

RESOLUTION NO. 24178

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PARKS, RECREATION, ARTS AND CULTURE TO EXECUTE A CONSERVATION AGREEMENT WITH THE TRUST FOR PUBLIC LAND, IN THE FORM ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE, RELATIVE TO THE CHATTANOOGA GREENWAYS PROGRAM, FOR A TERM OF JULY 1, 2004 THROUGH JUNE 30, 2005.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That the Administrator of the Department of Parks, Recreation, Arts and Culture be and is hereby authorized to execute a Conservation Agreement with the Trust for Public Land, in the form attached hereto and made a part hereof by reference, relative to the Chattanooga Greenways Program, for a term of July 1, 2004 through June 30, 2005.

ADOPTED: August 24, 2004

/pm

CONSERVATION SERVICES AGREEMENT - 2004-2005

This Agreement, made and entered into this ____ day of _____, 2004, by and between the City of Chattanooga, Tennessee, which shall be referred to as "City", and The Trust for Public Land, a nonprofit California public benefit corporation, which shall be referred to as "TPL":

WITNESSETH

I. 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.

II. GENERAL TERMS.

- a) The address and telephone number of TPL is 1253 Market Street, Suite 200, Chattanooga, TN 37402, 423/265-5229, 423/265-6681 (fax).
- b) The address and telephone number of the City is Administration, Suite 216, City Hall, Chattanooga, Tennessee 37402, 423/757-5167, 423/757-5586 (fax).
- c) The City's primary liaison with TPL shall be Jerry Mitchell, Administrator, Parks and Recreation Department, and the TPL employee responsible for administering this Agreement shall be Robert M. Davenport, Jr., Office Director, and Rick R. Wood, Project Manager, provided that the City and TPL reserve the right to substitute personnel at any time.
- d) It is agreed that TPL is solely responsible for the payment of unemployment insurance, social security, income and any other taxes on the 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, and that it maintains liability insurance in the minimum amount of \$500,000/1,000,000.00.
- e) The term of this Agreement commences on July 1, 2004 and ends on June 30, 2005.

III. SERVICES.

In consideration of the payment by City to TPL of the sum of \$67,120.00, TPL agrees to carry out all services described on 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 on Exhibit A of this Agreement. The City agrees to make all reasonable efforts to provide information and documents to TPL promptly for use in connection with the performance of services.

TPL represents and warrants that the services and products 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 year after the effective date hereof, unless the performance by TPL of the services are delayed as the result of forces beyond the control of TPL. However, TPL does not warrant or represent that its efforts to secure contracts for donation or sale of 8 properties will be successful, but does represent it will make a good faith effort to do so.

IV. PROFESSIONAL FEES.

A. City agrees to pay to TPL, as professional fees, the sum of \$67,120.00 payable in equal installments of \$5,593.33 per month. Payments shall be due on the first day of each month. TPL will provide an invoice to the City each month.

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. All reimbursements will be made by the City within 15 days of the date of TPL's invoice to the City.

V. ENTIRE 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, representation and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties.

VI. WAIVER OF RIGHTS.

A. 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.

VII. APPLICABLE LAW.

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

VIII. NO PARTNERSHIP RELATIONSHIP.

A. 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.

IX. 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 aforementioned services as an independent contractor.

D. 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.

E. The City shall not be liable to TPL for any expenses paid or incurred by TPL unless other wise agreed in writing, except as provided herein.

F. TPL shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide contracted services unless otherwise agreed in writing.

G. 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.

H. For all work being performed under this Agreement, the City of Chattanooga has the right to inspect, examine, and make copies of any and all books, accounts, records and other writing relating to the performance of the work. Audits shall take place at times and locations mutually agreed upon by both parties, although the contractor must make the materials to be audited available within one (1) week of a request.

IN WITNESS WHEREOF, the City and TPL have set their hands and seals as of the day and year first above written.

City:

Chattanooga, Tennessee

By: _____

Name: _____

Title: _____

Date: _____

TPL:

The Trust for Public Land

By: _____

Name: _____

Title: _____

Date: _____

"EXHIBIT A"

**THE TRUST FOR PUBLIC LAND
SOUTHEAST REGIONAL OFFICE**

SCOPE OF SERVICES

for

City of Chattanooga, Tennessee
Parks and Recreation Department

Chattanooga Greenways Program - 2004-2005
Trust for Public Land Chattanooga Project Office

A. LAND PROTECTION

OBJECTIVE: Secure the permanent protection of at least eight (8) additional critical properties within the priority greenway corridors.

Action Steps

1. Identify and select key properties for land protection efforts. Primary areas of attention for the contract term 2004-2005 will be greenway sites along Chattanooga Creek, St. Elmo, North and South Chickamauga Creeks, the Tennessee Riverpark, Ridgedale to Southside via Highland Park, Lakeview to East Chattanooga and Mountain Creek.
2. Contact owners of key properties to introduce them to the idea of the greenway and discuss their willingness to protect their property for the greenway.
3. Complete necessary pre-acquisition tasks including appraisals, surveys, environmental audits, and title work.
4. Complete negotiations to secure agreements to protect properties. However, TPL and its employees will not act as a real estate broker or attorney, nor provide any such services to the City. All contracts for purchase of interests in land will be entered into by TPL's name and at TPL's risk. If the City chooses to purchase any such properties, TPL and the City will determine the price and other terms for such conveyances to the City in separate negotiated

agreements. TPL may enter into contracts for the donation of interest in land in its own name or in the name of the City.

B. TECHNICAL ASSISTANCE

OBJECTIVE: Provide technical assistance for community organizing, institutional support, resource inventory, greenway planning, and greenway development to efforts along the priority greenway corridors.

Action Steps

1. Provide on-going organizational and administrative support to existing greenway organizations to enhance their institutional capacity.
2. Provide on-going technical assistance as needed.

C. PUBLIC EDUCATION AND OUTREACH

OBJECTIVE: Build public support for the Greenway Program through public education and outreach activities for individual greenway corridors and the overall Greenway System.

Action Steps

1. Continue to serve as the greenways information clearing house to provide information about greenways to the community.
2. Continue to work with the local media to promote and publicize greenways through print, radio, and television.
3. Conduct technical land protection short course for City and County staff.
4. Continue to make general presentations to civic groups and the general public.
5. Continue to promote and coordinate special greenway promotional events (e.g., stream clean-ups).

D. COORDINATION

OBJECTIVE: Continue to maintain strong relationships with and increase communication and coordination among existing public and private greenway efforts throughout the community.

Action Steps

1. Continue to operate the Chattanooga Greenways Task Force to serve as a coordinating body for greenway efforts; conduct meetings at least quarterly.
2. Support and provide assistance to the City of Chattanooga Greenways Advisory Board in carrying out its duties.
3. Maintain on-going contact and liaison with Hamilton County, the Chattanooga-Hamilton County Regional Planning Commission, the Tennessee Valley Authority, the National Park Service, and other local, state, and federal agencies working on greenways in Chattanooga.
4. Maintain on-going contact and liaison with other affected local governments.