# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 7/23/2015

Action Requested By:
Community
Development

Agenda Item Type

Resolution

Subject Matter:

Agreement between the City of Huntsville and Family Services Center, Inc., for HOME Investment Partnership Grant Fund.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into a contract with Family Services Inc., for new construction of a house using HOME Investment Partnership funds at 2909 Wilson Drive in the Terry Heights neighborhood.

**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.

The contract to construct housing meets the HUD requirement to commit funds provided to the City under the provisions of the HOME Investments Partnership Act.

Associated Cost: 0

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____

Date: 8/4/15

revised 3/12/2012

# ROUTING SLIP
# CONTRACTS AND AGREEMENTS

Originating Department: **Community Development** Council Meeting Date: **8/13/2015**

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

Contract or Agreement: **Agreement**

Document Name: **AGREEMENT BETWEEN FAMILY SERVICES CENTER INC. AND THE CITY O...**
2909 Wilson Drive

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

Account Number:

## Procurement Agreements

| | |
|---|---|
| **Select...** | **Select...** |

## Grant-Funded Agreements

| | |
|---|---|
| **Federal HUD** | **Grant Name:** HOME Investment Partnership Grant |

| Department | Signature | Date |
|---|---|---|
| 1) Originating | | 8/4/15 |
| 2) Legal | Mary C Gates | 8/7/15 |
| 3) Finance CC | | 8/10 |
| 4) Originating | | |
| 5) Copy Distribution | | |
| a. Mayor's office (1 copies) | | |
| b. Clerk-Treasurer (Original & 2 copies) | | |
| | | |

* see note

Revised 04/15/2011

**Resolution No.** 2015-_____

**WHEREAS**, the City of Huntsville, Alabama received grants from the United States Department of Housing and Urban Development, hereinafter referred to as HUD, whereby certain funds were provided to the City under the provisions of the HOME Investments Partnership Act, as amended; and,

**WHEREAS**, FAMILY SERVICES CENTER, INC., an Alabama nonprofit corporation, has met all requirements of the Act regarding its status as a Community Housing Development Organization (CHDO); and,

**WHEREAS**, the City of Huntsville certified Family Services Center as a Community Housing Development Organization (CHDO); and,

**WHEREAS**, the City of Huntsville desires to engage FAMILY SERVICES CENTER, INC., to provide certain services under provisions of the Act.

**NOW, THEREFORE, 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 an agreement with FAMILY SERVICES CENTER, INC., said agreement being substantially similar in words and figures to that document identified as "AGREEMENT BETWEEN FAMILY SERVICES CENTER, INC. AND THE CITY OF HUNTSVILLE, ALABAMA FOR THE USE OF HOME INVESTMENT PARTNERSHIP COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) FUNDS FOR AFFORDABLE HOUSING LOCATED AT 2909 WILSON DRIVE" consisting of twenty-one (22) pages, including Exhibits A and B, with the signature of the Council President or President Pro tem, and the date August 13, 2015 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 of the City of Huntsville.

**ADOPTED** this the 13th day of August 2015.

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

**APPROVED** this the 13th day of August, 2015.

_____
Mayor of the City of Huntsville,
Alabama

STATE OF ALABAMA )

COUNTY OF MADISON )

**AGREEMENT BETWEEN FAMILY SERVICES CENTER INC., AND THE CITY OF HUNTSVILLE, ALABAMA FOR THE USE OF HOME INVESTMENT PARTNERSHIP COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) FUNDS FOR AFFORDABLE HOUSING**

**AGREEMENT BETWEEN FAMILY SERVICES CENTER, INC., AND THE CITY OF HUNTSVILLE, ALABAMA FOR THE USE OF HOME INVESTMENT PARTNERSHIP COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO) FUNDS FOR AFFORDABLE HOUSING LOCATED AT 2909 WILSON DRIVE**

THIS AGREEMENT, entered into this the 13th day of August, 2015, by and between the City of Huntsville, Alabama, a municipal corporation, hereinafter referred to as the CITY, and, FAMILY SERVICES CENTER, INC., an Alabama nonprofit corporation, the DEVELOPER, hereinafter referred to as the DEVELOPER.

NOW, THEREFORE, for consideration as hereinafter provided, the parties hereto do mutually agree as follows:

**PART I**

I. PROJECT DESCRIPTION. The DEVELOPER shall provide management of a Community Housing Development Organization (CHDO) program that will involve homeownership opportunities for low and moderate-income families that meet HOME program income eligibility criteria. The City shall provide a total of **$157,000.00** in HOME funds for activities associated with the program. Funds shall be expended as described in Part I, Section VI of this Agreement. The DEVELOPER shall receive CHDO Operating funds for eligible operating expenses such as salaries/ benefits, rent/mortgage, utilities and any other HUD approved operating expense related to this project. The City will provide a maximum of **$22,560.00** in HOME funds for CHDO Operating. The total amount of funds committed under this contract shall not exceed **$179,560.00.**

II. PROJECT LOCATION. All records related to the DEVELOPER shall be maintained at the DEVELOPER office located at 4092 South Memorial Parkway Huntsville, Alabama 35802.

III. SERVICES TO BE PROVIDED. The DEVELOPER shall, in a satisfactory and proper manner, as determined by the Community Development Department (CDD) of the City of Huntsville, perform the following services:

A. The DEVELOPER will provide for the administration and oversight of its project that includes acquisition, new construction and a homeownership program for low-income families.

B. The CITY will provide funds for the construction of One (1) three bedroom house for low and moderate income families. The house will be located at 2909 Wilson Drive in the Terry Heights neighborhood and the CITY will provide a maximum of **$179,560.00** in HOME funds for this purpose.

IV. TIME OF PERFORMANCE. All activities to be undertaken by the DEVELOPER will be undertaken beginning on August 13th, 2015. All activities utilizing HOME funds, other than monitoring activities which continue for the duration of the affordability periods, will be completed by August 13, 2019. Any pre-development costs will be considered eligible costs provided the costs are incurred no more than 90 days before the contract is executed. Earnest money held by a third party for property acquisition will be an eligible expense provided the completion of purchase is after the execution of this contract. All documentation shall be completed no later than September 13, 2019.

V. CHDO Proceeds. Proceeds are to be retained by the DEVELOPER for additional HOME eligible activities approved by the city.

The DEVELOPER shall perform according to the following schedule:

| **Program Element** | **Deadline** |
|---|---|
| • Execute Contract for Project | August 13, 2015 |
| • Pre-construction Conference | August 18, 2015 |
| • Project Start Date | August 18, 2015 |
| • Construction Completion Date | August 18, 2019 |
| • Project Homeownership Sale Started | August 18, 2015 |
| • Project Home Ownership Completed | September 13, 2019 |

- Monitoring Period 5-15 years for each home in

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

VI. COMPENSATION AND METHOD OF PAYMENT. **After receipt of funds, the DEVELOPER shall make payment of expenses to the vendor(s) or employee(s) indicated in the request for funds within two (2) working days from the date of the deposit of funds by the DEVELOPER.** HOME assistance shall not exceed the total amount of **$179,560.00** for all services required hereunder. Community Development HOME funds shall be expended as delineated below:

| **One (1), 3 –bedroom House** | | |
|---|---|---|
| Acquistition | 18,000.00 | |
| Demolition | 8,000.00 | |
| Construction | 122,000.00 | |
| Legal | 2,000.00 | |
| Contingency | 5,000.00 | |
| Fees/Services | 2,000.00 | |
| **Total Construction Cost** | **157,000.00** | * |
| CHDO Operating funds | **22,560.00** | ** |
| **Total Project Cost** | **179,560.00** | |

** Cost listed here are estimated, actual cost may transfer line item amounts by up to 10%*

## COST CATEGORY

| ACCOUNT NUMBER | ACCOUNT NAME | AMOUNT |
|---|---|---|
| 511 * ** | $179,560.00 | $179,560.00 |
| | TOTAL | $179,560.00 |

* Cost associated with but not limited to construction, liability insurance, utilities, appraisals, real estate fees, legal fees, consultants, professional services, surveys and any other cost associated with creation of housing units are reimbursable expenses for the agency until execution of sales contract to homeowner.

** CHDO Operating funds may be used for expenses such as salaries/ benefits, rent/mortgage, utilities and any other HUD approved operating expense related to this project

VII. FEDERAL FUNDS. It is mutually understood by the parties hereto that this contract is subject to the continued availability of federal funds and no other funds of the City of Huntsville will be made available for funding this Agreement.

VIII. Requests for disbursement funds. The DEVELOPER may not request disbursement of funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

VIX. CHDO Proceeds. Proceeds are to be retained by the DEVELOPER for additional HOME eligible activities approved by the city.

## PART II
## HOME FUNDING -TERMS, CONDITIONS, REQUIREMENTS

CDD and DEVELOPER hereby agree:

I. **GENERAL TERMS AND CONDITIONS:**

A. The DEVELOPER agrees to comply with all applicable federal, state, and local laws and regulations governing the funds provided under this contract. Said HOME regulations are published in 24 CFR Part 92. In the event of any conflict between this agreement and applicable laws and regulations governing the HOME funds and the use of the HOME funds, the applicable HOME program laws and regulations shall govern. Each and every provision of law, regulation or clause required by law to be inserted in this agreement shall be as though it were included herein. The DEVELOPER agrees to enter into any modifications of this Agreement reasonably required by the CITY to attain compliance with the requirements of the HOME program.

B. The City shall have no responsibility or liability for the maintenance, operation or program funding not outlined in this contract for the DEVELOPER.

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 DEVELOPER 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 DEVELOPER is an independent contractor.

D. During the period of this Agreement, effective as of the start of the Project, the DEVELOPER shall, as a reimbursable expense, procure and maintain all-risk property damage and liability insurance. For the term of this agreement, the DEVELOPER shall list the City, its employees, and elected and appointed officials as additional insureds on said property 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 the Community Development Coordinator within 30 days of the lapse of said policy. The DEVELOPER shall provide Workers' Compensation Insurance coverage for all employees involved in the performance of this contract.

E. Amounts paid pursuant to this Agreement shall be secured by a deed restriction and where appropriate, a mortgage.

F. In the event the DEVELOPER discontinues the provision of affordable housing as funded under this Agreement prior to the affordability period of this Agreement, the value of the pro-rated portion of real and personal property (tangible and intangible) secured with the HOME Investment Partnership funds under this Agreement shall revert to the City. If the property has been disposed of, then the City will be reimbursed in the amount of the current fair market value of the property less any portion of the fair market value attributable to non-City HOME Investment Partnership funds. (Personal property includes, but is not limited to, equipment, furnishings, and vehicles.) Reversion of assets. Upon expiration of this agreement, the DEVELOPER must transfer to the CDD any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

G. All housing assisted with HOME Investment Partnership funds shall be constructed in compliance with the property standards defined in 24 CFR 92.251(a) (1),(2) &(3), and any locally enforceable housing standards, laws, codes, ordinances, and zoning ordinances of the City. The housing must meet the accessibility requirements in the regulations referenced in 24 CFR Part 8 which implement Section 504 of Rehabilitation Act of 1973 (29 U.S.C. 794) and the design and construction requirements at 24 CFR 100.205 which implement the Fair Housing Act (42 U.S.C. 3601-3619.

H. DEVELOPERs that receive HOME Investment Partnership funds shall maintain records indicating that an inspection of the housing was performed and at a minimum a Certificate of Occupancy was provided for each assisted property.

I. 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.

J. The Developer shall provide affordable homeownership housing for a minimum period of affordability beginning from the time each home is sold to an eligible occupant. All housing for acquisition by a family must meet the affordable housing requirements set forth in 24 CFR 92.254. According to HOME regulations, housing assisted with HOME Investment Partnership funds shall have a deed restriction placed upon it at the time of sale, requiring adherence to the occupancy restriction of 24 CFR 254. The Deed Restriction approved by the City of Huntsville for use for homes sold pursuant to this Agreement is set forth as Exhibit "A" attached hereto and incorporated by reference into this Agreement. Such deed restriction contains the Affordability Period table and the applicable recapture requirements of 24 CFR 92.254 (a)(5)(ii) and shall be included in the purchase and sales agreement and deed in all sales transactions to eligible homeowners. With the concurrence of the City concerning the amounts of the HOME subsidy for each home sold as part of the Project, the Developer shall complete this Deed Restriction for inclusion in all home sales transactions. The Affordability period for each home sold shall be determined by the amount of HOME funded assistance provided to reduce the home selling price from appraised value to one of affordability (affordability subsidy) for people at income levels of 80% or less of Huntsville's median income. If down payment assistance will be provided, that amount will be added to total amount of affordability period.

K. Monitoring by the Developer for compliance shall continue for the entire period of affordability for each home sold.

L. The DEVELOPER must comply with the requirements of 24 CFR 92.353 with regards to the displacement, relocation, and acquisition in order to minimize the displacement of persons as a result of this HOME assisted project.

M. News Media. Any publicity given to the project herein concerned shall recognize the City of Huntsville and the U.S. Department of Housing and Urban Development.

## II. PERFORMANCE AND REPORTING:

A. The DEVELOPER shall direct all notices, reports, insurance policies, and other communications related to or required by this Agreement to the City of Huntsville, Alabama, Community Development Office, P.O. Box 308, Huntsville, Alabama 35804. Notice by both DEVELOPER 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 DEVELOPER 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 fiscal year (October 1 to September 30)

C. DEVELOPER shall provide the City with a Certified Statement of the Expenditure of Funds disbursed under this Agreement each fiscal year.

D. DEVELOPERS that receive HOME Investment Partnership funds for homeowner assistance shall maintain records of determination of each homeowner's eligibility and eligibility as a family at the time the household(s) receive the assistance.

E. For projects with a HOME grant or loan of $500,000 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 in accordance with OMB Circular A133.

F. No reporting requirements for City HOME funds shall extend beyond the final annual report that is due on November 1, in the last year of the affordability period.

## III. OTHER REPORTS, AUDITS AND INSPECTIONS:

A. The DEVELOPER 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 DEVELOPER shall make available and accessible to the City, HUD and/or the Comptroller General of the United States, or their duly authorized representatives, all of the DEVELOPER'S records in order to permit examination of any books, documents, papers, audits, invoices, materials, payrolls, personnel records, conditions of employment, and other data relating to all matters covered by this Agreement.

C. The DEVELOPER 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.

D. Findings Confidential. All audit findings, reports, studies, and any other information or data prepared or assembled by the DEVELOPER under the terms of this agreement are confidential in nature, and the DEVELOPER agrees that they shall not be made available to any individual or organization, other than to a DEVELOPER of the United States Government, without the prior written approval of the City.

E. Additional guidelines for reports and retention of records are set forth in Exhibit "B" of this Agreement which is attached hereto.

## IV. ADMINISTRATIVE REQUIREMENTS:

A. Financial Management

1. Accounting Standards The DEVELOPER agrees to comply with OMB Circular A-110 and A-122 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. As a minimum the DEVELOPER's financial management systems shall provide for:

   a. Accurate, current and complete disclosure of the financial results of each federally sponsored project or program in accordance with the reporting requirements. When a Federal sponsoring DEVELOPER requires reporting on an accrual basis, the DEVELOPER shall not be required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

   b. Records that identify adequately the source and application of funds for federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

   c. Effective control over and accountability for all funds, property and other assets. DEVELOPERs shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

   d. Comparison of actual outlays with budget amounts for each grant or other agreement. Whenever appropriate or required by Federal sponsoring DEVELOPER, financial information should be related to performance and unit cost data.

   e. Procedures to minimize the time elapsing between the receipt of funds from the City by CDD and the disbursement by the DEVELOPER within two (2) working days.

   f. Procedures for determining the reasonableness, and if costs are allowable in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.

   g. Accounting records that are supported by source documentation.

   h. Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, and Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the

terms and conditions of the agreements.

2. Cost Principles. The DEVELOPER shall administer its program in conformance with *OMB Circular A-122/HUD Handbook 2210.18, "Cost Principles for 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 DEVELOPER 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-122, and/or OMB Circular A-133, and/or OMB Circular A-110.

2. Client Data

The DEVELOPER 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 DEVELOPER 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.

4. Additional guidelines for documentation and record-keeping are set forth in Exhibit "B" attached hereto.

C. Procurement

1. Compliance

In accordance with 24 CFR 92.350, the DEVELOPER shall comply with the federal requirements set forth in 24 CFR 5.105. These requirements include nondiscrimination and equal opportunity; disclosure requirements, debarred, suspended or ineligible contractors, and drug free workplace, and are applicable to all participants in the HOME program.

2. OMB Standards

The DEVELOPER shall procure services and materials in accordance with the requirements of OMB Circulars A-133, A-122, and A-110 Procurement Standards, and shall subsequently follow Attachment N, Property Management Standards, covering utilization and disposal of property. Copies of said circulars are provided and by execution of this Agreement, the DEVELOPER acknowledges their receipt.

D. Amendments

The City and DEVELOPER 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.

E. Uniform Administrative Requirements.

The DEVELOPER shall comply with the requirements of OMB Circular No. A-122 and the following requirements of 24 CFR: Part 84: 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

## V. NON-DISCRIMINATION and AFFIRMATIVE MARKETING:

No person shall be excluded from or denied the benefits of the DEVELOPER'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 DEVELOPER. The DEVELOPER shall comply with the affirmative marketing and minority outreach requirements set forth in 24 CFR 92.351.

## VI. 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.

## VII. EQUAL EMPLOYMENT OPPORTUNITY and FAIR HOUSING:

The DEVELOPER 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 DEVELOPER shall ensure that all contracts for work under this Agreement contain appropriate equal employment opportunity statements. In addition, DEVELOPERS shall comply with all provisions of 24 CFR 92.350.

## VIII. SECTION 3:

Contractors retained by the DEVELOPER shall adhere to the following Section 3 requirements and provide reports as required by HUD. The DEVELOPER agrees to comply with Section 3 requirements, the requirements under 24 CFR 24 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, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are Developers 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 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.

D. 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.

E. 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.

IX. **W/MBE:**

The DEVELOPER 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.

X. **LABOR:**

New construction projects funded under the HOME Investment Partnership program that

contain more than 12 (twelve) units shall comply with the labor provisions outlined in 24 CFR 92.354. The DEVELOPER agrees to adhere to said provisions and will not use suspended or debarred contractors and will abide by 24 CFR 92.357.

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

The DEVELOPER shall assist the City in complying with all applicable environmental assessment and historic preservation requirements of HUD and the State Historic Preservation Officer of Alabama.

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

The DEVELOPER 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. Each home completed pursuant to this Agreement must meet, prior to the closing of the sale of the property, the lead based paint requirement in 24 CFR Part 35, subparts, A,B,J, K,M, and R.

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

In accordance with 24 CFR 85.43, if the DEVELOPER fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the DEVELOPER violates any of the terms, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement in whole or in part by giving written notice to the DEVELOPER 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. 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 DEVELOPER shall promptly repay to the City the full loan amount or that portion of the amounts that have been disbursed to the DEVELOPER prior to such termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the DEVELOPER under the terms of this Agreement shall, at the option of the City, become the property of the City.

XIV. **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 DEVELOPER 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 DEVELOPER shall promptly repay to the City the full grant amount or that portion of the amount which has been disbursed to the DEVELOPER prior to such termination.

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

A. No federal funds appropriated under this contract shall be paid, by or on behalf of the

DEVELOPER, 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.

B. 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 DEVELOPER shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

C. The DEVELOPER shall require that the language of this certification be included in the award documents for all Developers and that all Developers shall certify and disclose accordingly.

D. The DEVELOPER agrees to comply with the provisions of 24 CFR 92.356 which forbids any owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) from occupying a HOME-assisted affordable housing unit in a project. This provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker.

E. The DEVELOPER shall maintain a code or standards of conduct that shall govern the performance of its officers, employees, consultants or agents engaged in the awarding and administration of contracts using Federal funds. No employee, officer or agent shall participate in the selection, award or administration of a contract in which Federal funds are used, where, to his knowledge, he or his immediate family or partner has a financial interest or with whom he is negotiating or has any arrangement concerning prospective employment. The DEVELOPER's officers, employees, consultants or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or potential contractors. Such standards shall provide for disciplinary actions to be applied for violations of such standards by the DEVELOPER's officers, employees, consultants, or agents.

## XVI. **GRANTOR RECOGNITION:**

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

## XVII. **ASSIGNABILITY:**

The DEVELOPER 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.

XVIII. **HOLD HARMLESS PROVISION:**

The DEVELOPER 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 DEVELOPER'S employees or agents during the performance of this Agreement.

XIX. **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.

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

The City shall not be liable to the DEVELOPER, 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 DEVELOPER, 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 DEVELOPER's involvement with the City.

XXI. Contractual Noncompliance. Non compliance with any and/or all part(s) of this contract, grant, loan or agreement, as determined by the City may result in the disallowance of costs thereby requiring the immediate payback of Federal funds by the DEVELOPER to the City within 30 days of such written determination. This requirement applies not only to the period of the contract, grant, loan or agreement but also for a period of five (5) to ten (10) years pursuant to the "Period of Record Retention" requirements.

XXII. Maximum per-unit subsidy amount. The amount of HOME funds that the DEVELOPER may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD under 24 CFR § 221.514 (b) (1) and (c) for elevator-type projects, involving nonprofit mortgagors, insured under section 221 (d) (3) of the National Housing Act that apply to the area in which the housing is located.

XXIII. Definitions.

A. DEVELOPER - an entity, whether public or private, which has the responsibility for administering a project or activity under the terms of Title II Cranston-Gonzalez National Affordable Housing Act of 1990, and which is a party to this agreement.

B. CDD - The City of Huntsville, Alabama, a municipal Corporation, acting by and through the Community Development Division.

C. CONTRACTOR - an entity, other than a DEVELOPER (except as noted in the Labor Standards provisions) that furnishes to the City or to an DEVELOPER services (other than standard commercial supplies, office space, office space, or printing services).

D. HUD - The Secretary of Housing and Urban Development or a person authorized to act on his behalf.

E. PROGRAM – Home Investment Partnership Program approved by HUD and as amended from time to time.

F. CITY - The City of Huntsville, Alabama, a municipal Corporation, including its elected and appointed officials, employees, or designated agents thereof.

XXIV. E-Verify

**The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535,** Code of Alabama (1975) § 31-13-1 through 31-13-30 (also known as and hereinafter referred to as " the Alabama Immigration Act") as amended by Act No. 2012-491 on May 16, 2012 is applicable to all competitively bid contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, as amended, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.
During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are included in each subcontract in accordance with §31-13-9(c). Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2).
Code of Alabama (1975) § 31-13-9 (k) requires that the following clause be included in all City of Huntsville contracts that have been competitively bid and is hereby made a part of this contract:
"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."

**IN WITNESS THEREOF**, the City and the DEVELOPER have executed this Agreement on this the 26th day of July, 2012.

**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:

_____

## Exhibit "A"

## Deed Restriction

It is understood and agreed that federal HOME funds in the amount of _____have been provided by the City of Huntsville, Alabama through Family Services Center Inc.,(AGENCY) to assist in the purchase and conveyance of the Property that is the subject of this real property transaction in order to make the Property available for low-income families as affordable housing. Federal regulations, set forth in 24 CFR 92.254 require that this housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the homebuyer throughout the period of affordability. Additionally, recapture provisions are required pursuant to 24 CFR 92.254 (a) (5) (ii) for the purchase and sale agreement and to be included as a deed restriction to ensure that the City of Huntsville, Alabama recoups all or a portion of the HOME assistance provided to the home purchaser, if the housing does not continue to be the principal residence of the home purchaser for the duration of the period of affordability. The minimum period of affordability is determined in accordance with the following table based on the total amount of HOME funding subsidy provided and subject to recapture:

| **AFFORDABILITY PERIOD** of **HOME FUNDS used for affordability subsidy** | |
|---|---|
| <$15,000 | 5 years |
| $15,000 - $40,000 | 10 years |
| >$40,000 | 15 years |

In accordance with 24 CFR 92.254 (a)(5) (ii) (A)(2), during the applicable Period of Affordability, the amount to be recaptured may be reduced by the City of Huntsville, Alabama, on a pro rata basis for the time the purchaser homeowner has owned and occupied the subject housing measured against the affordability period.

During the Period of Affordability Habitat for Humanity of Madison County (AGENCY) and the City of Huntsville, Alabama must receive prior written notification of any sale, refinancing, or foreclosure that occurs with regards to the Property.

**In the event of a sale** of the Property during the Period of Affordability, an amount equal to a pro rata share of HOME subsidy funds, reduced proportionately for every year of the Period of Affordability the qualifying homeowner owned the Property, shall be repaid to the City of Huntsville, Alabama from any net gain realized upon the sale of the Property after deduction for sales expenses in accordance with 24 CFR 92.254 (a) (5) (ii) (A) (3).

**In the event of a refinancing** of the Property during the Period of Affordability, cash out refinances are unallowable. Any refinancing must be limited to the balance of the first mortgage.

**In the event of a foreclosure** of the Property during the Period of Affordability, the City of Huntsville, Alabama may receive the "net proceeds" up to the original amount of the HOME funding subsidy. The net proceeds are the sales price minus superior loan repayment (other than HOME funds) and any closing costs. At the sole discretion of the City of Huntsville, Alabama the net proceeds may be shared in accordance with the provisions of 24 CFR 92. 254 (a)(5)(ii)(A)(3).

**The provisions of this "deed restriction" are hereby declared covenants running with the land and are fully binding on any successors, heirs, and assigns of the Purchaser/Grantee homeowner who**

may acquire any right, title, or interest in or to the Property, or any part thereof. The Purchaser/Grantee, its successors, heirs, and assigns do hereby agree and covenant to abide by and fully perform the provisions of this restriction and do hereby join into, executes, and accepts delivery of the deed of conveyance to evidence its obligation to abide by the obligations and restrictions set forth herein.

## Exhibit "B"

1. REPORTS, REPORT CONTROL, AND CONTROL INFORMATION.

   A. REPORT CONTROL. Reports related to this project will be maintained by the DEVELOPER as a permanent, separate, identifiable file subject to periodic audits by the City through its Community Development Division (CDD), the Department of Housing and Urban Development, the Comptroller General, or any of their duly authorized representatives.

   B. FORMS. All forms bearing a Community Development Form Number (Community Development Division Forms) will be provided by the CDD.

   C. REPORTS CONTROL PERSONNEL. Upon execution of this contract, the DEVELOPER shall designate those members of the DEVELOPER staff who will be totally responsible to the CDD for DEVELOPER reports. All DEVELOPER contact regarding matters of reporting under this contract will be directed to the attention of the designated individuals.

   D. PENALTY FOR REPORT DEFICIENCIES AND DELINQUENCIES. The CDD will inventory and examine DEVELOPER reports prior to each request for Community Development funds, being especially mindful to report completeness. Release of all funds under this contract is contingent upon satisfactory DEVELOPER reporting under the terms of this contract. The CDD shall respond to any report deficiency of delinquency with a letter citing the applicable report deficiency or delinquency.

   E. GENERAL REPORT PROVISIONS.

      1. Data requirements, reporting format, and submission times will be specified by the CDD for all reporting.

      2. From time to time, as the CDD may determine, data in addition to that specifically required of the DEVELOPER in support of planning and/or evaluation.

      3. The CDD will make the final determination regarding delinquent of deficient reports, and generally, regarding any matter of report provisions where interpretation may be required.

      4. No exception will be made to any part of these report provisions unless the exception is made in writing by the CDD.

      5. Non-compliance with these provisions regarding reporting will be considered sufficient cause for termination of contract.

2. Project & Financial Records/Record Retention.

The DEVELOPER shall maintain all records required by the federal regulations specified in 24 CFR Part 92.508 that is pertinent to the activities funded under this agreement. Such records shall include as a minimum but are not limited to:

A. Project Records/Financial Records.

(i) A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20.

(iii) Records demonstrating that each rental housing or homeownership project meets the maximum per-unit subsidy amount of 24 CFR 92.205 (c), the maximum per unit subsidy amount of 24 CFR 92.205 (a), and the subsidy layering guidelines adopted in accordance with 92.250(b).

(iv) Records demonstrating that each project meets the property standards of 24 CFR 92.251 and the lead based paint requirements of 24 CFR 92.355.

(v) Records demonstrating that each family is income eligible in accordance with 24 CFR 92.203.

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of 24 CFR 92.209 (c) including the tenant preference requirements, the rent reasonableness requirements, HQS inspection reports, and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project meets the affordability and income targeting requirements for the required period. Records must be kept for each family assisted.

(viii) Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing comply with the refinancing guidelines in 24 CFR 206 (b).

(ix) Records demonstrating that each lease for a tenant receiving tenant-based assistance and for an assisted rental housing unit complies with the tenant and participant protection requirements of 24 CFR 92.253. Records must be kept for each family.

(x) Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area. The records must demonstrate how the estimated value was determined.

(xi) Records demonstrating that each homeownership project meets the affordability requirements 24 CFR 92.254 for the required period.

(xii) Records concerning the tenant participation plan required by 24 CFR 92.303.

(xiii) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(xiv) Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act 1968, as amended (12 U.S.C. 1701u).

(xv) Documentation of the actions the DEVELOPER has taken to affirmatively further fair housing.

(xvi) Affirmative marketing and MBE/WBE records demonstrating compliance with 24 CFR 92.351.

(xvii) Records demonstrating compliance with the requirements regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date moving into the property on or after the date and occupying the property upon completion of the project.

(xviii) Records demonstrating compliance with the labor requirements 24 CFR 92.354 including contract provisions and payroll records.

(xix) Records demonstrating compliance with the lead-based paint requirements.

(xx) Records supporting exceptions to the conflict of interest prohibition.

(xxi) Records demonstrating compliance with the applicable uniform administrative requirements required by 24 CFR 92.505.

(xxii) Records demonstrating compliance with this Agreement.

(xxiii) Records demonstrating the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of 24 CFR 92.208 and 92.300.

(xxiv) Records demonstrating compliance with any environmental review requirements.

(xxv) Records indicating that an inspection of the housing was performed and at a minimum a certificate of occupancy was provided for each property assisted with HOME funds.

B. Record retention. All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.

(i) For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

(ii) For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.

(iii) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates.

(iv) Written agreements must be retained for five years after the agreement terminates.

(v) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the projects have received the final payment to which they are entitled.

(vi) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(vii) Access to records. HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the DEVELOPER, and any sub Developers, in order to make audits, examinations, excerpts, and transcripts.