

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT TO ENTER INTO A CONSERVATION SERVICES AGREEMENT WITH THE TRUST FOR PUBLIC LAND TO BE PAID IN FOUR (4) QUARTERLY INSTALLMENTS OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) EACH FOR A TERM OF ONE (1) YEAR BEGINNING JULY 1, 2013 THROUGH JUNE 30, 2014, FOR AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Economic and Community Development Department is hereby authorized to enter into a Conservation Services Agreement with The Trust for Public Land to be paid in four (4) quarterly installments of \$25,000.00 each for a term of one (1) year beginning July 1, 2013 through June 30, 2014, for an amount not to exceed \$100,000.00.

ADOPTED: _____, 2013

/mms

City of Chattanooga



Resolution/Ordinance Request Form

Date Prepared: October 15, 2013

Preparer: Dana Womble for Donna Williams

Economic and Community Developmentn Dept.

Brief Description of Purpose for Resolution/Ordinance: Res./Ord. # _____ Council District # _____

The Department of Economic and Community Development requests a resolution authorizing the Administrator to enter into a conservation services agreement with The Trust for Public Land, in an amount not to exceed \$100,000 (One Hundred Thousand Dollars) to be paid in 4 (four) quarterly installments of \$25,000 (Twenty-five Thousand Dollars) each for a term of 1 (one) year beginning July 1, 2013 through June 30, 2014.

Name of Vendor/Contractor/Grant, etc.	<u>The Trust for Public Land</u>	New Contract/Project? (Yes or No)	<u>Yes</u>
Total project cost \$	<u>\$100,000</u>	Funds Budgeted? (YES or NO)	_____
Total City of Chattanooga Portion \$	_____	Provide Fund	_____
City Amount Funded \$	_____	Provide Cost Center	_____
New City Funding Required \$	_____	Proposed Funding Source if not budgeted	_____
City's Match Percentage %	_____	Grant Period (if applicable)	_____

List all other funding sources and amount for each contributor.

<u>Amount(s)</u>	<u>Grantor(s)</u>
\$ _____	_____
\$ _____	_____
\$ _____	_____

Agency Grant Number

CFDA Number if known

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

Approved by: _____

Reviewed by: FINANCE OFFICE

DESIGNATED OFFICIAL/ADMINISTRATOR

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

CONSERVATION SERVICES AGREEMENT 2013-2014

This Agreement is made and entered into this _____ day of July, 2013 by and between the City of Chattanooga, (hereinafter "City") and The Trust for Public Land, (hereinafter "TPL"), a non-profit California public benefit corporation (collectively, the "Parties").

WITNESSETH:

For the acknowledged consideration, City enters into this Agreement with TPL as follows:

1. PURPOSE.

For the purpose and subject to the terms and conditions hereinafter set forth and in consideration of the payments and covenants set forth herein, the City hereby contracts for the services of TPL, and TPL agrees to provide the services to the City in accordance with the terms of this Agreement. The purpose of this Agreement is to implement the intent of the parties that TPL shall carry out land protection and implementation of the Chattanooga Greenways Program.

2. GENERAL TERMS.

(a) The address and telephone number of TPL is 202 Tremont Street, Chattanooga, TN 37405, (423) 265-5229, Facsimile: (423) 265-6681.

(b) The address and telephone number for the City is Department of Economic and Community Development, 101. 11th Street, 2nd Floor, Chattanooga, TN 37404, (423) 643-6886, Facsimile: (423) 265-6681.

(c) The City's primary liaison with TPL shall be the Department of Economic and Community Development, and the TPL employee responsible for administering this Agreement shall be Rick R. Wood, Tennessee State Director, provided that the City and TPL reserve the right to substitute personnel at any time. It is agreed that TPL is solely responsible for the payment of unemployment insurance, social security, income and any other taxes on payments made under this Agreement to employees and subcontractors, as provided by law. TPL agrees to provide certificates of insurance to the City evidencing that TPL maintains worker's compensation insurance for its employees.

(d) The term of this Agreement shall be from July 1, 2013 through June 30, 2014.

(e) Either party shall have the right to terminate this Agreement with or without cause upon thirty (30) days' written notice to the address set forth in Sections 2(a) and (b) of this Agreement.

3. SERVICES.

In consideration of the agreement by the City to pay TPL the sum of One Hundred Thousand Dollars and 00/100 Cents (\$100,000.00), TPL agrees to carry out all services described in Exhibit A, Scope of Services, attached hereto and made a part hereof.

The City agrees to furnish tax parcel maps, aerial photographs, or other public information concerning the greenways that are available for reproduction and at its disposal. TPL shall furnish all other equipment, supplies and materials necessary for the performance of the services described in Exhibit A of this Agreement (the "Services." The City agrees to make all reasonable efforts to provide information and documents to TPL promptly for use in connection with the performance of the Services.

TPL represents and warrants that the Services rendered under this Agreement will be of the highest professional quality. At TPL's election, TPL may subcontract for any of the Services to be performed hereunder. All Services will be completed within one (1) year after the effective date hereof, unless the performance by TPL of the Services are delayed as a result of forces beyond the control of TPL. However, TPL does not warrant or represent that its efforts to complete all aspects of the scope of Services will be successful, as they do not always represent tangible deliverables, but does represent it will make a good faith effort to do so.

4. PROFESSIONAL FEES.

(a) Fees. City agrees to pay to TPL, as professional fees, the sum of One Hundred Thousand Dollars and 00/100 Cents (\$100,000.00) payable in equal installments of Twenty-five Thousand Dollars and 00/100 Cents (\$25,000.00) per quarter. Payments shall be due on the first day of each quarter. TPL will provide a quarterly invoice to the City. In the event that this Agreement is terminated by either party, TPL shall be entitled only to a pro rata share of the professional fees earned prior to the termination of the Agreement. In no event shall the City's liability under this Agreement exceed One Hundred Thousand Dollars and 00/100 Cents (\$100,000.00) without prior written approval by the City.

(b) Reimbursements. City agrees to reimburse TPL for all expenses incurred by TPL to obtain appraisals, surveys, and other due diligence work from third parties. TPL shall obtain permission from the City prior to incurring any said expenses. All reimbursements will be made by the City within fifteen (15) days of the date of TPL's invoice to the City.

5. INSURANCE.

TPL agrees to hold the City, its officers, agents, employees, successors, and assigns, harmless and to indemnify them against any and all losses, penalties, damages, injuries, settlements, costs, charges, professional fees (including automatic fees), or other expenses or liabilities of every kind and character arising out of or relating to any claims, liens, demands,

obligations, actions, proceedings or causes of action of every kind and character in connection with the performance of the Services provided by TPL, its agents, servants, employees or subcontractors, or anyone directly employed by any of them for his acts any of them may be liable. TPL shall conduct its activities on the premises subject to this Agreement so as not to endanger any persons or property therein. TPL shall indemnify, save and hold harmless, and defend the City, and all of its officers, agents, and employees from any and all claims resulting from losses, injuries, damages, and liabilities to persons or properties resulting, wholly or in part, from acts or omissions of the TPL, including acts or omissions of its agents, officers, employees, guests, and/or patrons, to the full extent of its insurance coverage provided within this section. This section further requires TPL to indemnify, save and hold harmless, and defend the City, and all of its officers, agents, and employees, from any and all claims for injuries or damages resulting from TPL's use of the premises. TPL shall, at TPL's expense, purchase and maintain, for the benefit of the City, a policy or policies of public liability and property damage insurance, issued in the name of TPL and naming the City of Chattanooga as an additional named insured, with limits not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and/or death of any single person in a single occurrence, and not less than One Million and 00/100 (\$1,000,000.00) Dollars for injury to and death of more than one person in a single occurrence and not less than One Million and 00/100 (\$1,000,000.00) Dollars for damage to property in a single occurrence. Said insurance policy shall include contractual liability coverage which shall recognize and include the indemnification provisions of this Agreement. Said policy shall be approved by the City Attorney, which approval shall not be unreasonably withheld. The insurance policy or policies shall be filed with the Department of Economic and Community Development at the address set forth in Section 2(b) of this Agreement before execution of this Agreement. TPL shall, after securing approval by the City Attorney, file with the City Risk Manager a list of all insurance policies to be carried. Said insurance coverage must be maintained during the entire term of this Agreement, plus any extension, and any insurance policy shall contain a clause whereby the insurance company shall give written notice to the Administrator of the Department of Economic and Community Development or Mayor at least thirty (30) days prior to any cancellation or alteration of said policy. Any notice of cancellation or alteration of insurance policies during the term of this Agreement shall be considered as a default. Following notice of cancellation or alteration of any said insurance policy during the term of this Agreement and the failure of TPL to cure such default, the City may, upon the date of cancellation or alteration of said insurance policy, without further notice, terminate this Agreement, and TPL shall immediately cease the provisions of Services. This indemnification shall survive the expiration or sooner termination of this Agreement.

6. NO PARTNERSHIP RELATIONSHIP.

This Agreement does not create any partnership relationship between the City and TPL, and is intended solely to establish the relationship of Contractor and Client.

7. OTHER TERMS.

- (a) TPL shall operate as an independent contractor, and the City shall not be

responsible for any of TPL's acts or omissions. TPL agrees to hold the City harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of TPL in connection with the performance of its obligations under this Agreement.

(b) TPL shall not be treated as an employee with respect to the Services performed hereunder for federal or state tax, unemployment, or worker's compensation purposes. TPL understands that neither federal, nor state, nor payroll tax of any kind, shall be withheld or paid by the City on behalf of TPL or the employees of TPL. TPL further understands and agrees that TPL is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

(c) TPL agrees that it is familiar with the IRS regulations and laws pertaining to independent contractor status and that it is providing the Services as an independent contractor. TPL shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation of, any employee pensions, health, or other fringe benefit plan of the City.

(d) The City shall not be liable to TPL for any expenses paid or incurred by TPL unless otherwise agreed in writing, except as provided herein.

(e) TPL shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide the Services unless otherwise agreed in writing.

(f) TPL declares that it shall comply with all federal, state, and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.

8. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.

TPL will comply with all laws of the United States and the State of Tennessee, all ordinances of the City of Chattanooga, all relevant resolutions of Hamilton County, Tennessee, and all rules and regulations of the police and fire departments or other municipal authorities of the City of Chattanooga and Hamilton County, Tennessee, and will obtain and pay for necessary permits and licenses, and will not do or suffer to be done anything on said premises during the term of this License in violation of any such laws, ordinances, rules or requirements, and if the attention of said TPL is called to any such violation on the part of TPL or of any person employed by or admitted to said premises by TPL, TPL will immediately desist from and correct such violation. TPL covenants to comply with State laws and City laws and ordinances in regard to nuisances insofar as the premises are concerned and that TPL will not, by any act of its agents or officers, render the City liable therefore.

9. BREACH OF CONTRACT.

In the event of any breach of any of the terms or provisions of this Agreement, City

shall , in addition to all other recourse, have the right to immediately terminate this Agreement, to enter and obtain possession of the entire premises , and to remove and exclude all property of the TPL from property of the City. If it should become necessary for the City to employ an attorney to assist any right or enforce any obligation under this agreement, or any of them, City shall be entitled to recover, in addition to all other costs and expenses, the reasonable costs and charges of such attorney.

10. NON-DISCRIMINATION PROVISION.

TPL agrees to comply with all federal, state and local non-discrimination provisions that the City of Chattanooga is under a duty to comply with under federal, state or local law when utilizing this City facility. TPL agrees not to discriminate against any participant on the basis of race, color, religion, sex, age or national origin. TPL further agrees to comply with all federal, state and local laws regarding treatment and accommodations for individuals with disabilities.

11. AUDIT PROVISION.

The City or its assign may audit all financial and related records (including digital) associated with the terms of this Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the TPL or TPL's Subcontractors . The City may further audit any TPL or TPL Subcontractor's records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest.

The TPL shall at all times during the term of the Agreement and for a period of seven (7) years after the end of the contract, keep and maintain records of the work performed pursuant to this Agreement including proper records of quotations, contracts, correspondence, invoices, vouchers, timesheet, and other documents that support actions taken by the TPL pursuant to this Agreement. Documents shall be maintained by the TPL necessary to clearly reflect all work and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. The TPL shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City at all reasonable times and without prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between TPL and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the TPL's obligations to the City.

Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. TPL shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

12. AGREEMENT.

This Agreement constitutes the entire agreement between TPL and the City pertaining to the subject matter contained herein and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

13. WAIVER OF RIGHTS.

Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

14. SEVERABILITY.

If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with an applicable law, the validity of the remaining provisions of this Agreement shall not be affected thereby.

15. APPLICABLE LAW.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement on their respective behalf on the date first entered above.

CITY OF CHATTANOOGA, TENNESSEE
DEPARTMENT OF ECONOMIC AND
COMMUNITY DEVELOPMENT

THE TRUST FOR PUBLIC LAND

By: _____
Name: _____

By: _____
Rick Wood, Tennessee State Director

Exhibit A

Scope of Services

1. Connected Corridors: The Parties have a goal of completing the City's Greenway Masterplan. More importantly the Parties have a goal of giving people more opportunities for long-distance recreation and carbon-free transportation options. TPL will work towards accomplishing this goal by helping the city with the following items:

a. Identify remaining lands most essential to link up and expand the most critical parts of the Chattanooga Greenway Master Plan, through mapping and GIS.

b. Complete the South Chickamauga Creek Greenway from Camp Jordan to the Tennessee Riverpark. TPL will do this by launching a capital campaign and managing the design and construction, with a goal of completing it by late 2014.

c. Advise the City on critical neighborhood access points and connection opportunities to the greenways that will have the most impact from a transportation, recreational and quality of life perspective.

d. Help manage the CB Robinson Bridge –TDOT Grant.

2. Healthy People/ Healthy Neighborhoods: The parties believe that everyone, in every city, should live within a 10 minute walk to a park or green space. Specifically, TPL has mapped Chattanooga parks in relations to demographics and neighborhood access. It is TPL's goal to work with the City to help provide new parks and /or redevelopment of existing parks in areas where parks are most needed. This includes helping match the specific park design and amenities with the needs of the neighborhood. TPL will work towards this goal by helping the City with the following:

a. lands that can be used to create outdoor recreation access for people who do not have it within a ten-minute walk.

b. Prioritize features such as Fitness Zones that should be incorporated into park design to enhance opportunities for active use and healthy living opportunities.

c. Advise the City on connecting neighborhood residents to parks and the issues, barriers and opportunities that may exist.

d. Advise the city on the best park investments to make over the next 4 years that will have the most significant economic and neighborhood impact

3. Water Smart: We have a national objective in helping Cities across the country better manage stormwater runoff and consent decrees. Parks, whether they are new or redeveloped, and connected corridors should be "water smart" parks and green alleys that

manage storm water naturally to reduce flooding, save energy used for water treatment, and recharge drinking water supplies. TPL will:

a. Identify lands than can be redeveloped as green infrastructure to help the City meets its Combines Sewer Overflow consent decree.

b. Engage with Public Works and storm-water Department to identify opportunities for maximum benefit while redeveloping or building a parks or connected corridor.

4. Other opportunities: From time to time opportunities arise that are unforeseen or that may warrant The Trust for Public Land and the City to enter into a different agreement or relationship. These opportunities are often outside of the scope of this contract, or are much larger and longer term than this contract considers. In this case, the City and The Trust for Public Land will be clear about roles, responsibilities, and expectations.