ADOPTED 10/23/12
APPROVED AS TO FORM

Office of the City Attorney

Prepared By: GB
Requested: CDBG Cmte
Presentation on: 10-23-12
Suspension of Rules: No

# RESOLUTION

## RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE FUNDING AGREEMENT WITH THE TUSCALOOSA HOUSING AUTHORITY FOR THE ROSEDALE COURT PHASE II PROJECT (A12-1546)

WHEREAS, the City Council of Tuscaloosa has allocated a total of $1,290,000 in CDBG-DR Program funds (grant funds or program income) from the 2012 Program Year to the Tuscaloosa Housing Authority for the development of affordable housing for renter households in the Rosedale Court Phase II Project; and

WHEREAS, the City and the Tuscaloosa Housing Authority now desire to enter into an agreement regarding said funding.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TUSCALOOSA:

1. That CDBG-DR Program funds totaling $1,290,000 be, and they are hereby, allocated to the Tuscaloosa Housing Authority for the development of affordable housing for renter households in the Rosedale Court Phase II Project.

2. That the Mayor be, and he is hereby authorized, for and as an act of the City, to execute an agreement with the Tuscaloosa Housing Authority covering the use of $1,290,000 in 2012 CDBG-DR Program funds for the development of affordable housing for renter households in the Rosedale Court Phase II Project.

FUNDING REQUIRED: ☒Yes ☐No

By: _____
Finance Director

COUNCIL ACTION

Resolution _____
Ordinance _____
Introduced _____
Passed _____
2nd Reading _____
Unanimous _____
Failed _____
Tabled _____
Amended _____
Comments: _____

STATE OF ALABAMA )
TUSCALOOSA COUNTY )
CITY OF TUSCALOOSA )

**SUBRECIPIENT FUNDING CONTRACT BETWEEN THE CITY OF TUSCALOOSA AND TUSCALOOSA HOUSING AUTHORITY FOR ROSEDALE COURT PHASE II PROJECT (A12-1546)**

THIS AGREEMENT made and entered into on this the 10th day of September, 2013, by and between the CITY OF TUSCALOOSA, a Municipal Corporation, hereinafter sometimes referred to as the "City," and TUSCALOOSA HOUSING AUTHORITY, a public agency, hereinafter sometimes referred to as the "Subrecipient":

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

WHEREAS, the Subrecipient has requested that the City appropriate funds for its use for the benefit, either directly or indirectly, of the residents of the City; and,

WHEREAS, on October 23, 2012, the City Council of Tuscaloosa appropriated the amount of $1,290,000.00 in Community Development Block Grant Disaster Recovery (CDBG-DR) funds to the Tuscaloosa Housing Authority for the development of affordable housing for renter households in the Rosedale Court Phase II Project; and,

WHEREAS, the City desires to have the Subrecipient perform certain services and, therefore, in consideration of the benefits moving each to the other, it is mutually agreed by and between the City and the Subrecipient as follows:

## I. AUTHORITY

The City of Tuscaloosa has the authority to distribute federal Community Development Block Grant Disaster Recovery funds pursuant to Section 11-81A-1-7, Code of Alabama (1975). The Subrecipient represents and warrants to the City that it is authorized by law to receive funding from the City and that such funding will not be in violation of Article IV, Section 94, or amendments thereto, of the Constitution of Alabama, 1901, or any other constitutional or statutory provision. The Subrecipient further warrants that funding from the City will be used to perform public services and/or acts that the City is otherwise authorized to perform itself or to fund.

## II. SERVICES

The Subrecipient shall provide the following services within the Corporate Limits of the City of Tuscaloosa:

In accordance with the approved City of Tuscaloosa CDBG—Disaster Recovery Action Plan, the Subrecipient will incur construction costs for eighty-six rental units in the Rosedale Court Phase II Project. The general contractor completing construction work on this project shall have a General Contractor's license issued by the City of Tuscaloosa and shall obtain a building permit from the City as required by the City Planning and Development Services Department. All work completed by contractors shall be in accordance with the International Building Code as adopted by the City of Tuscaloosa.

In this project, the Subrecipient shall complete the construction of eighty six rental units within the Rosedale Court Phase II Project. The units to be constructed in this project shall be units of affordable rents for eligible households in accordance with HUD guidelines, and shall be completed by the Subrecipient. For each unit, Subrecipient must submit, upon request, to the City a report of the rent charged and the annual income of the tenant household for a period of twenty years.

Project Administration

The Subrecipient will carry out this affordable housing project in compliance with all applicable Federal, State and Local Regulations, including but not limited to all procurement rules and regulations.

The program client renting each unit constructed with funds through this funding agreement must qualify as low income as defined by HUD regulations.

Project Marketing

As a part of this project to develop affordable housing in this area of Tuscaloosa, the Subrecipient will implement a Marketing program to inform and recruit eligible low-income area residents for these affordable housing units. The program will include community meetings, assistance with completing rental applications, credit counseling for individual families, and "case management" assistance for individual households in completing the rental application process.

Housing Counseling and Social Service Assistance

In this project, in addition to the new construction of affordable rental units for low-income residents, the Subrecipient will include a Housing Counseling and Social Service Assistance component for each participant household.

Thus, the Subrecipient will administer a mandatory Renter Education Class Series for participant households. The classes will be free to the households. Classes will be instructed by professionals and address such topics as household budgeting, credit counseling and utilizing energy efficiency techniques.

**SCHEDULE FOR COMPLETION OF SERVICES**

| Activity | Time for Completion |
|---|---|
| Complete construction of the 86 units | March 17, 2014 |

The construction and rental of eighty-six (86) rental housing units to low income residents shall be completed in this project.

## III. APPROPRIATION

The City will reimburse the Subrecipient on a monthly basis for actual expenses incurred in the operation of the program, in accordance with the following budget:

OPERATING BUDGET

| | |
|---|---|
| Total Budget | $1,290,000.00 |

Once per month, the Subrecipient will submit a request for payment for actual expenses incurred during the preceding month and will also submit pertinent payroll records, invoices and other information that may be requested by the City.

No later than fifteen days after the end of the sixth month of the contract time period, the Subrecipient will submit to the City a narrative report of activities undertaken during the preceding six months. No later than fifteen days after the end of the contract time period, the Subrecipient will submit to the City a final report that provides data concerning the number of persons receiving services during the time period and other necessary data as proscribed by the City.

## IV. SEPARATE AGREEMENTS

The City shall be under no obligation to the Subrecipient except to the extent set out expressly in this Agreement. Provided, however, in the event there is a separate valid written agreement between the City and the Subrecipient, then this Funding Agreement is supplemental thereto. In the event of a conflict, the terms of the latest written agreement shall prevail.

## V. TERM; TERMINATION

This Agreement shall cover services provided by the Subrecipient during the time period from December 1, 2012 until March 17, 2014, or until said Agreement is otherwise terminated. The Subrecipient and the City further agree that this Agreement may be terminated at any time by either party upon the issuance of a thirty (30) day written notice to the other of intent to terminate the same. In the event of termination by either party, the Subrecipient shall refund to the City an amount equal to the excess of the total amount appropriated over an amount which bears the same ratio to the total amount appropriated as the services actually performed bear to the total services covered by this Agreement.

## VI. NON-DISCRIMINATION AND COMPLIANCE

The Subrecipient hereby covenants and agrees that, in performing its responsibilities and obligations hereunder, the Subrecipient, its officers, agents or employees will not, on the grounds of race, color, sex, religion, national origin, disability or age, discriminate or permit discrimination

against any person or groups of persons in any manner. The Subrecipient further agrees to comply with all applicable State and Federal ordinances and regulations, including but not limited to, the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), the Civil Rights Act of 1964 and any regulations promulgated there under.

## VII. INDEPENDENT CONTRACTOR

It is agreed between the City and the Subrecipient that the Subrecipient is an independent contractor. Neither the City nor its officers, agents or employees shall be liable for damages, claims, actions or causes of actions brought against the Subrecipient, or for actions of the Subrecipient.

Notwithstanding any of the provisions of this Agreement, it is agreed that the City has no financial interest in the business of the Subrecipient, and shall not be liable for any debts or obligations incurred by the Subrecipient, nor shall the City be deemed or construed to be partner, joint adventurer or otherwise interested in the assets of the Subrecipient, or profits earned or derived by the Subrecipient, nor shall the Subrecipient at any time or times use the name or credit of the City in purchasing or attempting to purchase any equipment, supplies, or other thing or things whatsoever.

In the performance of its operations and obligations hereunder, the Subrecipient shall not be deemed to be the agent of the City but shall be deemed to be an independent contractor in every respect and shall take all steps at its own expense as the City may from time to time request to indicate that it is an independent contractor. The City does not and will not assume any responsibility for the means by which or manner in which services by the Subrecipient, provided for herein, are performed, but on the contrary, the Subrecipient shall be wholly responsible therefor.

## VIII. INDEMNITY

The Subrecipient hereby covenants with the City that it will indemnify and hold the City and its officers, agents and employees harmless for or on account of any claim, suit, cause of action or judgment arising out of or in any manner associated with this Agreement or services provided or performed by the Subrecipient or any of its officers, agents or employees.

## IX. NO THIRD PARTY BENEFICIARIES

It is the intent of the parties to this Agreement that they be the only parties to the Agreement and to expressly exclude third party beneficiaries; no persons not a party to the Agreement may claim benefits under the Agreement.

## X. SERVICE AREA

The Subrecipient shall submit, if requested by the City, to the office of the finance director of the City, a written monthly report of the Subrecipient's activities and expenditures, including, but not limited to, information demonstrating that services by the Subrecipient within the Corporate Limits of the City at least equal, if not exceed, the funding from the City for that month. Should the City determine at any time during the term of this Agreement that the Subrecipient is not providing

the services within the City Corporate Limits at least equal to the funding herein, then the City may terminate the Agreement immediately. Upon such termination, the Subrecipient may be, at the sole discretion of the City, required to refund any funds deemed by the City not to have been appropriately expended within the Corporate Limits.

## XI. BOOKS AND RECORDS/REPORTS

The Subrecipient shall, at the request of the City, throw open and provide, at a time and place designated by the City, all books, records, accounts, statements and other documents as needed by the City to enable it to conduct a financial and/or operational review or audit of its operations and/or finances. If the Subrecipient refuses to honor the City's request within ten (10) days, it shall refund to the City all funds appropriated to it during the term of the contract. All reports, evaluations and audits required of the Subrecipient pursuant to Article IV of Chapter 2 of the City Code shall also be provided by the Subrecipient to any persons appointed by the City or the Mayor to the Agency's governing body.

## XII. FINANCIAL COMPILATION OR AUDIT

As a recipient of Community Development Block Grant Disaster Recovery (CDBG-DR) funds, the Subrecipient is required to submit to the City Finance Department a financial compilation prepared by an independent CPA firm, an annual report that describes the activities provided by the agency, certification from the Subrecipient's director showing that the financial compilation and annual report are on file at the Tuscaloosa Public Library and other like information that may be requested. No payment shall be made under this agreement until the City's Finance Director has determined that all the above referenced requirements have been met.

However, if the Subrecipient receives $500,000 or more in Federal funds (in total, not just CDBG-Disaster Recovery) per calendar year, it shall also have an audit made of all Federal funds received under this Agreement. The audit shall be performed in accordance with standards dictated by OMB Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations," OMB Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Institutions" and OMB Circular A-122, "Cost Principles for Nonprofit Organizations." The audit shall be submitted to the City's Community Planning & Development Department.

## XIII. OPEN MEETINGS, PUBLIC RECORDS, COMPETITIVE BIDS AND OTHER APPLICABLE LAWS

A. As the Subrecipient is receiving public funds and/or other things of public value, including in kind services, use of City employees and/or equipment from the City pursuant to this agreement, the Subrecipient agrees as follows:

1. To the same and like extent as is applicable to the City of Tuscaloosa, all meetings of the governing body of the Subrecipient or any committee or subcommittee thereof shall be open to the public when any issue or matter involving or relating directly or indirectly to this agreement is discussed or considered and when there is any discussion or consideration of the use of public funds or things of value provided to the Subrecipient by or through the City.

2. Public Records. To the same and like extent as is applicable to the City of Tuscaloosa pursuant to State law, all records, documents, letters, minutes, memoranda, etc., of the Subrecipient shall be open to public inspection and copying when the same pertain to any issue or matter involving or relating directly or indirectly to the performance by the Subrecipient of this agreement or the use of public funds or other things of value provided to the Subrecipient by or through the City.

3. Expenditure of Public Funds. To the same and like extent as is applicable to the City pursuant to State law, all expenditures or disbursements of funds received by the Subrecipient, whether directly or indirectly, from the City shall be subject to competitive bidding.

B. The Subrecipient shall comply with all applicable laws, ordinances and codes. The provisions of Chapter 2, Article IV, "Agency Funding," of the Code of Tuscaloosa, as amended, are adopted herein by reference and shall be complied with by the Subrecipient to the extent applicable. The City shall administer and appropriate funds to the Subrecipient in accordance with and subject to the provision of Chapter 2, Article III "Budgetary Procedure of the Code of Tuscaloosa," as amended to the extent applicable.

## XIV. SEVERABILITY

It is expressly understood and agreed by and between the parties hereto that in the event any covenant, condition or provision herein contained is held to be invalid by any court of competent jurisdiction, or otherwise appears to both parties to be invalid, the invalidity of any such covenant, condition or provision herein contained, shall not affect other remaining and valid covenants or conditions herein unless such invalidity renders performance of the essential elements of the contract impossible.

## XV. MISCELLANEOUS CLAUSES

Capacity: Each party to this Agreement represents and warrants to the other as follows:

A. That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.

B. That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including capacity, to the extent applicable, to grant, convey and/or transfer areas, assets, facilities, properties (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.

C. That to the extent required, each party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the party.

D. That each party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of this Agreement by such representative fully and completely binds the party to the terms and conditions hereof.

E. That, absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other party shall be entitled to rely upon the same. To the extent a party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the party and to the extent that the execution of agreement is limited to a manager, managing partner or specific member, then the person so executing this Agreement is duly authorized to act in such capacity for the party.

F. That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against it which would have an adverse impact upon this transaction or upon either party's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.

G. That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.

**Third Party Beneficiaries:** It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

**Final Integration:** This Agreement and referenced documents constitute the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. All understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party that is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

**Force Majeure:** Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other party's employees, agents or contractors.

**Amendment in Writing:** This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

**Binding Effect:** This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns.

**Captions:** The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend or limit the scope or intent of this Agreement.

**Construction:** This Agreement shall be construed in its entirety according to it plain meaning and shall not be construed against the Party who provided or drafted it.

**Mandatory and Permissive**: "Shall," "will," and "agrees" are mandatory; "may" is permissive.

**Governing Laws**: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

**Prohibition on Assignment and Delegation:** No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

**Waiver:** Non-enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

**Ownership of Contract Documents:** The Contract Documents, and copies of parts thereof, are furnished and owned by the City. All portions of the Contract Document, and copies and parts thereof, are the instruments of service for this project. They are not to be used on other work and are to be returned to the City upon request at the completion of the work. Any reuse of these materials without specific written verification or adaptation by the City will be at the risk of the user and without liability or legal expense to the City. Such user shall hold the City harmless from any and all damages, including reasonable attorney's fees, from any and all claims arising from any such reuse. Any such verification and adoption shall entitle the City to further compensation at rates to be agreed upon by the user and the City.

**Fines and Penalties:** The Subrecipient shall be solely liable for any and all fines or penalties that may be levied by any governmental authority against the Owner and/or Subrecipient that are related to the Subrecipient's operations. The Owner shall deduct the amount of the levied fine or penalty from the contract amount.

**Agreement Date/Counterparts:** The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

**Use of Words and Phrases:** The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

## XVI. FEDERAL REQUIREMENTS

The Subrecipient agrees to abide by all applicable Federal regulations in receiving, disbursing and accounting for Community Development Block Grant funds, as set forth in detail in Attachment "A" of this Agreement, which is hereby incorporated into this Agreement.

## XVII. PROGRAM INCOME

In the event that program income is generated by and under this Agreement, the Subrecipient shall return any said income to the City and it will be considered as program income to the City's Community Development Block Grant Disaster Recovery Program.

## XVIII. ACCOUNTS RECEIVABLE AND PROPERTY ACQUIRED

Upon the expiration of this Agreement, the Subrecipient agrees to transfer to the City of Tuscaloosa any Community Development Block Grant funds on hand and any accounts receivable attributable to the use of said funds. Any real property acquired or improved in whole or in part with Community Development Block Grant funds in excess of $25,000 shall be used to meet the Community Development National Program Objective of principally benefiting low and moderate-income persons for five years beyond the expiration of this Agreement.

## XIX. APPLICABILITY OF "THE COMMON RULE"

The Subrecipient further agrees to abide by 24 CFR Part 85, "The Common Rule," OMB Circular A-110 and OMB Circular A-122 in the administration of this Agreement. The Subrecipient acknowledges that these referenced documents have been provided to it by the City of Tuscaloosa.

## XX. ANTI-LOBBYING PROVISION

The Subrecipient agrees that no Federal appropriated funds will be paid, by or on behalf of the Subrecipient, 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 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 cooperative agreement.

The Subrecipient further agrees that 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, or an employee of a member of Congress in connection with this Agreement, the Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This Article of this Agreement is a prerequisite for entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than $10,000 and not more than $100,000 for each such failure.

## XXI. COMPLIANCE WITH IMMIGRATION LAW

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

**TUSCALOOSA HOUSING AUTHORITY**

BY: _____

ITS: Executive Director

ATTEST:

_____

**CITY OF TUSCALOOSA, A Municipal Corporation**

BY: _____

Mayor Walter Maddox

ATTEST:

_____

City Clerk

STATE OF ALABAMA )
TUSCALOOSA COUNTY )
CITY OF TUSCALOOSA )

I, Robert Wise, a Notary Public in and for said State at Large, hereby certify that Ralph Knight, who is named as Ralph Knight, is signed to the foregoing document, and:

X Who is known to me; or
___ Whose identity I proved on the basis of _____; or
___ Whose identity I proved on the oath/affirmation of _____, a creditable witness to the signer of the above document,

and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 2 day of September 2013.

Notary Public

My Commission Expires: 6-13-14

STATE OF ALABAMA )
TUSCALOOSA COUNTY )
City of TUSCALOOSA )

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Walter Maddox, whose name as Mayor of the City of Tuscaloosa, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 10th day of September 2013.

Vickie Milliland
Notary Public

My Commission Expires:
3/17/15

## ATTACHMENT "A"

## SPECIAL CONDITIONS FOR AN AGREEMENT BETWEEN THE CITY OF TUSCALOOSA AND TUSCALOOSA HOUSING AUTHORITY

### I. DEFINITIONS

"Contract" means a contract agreement between the City of Tuscaloosa and Tuscaloosa Housing Authority for the construction of a multifamily rental development consisting of Eighty-Six Single Family Rental Units in the Rosedale Court Phase II Project.

"Agency" means the Tuscaloosa Housing Authority, a public agency.

"HUD" means the U. S. Department of Housing and Urban Development.

"Local Government" and "the City" mean the City of Tuscaloosa.

"Program" means the Community Development Block Grant—Disaster Recovery ("CDBG-DR") Program.

"Project" means the payment of housing construction costs for a multifamily rental development consisting of Eighty-Six Single Family Rental Units in the Rosedale Court Phase II Project in the City of Tuscaloosa, Alabama.

"Project Area" means the Rosedale Court Phase II Project located within the corporate limits of the City.

"Subcontractor" means a person, firm or corporation that enters into a contract agreement with the Agency for work related to this project.

### II. CONFLICT OF INTEREST

A. Interest of Members of the Local Government: No officer, employee or agent of the local government who exercises any function or responsibilities in connection with the planning and carrying out of the program, or any other person who exercises any function or responsibilities in connection with the program, shall have any personal financial interest, direct or indirect, in this Contract, and the Agency shall take appropriate steps to assure compliance.

B. The Agency agrees that it will incorporate into every subcontract required to be in writing the following provision:

Interest of Agency and Employees - The Agency agrees that no person who presently exercises any functions or responsibilities in connection with the program, has any personal financial interest, direct or indirect, which would conflict in any manner or degree with the performance of services hereunder. The Agency further covenants that, in the performance of this contract, no person having any conflicting interest shall be employed. Any interest on the part of the Agency or its employees must be disclosed to the City. Provided, however, that this paragraph shall not be interpreted in such a manner so as to unreasonably impede the statutory requirement that

maximum opportunity be provided for employment of and participation by low income residents of the area.

C. Provisions of the Hatch Act - Neither the funds provided by this agreement nor the personnel employed in the administration of the agreed upon work shall be in any way or to any extent engaged in the conduct of political activities in contravention of Chapter 15 of Title 5, U. S. Code.

## III. EQUAL OPPORTUNITY REQUIREMENTS

A. During the performance of this contract, the Agency agrees as follows:

1. The Agency will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age or handicap. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, national origin, age or handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Agency agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The Agency will, in all solicitations or advertisement for employees placed by or on behalf of the Agency, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, age or handicap.

3. The Agency will comply with all provisions of Executive Order 11246 of September 24, 1965, and with the rules, regulations and relevant orders of the Secretary of Labor.

4. The Agency will furnish to the local government all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the local government, HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

5. In the event of the Agency's non-compliance with the non-discrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Agency may be declared ineligible for further local government contracts, in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation or order of the City, Secretary of Labor, or as otherwise provided by law.

6. The Agency will include the provisions of paragraph 1 through 5 above in every contract, subcontract or purchase order unless exempted by rules, regulations or orders of the local government or the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Agency will take action with respect to any contract, subcontract or purchase order as may be directed as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event the Agency becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the City, the Agency may request the local government to enter into such litigation to protect the interest of the local government.

7. The Agency agrees that it will assist and cooperate actively with the local government and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it will furnish the local government and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the local government in the discharge of its primary responsibility for securing compliance.

8. The Agency further agrees that it will refrain from entering into any contract or contract modifications subject to Executive Order 11246 of September 24, 1965 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order. In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the local government may take any or all of the following actions: terminate or suspend in whole or in part this contract; refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such Agency.

9. Non-segregated Facilities: The Agency certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. As used in this paragraph, the term "segregated facilities" means any waiting room, work areas, restrooms and washroom, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking founteins, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated on the basis of race, creed, color, national origin, age or handicap, because of habit, local custom, or otherwise.

10. No person in the United States shall, on the grounds of race, color, religion, sex, national origin, age or handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this contract. The Agency will comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

11. The Agency shall maintain data which records its affirmative action in equal opportunity employment, including but not limited to employment, upgrading, demotions, transfers, recruitment or recruitment advertising, layoffs, or terminations, pay or other compensation, and selection for training.

## IV. LABOR STANDARDS PROVISIONS

Agency will ensure that the following conditions are met:

A. Contract Work Hours and Safety Standards Act

1. Overtime Requirements. No Contracter or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work-week in which he is employed on such work to work in excess of forty hours in any work-week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of forty hours in any work-week.

2. Violations; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph 1, the Contractor and

any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the City for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph 1 in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work-week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph 1.

3. Withholding for Unpaid Wages and Liquidated Damages. The local government may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages.

E. Employment of Certain Persons Prohibited. No person under the age of sixteen years and no person who at the time, is serving sentence in a penal or correctional institution shall be employed on the work covered by this contract.

C. Complaints, Proceedings, or Testimony by Employee. No laborer or mechanic to whom the labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceedings or has testified or is about to testify in any proceedings under or relating to the labor standards applicable under this contract.

D. Questions Concerning Certain Federal Statutes and Regulations. All questions arising under this contract which relate to the application or interpretation of the aforesaid Contract Work Hours and Safety Standards Act, the regulations issued by the Secretary of Labor, United States Department of Labor, pursuant to said Act, or the labor standards provisions of any other pertinent Federal statute, shall be referred, through the City of Tuscaloosa and the Secretary of Housing and Urban Development, to the Secretary of Labor, United States Department of Labor, for said Secretary's appropriate ruling or interpretation which shall be authoritative and may be relied upon for the purpose of this contract.

E. The Agency and its contractors must comply with the provisions of form HUD-4010 which are attached hereto and incorporated herewith, and the applicable Davis Bacon Wage rates that follow.

## V. FINANCIAL MANAGEMENT

The Agency shall maintain effective control over and accountability for all funds, property, and other assets that are provided for by this agreement. The Agency shall adequately safeguard all

such assets and shall assure that they are used solely for authorized purposes.

A. Ineligible Costs. In addition to any costs that are ineligible under other criteria included herein the following costs are specifically ineligible:

1. Bad Debts. Any losses arising from uncollected accounts and other claims, and related costs.

2. Contingencies. Contributions to a contingency reserve or any similar provisions for unforeseen events.

3. Contributions and Donations.

4. Entertainment. Costs of amusements, social activities, and incidental costs, such as meals, beverages, lodgings, and gratuities, relating to entertainment.

5. Fines and Penalties. Costs resulting from violations of or failure to comply with Federal, State, and local laws and regulations.

6. Interest and Other Financial Costs. Interest on borrowing (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection herewith.

7. Legislative Expenses. Salaries and other expenses of local government bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction.

8. Membership Expenses. Cost of membership in an organization which devotes a substantial part of its activities to influencing legislation.

9. Travel. Costs in excess of those allowed by the Agency for its equivalent employees. In any case, the difference in cost between first-class air accommodations and less-than-first-class air accommodations are not available and is so documented.

10. Meeting Attendance. Costs of attending meetings which are not open for attendance on a non-segregated basis.

B. Property Management Standards.

The Agency's property management standards for non-expendable personal property acquired under this contract shall include the following procedural requirements:

1. Property records shall be maintained accurately and provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date, cost, and source of property; percentage of Federal funds used in the purchase of property; location, use and condition of the property; and ultimate disposition data including sales price or the method used to determine current fair market value.

2. A physical inventory of property shall be taken and the results reconciled with the property records at least once each year to verify the existence, current utilization, and continued need for the property.

3. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or theft to the property. Any loss, damage, or theft of non-expendable property shall be investigated and fully documented.

4. Adequate maintenance procedures shall be implemented to keep the property in good condition.

C. Procurement Standards

1. The Agency shall maintain a code or standard of conduct which conforms to the requirements set forth in 24 CFR part 570 and 24 CFR part 85 which shall govern the performance of its officers, employees, or agents in contracting with and expending grant funds. Local government officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractors or potential Contractors.

## VI. GENERAL REQUIREMENTS

A. Retention of Records

All records maintained by the Agency that pertain to this agreement shall be retained by the Agency for a period of time as required pursuant to HUD regulations.

B. Reports and Information

The Agency, at such times as the local government may require, shall furnish such statements, reports, records, data and information as may be requested pertaining to matters covered by this agreement.

C. Audit Requirements

The local government, the Secretary of HUD, the Comptroller General of the United States or any of the duly authorized representatives shall have access to all books, accounts, records,

reports, files and other papers or property of the Agency pertaining to funds provided under this agreement for the purpose of making surveys, audits, examinations, excerpts and transcripts.

D. Breach of Contract Terms and Conditions

In the event of the Agency's non-compliance with the terms and conditions of this contract or with any of the said rules, regulations or orders (which non-compliance is not cured within fifteen (15) days of written notice from the City), this contract may be cancelled, terminated or suspended in whole or in part.

E. Subcontracts

The Agency shall insert in any subcontracts all of the following terms and conditions set forth in this contract and also a clause requiring the subcontractors to include these terms and conditions in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

## VII. COMPLIANCE WITH IMMIGRATION LAW

By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

## VIII. COMPLIANCE WITH THE STAFFORD ACT AND 24 CFR 570

The Agency shall assist the City in complying with the Stafford Act, as amended, (42 U.S.C. 5121 through 5207) and the applicable sections of 24 CFR part 570 to prevent fraud, abuse, and duplication of benefits and shall assist in recapturing duplication, if such is determined.