

APPROVED AS TO FORM

GB

Office of the City Attorney

Prepared By: GB

Requested: Projects Cmte

Presentation on: 7-30-13

Suspension of Rules: Yes

RESOLUTION

RESOLUTION AUTHORIZING AMENDMENT TO 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 an amendment to the 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 7-30-13 \_\_\_\_\_  
 2<sup>nd</sup> Reading \_\_\_\_\_  
 Unanimous \_\_\_\_\_  
 Failed \_\_\_\_\_  
 Tabled \_\_\_\_\_  
 Amended \_\_\_\_\_  
 Comments: \_\_\_\_\_

STATE OF ALABAMA )  
TUSCALOOSA COUNTY )  
CITY OF TUSCALOOSA )

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

**THIS AMENDMENT** to that certain agreement made and entered into by and between the parties on the 27th 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") on this the 12<sup>th</sup> day of August, 2013, as follows:

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

**WHEREAS**, heretofore, the City of Tuscaloosa and the Agency entered into a funding agreement regarding various improvements to city parks; and,

**WHEREAS**, the City desires to allow for funding upon the availability of funds rather than based upon a fiscal year.

**NOW, THEREFORE**, the City of Tuscaloosa and the Agency do hereby enter into this amendment to the agreement between the parties on the above date, for and in consideration of the mutual benefits moving each to the other as more particularly set forth herein as follows:

**SECTION ONE:** That the second recital shall be amended to delete the reference to a fiscal year and shall read as:

**"WHEREAS**, the City of Tuscaloosa desires to have the Agency perform certain services from the date of execution of the contract and upon the availability of funds; and,"

**SECTION TWO:** That Section III. "APPROPRIATION" shall be amended to read as follows:

**"III. APPROPRIATION**

The City shall appropriate funds to the Agency 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."

### **SECTION THREE. Miscellaneous.**

**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.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

**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.

**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.

**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.

**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.

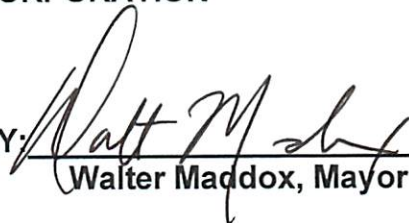
**IN WITNESS WHEREOF,** the parties hereto each herewith subscribe the same on the date first above written.

**CITY OF TUSCALOOSA, A MUNICIPAL CORPORATION**

**ATTEST:**

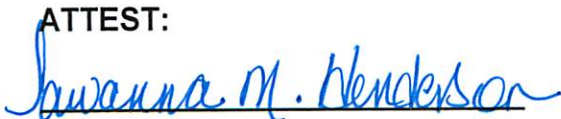
  
\_\_\_\_\_  
Tracy Croom, City Clerk

**BY:**

  
\_\_\_\_\_  
Walter Maddox, Mayor

**TUSCALOOSA COUNTY PARK AND RECREATION AUTHORITY**

**ATTEST:**

  
\_\_\_\_\_  
Swanna M. Henderson

**BY:**

  
\_\_\_\_\_  
TITLE: EXECUTIVE DIRECTOR