



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 2/8/2024

**File ID:** 2024-1111

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**Department:** Planning

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into a Memorandum of Understanding (MOU) between the City of Huntsville, The Huntsville Housing Authority and McCormack Baron Salazar, for the support of the Mill Creek Choice Neighborhood Initiative Implementation Grants Application.

Resolution No.

**Does this item need to be published?** No

If yes, please list preferred date(s) of publication: \_\_\_\_\_ N/A \_\_\_\_\_

**Finance Information:**

**Account Number:** TBD

**City Cost Amount:** \$30,000

**Total Cost:** \$30,000

**Special Circumstances:**

**Grant Funded:** N/A

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location:** N/A

**Address:** N/A

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

**Additional Comments:**

**RESOLUTION NO. 24 \_\_\_\_\_**

**WHEREAS** the United States Department of Housing and Urban Development (“HUD”) is accepting applications for Fiscal Year 2023 Choice Neighborhoods Initiative Planning Grant for the purpose of developing a draft Transformation Plan (the “Draft Plan”) to transform the Mill Creek neighborhood and revitalize the target public housing sites Johnson Towers, Butler Terrace, and Butler Terrace Addition, and;

**WHEREAS** the City of Huntsville, Alabama, the Huntsville Housing Authority and McMormack Baron Salazar, Inc., a Missouri Corporation, as applicants and co-applicants to prepare the Choice Neighborhoods Initiative Planning Grants Application for submission, and;

**WHEREAS** the City of Huntsville, Alabama and the Huntsville Housing Authority seek to enter into a Memorandum of Understanding (MOU) regarding the Joint Application for the Choice Neighborhoods Planning Grant.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor of the City of Huntsville is hereby authorized, requested and directed to enter into a Memorandum of Understanding between the City of Huntsville, Alabama, The Huntsville Housing Authority and McCormack Baron Salazar, Inc., regarding the Joint Application for the Choice Neighborhoods Initiative Planning Grant. said agreement being substantially similar in words and figures to that document identified as “Memorandum of Understanding Mill Creek Choice Neighborhoods Initiative,” consisting of Eleven (11) pages, and the date of February 8, 2024, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville.

**ADOPTED** this the 8th day of February, 2024.

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

**APPROVED** this the 8th day of February, 2024.

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

## **MEMORANDUM OF UNDERSTANDING**

### **Mill Creek Choice Neighborhoods Initiative**

This Memorandum of Understanding for the Mill Creek Choice Neighborhoods Initiative (this “MOU”) is entered into as of February [ 8 ], 2024, by and between the HUNTSVILLE HOUSING AUTHORITY, a quasi-municipal corporation authorized by the State of Alabama and a public housing authority (“HHA”), the CITY OF HUNTSVILLE, ALABAMA, a municipality authorized by the State of Alabama (the “City”), and McCORMACK BARON SALAZAR, INC., a Missouri corporation (“MBS”). HHA, the City, and MBS are sometimes referred to collectively in this MOU as the “Parties” or individually as a “Party.”

### **RECITALS**

HHA and the City have initiated a planning process, funded in part by a U.S. Department of Housing and Urban Development (“HUD”) Choice Neighborhoods Initiative (“Choice”) Planning Grant, to develop a draft Transformation Plan (the “Draft Plan”) to transform the Mill Creek neighborhood and revitalize the target public housing sites Johnson Towers, Butler Terrace, and Butler Terrace Addition (the “Target Sites”).

HHA issued a Request for Qualifications No. 2023-15 (the “RFQ”) seeking a developer to work with HHA, the City, and other stakeholders to develop the Draft Plan into a final “Transformation Plan” and to pursue the redevelopment of the Target Sites in accordance with the Transformation Plan. On November 20, 2023, the HHA Board of Commissioners confirmed the selection of MBS pursuant to the RFQ and authorized a Contract with MBS for the Transformation Plan.

The City, as “Lead Applicant,” intends to submit the Transformation Plan to HUD as part of an application (the “Choice Application”) for a Fiscal Year 2023 Choice Implementation Grant (the “Choice Grant”). HHA has agreed to serve as “Co-Applicant” pursuant to the Choice Application and, if applicable, the Choice Grant. MBS has agreed to serve as the Housing Implementation Entity (“HIE”) pursuant to the Choice Application and, if applicable, the Choice Grant.

This MOU sets forth the general terms and conditions on which the Parties intend to pursue the Choice Grant and the Transformation Plan. The Parties will supplement this MOU with one or more “Partnership Certifications” as required by HUD for the Choice Application, and if the Choice Application is successful will replace this MOU with a Master Development Agreement (an “MDA”) as further detailed below.

**NOW, THEREFORE**, the Parties agree as follows:

#### **1. Transformation Plan and Choice Application**

- 1.1. **Transformation Plan and Choice Application.** The Parties agree to work together, along with other stakeholders, to further develop the Draft Plan into a Transformation Plan and submit the Choice Application.

MBS, in its capacity as HIE, will prepare drafts of the “Housing Plan” elements of the Transformation Plan for approval by the City and HHA, and will prepare or cause to be prepared all exhibits and attachments to the Choice Application related to the “Housing Strategy.” The Parties acknowledge that the Housing Plan will evolve relative to the Draft Plan through their mutual consultation and stakeholder engagement prior to submission of the Choice Grant and that the Housing Plan will be subject to the approval of each Party, but agree that in any event the Housing Plan will include not less than five hundred eighty (580) total units.

The City has contracted with Urban Strategies, Inc. (“USI”) to serve as the “People Implementation Entity” for the Choice Application. Pursuant to a separate agreement between the City and USI, USI will prepare or cause to be prepared all exhibits and attachments to the Choice Application related to the “People Strategy” and will, if applicable, assist with the HUD site visit conducted as part of the Choice Application process (the “Site Visit”).

The City will serve as the “Neighborhood Implementation Entity” for the Choice Application. The City will prepare or cause to be prepared all exhibits and attachments to the Choice Application related to the “Neighborhood Strategy.” The Parties’ working assumption is that the Neighborhood Strategy will not require funding from the Choice Grant, but the Parties will revisit this assumption as needed in the course of finalizing the Transformation Plan and the associated Partnership Certification and Choice Application.

- 1.2. **Costs of Choice Application.** MBS will not receive any compensation for its services in helping to prepare or submit the Choice Application, or more generally in helping to develop the Housing Plan elements of the Transformation Plan based upon the Draft Plan. The City will fund the cost of the grant-writer consultant engaged by MBS to assist with the Grant Application (in its entirety, not only the Housing Plan) upon submission of associated invoices and reasonably requested documentation from MBS in an aggregate amount not to exceed Thirty Thousand Dollars (\$30,000). The City has contracted with Urban Design Associates, Inc. (“UDA”), and pursuant to a separate agreement between the City and UDA), UDA will perform all planning activities required for the Transformation Plan, the Choice Application, and the Site Visit (including those associated with the Housing Plan).

- 1.3. **HHA and City Financial Commitments for Housing Plan.**

The Parties do not presently expect HHA to make any financial commitments to the Housing Plan beyond the PBV subsidy as referenced below (and subject to funding by

HUD). HHA and the City each agree not to charge a program administration fee as may otherwise be permitted pursuant to the Choice Grant: the City will perform (and to the extent necessary assist HHA with) grant administration functions. If there are funds available to HHA arising from the redevelopment activities (such as sub-developer fees or ground lease rent from an Owner Entity (each as detailed below), or any proceeds from disposition of land to a third-party through a deed or long-term ground lease) HHA will recontribute such funds to the Housing Plan as program income in the form of additional subordinate loans or as otherwise approved by HHA and MBS. In certain circumstances, HHA may be able to retain sub-developer fee without recontributing it as program income as detailed in Section 2.6 below.

The City will commit Choice Grant funds as well as an additional forty million dollars (\$40,000,000) as a subordinate loan toward the “vertical” elements of the Housing Plan, and separately will also fund certain “horizontal” or site-wide expenses of the Housing Plan (which will include demolition of remaining structures, earthwork associated with the mitigation of the flood zone, design and construction of public infrastructure, construction, ownership and long-term maintenance of public parks and of parking garages (which will include parking for residents of each Phase at no charge), as will be further detailed in the approved Transformation Plan and the associated Partnership Certification and Choice Application.

- 1.4. **MDA Timing and Non-Choice Alternatives.** If the Choice Application is successful, the Parties will use their best efforts to enter into an MDA not later than forty-five (45) days after award of a Choice Grant, and in any event will enter into an MDA within applicable deadline to execute an MDA as may be established by the grant agreement with HUD (the “Choice Grant Agreement”). The Parties agree to negotiate in good faith to execute an MDA containing terms and conditions customary in a mixed-finance transaction, and otherwise satisfactory in form and substance to the Parties and their counsel. The MDA shall be generally consistent with the terms of this MOU.

If the Choice Application is not successful, the Parties will submit a second Choice Application (the “Second Choice Application”) in the next available funding round as determined by HUD, unless each Party agrees (in its respective sole discretion) not to reapply. If the Parties agree not to reapply, then this MOU will expire by its terms pursuant to Section 3.1 and neither Party will have any remaining liability or responsibility to the other.

If the Second Choice Application is not successful, the Parties will confer and determine jointly (in their respective sole discretion) whether to: (a) reapply for a Choice Grant in a later round, (b) pursue alternative or additional resources for the Housing Plan without a Choice Grant, or (c) discontinue their work together, in which case this MOU will expire by its terms pursuant to Section 3.1 and neither Party will have any remaining liability or responsibility to the other. As part of their determinations pursuant to the preceding

sentence, the Parties may (in their respective sole discretion) choose to revise the Housing Plan to take account of the resources reasonably anticipated to be available without a Choice Grant and may choose to extend the term of this MOU and/or negotiate an MDA without a Choice Grant.

- 1.5. **Cooperation and Approvals.** The Parties agree to cooperate with one another in good faith to submit the Choice Application and, if the Choice Grant is awarded, to pursue the Housing Plan pursuant to the MDA. Such cooperation will include reasonable efforts to respond to one another as expeditiously as possible and prompt, proactive sharing of information. Ultimately the form of the Housing Plan as submitted to HUD will be subject to the approval of each Party, and neither party will be obligated to proceed with the Choice Application unless it approves the Housing Plan. For this purpose and more generally to the extent this MOU entitles either Party to exercise any rights of approval, consent, or the like, approval and consent rights will not be unreasonably withheld, conditioned or delayed unless a different standard is explicitly established. The exercise of rights by HHA and the City will further be limited so as not to subject MBS to the requirements of 2 CFR Part 200 or of any state or local procurement laws that would otherwise be applicable to the actions of HHA or the City acting in its own capacity.

## 2. Business Terms

- 2.1. **General Expectations.** This MOU establishes certain business expectations between the Parties that will apply to the Housing Plan as a whole and to each separately-owned phase (each, a “Phase”). Business terms for each Phase, and associated regulatory restrictions, will be further detailed in the MDA, and ultimately will be established in closing documents entered into at the financial closing of such Phase (a “Closing”).
- 2.2. **Phase Owners.** For each Rental Phase, MBS will form a limited liability company or a limited partnership to serve as the “Phase Owner.” The Phase Owner will have a general partner or managing member owned by MBS or its affiliate. Neither the City, HHA nor their respective affiliates will participate in ownership of the Phase Owner or of the general partner or managing member. MBS will cause the Phase Owners to apply for tax credits, loans, and other sources as reflected in the Housing Plan, and will select investors and lenders to provide financing to each Phase Owner.
- 2.3. **Development Guaranties.** MBS will provide all development guaranties for each Rental Phase as are conventionally required for affordable housing development transactions, such as guaranties of construction completion and guaranties related to certain compliance matters. In no event will HHA or the City be required to provide guarantees to the investor or to lenders.
- 2.4. **Subordinate Loans.** The City will provide subordinate loans for each Phase using Choice Grant funds in the amount reflected in the Housing Plan, as well as other funds in

the amount reflected in the “vertical” budget of the Housing Plan. HHA will provide subordinate loans for each Phase, if applicable, using Program Income as referenced below and, in HHA’s sole discretion, using other HHA funds identified in the Housing Plan. Subordinate loans from the City and from HHA will be nonrecourse and will have a maturity date and such other terms as may reasonably be required by the investor to ensure financial feasibility and will be repaid prior to maturity solely from a share of cash flow as described below.

- 2.5. **Cash Flow.** Subject to approval of the investor(s), all loans from HHA and the City will be repaid from fifty percent (50%) of "Adjusted Surplus Cash" as described below and in accordance with other conditions required by the investor and other lenders. "Adjusted Annual Surplus Cash" will mean "Surplus Cash" (as established by HUD for multifamily projects subject to Uniform Financial Reporting Standards) less "Priority Payments" (payments of debt service, fees, tax credit adjuster payments, partner loans or advances, reserve replenishment and other conditions as may be required by the investor and by third-party lenders). If other lenders require repayment from Surplus Cash or otherwise from cash flow, those lenders, HHA and the City will share in the established percentage of Adjusted Surplus Cash *pro-rata* or as otherwise agreed by the lenders, HHA and the City. The remaining 50% share will be available as an incentive management fee (usually structured as 90% of this 50%, or 45% of the Adjusted Surplus Cash) to MBS or its affiliate.
- 2.6. **Developer Fee.** For each Rental Phase, MBS will maximize developer fee within limits permitted by HUD and Alabama Housing Finance Authority (“AHFA”) standards. Subject to such standards, MBS will be entitled to receive and retain a paid fee (the “MBS Base Fee”) equal to no less than twelve percent (12%) of the total development costs as calculated in accordance with HUD Cost Guidelines. If and to the extent the available paid fee exceeds the MBS Base Fee, HHA will receive a sub-developer fee that will be paid *pro-rata* with the MBS Base Fee. For example, example, if the total paid is fifteen percent (15%), MBS will receive the MBS Base Fee of twelve percent (12%) and HHA will receive a sub-developer fee of three percent (3%) and each installment of fee will be divided *pro-rata* as it is paid. HHA will treat sub-developer fee as program income as further referenced above; provided, however, that (subject to HUD approval) HHA may be able to retain sub-developer fee for a particular Phase to the extent that additional funding is obtained and there is not a financial gap for the overall Housing Plan at the time that Phase reaches Closing.
- 2.7. **Ground Leases.** HHA will hold fee title to each development site, and at Closing will enter into a long-term ground lease of each site with the applicable Owner Entity. The term of each ground lease will be for at least 75 (and up to 99) years. Rent paid by the Owner Entity will be nominal, unless otherwise proposed by the Developer on such terms as Developer may determine advisable for tax or financing purposes (in which case there

may be deferred rent paid from a part of HHA's portion of the fifty percent (50%) share of "Adjusted Surplus Cash" referenced above).

**2.8. Site Preparation and Public Improvements.**

The City and HHA will cause all remaining demolition work to be completed on each development site (with funds provided by the City as part of the Housing Plan).

The Parties will, as part of preparing the Transformation Plan, evaluate the need for remaining abatement, geotechnical work, and/or environmental remediation sufficient to place the site in "Clean and Buildable" condition (as will be further detailed in the MDA) (the "Site Preparation Work"). The Parties' working assumption is that there will be a limited scope (and limited cost) for Site Preparation Work, which would allow the Site Preparation Work to be included within the "vertical" scope and budget of each Owner Entity's Phase. If during the term of this MOU or the MDA the Parties determine that there is a material amount of Site Preparation Work required to achieve a Clean and Buildable site, then the Site Preparation Work may be separated from the Owner Entity's scope and budget and the source of funds for the Site Preparation Work will be identified from the Choice Grant or from other available "horizontal" City funds as applicable. The City and/or HHA will then contract with MBS or its affiliate to perform or contract for Site Preparation Work activities through a separate contract (Additional Services Agreement) for a "cost-plus" fee of six percent (6%). Any such fee will be separate from – and not credited against – the MBS Base Fee.

The City will also cause all public infrastructure improvements to be designed, constructed, and publicly dedicated (the "Public Improvements Work").

The MDA will include a shared set of standards, approval rights, and schedules for the performance of Site Preparation Work and Public Improvements Work, regardless of who performs or funds such activities.

- 2.9. Property Management.** MBS's affiliate McCormack Baron Management, Inc. ("MBM") will serve as property manager of each Rental Phase. MBM's fee will be the maximum allowable by HUD's Cost Control and Safe Harbor Guidelines. Subject to the foregoing, the management agreement, management fee and other material terms relating to such role will be subject to the approval of HHA and the City. The admissions policy, tenant selection plan and form of residential lease will be subject to the approval of HHA and the City, and will conform to Choice requirements regarding replacement units, as discussed below.

**2.10. Relocation and Right of Return to Replacement Units.**



HHA will be responsible for relocating remaining residents of the Target Site and continuing to fund, manage, and coordinate the relocation process for all relocated residents through the completion of replacement units and return of residents as referenced below. HHA will work with USI to develop a relocation plan (subject to the approval of each Party) and to carry out relocation activities. The Housing Plan will include a budget line item for relocation costs and is currently anticipated to be covered by Choice funds. MBS and MBM will assist with relocation by participating in the development of the relocation plan and coordinating the return of eligible residents (as identified by HHA) to replacement units.

Eligible current and former residents of the Target Sites will receive priority occupancy and a “right of return” to occupy such units in accordance with Choice requirements. For each unit within a Rental Phase designated as a “replacement unit,” subsidy is expected to be in the form of Section 8 Project-Based Voucher (“PBV”) assistance following a HUD Section 18 disposition. Subject to compliance with applicable HUD requirements, the PBV subsidy will be at 110% of Fair Market Rents, or greater as allowed by HUD. The overall replacement unit, operating subsidy and income profile of the Housing Plan as reflected in the Housing Plan will be subject to approval of each Party.

**2.11. Predevelopment Expenses and Developer Fee Advances.**

If a Choice Grant is awarded, HHA and/or the City will make Choice funds or other funds available for 75% of third-party predevelopment costs associated with each Phase, in accordance with the Choice “Cost Control and Safe Harbors” guidance, and subject to approval from HUD.

If a Choice Grant is awarded, HHA and/or the City also will advance up to 15% of the MBS Base Fee from Choice Grant funds or other City sources prior to the financial closing on each Phase. Such overhead advances will be funded monthly in accordance with the predevelopment budget during the predevelopment period. Such advances shall be nonrecourse and repayable only from MBS's share of development fee paid at initial closing.

Legal fees incurred by each Party (including those associated with the MDA and other “master” activities) may be included in associated predevelopment budgets and Phase budgets.

**3. Term and Termination**

**3.1. Term.** Subject to earlier termination pursuant to this Section 3, this MOU shall terminate:

- (a) if a Choice Grant is awarded in response to the initial Choice Application, on the earlier to occur of the execution of the MDA or 120 days after execution of the Choice Grant Agreement; or
- (b) if a Second Choice Application is submitted and not successful, on the earlier to occur of 120 days after the Parties learn that that the Second Choice Application was not successful or December 31, 2026.

**3.2. Event of Default.** The occurrence of any of the following shall constitute an Event of Default under this MOU:

- (a) A material breach by either Party of its obligations under this MOU; or
- (b) Either Party's being or becoming insolvent or bankrupt or ceasing to pay its debts as they mature or making an arrangement with or for the benefit of its creditors or consenting to or acquiescing in the appointment of a receiver, trustee, or liquidator for any substantial part of its property, (ii) a bankruptcy, winding up, reorganization, insolvency, arrangement, or similar proceeding instituted by such Party under the laws of any jurisdiction, or any such proceeding instituted against such Party under the laws of any jurisdiction that has not been stayed or dismissed within ninety (90) days after its institution, (iii) any action or answer by such Party approving or, consenting to, or acquiescing in, any such proceeding, or (iv) the levy of any distress, execution, or attachment upon the property of such Party that shall substantially interfere with its performance hereunder.

**3.3. Remedy Upon Default.** Upon the occurrence of an Event of Default, the non-defaulting Party may give written notice thereof to the defaulting Party. If the defaulting Party fails to cure the default within ninety (90) days of such notice, or such additional time as may be necessary (in no event to exceed an additional one hundred twenty (120) days) provided that the defaulting Party has promptly commenced to cure such default and thereafter prosecutes such cure to completion, then the non-defaulting Party may, by written notice, terminate this MOU. Notwithstanding the foregoing, this MOU shall not be terminated for an Event of Default if the subject Event of Default arises due to events beyond the reasonable control of either Party. Examples of such causes include (a) acts of God or public enemy, (b) fires, (d) floods, (e) strikes or labor disputes, (f) freight embargoes, (g) unavailability of materials, (h) unusually severe weather, (i) pandemics, (j) delays of subcontractors or suppliers at any tier arising from unforeseeable events beyond the control and without fault or negligence of the subject Party, or (k) delay caused by litigation that is not between the Parties.

**3.4. Termination for Convenience.** HHA and/or the City may terminate this MOU and MBS's designation in whole, or in part, whenever HHA and/or the City determines, in good faith, that such termination is in the best interest of HHA and/or the City. Any such

termination shall be effected by written notice to MBS specifying the date upon which such termination becomes effective. If the MOU is terminated, HHA and/or the City shall be liable to MBS for reasonable and proper costs resulting from such termination which costs shall be paid to MBS within sixty (60) days of receipt by HHA and/or the City of a properly documented and presented claim setting out in detail: (i) the total cost of all third-party costs actually incurred to date of termination, including costs paid previously by MBS and not funded by HHA and/or the City; (ii) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, or for settling other liabilities of MBS actually incurred in performance of its obligations hereunder; (iii) the cost of preserving and protecting the work already performed until HHA and/or the City or its assignee takes possession thereof or assumes responsibility therefor, and (iv) fair compensation to MBS for all tasks performed to date, including reasonable overhead and profit. The MDA will include further terms regarding "fair compensation" reflecting MBS's efforts up to the date of a termination for convenience.

#### **4. Representations**

##### **4.1 Representations of MBS.** MBS represents that as of the date hereof:

- (a) MBS is a corporation duly organized, existing and in good standing under the laws of the State of Missouri is qualified to do business in the State of Alabama and has the corporate power and authority to enter into and perform its obligations under this MOU, and each other agreement or instrument entered into or to be entered into by MBS pursuant to this MOU.
- (b) This MOU has been duly entered into and constitutes the legal, valid, and binding obligation of MBS, enforceable in accordance with its terms.
- (c) The execution, delivery, and performance of MBS's obligations under this MOU (i) have been duly authorized, (ii) will not violate any judgment, order, law, or regulation applicable to MBS or any provisions of MBS's organizational documents, and (iii) do not conflict with or constitute a default under any agreement or instrument to which MBS is a party or by which MBS or its assets may be bound or affected.
- (d) There are no actions or proceedings against MBS before any court or administrative agency that would materially adversely affect the ability of MBS to perform its obligations under this MOU.

##### **4.2 Representations of HHA** HHA represents that as of the date hereof:

- (a) HHA is a [public body corporate] organized under the laws of the State of Alabama and has the power, authority, and legal right to enter into and perform this MOU and each other agreement or instrument entered into or to be entered into by HHA pursuant to this MOU.
- (b) This MOU has been duly entered into and constitutes the legal, valid, and binding obligation of HHA enforceable in accordance with its terms.
- (c) The execution, delivery, and performance of HHA's obligations under this MOU (i) have been duly authorized, (ii) will not violate any judgment, order, law, or regulation applicable to HHA or any provisions of HHA's charter, and (iii) do not conflict with or constitute a default under any agreement or instrument to which HHA is a party or by which HHA or its assets may be bound or affected.
- (d) There are no actions or proceedings against HHA before any court or administrative agency that would materially adversely affect the ability of HHA to perform its obligations under this MOU.

**4.3 Representations of the City.** The City represents that as of the date hereof:

- (e) The City is a public body corporate organized under the laws of the State of Alabama and has the power, authority, and legal right to enter into and perform this MOU and each other agreement or instrument entered into or to be entered into by the City pursuant to this MOU. The City is a public body corporate organized under the laws of the State of Alabama and has the power, authority, and legal right to enter into and perform this MOU and each other agreement or instrument entered into or to be entered into by the City pursuant to this MOU.
- (f) This MOU has been duly entered into and constitutes the legal, valid, and binding obligation of the City enforceable in accordance with its terms.
- (g) The execution, delivery, and performance of the City's obligations under this MOU (i) have been duly authorized, (ii) will not violate any judgment, order, law, or regulation applicable to the City or any provisions of the City's charter, and (iii) do not conflict with or constitute a default under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.
- (h) There are no actions or proceedings against the City before any court or administrative agency that would materially adversely affect the ability of the City to perform its obligations under this MOU.

**5. Additional Terms**

- 5.1. **Successors and Assigns.** No Party may assign this MOU without the consent in writing of each other Party. Subject to the foregoing, this MOU shall be binding on the Parties, their heirs, successors and assigns.
- 5.2. **Separability of Provisions; Captions; Amendments.** Each provision of this MOU shall be considered separable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this MOU is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this MOU that are valid. The captions of the sections of this MOU are for convenience only and shall be disregarded in constructing this MOU. Any amendments to this MOU shall be in writing and executed by each Party.
- 5.3. **Counterparts.** This MOU may be executed in several counterparts each of which shall be deemed to be an original copy and all of which together shall constitute one agreement binding on all Parties, notwithstanding that all the Parties shall not have signed the same counterpart.
- 5.4. **Applicable Law.** This MOU shall be construed and enforced in accordance with the laws of the State of Alabama
- 5.5. **Notice.** All notices required or permitted to be given under this MOU shall be in writing and shall be deemed given on the date of receipt if, and shall not be deemed given unless, delivered by hand, sent by registered mail, return receipt requested, or dispatched by overnight delivery service with a delivery receipt, and addressed as follows:

If to HHA:

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Attn: Executive Director

with a copy to:

[                      ]  
Attn: [                      ]

If to the City:

\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_  
Attn:

with a copy to:

[                      ]  
Attn: [                      ]

If to MBS:

100 North Broadway, Suite 100

St. Louis, MO 63102  
Attn: Chief Executive Officer

With a copy to: Klein Hornig LLP  
101 Arch St., Suite 1101  
Boston, MA 02110  
Attn: Daniel M. Rosen

*[No Further Text. Signature Page Follows.]*

IN WITNESS WHEREOF, the Parties have caused this MOU to be duly executed as of the date as first written above.

**CITY:**

**THE CITY OF HUNTSVILLE**

By: \_\_\_\_\_  
Name: Tommy Battle  
Title: Mayor

**HH:**

**HUNTSVILLE HOUSING AUTHORITY**

By: \_\_\_\_\_  
Name: Antonio McGinnis  
Title: Executive Director

**MBS:**

**MCCORMACK BARON SALAZAR, INC.**

By: \_\_\_\_\_  
Name:  
Title: