

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 7/11/2013

Action Requested By:  
Community  
Development

Agenda Item Type  
Resolution

Subject Matter:

Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a contract with Family Services Inc. for the use of Home Investment Partnership Funds to rehabilitate existing housing.

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.

This resolution will allow the Mayor to enter into a contract with Family Services Inc. for the use of \$285,000 in HOME funds to rehabilitate existing housing. The project will renovate 11 existing scattered site single and multifamily housing units.

Associated Cost:

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 7/11/2013

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Community Development      Council Meeting Date: 7/11/2013

Department Contact: Scott Erwin      Phone # 256-427-5423

Contract or Agreement: Agreement

Document Name: Agreement between City of Huntsville and Family Services Inc. for HOME Investment...

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

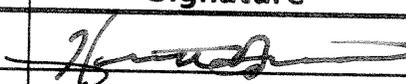
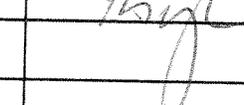
Account Number:

### Procurement Agreements

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

<b>Federal HUD</b>	<b>Grant Name:</b>
	HOME Investment Partnership Grant

Department	Signature	Date
1) Originating		7/8/13
2) Legal		7-8-13
3) Finance		7/9/13
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

RESOLUTION NO. 13-\_\_\_\_\_

WHEREAS, the City of Huntsville, Alabama, received a grant under Title I of the Housing and Community Development Act of 1974, as amended, from the U.S. Department of Housing and Urban Development (HUD),

BE IT RESOLVED, by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to enter into the Agreement between the City of Huntsville, Alabama and Family Services Center, Inc., said agreement being substantially similar in words and figures to that document identified as "Agreement Between the City of Huntsville, Alabama and Family Services Center, Inc. for Home Investment Partnership Funds including funds that are reserved for the use of Community Housing Development Organizations" consisting of eighteen (18) pages, including exhibit(s) A & B, with the signature of the Council President or President Pro tem, and the date July 11, 2013 appearing on the margin of the first page, a copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville.

ADOPTED this the 11th day of July, 2013.

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

APPROVED this the 11th day of July, 2013.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

**AGREEMENT BETWEEN THE  
CITY OF HUNTSVILLE, ALABAMA AND  
FAMILY SERVICES CENTER, INC. FOR  
HOME INVESTMENT PARTNERSHIP FUNDS INCLUDING FUNDS THAT ARE RESERVED  
FOR THE USE OF COMMUNITY HOUSING DEVELOPMENT ORGANIZATIONS**

THIS AGREEMENT (this "Agreement"), entered into this 11<sup>th</sup> day of July, 2013, by and between the City of Huntsville, Alabama, a municipal corporation ("City"), and Family Services Center, Inc., an Alabama non-profit corporation, the ("Owner");

WHEREAS, the City is the recipient of HOME Investment Partnership (HOME) funds granted by the U.S. Department of Housing and Urban Development (HUD) including funds that are reserved for the use of Community Housing Development Organizations (CHDO's); and

WHEREAS, THE Owner has been certified with the City as a CHDO, and has submitted a proposal for use of CHDO funds for a CHDO eligible project under HOME regulations.

WHEREAS, the City desires to utilize HOME Investment Partnership (HOME) funds to assist the OWNER in the rehabilitation of multi-family and single family housing for the purpose of affordable housing that is subject to all HOME Investment Partnership (HOME) regulations.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**PART I**

**1. PURPOSE AND SCOPE OF SERVICES:**

- A. The Owner shall use HOME funds provided by the City for the rehabilitation of transitional housing apartments and single family homes on properties identified in Exhibit A. Properties are located at various locations in Huntsville, Alabama and will be collectively referred to as ("The Project").
- B. The Owner shall cause to provide affordable *rental* housing for a minimum period of ten (10) years from the time when all eight (11) HOME assisted units associated with this project, are first occupied by eligible occupants (the "Affordability Monitoring Period"). The units will be designated as "fixed" units. All 11 units will be leased to households at or below 30% of the area median family income over the term of this agreement. Owner shall provide biannual rent roll of HOME units to the Community Development Department beginning at rent up and for the life of the affordability period. According to HOME regulations, rental housing assisted with HOME Investment Partnership funds shall have a deed restriction placed upon it, requiring adherence to the occupancy and rent restrictions of 24 CFR 92.252, with the effective term of said instrument in accordance with 24 CFR 92.252(e). Attached hereto as Exhibit B is the form of deed restriction to be recorded.
- C. Development of any architectural designs for the project shall be the responsibility of the OWNER.

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President of the City Council of  
the City of Huntsville, Alabama  
Date: July 11, 2013

- D. The City shall provide technical assistance to the OWNER concerning compliance with the terms of this Agreement. The OWNER shall be responsible for all sub-contractual arrangements. All procedures shall be carried out in accordance with all Federal, State and local standards, and shall be monitored by the City.
- E. The Project shall be completed in compliance with all applicable state and local building codes; and upon completion, shall be operated in compliance with all applicable state and local codes and ordinances. The OWNER agrees the facilities shall be used solely for the purpose of providing affordable rental housing as detailed in Part I.1.A of this Agreement.
- F. Owner will comply with NOTICE OF COMPLETION In accordance with Chapter 1, Title 39, Code of Alabama, 1975

2. **TIME OF PERFORMANCE:**

The OWNER shall perform according to the following schedule:

	<u>Deadline</u>
1     Execute Contract for Project	July 11, 2013
2     Pre-construction Conference	July 16, 2013
3     Project Start Date	July 16, 2013
4     Construction Completion Date	June 30, 2016
5     Affordability Monitoring Period	10 years

This schedule is subject to change by mutual agreement of both parties in writing.

3. **PROJECT BUDGET:**

- A. The total budget and HOME investment in the project will be \$285,000.00
- B. Eligible costs associated with this agreement will include predevelopment soft costs including but not limited to: architectural design, engineering, legal and appraisal fees, environmental audit, loan fees and construction management fees. Eligible development costs will also include hard development costs shall include, site improvements and hard construction costs eligible under the HOME regulations.

<b>Budget:</b>	
<b>Pre-Construction Costs:</b>	<b>\$6,500</b>
Including Environmental Testing, Lead Based Paint Testing	
<b>Construction Costs:</b>	<b>\$278,500</b>
Including HVAC, Windows, Roof Replacement, Flooring, Insulation, Doors, Paneling & Tile Replacement, Countertops, toilet, bathtub sink and faucet replacement, Ceiling Fan & Light fixture replacement,	

Heat Pump Installation

Total Budget \$285,000

4. **COMPENSATION AND METHOD OF PAYMENT:**

The City shall pay and the OWNER agrees to accept in full no more than \$285,000.00 (dollars and no\100) for performance under this Agreement, as follows:

- A. Based on the approved budget, partial payments shall be made upon presentation of (i) purchase agreements and invoices, and/or (ii) other source documents. Payments will be made within thirty (30) days for eligible expenses actually incurred by the OWNER, and not to exceed actual cash requirements.
- B. All payments under this agreement are subject to receipt by the City of sufficient federal funds for the HOME Investment Partnership program. HOME Investment Partnership funds shall be drawn from the U.S. Treasury by the City through the Integrated Disbursement and Information System (IDIS). The City shall retain exclusive direct access rights to the IDIS system. All access to the IDIS system will be by duly authorized persons designated by the City as approved by HUD. Any termination, reduction or delay of receipt of HOME Investment Partnership funds to the City shall, at the option of the City, result in the termination, reduction or delay of HOME Investment Partnership funds to the OWNER.
- C. Funds provided to the OWNER shall be expended within 10 business days from the date of disbursement to the OWNER by the City. Any funds not disbursed by the OWNER in the aforementioned time period shall be returned to the City and will be deposited in the U.S. Treasury, HOME Investment Partnership Trust Account. Any interest earned on cash advances from the U.S. Treasury and/or City of less than one hundred dollars (\$100.00) per year may be retained by the OWNER and used for project expenses. Any interest in excess of one hundred dollars (\$100.00) per year shall be remitted promptly to the City.

5. **TERMS AND CONDITIONS:**

- A. The OWNER agrees to comply with all applicable federal, state, and local laws and regulations governing the funds provided under this Agreement. Said HOME regulations are published in 24 CFR Part 92.
- B. The City shall have no responsibility or liability for the maintenance, operation or program funding for the OWNER.
- C. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The OWNER shall at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance as the OWNER is an independent contractor.
- D. During the period of this Agreement, effective as of the start of the Project, the OWNER shall, at its own expense, procure and maintain all-risk property

damage and liability insurance. For the term of this agreement, the OWNER shall list the City as a loss payee on said property insurance. The OWNER shall also list the City, its officers, elected officials, and employees as additional insureds on the said liability insurance. Property damage coverage shall not be less than the current market value of the property. Liability coverage shall include contractual insurance as well as comprehensive form insurance, and shall provide coverage of not less than \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence, and \$100,000 property damage. Proof of insurance shall be shown to the City by furnishing a copy of the certificate of insurance issued by an insurance company licensed to do business in the State of Alabama. The certificate of insurance shall include a statement guaranteeing that the insurance company shall notify Community Development within 30 days of the lapse of said policy.

- E. Until the expiration of the Affordability Monitoring Period, the OWNER shall, in a manner satisfactory to the City, fulfill its stated purpose as outlined in Part I.1.A of this Agreement. HOME affordability requirements will expire ten (10) years after the date that the final HOME assisted unit is first occupied by an eligible resident, unless legal action causes it to expire for cause prior to that date.
- F. The OWNER shall not sell, assign or transfer any legal or equitable interest in the property at any time prior to the expiration of the Affordability Monitoring Period without written concurrence of the City. If, (1) the OWNER does transfer without written concurrence of the City, the OWNER shall return to the City the amount provided for in this agreement. or, if (2) the OWNER discontinues its program, then OWNER shall return to the City the amount provided for in this agreement.
- G. In the event the OWNER discontinues the provision of affordable rental housing as funded under this Agreement prior to the expiration of the Affordability Monitoring Period, except as provided in Part I.1.A. of this Agreement, or if the property has been disposed of, then the City will be reimbursed any HOME funds from the current owner if not previously paid in the entire amount of \$285,000.
- H. Except as provided herein, the terms of this Agreement shall be effective from the date of execution through and including **the expiration of the Affordability Monitoring Period.**
- I. All housing assisted with HOME Investment Partnership funds shall be maintained in compliance with the property standards defined in 24 CFR 92.252, and any locally enforceable housing standards, laws and codes of the City.
- J. An OWNER that receives HOME Investment Partnership funds for rental housing shall maintain records indicating that an inspection of the rental housing was performed and at a minimum the rental housing meets HUD Section 8 Housing Quality Standards and all applicable local housing standards. For this project an annual inspection shall be performed as required.
- L. All projects shall adhere to the project requirements found in Subpart F of 24 CFR Part 92, as applicable in with the type of project assisted.
- M. The HOME Investment Partnership Program funds provided by the City of Huntsville Department of Community Development to Family Services Center,

Inc. will be considered a grant, subject to the provisions of this agreement, the affordability period and the deed restriction.

## PART II

### 1. PERFORMANCE AND REPORTING:

- A. The OWNER shall direct all notices, reports, insurance policies, and other communications related to or required by this Agreement to the office of the City of Huntsville, Community Development Office, 120 E. Holmes Avenue, Huntsville, Alabama 35801. Notice by both OWNER and City shall be given by ordinary mail.
- B. Until the completion of the Project and expenditure of all HOME Investment Partnership funds disbursed under this Agreement, the OWNER shall submit quarterly reports describing progress of the project activities. This report will be due 10 (ten) days after the end of each quarter, based upon the Community Development's fiscal year (July 1 to June 30).
- C. An OWNER that receives HOME Investment Partnership funds for rental housing shall maintain records of determination of each tenant income eligibility and eligibility as a family at the time the household(s) receive the assistance. The OWNER shall reexamine family income, size and composition at least annually unless waived by mutual consent by the U.S. Department of Housing and Urban Development, the City of Huntsville and the OWNER.
- D. The OWNER shall submit annual reports (July 1 – June 30) by the first day of August of each contract year through January 5, 2033. The annual report shall, at a minimum, include statistics relating to the number of households being assisted with HOME Investment Partnership funds, household size, racial characteristics, single head of household by gender, household income and a narrative of project highlights.
- E. For projects with a HOME grant or loan of \$285,000 or more (including all funding sources), an audit report which discloses the expenditure of HOME Investment Partnership funds allocated for this Project, shall be submitted prior to the expiration of the Affordability Monitoring Period.
- F. No reporting requirements for City HOME funds shall extend beyond the final annual report that is due at the expiration of the Affordability Monitoring Period.

### 2. OTHER REPORTS, AUDITS AND INSPECTIONS:

- A. The OWNER shall promptly furnish the City or HUD with any financial records, statements, other records, data and information as the City or HUD may reasonably request pertaining to this Agreement.
- B. During the term of this Agreement, any time during normal business hours, the

OWNER shall within three (3) business days of request make available to the City, HUD and/or the Comptroller General of the United States, or their duly authorized representatives, all of the OWNER's records in order to permit examination of any audits, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to all matters covered by this Agreement.

- C. The OWNER shall retain financial records, supporting documents, statistical records, and all other records pertaining to expenditures under this Agreement for a period of five (5) years after the termination of this Agreement.

3. **ADMINISTRATIVE REQUIREMENTS:**

A. Financial Management

1. Accounting Standards

The OWNER agrees to comply with HUD Handbook 2210.18 "Cost Principles for For Profit Organizations", and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The OWNER shall OWNER administer its program in conformance with HUD Handbook 2210.18 "Cost Principles For Profit Organizations" for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record-Keeping

1. Records to be Maintained

The OWNER shall maintain all records that are pertinent to the activities to be funded under this Agreement, including but not limited to:

- a. Records providing a full description of each activity undertaken;
- b. Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with HOME assistance;
- c. Records documenting compliance with the fair housing and equal opportunity components of the HOME program; and
- d. Financial records as required by OMB Circular A-87, and/or OMB Circular A-133, and/or HUD Handbook 2210.18 "Cost Principles for For Profit Organizations", as appropriate.

2. Client Data

The OWNER shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, signed verification of income statement, or other basis for determining eligibility, and description of service provided. Such information shall be made available to City monitors or their designees for review upon request.

3. National Objectives and Eligibility

The OWNER agrees to maintain documentation demonstrating the activities carried out with funds provided under this contract benefit low income persons, as defined in 24 CFR Part 92.216 and/or 92.217.

C. Procurement

1. Compliance

In the event of termination for cause as provided in paragraph 12 or termination for convenience as provided in paragraph 13, a pro-rated portion of program assets (unexpended program income, property, equipment, etc.) attributable to the City's HOME investment shall revert to the City upon termination of this contract, as provided in Paragraph 12 or Paragraph 13 of this Agreement.

2. OMB Standards

Throughout the construction period, The OWNER shall procure materials in accordance with the requirements, as appropriate, of A-133, or A-87 OMB Circular, if applicable. Copies of said circulars are provided and by execution of this Agreement, the OWNER acknowledges their receipt.

3. Amendments

The City or OWNER may amend this Agreement at any time provided that such amendments are executed in writing and signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement, nor relieve or release the City or OWNER from its obligations under this Agreement.

4. **NON-DISCRIMINATION and AFFIRMATIVE MARKETING:**

No person shall be excluded from or denied the benefits of the OWNER's service on the basis of age, race, color, religion, creed, national origin, sex, marital status, disability, gender identity or sexual orientation. All current and prospective project beneficiaries must, however, be persons in need of the programs provided by the OWNER. The OWNER shall comply with the affirmative marketing requirements set forth in 24 CFR 92.351.

5. **SECTION 504 COMPLIANCE:**

No otherwise qualified individual with handicaps shall, solely by reason of his or her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. This includes, but is not limited to, programs and/or activities related to housing, employment, and the delivery of services.

6. **EQUAL EMPLOYMENT OPPORTUNITY and FAIR HOUSING:**

The OWNER certifies that it is an "Equal Opportunity Employer" and that it will comply with all applicable regulations of the U.S. Department of Housing and Urban Development pertaining to equal opportunity and affirmative action in employment. Further, the OWNER shall ensure that all contracts for work under this Agreement contain appropriate equal employment opportunity statements. In addition, OWNER shall comply with all provisions of 24 CFR 92.350.

7. **SECTION 3:**

Contractors retained by the OWNER shall adhere to the following Section 3 requirements and provide reports as required by HUD. The OWNER agrees to comply with Section 3 requirements, the requirements under 24 CFR 92.350, the regulations set forth in 24 CFR 135, and to include the following language in all subcontracts executed under this Agreement:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 shall be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with the regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

8. **W/MBE:**

The OWNER will use its best efforts to afford minority and women-owned business enterprises (at least fifty-one (51) percent owned and controlled by minority group members or women) the maximum practicable opportunity to participate in the performance of this Agreement.

9. **LABOR:**

New construction projects funded under the HOME Investment Partnership program that contain more than 11 (eleven) HOME-assisted units shall comply with the labor provisions outlined in 24 CFR 92.354. The OWNER agrees to adhere to said provisions and will not use suspended or debarred contractors and will abide by 24 CFR 92.357. The Owner shall be responsible for compliance with all requirements of Davis Bacon Act, if applicable.

10. **ENVIRONMENTAL ASSESSMENT AND HISTORIC PRESERVATION:**

The OWNER shall comply with all applicable environmental assessment and historic preservation requirements of HUD and the State Historic Preservation Officer of Alabama.

11. **LEAD-BASED PAINT POISONING PREVENTION:**

The OWNER shall comply with requirements of Section 302 of the Lead-Based Paint Poisoning Prevention Act and HUD regulations there under (24 CFR 92.355) insofar as they apply to the performance of this Agreement.

12. **TERMINATION OF AGREEMENT FOR CAUSE:**

If the OWNER fails to materially fulfill its obligations under this Agreement in a timely and proper manner, or if the OWNER violates any of the terms, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the OWNER of such termination, specifying the default or defaults, and stating that this Agreement shall be terminated 30 days after the giving of such notice unless such default or defaults are remedied within such cure period unless the default or violation is of a nature that it cannot be cured within thirty (30) days in which event OWNER shall be provided additional time to cure so long as OWNER initiated its efforts to cure such default within said thirty (30) day time period and diligently pursues such cure to completion. The City shall be obligated to make no payment due hereunder after it gives said notice unless the defaults are remedied within said 30-day period. In the event of such termination, the OWNER shall promptly repay to the City the full loan amount or that portion of the amounts that have been disbursed to the OWNER prior to such termination.

13. **TERMINATION OF AGREEMENT FOR CONVENIENCE:**

This Agreement may be terminated in whole or in part upon the mutual agreement of the parties hereto, in which case the City and the OWNER shall agree upon the termination conditions, including the effective date, the disposition of contract amounts, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the City determines that the remaining portion of the award will not accomplish the purposes for which the award was made, and the award is terminated in its entirety, the OWNER shall promptly repay to the City the full grant and/or loan amount or that portion of the amount which has been disbursed to the OWNER prior to such termination.

14. **INTEREST OF CERTAIN FEDERAL AND OTHER OFFICIALS:**

- A. No member or delegate to the Congress of the United States, and no resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit to arise here from.
- B. No member of the governing body of the City, no officer, employee, official or

agent of the City, or other local public official who exercises any functions or responsibilities in connection with the review, approval or carrying out of the Project to which this Agreement pertains, shall have any private interest, direct or indirect, in this Contract.

- C. No federal funds appropriated under this contract shall be paid, by or on behalf of the OWNER, to any person for influencing or attempting to influence a member of Congress, an officer or employee of Congress or any federal agency in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or agreement.
- D. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, the OWNER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- E. The OWNER shall require that the language of this certification be included in the award documents for all sub-Owners and that all sub-Owners shall certify and disclose accordingly.
- F. The OWNER agrees to comply with the provisions of 24 CFR 92.356.

15. **GRANTOR RECOGNITION:**

All activities, facilities, and items utilized pursuant to this contract shall be prominently labeled as HOME funded. In addition, the OWNER will include a reference to the support provided herein in all publications made possible with funds made available under this contract.

16. **ASSIGNABILITY:**

The OWNER shall not assign or transfer any interest in this Agreement without the prior written approval of the City. Any assignment made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

17. **HOLD HARMLESS PROVISION:**

The OWNER shall indemnify, defend and hold harmless the City, its officers, employees and agents from all liability, loss, cost, damage and expense (including reasonable attorney's fees and court costs) resulting from or incurred by reason of any actions based upon the negligent acts or omissions of the OWNER's employees or agents during the performance of this Agreement.

18. **SEVERABILITY CLAUSE:**

If any one or more of the provisions contained in this Agreement are held to be invalid, illegal, or unenforceable, this Agreement shall be deemed severable and the remainder of the Agreement shall remain in full force and effect.

19. **LIMITATIONS OF CITY LIABILITY - DISCLAIMER OF RELATIONSHIP:**

The City shall not be liable to the OWNER, or to any party, for completion of or failure to complete any improvements which are part of the Project. Nothing contained in this Agreement, nor any act or omission of the City or the OWNER, shall be construed to create any special duty, relationship, third-party beneficiary, respondent superior, limited or general partnership, joint venture, or any association by reason of the OWNER's involvement with the City.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

**CITY OF HUNTSVILLE, ALABAMA**

By: \_\_\_\_\_  
Tommy Battle, Its Mayor

ATTEST:

\_\_\_\_\_  
Charles E. Hagood, City Clerk Treasurer

**FAMILY SERVICES CENTER, INC.**

\_\_\_\_\_  
Chairman of the Board

ATTEST:

\_\_\_\_\_  
Darin Geiger, Executive Director  
Family Services Center, Inc.

EXHIBIT A

Legal Description of HOME Assisted Property

**4007 Eunice St SW Huntsville, AL 35805 PPIN 32216**

PT OF NW1/4 OF SEC 15 BEING A PT OF LOT 11  
NEWSON PENNY ADD BEG S 1320 FT & E 1320 FT FR  
NW COR SEC 15 SD PT BEING E MAR EUNICE ST & NW  
COR SD LOT 11 TH S 70 FT TH E 200 FT TH N 70 FT TH  
W 200 FT TO BEG SEC 15 T4 R1W DB 800/888 10/16/92

**4005 Eunice St. SW Huntsville, AL 35805 PPIN 59226**

BEG AT NW COR OF SEC 15 TH S 1320 FT HT E 1320  
FT TO E MAR EUNICE ST & NW COR LOT 11 NEWSON  
PENNY ADD TH S 70 FT TO TR BEG TH S 70 FT TH E  
200 FT TH N 70 FT TH W 200 FT TO BEG SEC 15 T4  
R1W DB 800/888 10/16/92

**3906 & 3908 Troy Swasey Blvd SW Huntsville, AL 35805 PPIN 32777**

LOT 18 A W NEWSON & ED PENNY MERRIMACK ADD  
BEG AT AN IR STK SD STK BEING S 780.5 FT N 89 DEG  
E 150 FT FR THE INTER OF E MAR OF PENNEY ST WI S  
MAR PEA RIDGE RD OR RIDGECREST RD TH N 89 DEG  
E 150 FT TO IR STK ON W MAR OF TROY SWASEY  
BLVD S 60.5 FT TH S 89 DEG W 150 FT TH N 60.5 FT TO  
POB

**3910 A& B Blvd SW Huntsville, AL 35805 PPIN 32771**

TR 2 LOT 18 A W NEWSON & ED PENNEY MERRIMACK  
ADD BEG AT AN IR STK SD STK BEING S 841 FT & N 89  
DEG E 150 FT FR INTER OF E MAR OF PENNEY ST WI  
S MAR PEA RIDGE RD OR RIDGECREST RD TH N 89  
DEG E 150 FT TO IR STK ON W MAR TROY SWASEY  
BLVD TH ALG W MAR OF SD BLVD S 60.5 FT S 89 DEG  
W 150 FT N 60.5 FT TO POB

**2805 Wilson Dr NW Huntsville, AL 35816 PPIN 19487**

LOT 1 BL 2 TERRY HGTS ANNEX 3RD ADD PB 1 PG 178

Exhibit B

Form of Deed Restriction

STATE OF ALABAMA

COUNTY OF MADISON

**DECLARATION OF LAND USE RESTRICTIVE COVENANTS  
FOR HUNTSVILLE, ALABAMA HOME PROGRAM**

THIS DECLARATION OF LAND USE RESTRICTIVE COVENANTS FOR HUNTSVILLE, ALABAMA HOME PROGRAM, dated as of July 11, 2013, by and between Family Services Center, Inc., an Alabama non-profit corporation and City of Huntsville, Alabama, a municipal corporation.

WITNESSETH:

WHEREAS, the Owner is or shall be the owner of the Project, which is multi-family and single family affordable housing units located in the City of Huntsville, Alabama, County of Madison, State of Alabama, more particularly described in Exhibit A.

WHEREAS, the Owner has represented to City that Owner shall lease the Units in to Low-Income Tenants as indicated in Section 4 of this Declaration; and

WHEREAS, the Owner agrees to maintain the HOME Program rent and income restrictions for the Affordability Period; and

WHEREAS, the HOME Program requires, as a condition precedent to the allocation of the HOME Program funds, that the Owner and City execute, deliver and record this Declaration in the real estate records of the Probate Office of the county in which the Project is located in order to create certain covenants running with the Project for the purpose of enforcing the requirements of the HOME Program, the Project Occupancy Restriction, and the Building Occupancy Restriction by regulating and restricting the use, occupancy and transfer of the Project as set forth herein; and

WHEREAS, the Owner, by this Declaration, intends, declares and covenants that the restrictive covenants set forth herein governing the use, occupancy and transfer of the Project shall be and are covenants running with the Project for the Declaration Term and are binding upon all subsequent owners of the Project for such term, and are not merely personal covenants of the Owner; and

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1 – DEFINITIONS

The following terms shall be defined as follows:

a) "Act" means the National Affordable Housing Act of 1990, as from time to time amended and the regulations relating thereto.

b) "Affordability Period" means the 10-year period commencing upon the Completion of the Project.

c) "Application" means Owner's Alabama's HOME Program Application to the City of Huntsville, Alabama.

d) "Area Median Income" means "area median income" as determined by the Secretary of HUD with adjustments for smaller or larger households.

e) "Building" means any building that is or is to be part of the Project.

f) "City" means the City of Huntsville, Alabama, a municipal corporation, and any successor to its function.

g) "HOME Program" means the federal housing program created by Title II of the National Affordable Housing Act of 1990, as from time to time amended, and applicable regulations including, without limitation 24 CFR Parts 58 and 92, and all amendments thereto.

h) "HUD" means the United States Department of Housing and Urban Development and any successor thereto.

i) "Low-Income Requirement" means the requirement that tenants of Low-Income Units have incomes not exceeding the maximum income set out in Section 4 of this Declaration and made applicable by the Project Occupancy Restriction.

j) "Low-Income Tenant" means an individual or household whose income satisfies the Low-Income Requirement.

k) "Low-Income Unit" means a Unit as to which HOME Program funds were expended at any time during the Affordability Period and includes all Units that must be leased to a Low-Income Tenant to satisfy the Project Occupancy Restriction.

l) "Owner" means Family Services Center Inc., an Alabama non-profit corporation, and any person now or hereafter owning any interest (other than solely as a creditor) in the Project or any portion thereof.

m) "Project" means the certain tract of land in the City of Huntsville, County of Madison, State of Alabama, more particularly described in Exhibit A hereto.

n) "Project Occupancy Restriction" means the obligation of the Owner to restrict occupancy of a percentage of the Units in the Project to satisfy Section 4(a) of this Declaration.

o) "Project Rent Restriction" means the obligation of the Owner that rents charged Low-Income Tenants in Low-Income Units shall not exceed the maximum rent that may be imposed on occupancy of such Unit, pursuant to 24 CFR Section 92.252.

p) "Transfer", and any derivation thereof, includes a sale or exchange other than a technical assignment of title pursuant to a mortgage (but a foreclosure of a mortgage is a "transfer").

q) "Unit" means a residential apartment unit/single household home of the Project as determined in accordance with the HOME Program.

All words and phrases defined in the HOME Program and HUD regulations pertaining thereto and/or promulgated there under shall have the same meanings in this Declaration.

## SECTION 2 – RECORDING AND FILING; COVENANTS TO RUN WITH THE PROJECT

a) Upon execution and delivery by the parties hereto, the Owner shall cause this Declaration and all amendments hereto to be recorded and filed in the real estate records in the Probate Office of the county in which the Project is located and shall pay all fees and charges incurred in connection therewith. Prior to recording, the Owner shall provide City with an executed copy of this Declaration. Upon recording, the Owner shall provide City with the executed original of the recorded Declaration showing the Probate Office's time and date stamp and all pertinent recording data.

b) The covenants contained in this Declaration (i) shall be and are covenants running with the Project, encumbering the Project for the Declaration Term, binding upon the Owner's successors in title and all subsequent owners and operators of the Project or of any part thereof, (ii) are not merely personal covenants of the Owner, and (iii) shall bind the Owner and its successors and assigns during the Declaration Term. All parties hereto hereby agree that any and all requirements of the laws of the State of

Alabama to be satisfied in order for the provisions of this Declaration to constitute valid, binding and enforceable restrictive covenants running with the Project shall be deemed to be satisfied in full or in the alternative, that an equitable servitude has been created to ensure that these restrictions run with the Project.

c) For the Declaration Term, each and every mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof shall expressly provide that such conveyance and encumbrance is subject to this Declaration, provided, however, the covenants contained herein shall survive and be effective regardless of whether such mortgage, lease, deed or other instrument hereafter executed conveying or encumbering the Project or any portion thereof provides that such conveyance is subject to this Declaration.

### SECTION 3 – REPRESENTATIONS, COVENANTS AND WARRANTIES OF THE OWNER

The Owner hereby represents, covenants and warrants to City as follows:

a) The Owner is a (i) Non-profit corporation, duly organized, existing and in good standing under the laws of the State of Alabama, and is qualified to transact business under the laws of the State of Alabama, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted, and (iii) has the full legal right, power and authority to execute and deliver this Declaration.

b) The execution, delivery and performance of this Declaration by the Owner (i) will not violate any provision of law, rule or regulation, or any order of any court or other agency or governmental body and (ii) will not violate any provision of any indenture agreement, mortgage, mortgage note, or other instrument to which the Owner is a party or by which it or the Project is bound.

c) The Owner has good and marketable fee simple title to the Project and the covenants imposed on the Project by this Declaration are not inconsistent with the terms of any lien, mortgage, or other encumbrance or restrictive covenant, easement or servitude.

d) There is no action, suit or proceeding at law or in equity or by or before any governmental instrumentality or other agency now pending, or, to the knowledge of the Owner, threatened against or affecting the Owner or the Project, or any of the Owner's properties or rights, which, if adversely determined, would materially impair the Owner's right to carry on business substantially as now conducted (and as contemplated by this Declaration) or which would materially and adversely affect its financial condition or which would impair the use of the Project as contemplated by this Declaration.

e) Throughout the Affordability Period, the Project shall constitute a qualified low-income housing project, as required in Section 4 of this Declaration.

f) Each Unit shall, throughout the Affordability Period, contain complete facilities for living, sleeping, eating, cooking and sanitation (unless the Project qualifies as a single-room occupancy or transitional housing for the homeless under the HOME Program) which are to be used on other than a transient basis.

g) During the Affordability Period, each Low-Income Unit shall be suitable for occupancy and shall be used only other than on a transient basis.

h) The Owner shall not demolish any part of the Project or substantially subtract from any real or personal property of the Project or permit the use of any Unit for any purpose other than rental housing during the Affordability Period unless required by law.

i) If during the Affordability Period the Project, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, the Owner shall use its best efforts to repair and restore the Project to substantially the same condition as existed prior to the event causing such damage or destruction, or to relieve the condemnation, and thereafter to operate the Project in accordance with the terms of this Declaration. If the Building or any Units are damaged, destroyed, acquired for public use, or condemned and not rebuilt, the Project Occupancy Restriction shall be applied to the remaining Units in the Project as though no reduction in the total number of Units had occurred.

j) The Owner has not executed, and shall not execute, any other agreement with provisions contradictory to, or in opposition to this Declaration. This Declaration is paramount and controlling as to the rights and obligations herein set forth and supersedes any other requirements in conflict herewith.

k) Throughout this Declaration Term, the Owner shall not evict or terminate the tenancy of a Low-Income Tenant other than for good cause or increase gross rent with respect to a Low-Income Unit other than as permitted under the HOME Program.

#### SECTION 4 – EXTENDED LOW-INCOME HOUSING COMMITMENT

In order to satisfy the Project Occupancy Restriction, the Owner shall assure that throughout the Affordability Period and by no later than the last day of the first year of the Affordability Period:

a) All units in this project shall be designated as HOME assisted Units. All of the HOME assisted Units shall be rent restricted and occupied by individuals whose income is thirty percent (30%) or less of the Area Median Income.

The Project Rent and Income Restrictions are applied on a Project basis.

b) The determination of whether a Low-Income Tenant meets the Low-Income Requirement shall be made by the Owner at least annually on the basis of the then current income of such Low-Income Tenant and the guidelines established by the HOME Program.

#### SECTION 5 – ENFORCEMENT OF OCCUPANCY RESTRICTIONS

a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative or designated agent of City to inspect any books and records of the Owner regarding the Project with respect to the incomes of Low-Income Tenants or which pertain to compliance with the occupancy restrictions specified in this Declaration.

b) The Owner shall submit any other information, documents or certifications requested by City which City shall deem necessary to substantiate the Owner's continuing compliance with the provisions of the Project Occupancy Restriction and any other Occupancy Restrictions specified in this Declaration.

#### SECTION 6 – ENFORCEMENT TO HOME PROGRAM RESTRICTIONS

a) The Owner covenants that it shall not knowingly take or permit any action that would result in a violation of the requirements of the HOME Program, or this Declaration. Moreover, Owner covenants to take any lawful action (including amendment of this Declaration as may be necessary) to comply fully with the HOME Program, and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by HUD or other governmental agency from time to time pertaining to Owner's obligations under the HOME Program and affecting the Project.

b) The Owner and City each acknowledge that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Declaration is to assure compliance of the Project and the Owner with the HOME Program, AND BY REASONS THEREOF, THE OWNER IN



i) Other Declaration. This Declaration is in addition to, and is not in lieu of, any other declaration of restrictive covenants (the "Other Declaration") which the Owner may have heretofore executed, or may simultaneously herewith or hereafter execute, with respect to the Project. The Owner must abide by this Declaration and by the Other Declaration, if any, each of which stands on its own.

IN WITNESS WHEREOF, the parties have caused this Declaration to be signed by their respective duly authorized representatives, as of the day and year first written above.

**IN WITNESS THEREOF**, the City and the DEVELOPER have executed this Agreement on this the 11th day of July, 2013.

**CITY OF HUNTSVILLE**

\_\_\_\_\_  
Tommy Battle, Mayor  
City of Huntsville, Alabama

ATTEST:

\_\_\_\_\_  
Charles E. Hagood, City Clerk Treasurer  
City of Huntsville, Alabama

**Family Services Center, Inc.**  
an Alabama Non-Profit Corporation.

By: \_\_\_\_\_  
its President

ATTEST:

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