

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: Landscape Management

Council Meeting Date: 2/27/2014

Department Contact: Joy H. McKee

Phone # 256-427-5048

Contract or Agreement: Agreement by and between the City of Huntsville and City of Tuscaloosa, City ...

Document Name: Agreement by and between the City of Huntsville and City of Tuscaloosa, City of Flore...

City Obligation Amount: N/A

Total Project Budget: N/A

Uncommitted Account Balance: N/A

Account Number: N/A

Procurement Agreements

<u>Select...</u>	<u>Select...</u>
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Grant-Funded Agreements

<u>Select...</u>	<u>Grant Name:</u>
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Department	Signature	Date
1) Originating	<i>Brian R. Walker</i>	2-24-14
2) Legal	<i>Mary C. Cates</i>	2-24-14
3) Finance	<i>MSJL</i>	2/24/14
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 2/27/2014

Action Requested By:

Agenda Item Type

Landscape Management

Resolution

Subject Matter:

Cooperative agreement between the City of Tuscaloosa, City of Florence, The City of Daphne, The City of Albertville, The City of Boaz, The City of Troy, The City of Huntsville, The East Alabama Recycling Partnership, By and Through Auburn University, and The Alabama

Exact Wording for the Agenda:

Cooperative agreement between the City of Tuscaloosa, City of Florence, The City of Daphne, The City of Albertville, The City of Boaz, The City of Troy, The City of Huntsville, The East Alabama Recycling Partnership, By and Through Auburn University, and The Alabama Environmental Council(A14-0052)

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Cooperative agreement between the City of Tuscaloosa, City of Florence, The City of Daphne, The City of Albertville, The City of Boaz, The City of Troy, The City of Huntsville, The East Alabama Recycling Partnership, By and Through Auburn University, and The Alabama Environmental Council have agreed to work together to establish and maintain a comprehensive and coordinated recycling program in the state of Alabama, and pursue grant funding through the Alabama Recycling fund grant program administered by the Alabama

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: Brian R. Walker

Date: 2-24-14

RESOLUTION NO 14-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an Agreement by and between the City of Huntsville and City of Tuscaloosa, City of Florence, The City of Daphne, The City of Albertville, The City of Boaz, The City of Troy, The City of Huntsville, The East Alabama Recycling Partnership, By and Through Auburn University, and The Alabama Environmental Council (A14-0052) on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said document is substantially in words and figures similar to that certain document attached hereto and identified as "Cooperative agreement between the City of Tuscaloosa, City of Florence, The City of Daphne, The City of Albertville, The City of Boaz, The City of Troy, The City of Huntsville, The East Alabama Recycling Partnership, By and Through Auburn University, and The Alabama Environmental Council (A14-0052)," consisting of seventeen (17) pages and the date of February 27, 2014 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 27th day of February, 2014.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 27th day of February, 2014.

Mayor of the City of
Huntsville, Alabama

**COOPERATIVE AGREEMENT BETWEEN THE CITY OF TUSCALOOSA,
CITY OF FLORENCE, THE CITY OF DAPHNE, THE CITY OF
ALBERTVILLE, THE CITY OF BOAZ, THE CITY OF TROY, THE CITY OF
HUNTSVILLE, THE EAST ALABAMA RECYCLING PARTNERSHIP, BY
AND THROUGH AUBURN UNIVERSITY, AND THE ALABAMA
ENVIRONMENTAL COUNCIL
(A14-0052)**

WHEREAS, the City of Tuscaloosa, Alabama, City of Florence, the City of Daphne, the City of Albertville, the City of Boaz, the City of Troy, the City of Huntsville, the East Alabama Recycling Partnership, by and through Auburn University, and the Alabama Environmental Council have agreed to work together to establish and maintain a comprehensive and coordinated recycling program in the state of Alabama, and pursue grant funding through the Alabama Recycling Fund grant program administered by the Alabama Department of Environmental Management; and

WHEREAS, the parties wish to enter into a cooperative agreement with regard to such grant funding application and administration, subject to certain terms and conditions.

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

THIS AGREEMENT is made and entered into by and between the City of Tuscaloosa, the City of Florence, the City of Daphne, the City of Albertville, the City of Boaz, the City of Troy, the City of Huntsville, the East Alabama Recycling Partnership, by and through Auburn University, and the Alabama Environmental Council on this the _____ day of _____ 2014, as follows:

SECTION 1. AUTHORITY

Each party to this agreement has obtained the necessary approval of their 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.

SECTION 2. DUTIES OF RESPECTIVE PARTIES

The City of Tuscaloosa agrees to the following:

- The City of Tuscaloosa agrees to serve as the lead applicant and partner with the City of Florence, the City of Daphne, the City of Albertville, the City of Boaz, the City of Troy, the City of Huntsville, the East Alabama Recycling Partnership, by

and through Auburn University, and the Alabama Environmental Council to apply for funds to be distributed under the 2014 Alabama Department of Environmental Management (ADEM) Recycling Grant.

- The City agrees to contract with the Alabama Broadcast Association (ABA) for the production and airing of television ads that will showcase recycling. These ads will be broadcast in the markets associated with each of partners listed in this agreement and will feature contact information for each partner in their respective area.
- The City of Tuscaloosa agrees to serve as the main point of contact for the ABA and will supply materials (such as logos, contact information supplied by cooperating agencies) for regional recycling commercials.
- The City of Tuscaloosa agrees to serve as liaison between ABA and cooperating agencies
- The City agrees to submit semi-annual status reports during the 2014 funding cycle as defined in the Alabama Department of Environmental Management, Land Division, Solid Waste Program Administrative Code Chapter 335-13-10.

The cooperating agencies (the City of Tuscaloosa, Alabama, the City of Florence, the City of Daphne, the City of Albertville, the City of Boaz, the City of Troy, the City of Huntsville, the East Alabama Recycling Partnership, by and through Auburn University, and the Alabama Environmental Council) agree to the following:

- The cooperating agencies agree to send their individual City logo and contact information to the lead agency for inclusion in regional recycling commercials.
- The cooperating agencies agree to review all proposed advertisements in a timely manner, and send comments to lead agency
- The cooperating agencies agree to send status reports to lead agency in October and March. Reports will include verification that advertisements ran as programmed, and comments.
- The cooperating agencies agree to allow the Alabama Recycling Coalition (ARC) the rights to put contact information/logos in any commercial used for the statewide recycling campaign grant.

SECTION 3. TIME

Time is of the essence for the performance of the respective obligations of each party to this agreement. Each party shall perform as expeditiously as possible within the 2014 grant period.

SECTION 4. TERMINATION

Each party to this agreement shall have the right to terminate the same for a material breach thereof by another party to perform in accordance with the terms and conditions herein.

SECTION 5. NOTICES

All notices provided herein or which need to be given in connection with the performance of any obligation or condition of this agreement shall be in writing and shall be delivered by personal delivery, certified mail, return receipt requested, overnight delivery to the following:

- Tuscaloosa: Shane Daugherty
Director, Environmental Services
City of Tuscaloosa
3431 Kauloosa Avenue
Tuscaloosa, AL 35401

- Florence: Rachel Mansell, Education Outreach Coordinator
City of Florence Solid Waste
Street & Recycling Department
P.O. Box 98
Florence, AL 35631

- Daphne: Tracey Q. Miller
Solid Waste Coordinator
City of Daphne
251-621-3182

- Albertville: Jeannie Courington, Executive Director
Albertville-Boaz Recycling Authority
P.O.Box 1484
Albertville, AL 35950

Boaz: Jeannie Courington, Executive Director
Albertville-Boaz Recycling Authority
P.O.Box 1484
Albertville, AL 35950

Troy: Jason Reeves, Mayor
P.O. Box 549
Troy, Alabama 36081

Huntsville: Tommy Battle, Mayor
308 Fountain Circle, 7th Floor
Huntsville, Alabama 35801

East Alabama Recycling
Partnership:
(by and through
Auburn University) Donny Addison, Manager
Waste Reduction and Recycling Department
151 South Donahue Drive
Auburn, AL 36849

Alabama Environmental
Council: Michael Churchman, Executive Director
Alabama Environmental Council
2431 2nd Avenue North
Birmingham, AL 35203

SECTION 6. NO JOINT VENTURE

It is expressly understood and agreed between the parties hereto that nothing contained herein shall be construed in any manner to constitute or imply a joint venture, partnership, or agency between the City of Tuscaloosa, City of Florence, the City of Daphne, the City of Albertville, the City of Boaz, the City of Troy, City of Huntsville, the East Alabama Recycling Partnership, by and through Auburn University, and the Alabama Environmental Council. On the contrary, the Parties enter into this agreement in all respects as independent parties.

SECTION 7. ACTS AND OMISSIONS, ETC.

No party shall be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by any person who participates in any manner in the grant funding application and administration through the Alabama Recycling Fund of the Alabama Department of Environmental Management if such loss,

injury, death, or damage is not caused by or in any way results from an act or omission of its agents or employees. To the extent allowed by law, the party or parties whose act or omission causes any loss, injury, death, or damage contemplated by this paragraph hereby agrees to indemnify, defend, and hold harmless the other party or parties, as the case may be, to this agreement from any and all claims or actions that may arise as a result of such act or omission.

SECTION 8. MISCELLANEOUS CLAUSES

Capacity: Each party to this agreement represents to the other as follows:

1. That it is a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
2. 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.
3. That the parties have obtained the necessary approval of their 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.
4. 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.
5. 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.
6. 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.

7. 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.
8. 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;
9. Each party represents 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.
10. 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:
 - (a) Bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights.
 - (b) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.
11. 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.
12. 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;

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.

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 constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. 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.

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.

Non Discrimination: Each party agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The Contractor shall

fully comply with the Americans with Disabilities Act), the Fair Labor Standards Act and all other applicable laws and regulations).

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.

Severability. Each provision of this agreement shall be considered to be severable and, if for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this agreement that are valid, but this agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

SECTION 9. 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.

No present or future official, officer or employee of any part shall ever be personally liable for the performance of any obligations hereunder.

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

**CITY OF TUSALOOSA, A MUNICIPAL
CORPORATION**

By: _____
Walter Maddox, Mayor

Attest:

City Clerk

**CITY OF FLORENCE, A MUNICIPAL
CORPORATION**

By: _____

Attest:

**David Koonce
Manager, City of Florence Solid Waste
Street & Recycling Department
P.O. Box 98
Florence, AL 35631**

CITY OF DAPHNE, A MUNICIPAL CORPORATION

By: _____

Attest:

**Ron Scott, Interim Mayor
City of Daphne
1705 Main Street
Daphne, Alabama 36526**

CITY OF ALBERTVILLE, A MUNICIPAL CORPORATION

By: _____

Attest:

**CITY OF BOAZ, A MUNICIPAL
CORPORATION**

By: _____

Attest:

**CITY OF TROY, A MUNICIPAL
CORPORATION**

By: _____

Attest:

Jason Reeves, Mayor
P.O. Box 549
Troy, Alabama 36081

**CITY OF HUNTSVILLE, A MUNICIPAL
CORPORATION**

By: _____

Attest:

**Tommy Battle, Mayor
308 Fountain Circle, 7th Floor
Huntsville, Alabama 35801**

**EAST ALABAMA RECYCLING PARTNERSHIP
by and through Auburn University**

By: _____

Attest:

**Donny Addison, Manager
Waste Reduction and Recycling Department
151 South Donahue Drive
Auburn, AL 36849**

ALABAMA ENVIRONMENTAL COUNCIL, A NON-PROFIT ORGANIZATION

By: _____

Attest:
