

APPROVED AS TO FORM

GDW

Office of the City Attorney

Prepared By: GDW/rd
Requested: Projects Cmte
Presentation on: 12/05/2017
Suspension of Rules: No

RESOLUTION

RESOLUTION AUTHORIZING MAYOR TO EXECUTE AMENDMENT NO. 2
TO THE CONTRACT WITH WARD SCOTT ARCHITECTURE, INC.
FOR DESIGN OF THE ALBERTA PARK
(A15-0757)

BE IT RESOLVED BY THE TUSCALOOSA CITY COUNCIL that the Mayor be, and is hereby, authorized to execute Amendment No. 2 to the Contract with Ward Scott Architecture for Design of the Alberta Park Project to increase the total compensation amount from \$166,094.00 to \$167,012.78 being an increase of \$918.78 for additional design services related to Change Order #1 done by Walker & Associates which includes a new concrete pad to allow installation of a new bicycle rack built by the Students of University of Alabama Art and Art History Department; and the City Clerk is authorized to attest the same.

FUNDING REQUIRED: Yes No

CDBG - AL Power Funds
22817167 - No 75
Avail # 23,501

By: 
Finance Director

COUNCIL ACTION

Resolution /
Ordinance
Introduced
Passed 12-5-17
2nd Reading
Unanimous
Failed
Tabled
Amended
Comments:

STATE OF ALABAMA)
TUSCALOOSA COUNTY)
CITY OF TUSCALOOSA)

**AMENDMENT NO. 2 TO AGREEMENT BETWEEN THE CITY OF TUSCALOOSA AND
WARD SCOTT ARCHITECTURE, INC. TO FURNISH ARCHITECTURAL AND RELATED
SERVICES FOR DESIGN AND CONSTRUCTION OF:
(ALBERTA PARK PROJECT)
(Project No. A15-0757)**

THIS AMENDMENT to that certain agreement made and entered into by and between the parties on the 30th day of August, 2016, is made and entered into by and between the Architectural Firm of WARD SCOTT ARCHITECTURE, INC., hereinafter referred to as the "ARCHITECT," and the CITY OF TUSCALOOSA, a Municipal Corporation, hereinafter sometimes referred to as the "OWNER" or "CITY," on this the _____ day of _____, 20____, as follows:

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

WHEREAS, heretofore, the City of Tuscaloosa and WARD SCOTT ARCHITECTURE, INC. ("Architect") entered into a contract to provide architectural and related services to the City of Tuscaloosa for design and construction of Alberta Park Project; and,

WHEREAS, it is now necessary to enter into Amendment No. 2 to the Architect's contract increasing the total compensation amount from \$166,094.00 to \$167,012.78 being an increase of \$918.78 for additional design work associated with Change Order No. 1 done by Walker & Associates related to Change Order #1 which includes a new concrete pad to allow installation of a new bicycle rack built by the students of University of Alabama Art and Art History Department.

NOW, THEREFORE, the City of Tuscaloosa and the Architect do hereby enter into this Second Amendment to the contract 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 Article 2--ARCHITECTS SERVICES AND RESPONSIBILITIES, Subsection B. Additional Services, under "Landscape Design," be and the same is hereby amended to reflect an increase of \$ 918.78 from \$11,717.00 to \$12,635.00 for additional engineering design services associated with Change Order #1 to include a new concrete pad to allow installation of a new bicycle rack built by the Students of University of Alabama Art and Art History Department as part of the updated scope and shall be amended to read as follows:

"Landscape Design. The estimated fee for this service shall be \$ 12,635.00."

SECTION TWO. 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

BY: Walter Maddox
Mayor Walter Maddox

ATTEST:

Paul L. Field
City Clerk

ARCHITECT:

WARD SCOTT ARCHITECTURE, INC.

BY: J.S. 20

ATTEST:

Stacy H DeLoach

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Give under my hand and official seal this the 12th day of December, 2017.

Stacy Cooper
Notary Public

My Commission Expires: 2/17/21

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

I, Christy L. Baker, a Notary Public in and for said State at Large, hereby certify that Jordan Morris, who is named as Architect, is signed to the foregoing document, and,

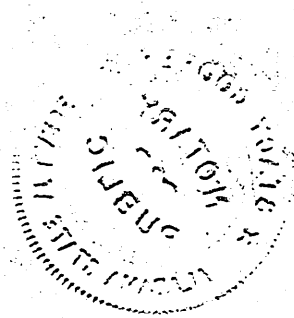
- Who is known to me, or
- Whose identity I proved on the basis of _____, or
- Whose identity I proved on the oath/affirmation of _____, a credible witness to the signer of the above document

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Give under my hand and official seal this the 18th day of December, 2017.

Christy L. Baker
Notary Public

My Commission Expires: 5-17-20



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10/10

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