOR ASSOCIATE CITY ATTORNEYS  
JAMES P. WOODSON III  
GLENDA D. BUMPUS

ASSOCIATE CITY ATTORNEYS  
THOMAS D. BOBITT II  
CHRISTOPHER J. ENGLAND

ASSISTANT CITY ATTORNEYS  
GRANT H. WILSON  
KRISTEN L. LOVE  
OTO TUAMOKUMO



LEGAL AFFAIRS ADMINISTRATOR  
ROBIN EDGEWORTH

LEGAL ASSISTANT  
CYNTHIA NOLAND

2201 UNIVERSITY BLVD. (35401)  
POST OFFICE BOX 2089  
TUSCALOOSA, ALABAMA 35403

TELEPHONE NO. (205) 248-5140  
FAX NO. (205) 349-0328  
www.tuscaloosa.com

June 21, 2013

RECEIVED

JUN 25 2013

PARA

Gary Minor, Executive Director  
Tuscaloosa Park and Recreation Authority  
P.O. Box 2496  
Tuscaloosa, AL 35403

Re: Park Improvements—PARA Funding Agreement  
Our File: A13-0487

Dear Gary:

Attached hereto please find a funding agreement for various improvements within City Parks that has been previously approved by the City Council and executed by the Mayor. Please review and if you find everything in order, execute the same and return to me for further processing.

Thank you for your cooperation and should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenda Bumpus".

Glenda Bumpus  
Senior Associate City Attorney

GB/rd

Enclosure