

OFFICE OF THE CITY ATTORNEY

CITY OF TUSCALOOSA

CITY ATTORNEY
GLENDA D. WEBB

SENIOR ASSOCIATE CITY ATTORNEYS
JAMES P. WOODSON III
THOMAS D. BOTTTT II

ASSOCIATE CITY ATTORNEYS

CHRISTOPHER J. ENGLAND
GRANT H. WILSON
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ROBIN EDGEWORTH

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POST OFFICE BOX 2089
TUSCALOOSA, ALABAMA 35403

TELEPHONE NO. (205) 248-5140
FAX NO. (205) 349-0328
www.tuscaloosa.com

MEMORANDUM

TO: Robin Edgeworth, Director, Recovery Operations

FROM: Grant Wilson, Associate City Attorney *GW/mc*

RE: Contract with Walker Associates, Inc. for HUD Disaster Relief Money in Tuscaloosa
Recovery Area
Our File Number: A13-0622

DATE: March 6, 2014

Enclosed is a fully executed copy of the above mentioned contract for your files. Thank you for your cooperation in this matter. If you have any questions, please feel free to contact me.

GW/mc

Enclosure

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March 6, 2014

Jason C. Walker, PE, PLS
Walker Associates, Inc.
917 22nd Avenue, Suite B
Tuscaloosa, AL 35401

RE: Contract for HUD Disaster Relief Money in Tuscaloosa Recovery Area
Our File Number: A13-0622

Dear Mr. Walker:

Enclosed please find a fully executed contract for your files. If you have any questions or comments, please feel free to contact myself or Robin Edgeworth.

Sincerely yours,

A handwritten signature in black ink that reads "Grant Wilson /mc".

Grant Wilson
Associate City Attorney

GW/mc

Enclosure

c: Robin Edgeworth, Director, Recovery Operations

City of Tuscaloosa
Tuscaloosa, Alabama



OFFICE OF THE CITY ATTORNEY

Project: _____ HUD DISASTER RELIEF MONEY IN TUSCALOOSA RECOVERY AREA
Dept.: _____ RECOVERY OPERATIONS
Contractor: _____ WALKER ASSOCIATES, INC.
Legal Dept. File No. _____ A13-0622

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

**AGREEMENT TO PROVIDE PROFESSIONAL CONSULTING AND RELATED
SERVICES FOR HUD DISASTER RELIEF MONEY IN
TUSCALOOSA RECOVERY AREA
File No. A13-0622**

THIS AGREEMENT is entered into by and between the CITY OF TUSCALOOSA, Alabama, a Municipal Corporation, Post Office Box 2089, Tuscaloosa, Alabama 35403-2089, (hereinafter referred to as the "CLIENT" or "CITY") and WALKER ASSOCIATES, INC. (hereinafter referred to as "CONSULTANT"), on this 1st day of August, 2013, as follows:

WHEREAS, the Client desires to provide the City with planning, engineering, and other professional support services as requested associated with a multi-year recovery plan for an area of the City of Tuscaloosa granted HUD Disaster Relief monies (i.e. Disaster Recovery Funds allocated in the amount of \$43.9 million in March 2013) due to the April 27, 2011 tornado, which it believes will promote the efficient operation of government; and,

WHEREAS, Consultant has made a proposal to the Client to provide such professional consulting services and has represented to the Client that it is staffed with personnel knowledgeable and experienced in such matters as to be able to provide those services to the Client in a professional and competent manner; and,

WHEREAS, heretofore, the Client duly enacted a resolution authorizing execution of an agreement between the Client and Consultant, and the Client now desires to enter into a contract with Consultant as more particularly set forth herein; as follows:

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

NOW, THEREFORE, this agreement is made and entered into on the date first above written by and between the Client and Consultant, by which Consultant will provide professional consulting and related services to the Client as hereinafter specified, through individuals possessing a high degree of professional skill where the personality of the individual will play a decisive role and which is thereby exempt from the Alabama Competitive Bid Law, Ala. Code §41-16-51(a)(3) (1975); for the consideration as set forth herein as follows:

I. SCOPE OF SERVICES

Consultant agrees, for the consideration as stated herein, to provide professional consulting and related services to the Client in regard to planning and administration of HUD Disaster Relief Money in Tuscaloosa Recovery Area as more particularly set forth in Consultant's proposal to Client dated September 10, 2013, which is adopted herein by reference except to the extent of a conflict with the terms and conditions herein, in which case the provisions herein shall prevail. Generally the Project services shall include, but not be limited to the following:

TASK 1 - PLANNING AND ENGINEERING SERVICES

Overview

Generally, the objective of Task Order Directive One (TOD 1) is to provide the City with planning, engineering, and other professional support services as requested associated with implementation of the initial plans developed as part of the Tuscaloosa Forward Strategic Plan and Generational Plan efforts. This will include coordination of the number of Disaster Relief (DR) funded projects including PARA Park Improvements, Alberta Revitalization Infrastructure Project, Forest Lake Revitalization Infrastructure Project, and the Hargrove Road / Hackberry Lane Infrastructure Project, Cedar Crest Drainage Improvements, McFarland Boulevard / 15th Street Improvements, Rosewood Sewer Improvements, Fire Station No. 4, Prince Avenue Improvements, Neighborhood Lakes Clean Up, The Edge, Alberta Technology Library, Rosedale Phase III, Technology Infrastructure Improvements, miscellaneous street improvements, and any other projects as requested by the City.

Task 1A: Project Coordination and Management

The CONSULTANT will assist the City's Recovery Operations, Office of City Engineer, Planning and Development Services, and other City Departments as directed with the coordination and management of the numerous infrastructure projects being undertaken by the City. This task will include development and maintenance of an overall project schedule and project budgets. Periodically and as otherwise necessary, the CONSULTANT will conduct progress meetings with City staff, other City Consultants, and other cooperating agencies. The CONSULTANT will attend periodic Recovery Operations Briefings and City Projects Committee meetings to provide progress reports as requested.

The CONSULTANT will be responsible for the direct management of other consultants as may be required for grant program management, technology infrastructure planning and design, demographic studies, etc. This will include review the scope of services, monitoring of project progress relative to the scope and coordinated project schedules, and evaluation and recommendation of payment of invoices.

Task 1B: Planning and Engineering Support

The CONSULTANT will assist the City with planning and engineering support related to coordination of proposed infrastructure projects and adjacent City infrastructure, including the plan elements identified in the Tuscaloosa Forward Generational Plan. As required by the environmental documentation process, The CONSULTANT, along with other planning, engineering, architecture, landscape architecture, and other professionals will assist with development of standards for each of the proposed projects. The CONSULTANT will provide assistance as requested for the Office of City Engineer and other City departments for development of other guidelines, studies, design plans, etc. The CONSULTANT will also provide general periodic construction observation engineering services for ensuring compliance to the grant requirements and for development of required reporting.

Task 1C: Environmental Coordination and Acquisition Phase Assistance

As a recipient of HUD assistance, the City will be required to act as the responsible entity for conducting environmental reviews of all projects in order to obtain approval for a Request for Release of Funds. The CONSULTANT will assist the City with review of draft project documents and coordination of required public meetings, agency correspondence, etc. as requested.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations (49 CFR Part 24) set forth minimum requirements for real property acquisition for Federal and federally-assisted programs. The CONSULTANT shall assist the City as requested with development of required documentation and recommendations on procedures associated with conforming to these regulations. Acquisition and relocation requirements will vary for each project.

The task of preparation of sketches and deeds shall be the responsibility of the respective project engineering consultants. The purpose of this task is to provide any additional resources and consulting as needed related to the ultimate acquisition and relocation assistance process. This may include assembling information for grant reporting, providing assistance with documentation for URA requirements, or any other consulting related to acquisition of property.

Task 1D: Grant Program Management Support

As a part of Task 2, Grant Program Management, certain engineering reviews and verification of procedures may be performed as part of this task. This will include periodic compliance reviews in coordination with the grant management subconsultant. Work under this task may also include other administrative support duties not performed as part of Task 2.

Table 1-1: Proposed Schedule of Task 1 Activities

Task and Months	Position	Estimated Staff Hours	Duration (Weeks)	Estimated Fees
Project Coordination and Scheduling	Project Manager, Staff Professionals	1600	150	\$200,000
Planning and Engineering Support	Professional Engineer, Staff Professional, & Consultants	2000	150	\$250,000
Environmental Coordination and Acquisition Phase Assistance	Project Engineer, Staff Professional, & Consultants	2000	100	\$250,000
Grant Program Management Support	Project Manager and Engineer	800	150	\$100,000

TASK 2 - GRANT PROGRAM MANGEMENT

Overview

Generally, the objective of Task Order Directive Two (TOD 2) is to assist the City with the development and implementation of policies and procedures for programs identified in the City's Action Plan for Housing and Urban Development (HUD) Community Development Block Grant Disaster Recovery (CDBG-DR) assistance. Tasks may include: (1) Development of policies and procedures for economic recovery, housing, and infrastructure programs; (2) establishment of a documentation management system; and (3) periodic program compliance review.

CONSULTANT will provide a Senior Grant management Consultant and Grant

Management Analyst for approximately 24 weeks to fulfill Tasks 2A and 2B.

Task 2A: Development of Policies and Procedures and Project Initiation

Work with City staff to develop policies and procedures that are designed to effectively implement the projects in the approved action plan. This will include compiling program manuals and providing staff training for projects as directed by the City for functional areas such as economic recovery projects, infrastructure projects, and housing projects. Recommendations for staff responsibilities for each program will also be provided.

The program manuals may include the following information as applicable: (1) clearly defined scope of the project (based on Action Plan description and compliance requirements); (2) policies and procedures, including compliance requirements for each project; (3) criteria for assistance (loans and/or homebuyer assistance); and (4) required documentation and recommended formats. Confirmation will be provided that the policies and procedures developed and implemented for the projects meet CDBG-DR programmatic requirements as defined by HUD.

During months one through six of the project, a Senior Grant Management Consultant shall perform project administration duties, documentation management system set-up (as defined in Task 2), and training of City Staff for ongoing project administration. After month six, additional administrative assistance and policy interpretation will be provided on an as-needed basis, at the request of the City and within the capacity of the budget.

Task 2A project deliverables will include Program Operating Manuals for the CDBG-DR projects.

Task 2B: Establishment of a Documentation Management System

Establish a redundant virtual and hard copy Documentation Management System (DMS) for storage and maintenance of project materials. The DMS will include project-specific guidance for required documentation, timesheets and a time-tracking system for City staff, documentation checklists for each project, and requirements for duplicative virtual storage (using the City's network for virtual storage of electronic data). CONSULTANT shall perform an initial set-up of all files and train City staff to assume responsibility for required file compilation and maintenance. Per CDBG-DR regulation, all hard copy project files will be kept at a City approved building which is accessible for public review upon request through the City's public records request process. All materials used to generate and store hard copy records will be provided by the City (binders, filing cabinets, folders, labels, bins, etc.)

Task 2B project deliverables will include Electronic and hard copy filing system for each project

Task 2C: Periodic Compliance Review

Following the completion of Tasks 2A and 2B (subject to delay due to HUD Action Plan/ Project acceptance and City approval, but expected within 6 months of project initiation), CONSULTANT will continue to provide periodic compliance reviews to evaluate ongoing project administration and documentation management. These compliance visits may include review of project files for compliance with HUD policies and with the City's CDBG-DR programs and policies. If necessary, CONSULTANT will identify compliance deficiencies and provide recommendations for improvement/ remediation of issues. Additionally, CONSULTANT can provide supplemental training for City staff to address compliance issues. These compliance visits and any resulting recommendations are for the benefit of the City and may not replace HUD reviews.

TASK 2C Project Deliverables:

- File Status Report (provided following each Compliance Review as scheduled in Table 1-1: Proposed Schedule of Activities)
- Supplemental training for City staff, as necessary

Anticipated Task 2 Project Schedule

This project schedule has been developed based on project scoping meetings with City staff. The tasks and timelines proposed are anticipated based on the City's request that the CONSULTANT provide project initiation assistance for the first six months of the project. Following project initiation, it is assumed that there will be one Compliance Review visit per month for three months. At the City's direction, this will be reduced to one Compliance Review visit every other month for ten months or another schedule mutually beneficial and agreed upon by both the City and CONSULTANT. Finally, remaining Compliance Review visits will be performed at the direction of the City until the budget is exhausted.

Table 2-1: Proposed Schedule of Task 2 Activities

Task and Months	Position	Estimated Staff Hours	Duration (Weeks)	Estimated Fees
Project Initiation (months one through six)	Senior Grant Management Consultant	500	24	\$60,000
Project Initiation (months one through six)	Grant Management Analyst	500	24	\$60,000
Monthly Compliance Review (months seven through nine)	Senior Grant Management Consultant	120		\$20,000
Bimonthly Compliance Review (months ten through nineteen)	Senior Grant Management Consultant	200		\$30,000
Ongoing Compliance Review (as needed at request of the City)	Senior Grant Management Consultant	200		\$30,000

TASK 3 - TECHNOLOGY INFRASTRUCTURE CONSULTING

Overview

Generally, Task 3 will include working closely with City staff and others to define, establish, and support implementation of an overall communications, telecommunications, and public safety infrastructure with various technologies to support the Disaster Recovery under the Housing and Urban Development (HUD) Program. The infrastructure and technologies will position and provide the City with a 21st Century solution that supports existing and future applications and services for future generations. Some foundation points that will be addressed in the scope of services presented include:

- Technical Design Standards
- Connections Points To Existing Infrastructure, Departments, Agencies, and Strategic Partners
- Clear Technology that aligns with the Overall Disaster Recovery Program and its stated goals
- Open, Accurate, and Continuous Communications
- Project Management based on Industry Standards
- Hands On Installation Supervision
- Professional Technology Resources
- Risk Migration

The broadband infrastructure will be based on both fiber and wireless technologies and offer a wide range of applications that support government functions, economic development, business growth, and industry recruitment.

Task 3A: Detailed Technology Planning and Design

CONSULTANT will consider the "big picture" that includes the disaster recovery areas, technical standards, and connectivity across the storm impacted area of the City. Specifics should be addressed for each technology and application used and how they will be selected, installed, maintained, supported, and upgraded. This task will include:

- Collection of various maps, drawing, reports, and documents that describes the existing infrastructure in place and technologies that are being used.
- Conduct needs assessment interviews with City personnel and other major users to determine areas of need and any existing / planned projects related to infrastructure and technology. Determine where gaps and holes exist in coverage, infrastructure, and services.
- Write a "Technology Master Plan document" that describes the needs, the vision, recommended routes and technologies, a phased deployment outline, and

budget estimates based on available information. Also included in the plan will be potential funding options, implementation strategies, and ongoing support options.

- Use the input, comments, and defined current projects to develop a Master Technology Design for Infrastructure, Technology, and Applications that addresses the current and future needs of the City.
- Typical design criteria include: standards, accessibility, total cost of ownership (TCO), sustainability, operations / maintenance, and growth / expansion.
- Create preliminary routes and locations for the infrastructure and technology.
- Define technologies and applications that would be supported by the infrastructure.
- Forecast emerging applications that could be used and available in the near future.
- Provide and perform engineering and Technical support for the infrastructure, technologies, and applications installation process that ensures industry best practices and standards are achieved.
- This task includes required coordination with the various Project Engineers for the HUD DR street and City Walk projects throughout the recovery area. The CONSULTANT shall provide necessary design and specifications for incorporation of base conduit and other infrastructure required to be installed and or constructed as part of the projects as directed by the City:

Task 3B: Procurement Process

- The CONSULTANT will lead the infrastructure and technology procurement process in conjunction with the City's purchasing and legal department to ensure all vendors / suppliers meet the technical hardware/software/services; installation; and cost requirements established for the project. This will include development of technical specifications for the total infrastructure (conduit, pathways, fiber, wireless, lighting, etc.) and all applications (surveillance cameras, digital signage, lighting, etc.)
- Request for Proposal (RFP) process management to cover the vendors lists, pre-proposal conferences, vendor solution evaluations, and recommendations, and contract negotiations (in conjunction with City legal, technology, purchasing, and other departments)

Task 3C: Installation Coordination and Supervision

- Establish and manage a Technology Project Management Office (TPMO) that has responsibility for oversight, coordination, scheduling, and quality assurance for all aspects of the infrastructure and technology projects.
- Provide on-site, project resident observation for coordination and supervision of

the installation of all technology infrastructure, equipment, services, and monitoring.

Task 3D: Application Solutions and Deployment

- Conduct a series of interviews, meetings, and discussion sessions with "all" stakeholders to identify and define an initial list of applications and solutions that create immediate positive impact.
- Stakeholders to include City departments and staff, cooperating City agencies and authorities including non-profit organizations, the Tuscaloosa City Schools, etc.
- Research the marketplace for information specific to government use, technology industry direction, applications, and workflows that create value for the overall project and specific technology development areas.
- Develop a phased deployment and training plan based on requirements and considerations developed from meetings and discussions with the City.
- Recommendations for a starting point and key areas that should be addressed to produce the most positive impact in the shortest time.

- Provision of support, management, and enhancement services for the overall infrastructure, technology, and application project on an as needed or ongoing basis.

Table 3-1: Proposed Schedule of Task 3 Activities

Task and Months	Position	Estimated Staff Hours	Duration (Weeks)	Estimated Fees
3A: Detailed Technology Planning and Design	Technology Consultant	1200	50	\$180,000
3B: Procurement Process	Technology Consultant	400	30	\$60,000
3C: Installation Coordination and Supervision	Technology Consultant	800	50	\$120,000
3D: Application Solutions and Deployment	Technology Consultant	1000	50	\$140,000

II. TIME OF PERFORMANCE

Consultant shall commence providing services pursuant to this agreement as of

the date first above written and diligently and expeditiously conduct its works in such a manner as to complete its commitments for each task as indicated on the respective task tables (1-1, 2-1, and 3-1). Consultant agrees and understands that time is of the essence in the performance of this agreement.

Consultant shall commence, carry on and complete the project with all practicable dispatch, in a sound, economical and efficient manner, in accordance with the provisions hereof and applicable laws. In accomplishing the project, Consultant shall take such steps as are appropriate to insure that the work involved is properly coordinated with related work and policies being carried on within the City.

Consultant shall provide services in the order indicated by Client.

III. COMPENSATION

The Client agrees to pay Consultant for the services as set forth herein, a total maximum amount of One-Million Five-Hundred Thousand Dollars and Zero Cents (\$1,500,000.00) (Excluding N/A). The total maximum amount includes the complete and satisfactory performance of all the Services specified in this agreement. Payment is to be made as follows:

From Community Development Block Grant Disaster Recovery Funds.

Unless otherwise indicated above, Consultant will invoice Client monthly detailing the services performed on an hourly basis on behalf of Client. The invoice format shall be satisfactory to Client.

Client will remit payment to Consultant within forty-five (45) days from receipt of invoice.

Provided; however, the Client may delay payment for a reasonable time on all or any portion of an invoice, without the accrual of any interest or charges, on the basis of improper, contested or inadequate explanation of invoices by Consultant.

In the event of such disputed or contested invoice, only that portion so contested shall be withheld by the Client, and the undisputed portion shall be paid in accordance with the provisions herein. The Client will exercise reasonableness in contesting any invoice or portion thereof.

In the event Consultant is required by the scope of services to provide documents or testimony on behalf of the Client in response to claims, demands or actions against the Client, its officers, agents or employees by third parties, Consultant shall bill the Client for services rendered based on the then current professional fees and expenses incurred. Provided; however, in the event of a final adjudication by a court of competent jurisdiction that the services or any portion thereof provided by Consultant was not properly performed, then Consultant will refund to Client all sums paid Consultant for all work related to the testimony. No task will be undertaken by Consultant without prior notification to the Client. The provisions hereof are intended to apply only to third party actions based upon the Client's implementation of Consultant's report and findings and not in regard to claims or actions by or between the Client and Consultant.

Provided; however, nothing herein contained shall prevent the Client from utilizing any document studies, forms or other data or information otherwise resulting from the performance of this agreement by Consultant, in bringing, defending or otherwise assisting in litigation, claims, actions or demands undertaken or defended by the Client, without any additional cost to the Client.

In no event shall the making by the Client of any payment to Consultant constitute or be construed as a waiver by the Client of any breach of covenant, or any default which may exist on the part of Consultant and the making of any such payment by the Client while any such breach or default exists shall in no way impair or prejudice any rights or remedies available to the Client in respect to such breach or default.

IV. CLIENT RESPONSIBILITIES

In addition to paying Consultant for services according to the preceding paragraph, the Client shall have the following responsibilities to Consultant:

The Client shall provide for Consultant: access to its personnel, facilities, and materials including, but not necessarily limited to Tuscaloosa Generational Plan and other implementation documents.

V. LEVEL OF COMPETENCE

Consultant represents and warrants to the City that it and all of its employees that will be working on the Project for the Client are fully qualified and competent to perform all services required herein and that to the extent required, Consultant has or will secure at its own expenses, all personnel required in performing the services under this agreement. Such personnel shall not be employees of or have any contractual relationship with the Client. All of the services required hereunder will be performed by Consultant or under its supervision and all personnel engaged in the work shall be fully qualified to perform such services.

Consultant represents and warrants to the Client that its Project Director for the performance of services by Consultant pursuant to the terms and conditions of this agreement shall be and remain Jason Walker, P.E., P.L.S., of Consultant's organization and there shall be no change in the Project Director without the prior written consent of the Client's representative.

VI. MATERIALS / CONFIDENTIALITY

The Client agrees to cooperate with and provide Consultant with access to facilities and information within its reasonable possession and control, requested by Consultant for its review and use in performing the services herein. Provided; however, all such documents, information, results, memoranda and all other written or verbal information ("information") shall be held confidential by Consultant and any of its subconsultants and shall not, without the prior written consent of the Client, be used for any purpose other than the performance of this agreement nor be disclosed to any other entity not connected with performance of this agreement. Upon completion of services, Consultant shall return all such information to the City. The City shall retain ownership of

all such information and the same shall not be used by the Consultant for any purpose or purposes without the express written permission of the City. Consultant shall not use the City's name or insignia in any magazine, trade paper, newspaper or other medium without first obtaining the written consent of the City.

VII. INTELLECTUAL PROPERTY

The City and Consultant, jointly and separately, acknowledge and agree that the intellectual property of both parties shall remain owned by the respective party. With the exception of Consultant's periodic and final reports generated for performance of this agreement to or for the City, reports, memorandums, electronic mail, facsimile transmissions and other written and prepared documents shall be owned by the party who authored, generated or who originally possessed the same and nothing in this agreement shall contravene said rights.

VIII. INFORMATION AND REPORTS

Consultant shall, at such time and in such format as the Client's representative may require, furnish a final written report and such periodic reports concerning the status of the Project as may be requested by the Client's representative. Consultant shall furnish the Client, upon request, with copies of all documents and other material prepared or developed in relation with or as part of the Project. Such requests shall be reasonable and within normal business practices for such work. The City shall own and acquire all rights to the periodic and final report of Consultant.

IX. RECORDS AND INSPECTIONS

Consultant shall maintain complete and accurate records with respect to all matters performed pursuant to this agreement. The Client shall have free access at all proper times to such records and the right to examine and audit the same and to make

transcripts therefrom and to inspect all program data, documents, proceedings and activities of Consultant. Such inspections shall not be in violation of confidentiality guarantees provided for herein. Promptly upon the Client's request, all documents, materials, information and writings and all copies thereof provided by the Client to the Consultant directly or indirectly shall be returned by Consultant to Client (if applicable).

X. COPYRIGHT INFORMATION

The Client acknowledges that with the exception of periodic and final reports, all intellectual property developed during the course of this agreement by Consultant shall belong exclusively to Consultant. However, the Client may utilize any of the foregoing for and on behalf of its internal operations, but will take steps reasonably necessary with its employees with respect to the use, copying, protection and security of the foregoing.

XI. APPLICABLE LAWS

Consultant shall register and comply with all State or Federal laws and/or regulations as they may relate to the services or activities of the Consultant to the City.

XII. INDEMNIFICATION

Each party shall generally be responsible for its own acts and will be responsible for all damages, costs, fees, and expenses, including attorney's fees and costs, which arise out of the performance of this agreement and which are due to that party's own negligence, carelessness, unskillfulness and other unlawful conduct and/or the negligence, carelessness or unskillfulness or other unlawful conduct of its respective officers, agents and/or employees acting in their official capacities. Provided; however, Consultant shall defend, indemnify and hold the Client, its officers, agents and employees free and harmless from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with, any

claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of Consultant or its respective agents, officers and employees in the performance of this agreement. In addition, the Client shall release and remise Consultant, its officers, agents and employees from and against any claims, demands, actions, damages, expenses, fees, liabilities and/or attorney's fees arising out of, by virtue of or associated with, any claims, demands or actions brought by third parties which are related in any way or are associated with the negligence, tortious acts or other unlawful conduct of the Client or its respective agents, officers and employees in the performance of this agreement.

XIII. TERMINATION

The Client reserves the right with or without cause, to terminate this agreement by giving written notice to Consultant of such termination at least fifteen (15) days before the effective date thereof. In the event of termination pursuant to this paragraph, Consultant shall cease performing any work pursuant to this agreement and be entitled to compensation for services rendered through the effective date of termination.

XIV. INSURANCE

Consultant shall carry all appropriate and necessary insurance to be in compliance with state and national laws regarding the insurance coverage of its employees and professional liability including errors and omissions. Consultant carries Worker's Compensation Insurance (unlimited), General Liability Insurance (limits of \$1,000,000) and Professional Errors and Omissions Insurance (limits of \$1,000,000/3,000,000). In addition, Consultant offers Health Insurance to all employees. Consultant will furnish a certificate of insurance to Client within ten (10) days of the date of execution of this agreement certifying as to the above insurance and that full aggregate limits and waiver of subrogation apply.

XV. CONFLICTS OF INTEREST

The Consultant represents and warrants to the City that neither it nor its Project Director are aware of any conflict of interest which exists or could arise by means of its provision of services to the City pursuant to the terms and conditions of this agreement. Consultant further warrants that during the course of providing services to the City pursuant to this agreement it will not represent or receive compensation from any vendor, supplier or contractor to the City. This is an exclusive personal service agreement and Consultant will not represent the interest of any other person, firm or entity that conflicts with the interest of the City of Tuscaloosa in regard to the subject matter of this agreement or the performance of services pursuant to the terms and conditions hereof.

It is understood by and between the parties hereto that neither the Consultant, nor any of its officers, agents or employees nor any sub consultant to the Consultant nor any subsidiary, parent entity, principal officers nor any entity having a beneficial interest in any of the same, may submit a bid or proposal in response to any request for proposals or advertisement for bids resulting from the services provided in whole or in part pursuant to this agreement.

XVI. NOTICES/PARTIES REPRESENTATIVES

The representative of the City of Tuscaloosa for this agreement shall be Robin Edgeworth, Director, Recovery Operations.

All notices, bills, invoices and reports required by this agreement shall be sufficient if sent by the parties hereto in the United States Mail, postage prepaid thereon to the addresses noted below:

Client: P.O. Box 2089, Tuscaloosa, Alabama 35403

Consultant: 917 22nd Avenue, Tuscaloosa, Alabama 35401

XVII. REPRESENTATIVE CAPACITY:

While Consultant's role will be that of consultant to the City, Consultant shall be and remain an independent contractor and not act in the role of an agent or legal representative on behalf of the City. Consultant shall not have the authority to bind or obligate the City, its officers, agents or employees.

XVIII. MISCELLANEOUS:

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 the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- 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'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.
- H. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.
- I. Each party represents and warrants that the execution and delivery of this agreement and the consummation of the transactions contemplated herein will not conflict with, be in violation of, or constitute (upon notice or lapse of time, or both) a default under the laws of the State of Alabama, any resolution, agreement, or other contract agreement, or instrument to which a party is subject, or any resolution, order, rule, regulation, writ, injunction, decree or judgment of any governmental authority or court having jurisdiction over the party.
- J. This agreement constitutes the legal, valid and binding obligation of each party and is enforceable against each party in accordance with its terms, except in so far as the enforceability thereof may be limited by:
 - (1) Bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights
 - (2) General principles of equity, regardless of whether such enforceability is considered as a proceeding at equity or at law.
- K. Neither party will enter into any agreement to do anything prohibited in this agreement or enter into any agreement or take any action which would in any way impair the ability of the other party to faithfully and fully perform its obligations hereunder.
- L. Under the provisions of the Constitution and laws of the State of Alabama, each party has the power to consummate the transactions contemplated by this agreement.

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 of parts thereof, are the instruments of serve for this project. They are not to be used on other work and are to be returned to the City on 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 attorneys' 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.

City Logo and Name: The Consultant shall not use the City of Tuscaloosa's name or insignia or logo in any magazine, trade paper, newspaper, advertisement or other medium without first obtaining the written consent of the Owner.

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

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

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

Final Integration: This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

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

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

Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

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

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

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

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

Liability of the City or City Officials. Notwithstanding any provision hereof to the contrary, the parties agree and acknowledge that the liability and obligations of the City,

City officials or City employees as set forth herein are subject to the limitations imposed on municipalities by the Constitution and laws of the State of Alabama. No present or future official, officer or employee of the City shall ever be personally liable for the performance of any obligations hereunder.

Non Discrimination: The Consultant agrees that in performing the work and services as required herein under this agreement, not to discriminate against any person on the basis of race color, religion, sex, age or disability. (The Contractor shall fully comply with the Americans with Disabilities Act, the Fair Labor Standards Act and all other applicable laws and regulations).

Fines and Penalties: The Consultant shall be solely liable for any and all fines or penalties which may be levied by any governmental authority against the Owner and/or Consultant which are related to the Consultant'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.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein

used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

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

XIX. ALABAMA IMMIGRATION LAW

Consultant shall comply with Alabama Act 2011-535 in regard to subcontractors, employees, and otherwise. The Consultant shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien, and shall attest to such by sworn affidavit signed before a notary. Consultant shall cooperate with the City in providing information needed by the City to verify the status of any person as may be required by Alabama Act No. 2011-535. The requirements of this section are mandated by Alabama state law and should not be interpreted as a City initiative. In the event the state law requirement is repealed, then the Consultant will not be held to the requirements of this section.

CITY OF TUSCALOOSA, A MUNICIPAL CORPORATION

ATTEST:

Asst. City Clerk
Deborah K. Clement
City Clerk

BY:

Walter Maddox
Walter Maddox, Mayor

CONSULTANT:

Walker Associates, Inc.

ATTEST:

Franklin E. Johnson III

BY:

Franklin E. Johnson III

STATE OF ALABAMA)
TUSCALOOSA COUNTY)

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 5th day of March, 2014.

Vickie Hilted

Notary Public.

My Commission Expires: 3/17/15

STATE OF ALABAMA)
COUNTY OF TUSCALOOSA)

I, Carolyn S. Duncan, a Notary Public in and for said State at Large, hereby certify that Jason C. Walker, who is named as Engineer/Consultant, is signed to the foregoing document, and,

- 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 3rd day of March, 2014.

Carolyn S. Duncan

Notary Public.

My Commission Expires: 6/15/2014

