



ADMINISTRATIVE SERVICES COMMITTEE MEETING AGENDA

Commission Chamber

Tuesday, January 31, 2023

1:15 PM

ADMINISTRATIVE SERVICES

- 1.** Motion to approve Housing and Community Development Department's (HCD's) request to enter into an agreement with TDA Consulting Inc. to complete 2023 Augusta, GA Fair Housing Analysis of Impediments (RFP 22-277)
- 2.** Motion to Approve Recommendation from Golden Harvest Food Bank to select RW Allen for award under CDBG-CV funding opportunity in Partnership with CSRA Regional Commission and Augusta, Georgia to expand the Produce Rescue Center (Warehouse) at GHFB's Augusta, GA location.
- 3.** Motion to approve the purchase of 11 Dodge Police Chargers, bid #22-289 at a total cost of \$485,287 from Thomson Motor Center for the Richmond County Sheriff's Office.
- 4.** Motion to approve the Human Resource Department to enter into a third-party agreement for the marketplace platform to assist Augusta, Ga employees in locating childcare service providers.
- 5.** Motion to approve the development of (2) single-family workforce homes, new construction.
- 6.** Receive as information the emergency request for water mitigation and drying of structure at Craig Houghton in the amount of \$64,231.71 by ServPro of Augusta.
- 7.** Receive as information an update on the Georgia State Veterans Cemetery.
- 8.** Motion to approve the minutes of the Administrative Services Committee held on January 9, 2023.



Administrative Services Committee Meeting

Meeting Date: 01/31/2023

HCD_Fair Housing Analysis Approval Request

Department:	HCD
Presenter:	Hawthorne Welcher, Jr. and/or HCD Staff
Caption:	Motion to approve Housing and Community Development Department's (HCD's) request to enter into an agreement with TDA Consulting Inc. to complete 2023 Augusta, GA Fair Housing Analysis of Impediments RFP 22-277
Background:	<p>Through the RFP Process of the Augusta's Procurement Department, TDA Consulting Inc. was chosen to complete the Analysis of Impediments for Augusta, GA through Housing and Community Development (HCD).</p> <p>The Augusta, Georgia Analysis of Impediments to Fair Housing Choice is a report required by the U.S. Department of Housing and Urban Development (HUD). The Analysis of Impediments seeks to identify the various factors that may adversely affect fair housing choice in Augusta, GA and outlines an action plan to overcome these barriers. This report provides detailed information on fair housing legislative achievements, population and housing trends, fair housing complaints, and strategies to combat impediments to fair housing. This analysis is conducted every five years in connection with the State's programs funded by HUD.</p>
Analysis:	<p>Two firms responded to the RFP request. TDA received the highest score and the Department requested to enter into contract negotiations with the firm. The request is to approve the contract with TDA which will allow Augusta, GA to meet HUD's five year requirement in connection with the State's program funded by the HUD.</p>
Financial Impact:	<p>HCD will utilize Community Development Block Grant (CDBG) funding received through its annual allocation from Housing and Urban Development in the amount of \$ 36,708.00 to complete the Fair Housing Analysis of Impediments.</p>
Alternatives:	<p>Do not approve HCD's Request.</p>
Recommendation:	<p>Motion to approve Housing and Community Development Department's (HCD's) request to enter into an agreement with TDA Consulting Inc. to complete 2023 Augusta, GA Fair Housing Analysis of Impediments</p>

**Funds are available in
the following accounts:**

Housing and Urban Development (HUD) Funds: Community Development Block
(CDBG) funds.
CDBG Funds: 22107 3111-5211119 Job Ledger 413-99-99

Item 1.

REVIEWED AND
APPROVED BY:

Finance.
Law.
Administrator.
Clerk of Commission.

**AUGUSTA, GEORGIA HOUSING AND COMMUNITY DEVELOPMENT
DEPARTMENT
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
AUGUSTA, GEORGIA
AND
TDA CONSULTING, INC.**

This Agreement made and entered into this ____ day of _____ 202_ (the “Effective Date”), by and between Augusta, Georgia, (hereinafter referred to as “Augusta”) a political subdivision of the State of Georgia, acting by and through the Augusta, Georgia Housing and Community Development Department (“HCD”) whose address is 510 Fenwick Street, Augusta, GA, and TDA Consulting, Inc., (hereinafter referred to as the Consultant) a Delaware corporation whose address is 1110 Harvest Canyon, San Antonio, Texas.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Consultant and Augusta, intending to be legally bound, do hereby covenant and agree as follows:

ARTICLE I.
SCOPE OF SERVICES TO BE PROVIDED

A. Consultant will conduct those activities as indicated in RFP 22-277, Section III, “Scope of Services,” which is incorporated herein by reference as if each and every section and subsection thereof is subsequently recited below, including but not limited to:

- a. Obtaining applicable documents and project-related files from Augusta, including but not limited to Consolidated Plans and Action Plans and past Fair Housing studies;

- b. Becoming acquainted with primary contacts and establishing a mutual and complete understanding of the project's parameters based on affirmed needs and expectations;
- c. Conduct factual data gathering and research that provides a demographic profile, a thorough examination of laws and regulations, and an effective process of engagement with the community to determine factors that contribute to barriers to fair housing;
- d. Conduct research and data analysis;
- e. Review and assess county laws and other conditions that affect fair housing;
- f. Conduct community outreach and consultation;
- g. Determine whether policies, practices, programs and activities restrict fair housing choice and access to opportunity;
- h. Determine what factors contribute to barriers or restrictions to fair housing;
- i. Prepare such reports as requested or required.

ARTICLE II

GENERAL CONDITIONS

A. Agreement Term The term of this Agreement commences on the Effective Date hereof and terminates absolutely and without further obligation on the part of Augusta, Georgia each and every December 31st, unless terminated earlier in accordance with the termination provisions of the Agreement. The term of this agreement automatically renews on each January 1st, unless terminated in accordance with the termination provisions of the Agreement. The term of this agreement shall terminate absolutely, with no further renewals, on August 31, 2023, unless extended by written amendment. Any extension is contingent upon funding and satisfactory delivery and performance, to be determined in Augusta, Georgia's sole discretion.

B. The ownership of all data, drawings, charts, etc. which are prepared or produced under this contract shall be that of Augusta, Georgia.

ARTICLE III **CONSIDERATION/FEES**

A. Augusta shall pay to Consultant a fixed price of [X]. Invoices shall be addressed to HCD and transmitted at the discretion of Augusta. Payment is due upon receipt of invoice. Payment will be based on invoices for progress payments for each milestone completed as follows:

- i. Data analysis complete – 25%
- ii. Public Engagement complete – 25%
- iii. Initial Draft AFH – 35%
- iv. Final Draft AFH – 15%

B. Adjustment in price in this Agreement shall be computed in one of the following ways:

- a. By agreement on a fixed price adjustment before commence of the pertinent performance or as soon thereafter as practicable;
- b. By unit prices specified in this Agreement or subsequently agreed upon;
- c. By the costs attributable to the events or situations under such clause with adjustment of profit or fee, all as specified in this Agreement or subsequently agreed upon; and/or
- d. In such other manner as the contracting parties may mutually agree upon.

ARTICLE IV **REPRESENTATIONS AND WARRANTIES OF CONSULTANT**

Consultant hereby represents and warrants to HCD as follows:

A. Due Authorization and Binding Obligation. This Agreement has been duly authorized, executed and delivered by Consultant and constitutes a legal, valid and binding obligation of Consultant, enforceable against Consultant in accordance with its terms, except to the extent its enforceability may be limited by (i) applicable bankruptcy, reorganization, moratorium or similar laws affecting enforcement of creditors' rights or remedies generally, (ii) general equitable principles concerning remedies, and (iii) limitations on the enforceability of rights to indemnification by federal or State laws or regulations or public policy.

B. No Conflict. To its knowledge, neither the execution nor delivery of this Agreement by Consultant, nor the performance by Consultant of its obligations hereunder (i) conflicts with, violates or results in a material breach of any law or governmental regulation applicable to Consultant, (ii) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which Consultant is a party or by which Consultant or any of its properties or assets are bound, or constitutes a material default under any of the foregoing, or (iii) constitutes a default under or results in the creation of, any lien, charge, encumbrance or security interest upon any assets of Consultant under any agreement or instrument to which Consultant is a party or by which Consultant or its assets may be bound or affected.

C. No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by Consultant or the performance of its obligations hereunder, except such as have been duly obtained or made.

D. Financial Condition. There has been no material adverse change in the financial condition of Consultant that would impair the ability of Consultant to perform its obligations under this Agreement.

E. No Collusion. Consultant's Proposal is genuine and not collusive or a sham. Consultant has not colluded, conspired, connived or agreed, directly or indirectly, with any other person, to put in a sham proposal, or to refrain from proposing, and has not in any manner, directly or indirectly, sought, by agreement, collusion, communication or conference with any person, to fix the prices of Consultant's proposal or the proposals of any other person or to secure any advantage against any person interested in this Agreement.

F. Information Supplied By Consultant. The information supplied and representations and warranties made by Consultant and in all submittals made in response to the RFP, including Consultant's Proposal, and in all post-proposal submittals with respect to Consultant (and, to its knowledge, all information supplied in such submittals with respect to any subsidiary or subcontractor) are true, correct and complete in all material respects. Consultant's Proposal does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary in order to make the statements therein not misleading.

G. Ethics: Gratuities and Kickbacks. Neither Consultant, any subsidiary, or any agent or other representative of Consultant has given or agreed to give, any employee or former employee of HCD or any other person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a procurement requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any procurement requirement or an Agreement or subcontract, or to any solicitation or proposal for an Agreement or subcontract. Notwithstanding any other provision hereof, for the breach or violation of this

representation and warranty and upon a finding after notice and hearing, Augusta may terminate this Agreement.

H. Contingent Fees. The Consultant warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Consultant for the purpose of securing business and that the Consultant has not received any non-Augusta fee related to this Agreement without the prior written consent of the Augusta. For breach or violation of this warranty, the Augusta shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement Price of consideration the full amount of such commission, percentage, brokerage or contingent fee.

I. Existence and Powers. Consultant is a corporation duly organized and validly existing under the laws of Georgia and is duly qualified to do business in the State of Georgia, with full power, authority and legal right to enter into and perform its obligations under this Agreement.

J. Augusta's selection of the Consultant was made with specific reliance on the qualifications and experience of specific Consultant staff identified in the Consultant's response to RFP 22-277, incorporated herein by reference. Unless substitutions are otherwise approved by Augusta or HCD, Consultant agrees to assign specific staff members to this Agreement substantially in keeping with the roles articulated in Consultant's response.

ARTICLE V **INSURANCE**

1. TDA Consulting, Inc. shall, at all times that this Agreement is in effect, cause to be maintained in force and effect an insurance policy that will ensure and indemnify Augusta against liability or financial loss resulting from injuries

occurring to persons or property or occurring, as a result of any negligent error, act or omission of TDA Consulting, Inc. during the term of this Agreement.

TDA Consulting, Inc. shall provide, at all times, Worker's Compensation insurance in accordance with the laws of the State of Georgia. Augusta will be named as an additional insured with respect to TDA Consulting, Inc.'s liabilities hereunder in insurance coverages. The policies shall be written by a responsible company(s), to be approved by Augusta, and shall be noncancellable except on thirty (30) days' written notice to Augusta. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Consultant is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Consultant under this Agreement:

2. The Consultant shall carry professional/public liability insurance coverage in the amount of One Million Dollars \$1,000,000 covering itself and all of its employees and agents.
 - i. Additional Insured – Consultant agrees to endorse the Augusta as an Additional Insured on the Commercial General Liability. The Additional Insured shall read 'Augusta as its interest may appear'.
 - ii. Certificate of Insurance – Consultant agrees to provide Augusta a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. If Consultant receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements

herein, Consultant agrees to notify Augusta within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance.

ARTICLE VI

TERMINATION

A. Augusta may terminate this Agreement upon thirty (30) days written notice to the Consultant for any reason whatsoever at its sole discretion. HCD shall, upon invoice, pay for all service rendered to the date of termination as provided for herein.

B. Augusta shall have the right to terminate this Agreement for a violation of the terms hereof, at any time after thirty (30) days' notice, other such other time period as set forth in such notice, has been given to the Consultant and unless corrective action has been taken or commenced within said thirty (30) day period and thereafter diligently completed.

C. Termination of the Agreement for Default. Failure of the Consultant, which has not been remedies or waived, to perform or otherwise comply with a material condition of the Agreement shall constitute default. Augusta, Georgia may terminate this contract in part or in whole upon written notice to the Consultant pursuant to this term.

D. Augusta shall have the right to terminate this Agreement immediately upon or after any of the following:

1. **Assignment for Creditors:** The Consultant makes a general assignment for the benefit of creditors.
2. **Bankruptcy:** The Consultant files a petition for relief as a debtor under any Article or chapter of the Federal Bankruptcy Code, as amended from time to time.

3. **Receivership:** A receiver, trustee, or custodian is appointed for all or substantially all of the assets of the Consultant in any proceeding brought by or against the Consultant, or the Consultant consents to or acquiesces in such appointment.

C. Termination. Augusta may terminate this Agreement any time for breach of contractual obligations by providing written notice of such cancellation. Should Augusta exercise its right to cancel the Agreement for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation. Furthermore, Augusta may terminate this Agreement at any time upon the giving of written notice as follows:

1. In the event that the Consultant fails to discharge any obligations or remedy any default or breach under this Agreement for a period continuing more than thirty (30) days after the providing written notice specifying such failure or default and that such failure or default continues to exist as of the date upon which such notice so terminating this Agreement is given; or

2. In the event that the Consultant makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium; or

3. In the event that appropriate and otherwise unobligated funds are no longer available to satisfy the obligations of HCD.

D. Temporary Suspension or Delay of Performance of Contract. To the extent that it does not alter the scope of this Agreement, Augusta Georgia may unilaterally order a temporary stopping of the work, or delaying of the work to be performed by Consultant under this Agreement.

ARTICLE VII
MISCELLANEOUS PROVISIONS

A. Consultant will promptly observe and comply with applicable provisions of all published federal, state, and local laws, rules and regulations which govern or apply to the services rendered by Consultant herein, or to the wages paid by Consultant to its employees.

B. Consultant will procure and keep in force during the term of this Agreement all necessary licenses, registrations, certificates, permits, and other authorizations as are required herein.

C. All reports, documents, data bases, commercials, and other deliverable products produced by Consultant for sole purposes of HCD under the terms of this Agreement will at all times be the exclusive property of HCD.

D. Governing Law. This Agreement and any questions concerning its validity, construction or performance shall be governed by the laws of the State of Georgia, irrespective of the place of execution or the place or places of performance.

E. Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

F. Severability. In the event that any part, provision or term of this Agreement shall, for any reason, be determined to be invalid, illegal, or unenforceable in any respect, the Parties shall negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions as shall, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified, supplemented, or otherwise affected by such action, remain in full force and effect.

G. No Third Party Beneficiary. This Agreement is intended to be solely for the benefit of Consultant and Augusta and their respective successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any Person not a signatory hereto.

H. HCD Approvals and Consents. When this Agreement requires any approval or consent by Augusta Housing & Community Development to a Consultant submission, request or report, the approval or consent shall be given by HCD's Authorized Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by HCD with the applicable law that generally governs its affairs. Unless expressly stated otherwise in this Agreement, and except for requests, reports and submittals made by the Consultant that do not, by their terms or the terms of this Agreement, require a response or action, if HCD does not find a request, report or submittal acceptable, it shall provide written response to Consultant describing its objections and the reasons therefore within thirty (30) days of the HCD's receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected.

I. Notices and Authorized Representatives. All notices, consents, approvals or communications required or permitted hereunder shall be and may be relied upon when in writing and shall be (i) transmitted by registered or certified mail, postage prepaid, return receipt requested, with notice deemed to be given upon receipt, or (ii) delivered by hand or nationally recognized courier service, or (iii) sent by facsimile transmission with confirmed receipt thereof, with a hard copy thereof transmitted pursuant to (i) or (ii) above. All such notices, consents, approvals or communications shall be addressed as follows:

For Augusta:	Office of the Mayor 535 Telfair Street Suite 200 Augusta, Georgia 30901
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Augusta Housing and Community Development
 510 Fenwick Street
 Augusta, Georgia 30901
 Attn: Hawthorne Welcher

With a Copy to:
 General Counsel
 Augusta Law Department
 535 Telfair Street, Building 3000
 Augusta, GA 30901

For Consultant:

TDA Consulting, Inc.

 Attn:

J. Nondiscrimination. During the performance of services under this Agreement, Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to their race, color, religion, sex, age, or national origin. Such action will 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.

K. Indemnification. Consultant hereby agrees to hold harmless, indemnify and defend Augusta, Augusta Housing & Community Development, its members, elected officials, officers and employees, against any claim, action, loss, damage, injury (whether mental or physical, and including death to persons, or damage to property), liability, cost and expense of whatsoever kind or nature including, but not by way of limitation, attorneys' fees and court

costs, caused by negligent acts or acts of commission or omission by Consultant its officers, employees, sub-consultants, or other representatives.

L. Compliance with laws: The Consultant shall obtain and maintain all licenses, permits, liability insurance, workman's compensation insurance and comply with any and all other standards or regulations required by federal, state or City statute, ordinances and rules during the performance of any contract between the Consultant and Augusta. Consultant shall also provide, pay for, and maintain with companies, reasonably satisfactory to Augusta, the types of insurance as set forth in the Augusta-Richmond County Code, and Georgia law as the same may be amended from time to time.

M. Prompt Pay Act. The terms of this Agreement supersede any and all provisions of the Georgia Prompt Pay Act.

N. Contractor acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Contractor is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Contractor agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of non-payment for the provision of any unauthorized

goods or services to Augusta, Georgia, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

O. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's E-Verify number as evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services.

P. Throughout the term of this contract, Consultant will comply with all applicable federal, state, or local laws related to equal employment opportunity and will not discriminate on the basis of race, color, religion (creed), gender, gender expression, age, national origin (ancestry), disability, marital status, sexual orientation, or military status, in any of its activities or operations. Consultant will comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Consultant certifies that it is not, nor will it employ any individuals or subcontractors who are debarred, suspended, or otherwise excluded by the U.S. Department of Housing and Urban Development, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Consultant further certifies it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Further, Consultant will promptly disclose to Augusta if this certification ceases to be accurate at any point during the contract period. As applicable, Consultant will comply with the requirements of 2 CFR 200.322 related to the procurement of materials under this contract.

Q. Inspection. Augusta, Georgia may, at reasonable times, inspect the part of the plant, place of business, or work site of Consultant or any subcontractor of Consultant or subunit thereof which is pertinent to the performance of any contract awarded or to be awarded by Augusta, Georgia. Consultant agrees to maintain records of costs and services provided to document and fully support billings. All books, records and other documents relevant to this agreement shall be retained for a period of three years after the end of the fiscal year during which they were created. Augusta and their duly authorized representatives shall

have access to the books, documents, papers, and records of Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts.

R. Independent Contractor. The Consultant shall act at all times as an independent contractor, not as an agent of Augusta or Augusta Housing & Community Development; and shall retain control over its employees, agents, servants and subcontractors.

S. Assignment and Subcontracting. The Consultant shall not sell, convey, transfer, mortgage, subcontract, sublease or assign this Agreement or any part thereof, or any rights created thereby, without the prior written consent of Augusta. Any assignment or transfer of this Agreement or any rights of the Consultant hereunder, without the prior written consent of Augusta shall be invalid, and shall convey to Augusta the right to terminate this Agreement at its sole discretion.

T. Choice of Law and Venue. This Agreement shall be performable and enforceable in the Superior Court of Richmond County, Georgia, and shall be construed in accordance with the laws of the State of Georgia. Consultant by execution of this Agreement specifically consents to jurisdiction and venue in the Superior Court of Richmond County and waives any right to contest same.

U. Invalid Provisions: If any covenant, condition or provision contained in this Agreement is held to be invalid by any Court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenants, conditions or provisions contained in this Agreement; provided, that the validity of such covenant, condition or provision does not materially prejudice either the HCD or Consultant in its respective rights and obligations contained in the valid covenants, conditions or provisions of this Agreement.

V. Waivers. Failure by Augusta to insist upon the strict performance by the Consultant of any of the terms herein contained shall not constitute a waiver of Augusta's right to thereafter enforce any such term, but the same shall continue in full force and effect. The exercise of any right to terminate arising under this Agreement shall not operate to deprive Augusta of any coexisting right to seek damages or other remedies arising from the default of the Consultant.

W. Entire Agreement. This Agreement constitutes the entire agreement between the parties and will supersede and replace all prior agreements or understandings, written or oral, in relation to the matters set forth herein. Notwithstanding the foregoing, however, Consultant hereby affirms the completeness and accuracy of all of the information provided by it in its proposal to Augusta in pursuit of this Agreement. Should there be a conflict between any provision in this Agreement and the Consultant's response to RFP 22-198 (Exhibit "A"), the Consultant's response to RFP 22-198 shall take precedence over this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

TDA Consulting, Inc.

Augusta, Georgia

By: _____

By: _____

Name: _____

Name:

Title: _____

Title: Mayor

Date: _____

Date: _____

Augusta Housing and Community Development Department

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____
Lena J. Bonner, Clerk of Commission

EXHIBIT A
RFP 22-277 and CONSULTANT'S RESPONSE TO RFP 22-277

Request for Proposals

Request for Proposals will be received at this office until **Wednesday, September 21, 2022 @ 3:00 p.m.** via ZOOM Meeting ID: **880 8713 3052; Passcode: 833259** for furnishing:

RFP Item # 22-277 Assessment of Fair Housing for Augusta, GA – Housing and Community Development

RFPs will be received by: The Augusta Commission hereinafter referred to as the OWNER at the offices of:

Geri A. Sams, Director
Augusta Procurement Department
535 Telfair Street - Room 605
Augusta, Georgia 30901

RFP documents may be viewed on the Augusta Georgia web site under the Procurement Department ARCBid. RFP documents may be obtained at the office of the Augusta, GA Procurement Department, 535 Telfair Street – Room 605, Augusta, GA 30901 (706-821-2422).

A Pre-Proposal Conference will be held on Tuesday, September 6, 2022 @ 2:00 p.m. Via Zoom – Meeting ID: 844 9160 5730; Passcode: 509608.

All questions must be submitted in writing by fax to 706 821-2811 or by email to procbidandcontract@augustaga.gov to the office of the Procurement Department by Wednesday, September 7, 2022 @ 5:00 P.M. No RFP will be accepted by fax or email, all must be received by mail or hand delivered.

No RFP may be withdrawn for a period of **90** days after proposals have been opened, pending the execution of contract with the successful bidder(s).

Request for proposals (RFP) and specifications. An RFP shall be issued by the Procurement Office and shall include specifications prepared in accordance with Article 4 (Product Specifications), and all contractual terms and conditions, applicable to the procurement. **All specific requirements contained in the request for proposal including, but not limited to, the number of copies needed, the timing of the submission, the required financial data, and any other requirements designated by the Procurement Department are considered material conditions of the bid which are not waivable or modifiable by the Procurement Director.** All requests to waive or modify any such material condition shall be submitted through the Procurement Director to the appropriate committee of the Augusta, Georgia Commission for approval by the Augusta, Georgia Commission. Please mark RFP number on the outside of the envelope.

GEORGIA E-Verify and Public Contracts: The Georgia E-Verify law requires contractors and all sub-contractors on Georgia public contract (contracts with a government agency) for the physical performance of services over \$2,499 in value to enroll in E-Verify, **regardless of the number of employees.** They may be exempt from this requirement if they have no employees and do not plan to hire employees for the purpose of completing any part of the public contract. Certain professions are also exempt. All requests for proposals issued by a city must include the contractor affidavit as part of the requirement for their bid to be considered.

Proponents are cautioned that acquisition of RFP documents through any source other than the office of the Procurement Department is not advisable. Acquisition of RFP documents from unauthorized sources places the proponent at the risk of receiving incomplete or inaccurate information upon which to base their qualifications.

Correspondence must be submitted via mail, fax or email as follows:

**Augusta Procurement Department
Attn: Geri A. Sams, Director of Procurement
535 Telfair Street, Room 605
Augusta, GA 30901
Fax: 706-821-2811 or Email: procbidandcontract@augustaga.gov**

GERI A. SAMS, Procurement Director

Publish:

Augusta Chronicle August 11, 18, 25, 2022 and September 1, 2022
Metro Courier August 11, 2022

Revised: 3/22/21



**RFP 22-277 Assessment of Fair Housing
for Augusta, GA – Housing and Community
Development Department**

RFP Due: Wednesday, September 21, 2022 @ 3:00 p.m.

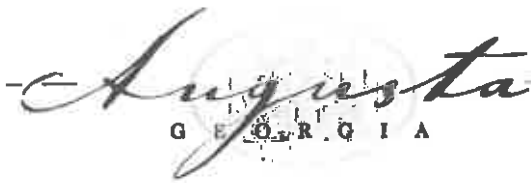
Total Number Specifications Mailed Out: 23
Total Number Specifications Download (Demandstar): 4
Total Electronic Notifications (Demandstar): 118
Georgia Procurement Registry: 1042
Total packages submitted: 3
Total Noncompliant: 0

VENDORS	Attachment "B"	E-Verify	Save Form	Fee Proposal	Original	7 Copies
BluLynx Solutions 8343 Roswell Rd., Ste. 154 Atlanta, GA 30350	Yes	1129761	Yes	Yes	Yes	Yes
TDA Consulting, Inc. 131 Atkinson Street, Ste. B Laurinburg, NC 28352	Yes	877992	Yes	Yes	Yes	Yes
WFN Counsulting 123 Church Street, Suite 200 Marietta, GA 30060	No Bid Response					



**RFP 22-277 Assessment of Fair Housing
for Augusta, GA – Housing and Community
Development Department
RFP Evaluation Meeting: Wednesday, October 19, 2022 @ 10:00 a.m.**

Vendors			BluLynx Solutions 8343 Roswell Rd., Ste. 154 Atlanta, GA 30350	TDA Consulting, Inc. 131 Atkinson Street, Ste. B Laurinburg, NC 28352	BluLynx Solutions 8343 Roswell Rd., Ste. 154 Atlanta, GA 30350	TDA Consulting, Inc. 131 Atkinson Street, Ste. B Laurinburg, NC 28352
Phase 1			Ranking of 0-5 (Enter a number value between 0 and 5)		Weighted Scores	
Evaluation Criteria	Ranking	Points	Scale 0 (Low) to 5 (High)			
1. Completeness of Response • Package submitted by the deadline • Package is complete (includes requested information as required per this solicitation) • Attachment B is complete, signed and notarized	N/A	Pass/Fail	PASS	PASS	PASS	PASS
2. Qualifications & Experience	(0-5)	15	5	5	75	75
3. Organization & Approach	(0-5)	15	5	5	75	75
4. Scope of Services Provide details on your approach to the specification listed in the Scope of Services (Section III) include experience with the following. Vendor is also to provide evidence of: a. Clear understanding of Project. b. Qualification to demonstrate knowledge, training and experience in fair housing c. Experience with Similar Projects - Individual/firm must demonstrate successful experience with projects of a similar nature. Professionalism and timely delivery of services to clients is a key consideration. Familiarity with contract requirements for federally/funded projects is helpful.	(0-5)	25	4	5	100	125
5. Schedule of Work	(0-5)	10	3.5	4.5	35	45
6. Financial Stability	(0-5)	5	3	5	15	25
7. References	(0-5)	5	5	5	25	25
Phase 1 Total - (Total Maximum Ranking 25 - Maximum Weighted Total Possible 375)			22.5	24.5	325	370
Phase 2 (Option - Numbers 8 - 9) (Vendors May Not Receive Less Than a 3 Ranking in Any Category to be Considered for Award)						
8. Presentation by Team	(0-5)	10			0	0
9. Q&A Response to Panel Questions	(0-5)	5			0	0
10. Cost/Fee Proposal Consideration (only choose 1 line according to dollar value of the proposal in relation to all fee proposals - enter the point value for the one line only)					Cost/Fee Proposal Consideration	
Lowest Fees	5	10	5		50	0
Second	5	6		5	0	30
Third	5	4			0	0
Fourth	5	2			0	0
Fifth	5	1			0	0
Total Phase 2 - (Total Maximum Ranking 15 - Maximum Weighted Total Possible 125)			5	5	50	30
Total (Total Possible Score 500) Total (May not Receive Less Than a 3 Ranking in Any Category to be Considered for Award)						
Total Cumulative Score			27.5	29.5	375	400
Internal Use Only						
Evaluator:	Cumulative	Date:	10/25/22			
Procurement Department Representative: _____ Nancy Williams _____						
Procurement Department Completion Date: 10/25/22						



Hawthorne E. Welcher, Jr.
Director

Shauntia Lewis
Deputy Director

Memorandum

TO: Geri Sams, Procurement Director
Darrell White, Deputy Procurement Director

FROM: Hawthorne Welcher, Jr., Director

CC: Shauntia Lewis, Deputy Director HCD

DATE: November 1, 2022

RE: Assessment for Fair Housing – (RFP 22-277)

After careful consideration and review of documentation, Augusta Housing and Community Development (HCD) is pleased to accept the proposal submitted by TDA Consulting, Inc. for RFP 22-277. We would like to begin with the proper contract negotiation with the submission of a draft contract for review.

If you have any questions, please contact La Sandra Corley, Housing Programs Manager at (706) 821-1797.

WFN Consulting
123 Church Street, Suite 200
Marietta, GA 30060

TDA Consulting, Inc.
Attn: Dionne L. Roberts
17 Caleb Circle
San Antonio, TX 78258

Nan McKay and Associates, Inc.
Attn: John McKay
1810 Gillespie Way, Suite 202
El Cajon, CA 92020

Mosiac Community Planning
195 Arizona Ave. NE Suite 123
Atlanta, GA 30307

Fourth Economy Consulting
1501 Preble Ave, 2nd floor
Pittsburgh, PA 15233

Quadel Consulting & Training, LLC
1200 G St. NW, Suite 700
Washington, DC 20005

Endelman & Associates PLLC
One Union Square
600 University St., Suite 1515
Seattle, WA 98101

**Northwest & Buckds Company T/A
Mullin & Lonergan Associates**
800 Vinial Street, Suite B414
Pittsburg, PA 15212

Blazik Consulting
300 West Clarendon Ave, Suite 230
Phoenix, AZ 85013

Blulynx Solutions, LLC
Attn: Kimberly Roberts
8343 Roswell Road, Suite 154
Atlanta, GA 30350

Collabo Planning
3357 N Seminary #1
Chicago, Illinois 60657

WRT Design
1700 Market Street, Suite 2800
Philadelphia, PA 19103

EJP Consulting Group
PO Box 336
Manchester, WA 98353

Camiros, Ltd
411 S Wells Street, Suite 400
Chicago, IL 60607

Nan McKay and Associates, Inc.
7400 Corporate Center Drive
Bays F-H
Miami, FL 33126

Millennia Consulting, LLC
3530 North Damen Ave, Suite 1000
Chicago, IL 60618-6108

Morning Research and Consulting, Inc.
PO Box 4173
Austin, TX 78765

**Legal Aid of North Carolina,
Fair Housing Project**
224 S. Dawson Street
Raleigh, NC 27601

J.C. Vision & Associates
135 East MLK, Jr. Drive, Suite G
Hinesville, GA 31313

Western Economic Service, LLC
212 SE 18th Ave
Portland, OR 97214

Metro Fair Housing Services, Inc.
215 Lakewood Way, S.W. Suite 106
Atlanta, GA 30315

Hawthorne Welcher
Housing & Community Development

LaSandra Corley
Housing & Community Development

Phyllis Johnson
Compliance

RFP Item #22-277
Assessment of Fair Housing for Augusta,
GA Housing and Community Development
Due: Wed., Sept. 21, 2022 @ 3:00 p.m.

RFP Item #22-277
Assessment of Fair Housing for Augusta,
GA Housing and Community Development
Mail: 08/11/22

BIDDERS LIST

 BID ITEM # 22-277 COST \$ _____

#	COMPANY'S NAME & CONTACT PERSON	COMPLETE MAILING ADDRESS TELEPHONE & FAX NUMBERS	DATE	SPEC #	INITIALS	MAILED BY
1	Kimistry Solutions Consulting, LLC Attn: Kimberly Scott 731 Duval Station Road, Ste. 107-146 Jacksonville, FL. 32218	Phone				U.S.
2		904 219-6055	8/12/22	22-277	DW	ma: 1
3	Carras Community Investment Inc. Attn: James Carras 1701 NE Sixth Street Fort Lauderdale, FL 33304	Phone				U.S.
4		954 415-2022	8/12/22	22-277	DW	ma: 1
5						
6						
7						

Planholders

[Add Supplier](#)[Export To Excel](#)

Supplier (3)

Supplier **Download Date**

AE Engineering Inc

08/11/2022

Augusta University

09/02/2022

Chrysalis Research & Consulting LLC

09/07/2022

[Add Supplier](#)

Supplier Details

Supplier Name	AE Engineering Inc
Contact Name	Christina Yero
Address	219 N Newnan Street 4th Floor, Jacksonville, FL 32202
Email	info@aeengineeringinc.com
Phone Number	561-632-5185
Self Declarations	African American Owned, Hispanic Owned, Small Business

Documents

Filename	Type	Action
22-277_RFP	Bid Document / Specifications	View History

ZION FOUNDATION INC 2022-08-11	ters@zionfoundation.net ZIONFOUNDATION, ZIONFOUNDATION	N	NOM
ZOE OUTREACH CENTER 2022-08-11	thegriggsgroupllc@yahoo.com GRIGGS, JOYCE	Y	AFA
Zellner, Inc 2022-08-11	zellnerrealty@gmail.com Zellner, Jamarr	N	NOM
Zion Restorations, Inc. 2022-08-11	info@zion1.org Mosely, DuJuan	Y	AFA
Zoltan Consulting, Inc 2022-08-11	cdaniels@zoltanconsultinginc.com Daniels, Carolyn J	Y	AFA
adesinabadesina 2022-08-11	adesina123@yahoo.com adesina, badesina	Y	AFA
christolyst llc 2022-08-11	todd.thompson@christolyst.com thompson, todd	Y	AFA
jackie robinson and associates 2022-08-11	jackie@jrobinsonassociates.com robinson, jackie	Y	AFA
moracco marketing & dist inc 2022-08-11	KANDERSON617@GMAIL.COM ANDERSON, KAREN	Y	AFA
ogumgbuajasabina 2022-08-11	sabinaozome@yahoo.com ogumgbuaja, sabina	Y	AFA
usregistryconnect 2022-08-11	rfq@usregistryconnect.com usregistry, usregistry	N	NOM
z SofTech Solutions, LLC 2022-08-11	leticiaalexander@zsoftechsolutions.com Alexander, Leticia	Y	AFA
À la Carte Investments, LLC 2022-08-11	jharland@alacarteinvestments.com Harland II, Joseph	N	NOM

African American	270
Asian American	20
Native American	7
Hispanic/Latino	9
Pacific Island/American	1
Non Minority	389
Not Classified	0
Total Number of Vendors	696
Total Number of Contacts	1042

PR_bid_email_list

FYI: Process Regarding Request for Proposals

Sec. 1-10-51. Request for proposals.

Request for proposals shall be handled in the same manner as the bid process as described above for solicitation and awarding of contracts for goods or services with the following exceptions:

- (a) Only the names of the vendors making offers shall be disclosed at the proposal opening.
- (b) Content of the proposals submitted by competing persons shall not be disclosed during the process of the negotiations.
- (c) Proposals shall be open for public inspection only after the award is made.
- (d) Proprietary or confidential information, marked as such in each proposal, shall not be disclosed without the written consent of the offeror.
- (e) Discussions may be conducted with responsible persons submitting a proposal determined to have a reasonable chance of being selected for the award. These discussions may be held for the purpose of clarification to assure a full understanding of the solicitation requirement and responsiveness thereto.
- (f) Revisions may be permitted after submissions and prior to award for the purpose of obtaining the best and final offers.
- (g) In conducting discussions with the persons submitting the proposals, there shall be no disclosure of any information derived from the other persons submitting proposals.

Sec. 1-10-52. Sealed proposals.

- (a) *Conditions for use.* In accordance with O.C.G.A. § 36-91-21(c)(1)(C), the competitive sealed proposals method may be utilized when it is determined in writing to be the most advantageous to Augusta, Georgia, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors in the request for proposals shall be the basis on which the award decision is made when the sealed proposal method is used. Augusta, Georgia is not restricted from using alternative procurement methods for

obtaining the best value on any procurement, such as Construction Management at Risk, Design/Build, etc.

- (b) *Request for proposals.* Competitive sealed proposals shall be solicited through a request for proposals (RFP).
- (c) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in section 1-10- 50(c)(Public Notice and Bidder's List); provided the normal period of time between notice and receipt of proposals minimally shall be fifteen (15) calendar days.
- (d) *Pre-proposal conference.* A pre-proposal conference may be scheduled at least five (5) days prior to the date set for receipt of proposals, and notice shall be handled in a manner similar to section 1-10-50(c)-Public Notice and Bidder's List. No information provided at such pre-proposal conference shall be binding upon Augusta, Georgia unless provided in writing to all offerors.
- (e) *Receipt of proposals.* Proposals will be received at the time and place designated in the request for proposals, complete with bidder qualification and technical information. No late proposals shall be accepted. Price information shall be separated from the proposal in a sealed envelope and opened only after the proposals have been reviewed and ranked.

The names of the offerors will be identified at the proposal acceptance; however, no proposal will be handled so as to permit disclosure of the detailed contents of the response until after award of contract. A record of all responses shall be prepared and maintained for the files and audit purposes.

- (f) *Public inspection.* The responses will be open for public inspection only after contract award. Proprietary or confidential information marked as such in each proposal will not be disclosed without written consent of the offeror.
- (g) *Evaluation and selection.* The request for proposals shall state the relative importance of price and other evaluation factors that will be used in the context of proposal evaluation and contract award. (Pricing proposals will not be opened until the proposals have been reviewed and ranked). Such evaluation factors may include, but not be limited to:

- (1) The ability, capacity, and skill of the offeror to perform the contract or

provide the services required;

- (2) The capability of the offeror to perform the contract or provide the service promptly or within the time specified, without delay or interference;
 - (3) The character, integrity, reputation, judgment, experience, and efficiency of the offeror;
 - (4) The quality of performance on previous contracts;
 - (5) The previous and existing compliance by the offeror with laws and ordinances relating to the contract or services;
 - (6) The sufficiency of the financial resources of the offeror relating to his ability to perform the contract;
 - (7) The quality, availability, and adaptability of the supplies or services to the particular use required; and
 - (8) Price.
- (h) *Selection committee.* A selection committee, minimally consisting of representatives of the procurement office, the using agency, and the Administrator's office or his designee shall convene for the purpose of evaluating the proposals.
 - (i) *Preliminary negotiations.* Discussions with the offerors and technical revisions to the proposals may occur. Discussions may be conducted with the responsible offerors who submit proposals for the purpose of clarification and to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of information derived from proposals submitted by competing offerors.
 - (j) From the date proposals are received by the Procurement Director through the date of contract award, no offeror shall make any substitutions, deletions,

additions or other changes in the configuration or structure of the offeror's teams or members of the offeror's team.

- (k) *Final negotiations and letting the contract.* The Committee shall rank the technical proposals, open and consider the pricing proposals submitted by each offeror. Award shall be made or recommended for award through the Augusta, Georgia Administrator, to the most responsible and responsive offeror whose proposal is determined to be the most advantageous to Augusta, Georgia, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain a written report of the basis on which the award is made/recommended. The contract shall be awarded or let in accordance with the procedures set forth in this Section and the other applicable sections of this chapter.



Administrative Services Committee Meeting

Meeting Date: 01/31/2023

HCD_ Request to Approve Contractor Selection for Golden Harvest Food Bank Fresh Produce Warehouse Expansion Project

Department:	HCD
Presenter:	Hawthorne Welcher, Jr. and/or HCD Staff
Caption:	Motion to Approve Recommendation from Golden Harvest Food Bank to select RW Allen for award under CDBG-CV funding opportunity in Partnership with CSRA Regional Commission and Augusta, Georgia to expand the Produce Rescue Center (Warehouse) at GHFB's Augusta, GA location.
Background:	<p>With the Commission's approval of Augusta's acceptance of the award of \$3,707,260 in Community Development Block Grant CARES Act (CDBG-CV) funds from the State of Georgia's Department of Community Affairs (GA DCA), in partnership with the CSRA Regional Commission, staff moved forward to implement the project to expand Golden Harvest Food Bank's Warehouse facility to increase food storage and distribution capacity.</p> <p>Cheatham Fletcher Scott (CFS) was contracted to provide A/E services for this project and to facilitate the Bid Process in compliance with applicable laws and regulations. Initial bids for the project were received and all compliant bidders were over the estimated project budget. Golden Harvest directed CFS to negotiate with the low bidder for scope reductions and value engineering recommendations that could bring the total development cost down to a feasible dollar amount. The price is now \$5,586,098 and Golden Harvest directed that RW Allen prepare a contract. Golden Harvest will contribute the Cash Match required to address the costs over and above those covered by the CDBG-CV Grant Award of \$3.7mm.</p> <p>Augusta Housing and Community Development (HCD) has been assigned by the Office of the Administrator to oversee Augusta, Georgia's interest in the DCA CDBG Funded Public Facility Project at Golden Harvest Food Bank on their behalf.</p> <p>HCD reports to the Administrator's Office on a monthly basis regarding project updates/milestones. CSRA Regional Commission is responsible for reporting both DCA and to the City of Augusta on matters concerning timeline, funding, compliance reporting, etc.</p>
Analysis:	The proposed project will allow Golden Harvest Food Bank to collect fresh farm foods from local growers and distribute them to thousands of hungry residents across a 25-county service area. The CDBG-CV funds from DCA are critical to realizing the potential impact of this project, and GHFB's Board of Directors has committed to being responsible for all project costs beyond the \$3.7mm CDBG-CV Grant Award.

Financial Impact:

The City of Augusta has been awarded, in partnership with the CSRA Regional Commission, funding from the State of Georgia's Community Development Block Grant – CARES Act allocations (CDBG-CV) in the amount of \$3,707,260 for this project. Golden Harvest has committed to covering the Cash Match of \$3,114,591.00.

Alternatives:

Do not approve Recommendation from Golden Harvest Food Bank to select RW Allen for award under CDBG-CV funding opportunity in Partnership with CSRA Regional Commission and Augusta, Georgia to expand the Fresh Food Warehouse at the GHFB location.

Recommendation:

Approve Recommendation from Golden Harvest Food Bank to select RW Allen for award under CDBG-CV funding opportunity in Partnership with CSRA Regional Commission and Augusta, Georgia to expand the Produce Rescue Center (Warehouse) at 3310 Commerce Drive, Augusta, GA (30909).

Funds are available in the following accounts:

State of Georgia Housing and Urban Development (HUD) Funds: Community Development Block Grant – Covid / CARES Act (CDBG-CV) – \$3,707,260.00
Golden Harvest Private Funds (Cash Match Requirement) – \$3,114,591.00

**REVIEWED AND
APPROVED BY:**

Procurement
Finance
Law
Administrator
Clerk of Commission



AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the 9 day of January in the year 2023
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Golden Harvest Food Bank
3310 Commerce Drive
Augusta, GA 30909
706-736-1199

and the Contractor:
(Name, legal status, address and other information)

RW Allen Construction, LLC
1015 Broad Street
Augusta, GA 30901
706-733-2800

for the following Project:
(Name, location and detailed description)

Golden Harvest Produce Rescue Center
3301 Commerce Drive
Augusta, GA 30909

The Architect:
(Name, legal status, address and other information)

Cheatham, Fletcher, Scott Architects + Designers
420 ½ Eighth Street
Augusta, GA 30901
706-724-2668

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[] Not later than () calendar days from the date of commencement of the Work.

[] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Five Million Five Hundred Eighty-Six Thousand Ninety-Eight Dollars (\$ 5,586,098), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price
------	-------

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item	Price
Materials Testing	\$10,000
Section 11400 – Appliances	\$10,000
Sound Masking White Noise System	\$15,000
Roller Shades	\$4,000
Irrigation system	\$10,000

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 20th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Twenty (20) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Init.

10%

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

General conditions, Insurances, Permit fees and applications

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

At the Owner's sole discretion and upon completion of 50% of the project, the Owner may reduce retainage from 10% retainage on all approved work to 10% retainage on the 1st 50% and 0% retainage on the remaining 50% of work

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

2 % Above Prevailing Prime Rate as published by Bank of America

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

Init.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017

☐ Litigation in a court of competent jurisdiction

☒ Other *(Specify)*

Mediation

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

As stated in the contract documents

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Glenn Tomlinson – Project Manager
Golden Harvest Food Bank
gtomlinson@goldenharvest.org

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

John H. Martin – Executive VP
RW Allen Construction, LLC
jmartin@rwallen.com

Init.

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

Number	Title	Date
See Attachment A	Drawing Index	9/23/2022

.6 Specifications

Section	Title	Date	Pages
See Attachment B	Project Manual Table of Contents	9/23/2022	5

.7 Addenda, if any:

Number	Date	Pages
Addendum No. 1	11/14/2022	18
Addendum No. 2	11/23/2022	4
Addendum No. 3	11/23/2022	8
Addendum No. 4	11/28/2022	10

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract

Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

☐ The Sustainability Plan:

Title	Date	Pages
-------	------	-------

☒ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Attachment C	Proposed Cost Savings Summary Table	12/29/2022	1

.9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

JOHN H. MARTIN, EXECUTIVE VICE PRESIDENT
(Printed name and title)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Golden Harvest Produce Rescue Center
3301 Commerce Drive, Augusta, GA 30909

THE OWNER:

(Name, legal status and address)

Golden Harvest Food Bank
3310 Commerce Drive, Augusta, GA 30909

THE ARCHITECT:

(Name, legal status and address)

Cheatham, Fletcher, Scott Architects + Designers
420 1/2 Eighth Street, Augusta, GA 30901

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

§ 1.2.4 No responsibility, either direct or implied, is assumed by the Architect for omissions or duplications by Contractor or subcontractors due to real or alleged error in arrangement of matter in these Contract Documents.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 Contractor shall comply with provisions of Wage Decision No. GA220311, Federal Labor Standards Provisions, US Dept. of Labor provisions, and OSHA provisions as described in Specification Section 007301.

§ 3.4.5 Contractor shall comply with provisions of Community Development Block Grant (CDBG) Contract Conditions as described in Specification Section 007302.

§ 3.4.6 Contractor shall comply with provisions of Georgia Department of Community Affairs (DCA) Section 3 Solicitation Package as described in Specification Section 007303.

§ 3.4.7 Contractor shall comply with Community Development Block Grant (CDBG) Contract and Contractor Procurement Review Checklist as described in Specification Section 007304.

§ 3.4.8 After the Contract has been executed, the Owner and the Architect will not consider any formal requests for the substitution of products in lieu of those specified. All requests for substitution of products and materials are covered under the conditions set forth in Division 1 - General Requirements, Section 01631 - Product Substitutions, and in A.I.A. Document A701, Instructions to Bidders.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and except when installation is specified as part of the allowance as described in Division 1 - General Requirements, Section 01020 - Allowances.
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. At the Contractor's option, submit to the Architect a minimum of five (5) copies of all Shop Drawings, Product Data, Samples and similar submittals. Or, materials may be submitted electronically. The Architect will retain three (3) hard copies or electronic review documents for distribution to the Owner and the Engineer as applicable. No work shall be fabricated by Contractor save at his own risk, until approval from Architect is complete.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

- § 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
 - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an allowance for overhead and profit in accordance with Clauses 7.3.11.1 through 7.3.11.6 below. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In Subparagraph 7.3.4, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor's own forces, 8.5 percent of the cost.
2. For the Contractor, for Work performed by the Contractor's Subcontractor, 7.0 percent of the amount due the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, 10 percent of the cost.
4. For each Subcontractor, for work performed by the Subcontractor's Sub-subcontractors, 7.0 percent of the amount due the Sub-subcontractor.
5. Cost to which overhead and profit is to be applied shall be as determined in accordance with Subparagraph 7.3.6.
6. In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$2,000.00 be approved without such itemization.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall within fifteen (15) days after signing of the Contract Agreement, submit to the Architect a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 Until Substantial Completion, the Owner shall pay 90 percent of the amount due the Contractor on account of progress payments.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon

compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment shall be sufficient to increase the total payments to 95 percent of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and

on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum.

§ 11.1.2.1 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished. The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

1. Workers' Compensation Insurance fully covering all persons engaged in the performance of this Agreement in accordance with Georgia Law.
2. Commercial General Liability Insurance on an occurrence basis with no less than the following limits:

General Aggregate Limit:	\$ 3,000,000.00
Products Completed Operations Aggregate Limit:	\$ 3,000,000.00
Personal Injury Limit:	\$ 1,000,000.00
Each Occurrence Limit:	\$ 1,000,000.00

3. Automobile Liability Insurance (including owned, non-owned and hired vehicles):

Bodily Injury and Property Damage: **\$ 1,000,000.00**

4. Umbrella Liability Insurance with limit no less than: **\$ 5,000,000.00**

§ 11.1.2.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. If this insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD form 25S will be acceptable.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.1.5 Upon completion of the work to be performed the Contractor shall furnish the Owner a signed and notarized copy of the statutory affidavit that follows this section.

§ 11.2 Owner's Insurance

§ 11.2.1 The Contractor shall purchase Owner's Protective Liability Insurance in the name of the owner covering bodily injury and property damage with the following limits:

Aggregate Limit: **\$ 2,000,000.00**
Occurrence Limit: **\$ 1,000,000.00**

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall

be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

Init.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after

occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data

from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to

file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

January 10, 2023

Ms. Takiyah Douse, City Administrator
Augusta Richmond County
535 Telfair Street, Suite 910
Augusta, GA 30901

RE: Golden Harvest Food Bank – Produce Rescue Center (Fresh Warehouse)

Dear Ms. Douse,

On November 29, 2022 bids were received by Augusta Housing and Community Development for construction of the Produce Rescue Center (formerly known as Fresh Warehouse) at Golden Harvest Food Bank on Commerce Drive in Augusta.

Three bids were received, and all bidders were qualified. The low bid was \$7,360,000, and was submitted by RW Allen Construction of Augusta, GA.

All bids were over the project budget, and the Owner directed my company to negotiate with RW Allen. Over a period of several weeks, we identified a number of cost saving items that brought the cost down to a level the Owner found acceptable.

It is our recommendation that Golden Harvest contract with RW Allen for the amount of \$5,586,098.

Please feel free to contact me if you have any questions.

Sincerely,



Richard M. Fletcher, AIA, NCARB

BID TABULATION

Item 2.

PROJECT: Produce Rescue Center (Fresh Warehouse)
OWNER: Golden Harvest Food Bank
ARCHITECT: Cheatham Fletcher Scott Architects
BID LOCATION: 510 Fenwick Street, Augusta, GA 30901
DATE OF BID: Tuesday, November 29 at 11:00 A.M.

BUDGET AMOUNT: \$5,000,000.
RECOMMENDED AWARD AMOUNT: \$5,586,098.
CONSTRUCTION START DATE: ASAP
CONSTRUCTION COMPETION DATE: December 31, 2023

<u>GENERAL CONTRACTOR CITY, STATE</u>	<u>BID BOND</u> (Yes/No)	<u>ADDENDA RECEIVED</u>	<u>BASE BID</u>	<u>ALTERNATE 1</u>	<u>CONSTRUCTION TIME</u> (Calendar Days)	<u>NOTES</u>
RW Allen Construction Augusta, GA	Yes	1 – 4	\$7,360,000	\$106,000	365	
RD Brown Contractors North Augusta, SC	Yes	1 – 4	\$7,895,000	\$58,000	426	
Kuhlke Construction Augusta, GA	Yes	1 – 4	\$7,596,000	\$100,000	420	

I certify that this is a correct tabulation of bids as read aloud, and I certify that I have personally and visually checked the tabulation against the proposal forms submitted. RW Allen Construction is the apparent low bidder.

Cheatham Fletcher Scott Architects + Designers

By: 



RW Allen Construction, LLC

Golden Harvest - Produce Rescue Center

12/29/2022

Proposed Cost Savings Summary Table

Item #	Item Description	Estimated Cost (Savings)	Status	Final Value
1	Eliminate second story concrete mezzanine 2" slab on deck	(\$41,500)		0
2	Eliminate masonry elevator shaft	(\$27,164)		0
3	Eliminate steel exterior stairs, lobby stairs, and second story handrails	(\$111,325)		0
4	Eliminate second story bathroom vanities and AV room cabinetry	(\$11,925)		0
5	Eliminate elevator pit waterproofing	(\$1,440)		0
6	Eliminate HM/wood doors and hardware on second story	(\$22,606)		0
7	Eliminate second story translucent Kalwall panels	(\$137,700)		0
8	Eliminate second story aluminium storefront and curtainwall	(\$85,005)		0
9	Eliminate second story metal stud, drywall, ceiling, and wall finishes	(\$288,908)		0
10	Eliminate second story floor finishes	(\$43,812)		0
11	Eliminate hardwood stair treads at lobby stairs	(\$7,488)		0
12	Eliminate toilet partitions and accessories in second story bathrooms	(\$8,445)		0
13	Eliminate mezzanine and second story from PEMB, extend 10' eave extension across lobby, standard color wall panels	(\$545,303)		0
14	Eliminate elevator	(\$99,000)		0
15	Eliminate all fire protection in building	(\$168,700)		0
16	Eliminate all HVAC work related to the second story	(\$101,281)		0
17	Eliminate all plumbing work related to the second story	(\$20,000)		0
18	Eliminate all electrical work related to the second story	(\$52,300)		0

GRAND TOTAL ESTIMATED BUILDING COST REDUCTION**(\$1,773,901.59)**

Original GMP Estimate	\$7,360,000.00		\$7,360,000.00
Estimated Cost Options Offered	(\$1,773,901.59)		
Revised Estimate w/ Cost Options	\$5,586,098.41		\$7,360,000.00

*** Note that items marked with an * cannot be accepted in conjunction with other specified alternates.

January 10, 2023

Ms. Takiyah Douse, City Administrator
Augusta Richmond County
535 Telfair Street, Suite 910
Augusta, GA 30901

RE: Golden Harvest Food Bank – Produce Rescue Center (Fresh Warehouse)
Funding Commitment Statement

Dear Ms. Douse,

Golden Harvest Food Bank is absolutely thrilled to receive a Georgia Department of Community Affairs (DCA) block grant award for \$3.7 million. These funds will allow us to collect fresh farm foods from local growers and distribute them to thousands of hungry people across a 25-county service area.

Our Board of Directors voted to award a contract for construction in the amount of \$5,586,098 to Augusta-based RW Allen Construction to build our new Produce Rescue Center. The DCA will fund about two thirds of the cost, and Golden Harvest and our Board of Directors will be responsible for all project costs beyond the \$3.7 million grant amount.

We look forward to a groundbreaking in early February. On behalf of our Board, we hope you will express our sincere thanks to the Commission for adding their blessing to this project that will build distribution capacity and help bridge the hunger gap in the Augusta area.

If you have any questions about our project or programs, please feel to contact me.

Sincerely,



Amy C. Breitmann
President & CEO
Golden Harvest Food Bank

Project Manual for
BUILDING CONSTRUCTION OF
GOLDEN HARVEST FOOD BANK
FRESH WAREHOUSE
3301 Commerce Drive
Augusta, GA 30909

September 23, 2022

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GOLDEN HARVEST FOOD BANK
FRESH WAREHOUSE
CONSTRUCTION DOCUMENT SET

3301 COMMERCE DRIVE AUGUSTA GEORGIA 30909

POC: 706-736-1199EMAIL: gtomlinson@goldenharvest.org



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DRAWING INDEX

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CFS | Cheatham Fletcher Scott
ARCHITECTS + DESIGNERS

ARCHITECT & INTERIOR DESIGNER

CHEATHAM FLETCHER SCOTT

420 8TH STREET
AUGUSTA, GA, 30901

T: 706-724-2668
EMAIL: meagand@cfsarchitects.com

STRUCTURAL ENGINEER

ABOVE GROUP

305 EAST DRIVE, STE. H
MELBOURNE, FL 32904

T: 321-345-9026 ext 133
M: 803-640-9445

MECHANICAL & PLUMBING ENGINEER

DELTAENGINEERING GROUP, LLC.

204-A PITCARIN WAY
AUGUSTA, GA 30909

T: 706-364-1770

ELECTRICAL ENGINEER

ELECTRICAL DESIGN
CONSULTANTS, INC.

1201 BROAD STREET
AUGUSTA, GA 30901

T: 706-724-3551





Administrative Services Committee Meeting

Meeting Date: 01/31/2023

2023-RCSO RP Chargers

Department:	Central Services – Fleet Management
Presenter:	Ron Lampkin; Interim Central Services Director
Caption:	Motion to approve the purchase of 11 Dodge Police Chargers, bid #22-289 at a total cost of \$485,287 from Thomson Motor Center for the Richmond County Sheriff's Office.
Background:	The Richmond County Sheriff's Office – Road Patrol Division is requesting to purchase 11 V8 Dodge Police Chargers.

Fleet Management was previously informed that the Dodge Police Chargers would have a short order period due to the discontinued 2023 model. However, Dodge manufacture has approved additional 2023 Dodge Police Chargers to be built and the order bank is still open for purchasing. Once Commission has approved the order, Fleet Management will acquire the purchase order and submit to the vendor for securing the purchase.

Fleet Management has provided a list of totaled vehicles and qualified replacement vehicles according to the Fleet Management Operations, Maintenance and Replacement Policy stating any public safety vehicles that are over 125k are eligible for replacement. Fleet Management will determine the surplus vehicles at the time of delivery based upon priority of totaled vehicles, mechanically disposed and vehicles over 125K miles.

Analysis:	The Procurement Department published a competitive bid using the Demand Star application for 2023 Dodge Police Charger, bid #22-289. The bid is awarded to Thomson Motor Center. Bid tab sheet for the Patrol Package V8 is attached for review.
Financial Impact:	<p>Funding in the amount of \$485,287 is available in the following SPLOST 8 Public Safety Vehicles account:</p> <ul style="list-style-type: none"> • 330031310/222039002/54.22110

Alternatives: (1) Approve (2) Do not approve

Alternatives:	(1) Approve (2) Do not approve
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Recommendation: Motion to approve the purchase of 11 Dodge Police Chargers, bid #22-267 at a total cost of \$485,287 from Thomson Motor Center for the Richmond County Sheriff's Office.

Funds are available in the following accounts: 330031310/222039002/54.22110

REVIEWED AND N/A
APPROVED BY:

125K List

ASSET #	YEAR/MAKE/MODEL	VIN #	DIVISION	MILEAGE
213055	2013 Chevrolet Tahoe	1GNLC2E06DR312695	ROAD PATROL/TRAFFIC	215,207
209257	2010 Chevrolet Tahoe	1GNMCAE05AR108951	ROAD PATROL/TRAFFIC	211,814
210301	2011 Ford Crown Victoria	2FABP7BV4BX121954	ROAD PATROL/TRAFFIC	199,898
209258	2010 Chevrolet Tahoe	1GNMCAE08AR110015	ROAD PATROL/TRAFFIC	199,775
214113	2014 Dodge Charger	2C3CDXAT9EH348146	ROAD PATROL/TRAFFIC	197,939
213066	2013 Dodge Charger	2C3CDXAT7DH694758	ROAD PATROL/TRAFFIC	197,278
212051	2013 Ford Taurus	1FAHP2M84DG124575	ROAD PATROL/TRAFFIC	195,347
210313	2011 Ford Crown Victoria	2FABP7BV9BX120587	ROAD PATROL/TRAFFIC	194,276
212035	2013 Ford Taurus	1FAHP2M8XDG119204	ROAD PATROL/TRAFFIC	193,242
214093	2014 Dodge Charger	2C3CDXAT8EH348123	ROAD PATROL/TRAFFIC	192,979
215078	2015 Dodge Charger	2C3CDXATXFH902084	ROAD PATROL/TRAFFIC	191,568
210280	2011 Ford Crown Victoria	2FABP7BV7BX121933	ROAD PATROL/TRAFFIC	190,251
213072	2013 Dodge Charger	2C3CDXAT0DH696321	ROAD PATROL/TRAFFIC	187,529
210081	2010 Ford Crown Victoria	2FABP7BV7AX138732	ROAD PATROL/TRAFFIC	180,136
209051	2009 Ford Crown Victoria	2FAHP71V99X135855	ROAD PATROL/TRAFFIC	180,126
213071	2013 Dodge Charger	2C3CDXAT9DH696320	ROAD PATROL/TRAFFIC	179,706
210310	2011 Ford Crown Victoria	2FABP7BV3BX120584	ROAD PATROL/TRAFFIC	179,084
210312	2011 Ford Crown Victoria	2FABP7BV7BX120586	ROAD PATROL/TRAFFIC	178,702
210281	2011 Ford Crown Victoria	2FABP7BV9BX121934	ROAD PATROL/TRAFFIC	178,185
210102	2010 Ford Crown Victoria	2FABP7BV2AX138752	ROAD PATROL/TRAFFIC	175,190
209060	2009 Ford Crown Victoria	2FAHP71V69X135215	ROAD PATROL/TRAFFIC	171,592
209059	2009 Ford Crown Victoria	2FAHP71V49X135214	ROAD PATROL/TRAFFIC	170,168
207094	2007 Ford Explorer	1FMEU63E37UB84384	ROAD PATROL/TRAFFIC	169,794
215083	2015 Dodge Charger	2C3CDXATXFH914767	ROAD PATROL/TRAFFIC	169,287
212127	2013 Ford Explorer	1FM5K7B89DGB15894	ROAD PATROL/TRAFFIC	168,013
213057	2013 Dodge Charger	2C3CDXAT6DH694749	ROAD PATROL/TRAFFIC	167,122
212049	2013 Ford Taurus	1FAHP2M82DG123411	ROAD PATROL/TRAFFIC	167,102
212034	2013 Ford Taurus	1FAHP2M88DG119203	ROAD PATROL/TRAFFIC	166,212
212059	2013 Ford Taurus	1FAHP2M83DG124583	ROAD PATROL/TRAFFIC	165,946
212225	2012 Dodge Charger	2C3CDXATXCH316206	ROAD PATROL/TRAFFIC	164,298
213264	2013 Chevrolet Tahoe	1GNLC2E02DR304061	ROAD PATROL/TRAFFIC	164,134
214116	2014 Dodge Charger	2C3CDXAT4EH348149	ROAD PATROL/TRAFFIC	163,364
210283	2011 Ford Crown Victoria	2FABP7BV2BX121936	ROAD PATROL/TRAFFIC	163,292
213085	2013 Dodge Charger	2C3CDXATXDH706949	ROAD PATROL/TRAFFIC	161,800
212057	2013 Ford Taurus	1FAHP2M8XDG124581	ROAD PATROL/TRAFFIC	160,887
213070	2013 Dodge Charger	2C3CDXAT2DH696319	ROAD PATROL/TRAFFIC	160,881
213053	2013 Chevrolet Impala	2G1WD5E36D1258329	ROAD PATROL/TRAFFIC	160,462
216138	2016 Dodge Charger	2C3CDXAT8GH347489	ROAD PATROL/TRAFFIC	159,817
212061	2013 Ford Taurus	1FAHP2M87DG124585	ROAD PATROL/TRAFFIC	159,304
207045	2007 Ford Crown Victoria	2FAFP71W37X158903	ROAD PATROL/TRAFFIC	159,243

Item 3.

212048	2013 Ford Taurus	1FAHP2M80DG123410	ROAD PATROL/TRAFFIC	155,870
213082	2013 Dodge Charger	2C3CDXAT8DH706951	ROAD PATROL/TRAFFIC	155,380
212044	2013 Ford Taurus	1FAHP2M89DG123406	ROAD PATROL/TRAFFIC	154,591
209052	2009 Ford Crown Victoria	2FAHP71V09X135856	ROAD PATROL/TRAFFIC	154,025
205096	2006 Ford Crown Victoria	2FAFP71W16X104434	ROAD PATROL/TRAFFIC	153,404
214114	2014 Dodge Charger	2C3CDXAT0EH348147	ROAD PATROL/TRAFFIC	152,994
214119	2014 Dodge Charger	2C3CDXAT4EH348152	ROAD PATROL/TRAFFIC	152,549
210309	2011 Ford Crown Victoria	2FABP7BV1BX120583	ROAD PATROL/TRAFFIC	152,488
203295	2003 Pontiac Grand Prix	1G2WK52J93F104158	ROAD PATROL/TRAFFIC	151,312
215081	2015 Dodge Charger	2C3CDXAT3FH906879	ROAD PATROL/TRAFFIC	150,788
214105	2014 Dodge Charger	2C3CDXAT1EH348156	ROAD PATROL/TRAFFIC	149,911
206041	2006 Ford Crown Victoria	2FAFP71W46X148850	ROAD PATROL/TRAFFIC	149,897
212072	2013 Ford Taurus	1FAHP2M87DG119287	ROAD PATROL/TRAFFIC	149,806
212046	2013 Ford Taurus	1FAHP2M82DG123408	ROAD PATROL/TRAFFIC	146,927
212055	2013 Ford Taurus	1FAHP2M81DG124579	ROAD PATROL/TRAFFIC	145,925
208071	2009 Ford Crown Victoria	2FAHP71V79X101381	ROAD PATROL/TRAFFIC	145,436
212036	2013 Ford Taurus	1FAHP2M81DG119205	ROAD PATROL/TRAFFIC	144,124
209057	2009 Ford Crown Victoria	2FAHP71V09X135212	ROAD PATROL/TRAFFIC	143,248
213064	2013 Dodge Charger	2C3CDXAT3DH694756	ROAD PATROL/TRAFFIC	142,476
215085	2015 Dodge Charger	2C3CDXAT6FH902079	ROAD PATROL/TRAFFIC	141,791
214088	2014 Dodge Charger	2C3CDXAT0EH343790	ROAD PATROL/TRAFFIC	141,050
213080	2013 Dodge Charger	2C3CDXAT3DH706954	ROAD PATROL/TRAFFIC	139,827
217118	2017 Dodge Charger	2C3CDXAT1HH625327	ROAD PATROL/TRAFFIC	139,736
214104	2014 Dodge Charger	2C3CDXAT8EH348137	ROAD PATROL/TRAFFIC	139,052
213084	2013 Dodge Charger	2C3CDXAT8DH706948	ROAD PATROL/TRAFFIC	138,489
216142	2016 Dodge Charger	2C3CDXATXGH347493	ROAD PATROL/TRAFFIC	138,484
214091	2014 Dodge Charger	2C3CDXAT2EH343791	ROAD PATROL/TRAFFIC	138,242
215046	2015 Ford F250	1FT7W2BT7FED30231	ROAD PATROL/TRAFFIC	138,054
216088	2016 Chevrolet Tahoe	1GNLCDEC2GR121575	ROAD PATROL/TRAFFIC	136,756
215074	2015 Dodge Charger	2C3CDXAT2FH902077	ROAD PATROL/TRAFFIC	135,306
212073	2013 Ford Taurus	1FAHP2M89DG119288	ROAD PATROL/TRAFFIC	133,994
215086	2015 Dodge Charger	2C3CDXAT1FH914768	ROAD PATROL/TRAFFIC	133,868
214099	2014 Dodge Charger	2C3CDXATXEH348155	ROAD PATROL/TRAFFIC	131,908
213075	2013 Dodge Charger	2C3CDXAT6DH696324	ROAD PATROL/TRAFFIC	131,810
209079	2009 Ford Crown Victoria	2FAHP71V69X136512	ROAD PATROL/TRAFFIC	129,994
210198	2011 Ford F250	1FT7W2B60BEB15097	ROAD PATROL/TRAFFIC	128,823
214117	2014 Dodge Charger	2C3CDXAT0EH348150	ROAD PATROL/TRAFFIC	128,554
214097	2014 Dodge Charger	2C3CDXAT5EH348130	ROAD PATROL/TRAFFIC	127,621
214108	2014 Dodge Charger	2C3CDXAT3EH348157	ROAD PATROL/TRAFFIC	126,676
213083	2013 Dodge Charger	2C3CDXAT6DH706950	ROAD PATROL/TRAFFIC	126,633
215077	2015 Dodge Charger	2C3CDXAT8FH902083	ROAD PATROL/TRAFFIC	126,273
212052	2013 Ford Taurus	1FAHP2M86DG124576	ROAD PATROL/TRAFFIC	125,747

212041	2013 Ford Taurus	1FAHP2M83DG123403	ROAD PATROL/TRAFFIC	125,715
219031	2019 Dodge Charger	2C3CDXAT5KH514058	ROAD PATROL/TRAFFIC	125,487
210297	2011 Ford Crown Victoria	2FABP7BV7BX121950	ROAD PATROL/TRAFFIC	125,330

Item 3.

Totaled List				
214090	2014 Dodge Charger	2C3CDXAT4EH343789	ROAD PATROL/TRAFFIC	12/9/2022
217116	2017 Dodge Charger	2C3CDXAT8HH625325	ROAD PATROL/TRAFFIC	1/3/2023

Invitation to Bid

Sealed bids will be received at this office until **Thursday, September 29, 2022 @ 11:00 a.m.** via ZOOM Meeting ID: **862 0863 3243**; Passcode: **336929** for furnishing:

Bid Item #22-289 Dodge Police Charger for Augusta, GA – Central Services Department – Fleet Management

Bids will be received by Augusta, GA Commission hereinafter referred to as the OWNER at the offices of:

Geri A. Sams, Director
Augusta Procurement Department
535 Telfair Street - Room 605
Augusta, Georgia 30901

Bid documents may be viewed on the Augusta, Georgia web site under the Procurement Department ARcbid. Bid documents may be obtained at the offices of Augusta, GA Procurement Department, 535 Telfair Street – Suite 605, Augusta, GA 30901 (706-821-2422).

All questions must be submitted in writing by fax to 706 821-2811 or by email to procbidandcontract@augustaga.gov to the office of the Procurement Department by Tuesday, September 27, 2022 @ 5:00 P.M. No bid will be accepted by fax or email, all must be received by mail or hand delivered.

No bids may be withdrawn for a period of ninety (90) days after bids have been opened, pending the execution of contract with the successful bidder.

Invitation for bids and specifications. An invitation for bids shall be issued by the Procurement Office and shall include specifications prepared in accordance with Article 4 (Product Specifications), and all contractual terms and conditions, applicable to the procurement. **All specific requirements contained in the invitation to bid including, but not limited to, the number of copies needed, the timing of the submission, the required financial data, and any other requirements designated by the Procurement Department are considered material conditions of the bid which are not waiveable or modifiable by the Procurement Director.** All requests to waive or modify any such material condition shall be submitted through the Procurement Director to the appropriate committee of the Augusta, Georgia Commission for approval by the Augusta, Georgia Commission. Please mark BID number on the outside of the envelope.

The local bidder preference program is applicable to this project. To be approved as a local bidder and receive bid preference an eligible bidder must submit a completed and signed written application to become a local bidder at least thirty (30) days prior to the date bids are received on an eligible local project. An eligible bidder who fails to submit an application for approval as a local bidder at least thirty (30) days prior to the date bids are received on an eligible local project, and who otherwise meets the requirements for approval as a local bidder, will not be qualified for a bid preference on such eligible local project.

GEORGIA E-Verify and Public Contracts: The Georgia E-Verify law requires contractors and all sub-contractors on Georgia public contract (contracts with a government agency) for the physical performance of services over \$2,499 in value to enroll in E-Verify, regardless of the number of employees. They may be exempt from this requirement if they have no employees and do not plan to hire employees for the purpose of completing any part of the public contract. Certain professions are also exempt. All requests for proposals issued by a city must include the contractor affidavit as part of the requirement for their bid to be considered.

Bidders are cautioned that acquisition of BID documents through any source other than the office of the Procurement Department is not advisable. Acquisition of BID documents from unauthorized sources placed the bidder at the risk of receiving incomplete or inaccurate information upon which to base his qualifications.

Correspondence must be submitted via mail, fax or email as follows:

Augusta Procurement Department
Attn: Geri A. Sams, Director of Procurement
535 Telfair Street, Room 605
Augusta, GA 30901
Fax: 706-821-2811 or Email: procbidandcontract@augustaga.gov

No bid will be accepted by fax or email, all must be received by mail or hand delivered.

GERI A. SAMS, Procurement Director

Publish:

Augusta Chronicle September 15, 22, 26, 2022
Metro Courier September 15, 2022



Bid Opening Item #22-289
2021 Dodge Charger Automobile Police Model
for Augusta, Georgia- Central Services Department-
Fleet Maintenance Division
Bid Due: Thursday, September 29, 2022 @ 11:00 a.m.

Total Number Specifications Mailed Out: 12
Total Number Specifications Download (Demandstar): 2
Total Electronic Notifications (Demandstar): 14
Georgia Registry: 251
Total packages submitted: 1
Total Non-Compliant: 0

VENDORS	Thomson Motor Center 2158 Washington Road NE P.O. Box 847 Thomson, GA 30824
Attachment B	Yes
E-Verify Number	369935
SAVE Form	Yes
BIDDER OFFER	
Year:	2023
Make:	Dodge
Model:	Charger
VEHICLE/OPTIONS REQUIRED	
5.01 Administrative Package - Police Model Charger Option 1	\$36,833.00
5.01 Administrative Package - Police Model Charger Option 2	NB
5.01 Administrative Package - Police Model Charger Option 3	NB
5.02 Civil Package - Police Model Charger Option 1	\$37,873.00
5.02 Civil Package - Police Model Police Model Charger Option 2	NB
5.02 Civil Package - Police Model Police Model Charger Option 3	NB



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VENDORS	Thomson Motor Center 2158 Washington Road NE P.O. Box 847 Thomson, GA 30824
5.03 Marshal Package - Police Model Charger Option 1	\$40,946.00
5.03 Marshal Package - Police Model Police Model Charger Option 2	NB
5.03 Marshal Package - Police Model Police Model Charger Option 3	NB
5.04 Patrol Package V8 - Police Model Charger Option 1	\$44,117.00
5.04 Patrol Package V8 - Police Model Police Model Charger Option 2	NB
5.04 Patrol Package V8 - Police Model Police Model Charger Option 3	NB
5.05 Traffic Package V8 - Police Model Charger Option 1	\$44,507.00
5.05 Traffic Package V8 - Police Model Police Model Charger Option 2	NB
5.05 Traffic Package V8 - Police Model Police Model Charger Option 3	NB



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VENDORS	Thomson Motor Center 2158 Washington Road NE P.O. Box 847 Thomson, GA 30824
5.06 Patrol Package V6 - Police Model Charger Option 1	\$43,565.00
5.06 Patrol Package V6 - Police Model Police Model Charger Option 2	NB
5.06 Patrol Package V6 - Police Model Police Model Charger Option 3	NB
5.07 Traffic Package V6 - Police Model Charger Option 1	\$43,955.00
5.07 Traffic Package V6 - Police Model Police Model Charger Option 2	NB
5.07 Traffic Package V6 - Police Model Police Model Charger Option 3	NB
5.08 Narcotics Package - Police Model Charger Option 1	\$38,948.00
5.08 Narcotics Package - Police Model Police Model Charger Option 2	NB
5.08 Narcotics - Police Model Police Model Charger Option 3	NB
6.00 OPTIONAL ITEMS	



Bid Opening Item #22-289
2021 Dodge Charger Automobile Police Model
for Augusta, Georgia- Central Services Department-
Fleet Maintenance Division
Bid Due: Thursday, September 29, 2022 @ 11:00 a.m.

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Georgia Registry: 251
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Total Non-Compliant: 0

VENDORS	Thomson Motor Center 2158 Washington Road NE P.O. Box 847 Thomson, GA 30824
6.01 Pit Bar Option 1	\$1,505.00
6.01 Pit Bar Option 2	NB
6.01 Pit Bar Option 3	NB
Delivery Schedule	4-6 months from order
Exceptions	Please see exceptions noted by vendor.



Central Services Department

Ron Lampkin, Interim Director
Laquona C. Sanderson, Fleet Manager

Fleet Management
1568-C Broad Street
Augusta GA 30904
Phone: (706) 821-2892

MEMORANDUM

TO: Geri Sams, Director, Procurement Department

THROUGH: Ron Lampkin, Interim Director, Central Services Department

FROM: Laquona C. Sanderson, Fleet Manager, Central Services Department,
Fleet Management Division

DATE: August 1, 2022

SUBJECT: Recommendation for Bid #22-289 – Dodge Charger Police Charger

Fleet Management would like to recommend the award of bid # 22-289, to Thomson Motor Center of Thomson, GA. The vendor's submission met the requirements of the bid and provided all of the options requested.

Please advise this office upon completion of notifications so that we may proceed with the acquisition process.

If you need further information or if you have any questions regarding this recommendation, please contact the Fleet Management Office at 706-821-2892.

LCS/ams

MILTON RUBEN CHRYSLER DODGE
ATTN: DAVID PERIVAL
3518 WASHINGTON ROAD
AUGUSTA, GA 30907

THOMSON MOTOR CENTRE
ATTN: MAC MCALLISTER
2158 WASHINGTON ROAD NE
THOMSON, GA 30824

AKINS FORD CORP
ATTN: ROZ ICENHOUR
220 WEST MAY STREET
WINDER, GA 30680

BUTLER CHRYSLER DODGE JEEP
ATTN: TINA NEILL
1555 SALEM ROAD
BEAUFORT, SC 29902

ED VOYLES AUTOMOTIVE GROUP
ATTN: GLENN PETERSON
789 COBB PARKWAY SE
MARIETTA, GA 30060

HARRY LEWIS CHRYSLER DODGE
ATTN: MIKE MASTERS
196 ALABAMA BLVD.
PO BOX 74
JACKSON, GA 30233

LANDMARK CHRYSLER DODGE JEEP
ATTN: PETE BARNETT
6850 MOUNT ZION BLVD
MORROW, GA 30260

FIRST MOBILE TECHNOLOGIES
ATTN: DEAN ALBERTSON
1013 CONSHOCKEN ROAD SUITE 316
CONSHOCKEN, PA 19428

MATT FORTE
ALAN JAY AUTOMOTIVE NETWORK
1896 BLUEBONNET WAY
FLEMING ISLAND, FL

WAYNESBORO CHRYSLER DODGE
ATTN: PAUL THIGPEN
480 HIGHWAY 25 NORTH
WAYNESBORO, GA 30830

JIMMY BRITT CHRYSLER DODGE
7188 VETERANS MEMORIAL PKWY.
STATESBORO, GA 30458-5680

JTs DODGELAND
190 GREYSTONE BLVD.
COLUMBIA, SC 2910

LAQUANA SANDERSON
FLEET MANAGEMENT

PHYLLIS JOHNSON
COMPLIANCE

ANTHONT SEBEK
FLEET MANAGEMENT

BID ITEM 22-289
DODGE POLICE CHARGER
FOR CENTRAL SERVICES-FLEET
MANAGEMENT DIVISION
MAILED SEPTEMBER 15, 2022

BID ITEM 22-289
DODGE POLICE CHARGER
FOR CENTRAL SERVICES-FLEET
MANAGEMENT DIVISION
BID DUE: THUR. 09/29/22 @ 11:00 A.M.

BIDDERS LIST

BID ITEM # _____ COST \$ _____

#	COMPANY'S NAME & CONTACT PERSON	COMPLETE MAILING ADDRESS TELEPHONE & FAX NUMBERS	DATE	SPEC #	INITIALS	MAILED BY
1	Sterling Fisher 100 Woodlawn Park Dr. McDonough, GA 30253				NW	9/23/22
2						
3						
4						
5						
6						
7						
8						
9						
0						
1						

Wheels, Inc. 2022-09-15	knott@wheels.com Knott, Peter	N	NOM
ZBS & Associates, LLC 2022-09-15	info@zbsga.com Jewell, TJ	N	NOM
ZT AUTO CDJR UNION CITY LLC 2022-09-15	RAMTRUCKS1970@GMAIL.COM PARRISH, ROB	N	NOM
e-Watch Corporation 2022-09-15	pgiles@e-watch.com Giles, Patrick	N	NOM
lonni cobb ford llc 2022-09-15	lcag.fleet@gmail.com blackstock, steven	N	NOM
republic diesel 2022-09-15	chris.redden@republicdiesel.com redden, chris	N	NOM
the rilevare group llc 2022-09-15	tynesha813@aol.com cross, tynesha	Y	AFA

Item 3.

ETHNIC GROUP	COUNT
African American	21
Asian American	0
Native American	3
Hispanic/Latino	5
Pacific Island/American	0
Non Minority	140
Not Classified	0
Total Number of Vendors	169
Total Number of Contacts	251

[PR_bid_email_list](#)

Planholders

[Add Supplier](#)
[Export To Excel](#)

Supplier (2)

Supplier 
Download Date

Onvia, Inc. - Content Department

09/26/2022

STEP ONE AUTOMOTIVE

09/18/2022

[Add Supplier](#)

Supplier Details

Supplier Name Onvia, Inc. - Content Department

Contact Name Content Source Management

Address 509 Olive Way, Suite 400 , Seattle, WA 98101

Email sourcingsupport@deltek.com

Phone Number 206-373-9500

Documents

Filename	Type	Action
22-289_ITB	Bid Document / Specifications	View History



Committee Meeting

Meeting Date: Tuesday, January 31, 2023

Administrative Services Human Resource

Department:	Human Resource
Presenter:	Anita Rookard
Caption:	Motion to approve the Human Resource Department to enter into a third-party agreement for the marketplace platform to assist Augusta, Ga employees in locating childcare service providers.
Background:	<p>Human Resources department has noticed a need of our employees and has located a service provider to assist our employees who are not able to find daycare.</p> <p>WeeCare provides a marketplace platform to assist with connecting parents or guardians with childcare services for both children and adults.</p>
Analysis:	<p>Human Resource Department is requesting to enter into a third-part agreement with Wee Care who will assist our employees in seeking childcare for both children and adults.</p> <p>The terms of the contract is for a two year period at a cost of \$28,000.00 per year for a total initial term fee of \$56,000.</p>
Financial Impact:	HR has included funding for these services in the FY2023 budget, No additional funding is needed.
Alternatives:	Not approve and hinder our employees from finding adequate daycare options available to them.
Recommendation:	Motion to approve the Human Resource Department to enter into a third-party agreement for the marketplace platform to assist Augusta, Ga employees in locating childcare service providers.
Funds are available in the following accounts:	#6011140 New programs for Human Resource
<u>REVIEWED AND APPROVED BY:</u>	Anita Rookard

WEECARE MASTER SERVICES AGREEMENT

This WeeCare Master Services Agreement (this “**Agreement**”), effective as of 12/30/22 (the “**Effective Date**”), is by and between WeeCare, Inc., a Delaware corporation (“**WeeCare**”) and Augusta, Georgia, a political subdivision of the State of Georgia, (“**Customer**”). WeeCare and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

WHEREAS, WeeCare provides a marketplace platform to connect parents or guardians and childcare services providers (the “**WeeCare Platform**”);

WHEREAS, Customer desires to offer access to the WeeCare Platform and other associated services provided by WeeCare, as a corporate benefit, to Customer’s employees, upon the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SERVICES

(a) Services. Subject to the terms and conditions of this Agreement, WeeCare will provide Company the services associated with the WeeCare Platform set forth in the statement of work (a “**SOW**”) attached hereto as Exhibit A and any other SOW executed by the Parties pursuant to Section 1(b) (collectively, the “**Services**”).

(b) SOWs. From time-to-time in connection with this Agreement, the Parties may mutually agree in writing to execute additional SOWs under this Agreement. Upon the execution of any SOW by an authorized representative of each Party, such SOW will be deemed a part of and subject to the terms and conditions of this Agreement. In the event that any provision set forth in a SOW conflicts with any provision of the main body of this Agreement, such provision of this Agreement will supersede and control to the extent of such conflict, except to the extent that specific language in a SOW expressly states that it supersedes particular language in this Agreement.

(c) Employee Information. Customer (or if otherwise agreed by the Parties, WeeCare) will provide Customer’s designated employees with access to a WeeCare landing page where such employees may elect to opt-in to have access to the WeeCare Platform and may submit Employee Information to WeeCare.. Customer hereby represents, warrants and covenants that it has obtained from all of its applicable employees all rights and permissions necessary to provide such employees with access to such landing page, and for WeeCare to collect such Employee Information without violation of applicable laws, rules or regulations. For purposes of this Agreement, “**Employee Information**” means, with respect to each of Customer’s employees, such employee’s name, phone number, email and address and any other information designated as “Employee Information” in any applicable SOW.

(d) WeeCare Terms. Customer hereby acknowledges and agrees that all access to and use of WeeCare Platform by any of Customer’s employees who have opted-in to obtain such access and use will be subject to the WeeCare Terms of Use (located at <https://weecare.co/terms>) and WeeCare Privacy Policy (located at <https://weecare.co/privacy>), each as may be updated from time-to-time (collectively, the “**WeeCare Terms**”). WeeCare hereby reserves the right to terminate or suspend access to the Services to any of Customer’s employees who violated any provision of the WeeCare Terms.

(e) Cooperation. Customer will provide WeeCare with reasonable cooperation, assistance, access and information as necessary for WeeCare to perform the Services in accordance with this Agreement, including complete and accurate Employee Information, and any other specific assistance, information, cooperation or materials designated to be provided by Customer in any SOW.

(f) Feedback. From time-to-time Customer may provide WeeCare with suggestions, comments and feedback with regard to the WeeCare Platform or Services (collectively, “**Feedback**”). WeeCare may use all Feedback in connection with WeeCare’s business purposes, including for the improvement and provision of the WeeCare Platform and Services.

2. FEES AND PAYMENT.

(a) Fees. Customer will pay WeeCare the fees, charges and expenses set forth in any SOW, which fees will be invoiced in writing by WeeCare to Customer on an annual basis, and payable to WeeCare within thirty (30) days after the date of such invoice. With respect to any invoice, Customer may notify WeeCare no later than fifteen (15) days prior to the applicable invoice due date, if Customer disputes in good faith the accuracy of fees set forth on any invoice (e.g., in the event that a particular employee who previously opted into access the WeeCare Platform no longer works for Customer), with such notice to contain reasonable supporting evidence to support the basis of such dispute. WeeCare will promptly consider any such notice in good faith, and if WeeCare confirms such disputed amount in writing (email to suffice), then Customer will only be required to pay the undisputed amount on such invoice.

(b) Payments. All payments made under this Agreement to WeeCare will be made in U.S. dollars by wire transfer, credit card or ACH of immediately available funds to an account designated by WeeCare, or such other payment method mutually agreed by the Parties, and will be non-refundable. Any amounts due to WeeCare hereunder and not paid when due shall be a considered a material breach to this Agreement and grounds for termination. Neither Party will have any right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other Party under this Agreement for any reason.

(c) Taxes. Customer will be responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to WeeCare hereunder (including as set forth on any invoice issued by WeeCare), other than any taxes imposed on WeeCare’s income. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to WeeCare hereunder, Customer will pay an additional amount, so that WeeCare receives the amounts due to it hereunder in full, as if there were no withholding or deduction.

3. CONFIDENTIAL INFORMATION.

(a) Confidential Information. Any information that one Party provides to the other Party during the Term that is identified at the time of disclosure as confidential or, given the circumstances of disclosure or the nature of the information, reasonably should be considered to be confidential will be “**Confidential Information**” of the disclosing Party (the “**Disclosing Party**”). The WeeCare Platform, the Services and the pricing set forth in this Agreement will be deemed the Confidential Information of WeeCare hereunder.

(b) Obligations. Each Party (the “**Receiving Party**”) will maintain the other Party’s Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise or enforce its rights under this Agreement. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those affiliates, employees, representatives, or contractors of the Receiving Party who

enforce its rights under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement; or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

(c) Permitted Disclosures. Nothing in this Agreement will prohibit or limit either Party's use of information (i) rightfully known to it prior to receiving it from the Disclosing Party (as can be demonstrated by reasonable supporting evidence and written documentation); (ii) independently developed by or for it without use of or access to the other Party's Confidential Information (as can be demonstrated by reasonable supporting evidence and written documentation); (iii) permissibly acquired by it from a third party which is not under an obligation of confidence with respect to such information (as can be demonstrated by reasonable supporting evidence and written documentation); or (iv) which is or becomes publicly available through no breach of this Agreement. This Agreement is subject to the Georgia Open Records Act, including all its terms and conditions. If it is necessary for WeeCare to prevent the disclosure of Confidential Information, WeeCare shall abide by the requirements of the Georgia Open Records Act stated in Section 7 (j) below. However, such Confidential Information of each Party, but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona-fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

(d) Press Release. Neither Party will make any public disclosure or issue any press release with respect to the relationship between the Parties under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, WeeCare may use and refer to Customer's name for marketing and/or due diligence purposes, including, without limitation, as part of WeeCare's customer lists or other marketing materials.

4. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION.

(a) General. Each Party hereby represents and warrants to the other Party, as of the Effective Date, that:

(i) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has full corporate power and authority to enter into this Agreement and to carry out the provisions hereof;

(ii) Such Party has taken all necessary action on its part to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder, and has obtained all rights and consents necessary to grant the licenses set forth herein;

(iii) This Agreement has been duly executed and delivered on behalf of such Party, and constitutes a legal, valid, binding obligation, enforceable against it in accordance with the terms hereof; and

(iv) The execution and delivery of this Agreement by such Party does not conflict with any agreement or any provision thereof, or any instrument or understanding, oral or written, to which it is a party or by which it is bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over such Party.

(b) DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND WEECARE PLATFORM (INCLUDING THE INFORMATION AND CONTENT AVAILABLE THROUGH THE WEECARE PLATFORM) ARE PROVIDED ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WEECARE HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING,

BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. CUSTOMER ACKNOWLEDGES AND AGREES THAT WEECARE DOES NOT PROVIDE CHILDCARE SERVICES, AND WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY ACT OR OMISSION OF ANY CHILDCARE OR DAYCARE PROVIDER THAT IS LISTED ON THE WEECARE PLATFORM.

(c) WeeCare Indemnification. Subject to Section 4(d) and 4(e), WeeCare will defend Customer against any claim, suit or proceeding brought by a third party (“*Claims*”) (i) alleging that the WeeCare Platform infringes or misappropriates such third party’s intellectual property rights; or (ii) arising from any significant malfunction or defect in the WeeCare Platform, and, in each case, will indemnify and hold harmless Customer against any damages and costs awarded against Customer or agreed in settlement by WeeCare (including reasonable attorneys’ fees) resulting from such Claim.

(d) Exclusions. WeeCare’s obligations under Section 4(c) will not apply if the underlying third-party claim arises from or as a result of allegations of: (i) Customer’s breach of this Agreement, negligence, willful misconduct or fraud; (ii) any information or materials provided by WeeCare; (iii) modifications to the WeeCare Platform by anyone other than WeeCare; or (iv) combinations of the WeeCare Platform with software, data or materials not provided by WeeCare.

(e) Indemnification Procedures. Customer will promptly notify WeeCare of any Claim for which indemnity is being sought under Section 4(c), and will reasonably cooperate with WeeCare in the defense and/or settlement thereof. WeeCare will have the sole right to conduct the defense of any claim for which the WeeCare is responsible hereunder (provided that WeeCare may not settle any claim without Customer’s prior written approval unless the settlement is for a monetary amount, unconditionally releases the Customer from all liability without prejudice, does not require any admission by the Customer, and does not place restrictions upon Customer’s business, products or services). Customer may participate in the defense or settlement of any such claim at its own expense and with its own choice of counsel.

5. LIMITATIONS OF LIABILITY.

(a) Exclusion of Damages. EXCEPT FOR PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF SUBSTITUTE SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR THE SERVICES OR THE WEECARE PLATFORM, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

(b) Total Liability. EXCEPT FOR PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER PARTY’S TOTAL LIABILITY TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, OR THE SERVICES OR THE WEECARE PLATFORM, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO WEECARE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM OR ACTION GIVING RISE TO SUCH LIABILITY, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR

OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH LOSS OR DAMAGE.

(c) Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 5 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN WEECARE AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

(d) Insurance. Prior to the commencement of the Services, the Contractor shall provide evidence satisfactory to Customer that it has secured the following types and amounts of insurance:

(1) Workers' compensation insurance covering all employees and principals of the Contractor, in a minimum amount of \$1 million per accident;

(2) Commercial general liability insurance covering third party liability risks, including without limitation, contractual liability, in a minimum amount of \$1 million per occurrence for bodily injury, personal injury, and property damage. If commercial general liability insurance or other form with a general aggregate limit is used, either the general aggregate shall apply separately to this Project, or the general aggregate limit shall be twice the occurrence limit;

(3) Commercial auto liability and property insurance covering "any auto" with a minimum limit of \$1 million combined single limit per accident for bodily injury and property damage.

(4) Technology Errors and Omission liability insurance appropriate to Contractor's profession. Such insurance shall be in an amount not less than \$850,000 per claim, and shall be endorsed to include contractual liability.

The commercial general liability and automobile policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by Customer to add the following provisions to the insurance policies: (1) the City, its officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Contractor, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects Customer, its officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by Customer or its officials, officers, employees or agents shall be excess of the Contractor's insurance and shall not be called upon to contribute with it in any way. All policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by Customer to add the following provisions to the insurance policies: (1) coverage shall not be canceled or reduced by either party except after thirty (30) days prior notice has been given in writing to Customer; provided, however, in the case of non-payment of premium, ten (10) days notice will be provided; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to Customer, its officials, officers, employees and agents.

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to Customer, its officials, officers, employees and agents. All Insurance is to be placed with insurers with a current A.M. Best's rating no less than B+:VIII, licensed to do business in Georgia, and satisfactory to Customer.

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to Customer. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by Customer if requested. All certificates and endorsements must be received and approved by Customer before work commences. Customer reserves the right to require complete, certified copies of all required insurance policies, at any time.

6. TERM AND TERMINATION.

(a) Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement or extended by mutual written agreement of the Parties, will continue in effect until the expiration of the last to expire SOW under this Agreement (the “***Term***”).

(b) Termination for Cause. Without limiting any right or remedy available to either Party, either Party may terminate this Agreement effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice detailing the nature of such breach.

(c) Survival. This Section 6(c) and Sections 1(d), 1(f), 2, 3, 4(b), 5, 6(d), 6(e) and 7 survive any termination or expiration of this Agreement.

(d) Employee Notification on Termination. Customer acknowledges and agrees that Customer will be solely responsible for notifying its employees in advance of any termination or expiration of this Agreement that their access to the WeeCare Platform via the Services will cease immediately upon any such termination or expiration except as may be otherwise expressly agreed between any such employee and WeeCare.

(e) Effect of Termination. Upon expiration or termination of this Agreement: (i) each Receiving Party will return or destroy, at the Disclosing Party’s sole option, all Confidential Information of the Disclosing Party in its possession or control, including permanent removal of such Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in Receiving Party’s possession or under Receiving Party’s control, and at Disclosing Party’s request, Receiving Party will certify in writing to Disclosing Party its compliance with the provisions of this Section 6(d); and (ii) for clarity, Customer will pay all previously accrued amounts due to WeeCare hereunder in accordance with Section 2.

(f) Termination For Convenience: Either Party may voluntarily terminate this Agreement at any time upon one hundred and eighty (180) days advance written notice to the other party of its intention to terminate. Upon such termination WeeCare shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement, for clarification, all amounts owed under any agreed upon SOW shall become due within 30-days after the termination date of this agreement, including SOWs where payment terms are due over multiple years plus, (2) such other cost actually incurred by WeeCare as are permitted and approved by Customer. All notice correspondence shall be forwarded by certified mail to the persons and locations as provided herein above.

7. MISCELLANEOUS.

(a) Entire Agreement. This Agreement, together with all SOWs and any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

(b) Notices. Except as otherwise expressly permitted herein, all notices required or permitted to be given hereunder will be in writing and will be deemed effective when personally delivered, when received by electronic means (with no bounceback message received), when delivered by overnight courier or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to WeeCare:

WeeCare Inc.
5521 N University Dr Suite 104
Coral Springs, FL 33067
Attention: Greg Crisci, Head of Childcare Benefits
Email: greg@weecare.co

If to Customer:

Augusta, Georgia, a political subdivision of the State of Georgia
535 Telfair Street, Suite 400
Augusta, GA 30901
Attention: Anita Rookard
Email: ARookard@augustaga.gov

or to such other address or number, and to the attention of such other person or officer, as any Party may designate, at any time, in writing in conformity with these notice provisions.

(c) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. WeeCare acknowledges that this Agreement and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, WeeCare is deemed to possess knowledge concerning Customer's ability to assume contractual obligations and the consequences of WeeCare's provision of goods or services to Customer under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that WeeCare may be precluded from recovering payment for such unauthorized goods or services. Accordingly, WeeCare agrees that if it provides goods or services to Customer under a contract that has not received proper legislative authorization or if WeeCare provides goods or services to Customer in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Customer may withhold payment for any unauthorized goods or services provided by WeeCare. Service Provider assumes all risk of non-payment for the provision of any unauthorized goods or services to Customer, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Customer, however characterized, including, without limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts. Notwithstanding the forgoing, Customer shall provide WeeCare a certified copy of the legislative authorization from the Board of Commissioners for this Contract, and any amendment, change order, modification, addition of deliverables, or similar document. Customer further acknowledges that WeeCare shall not commence any work that is contained in any this Contract or any amendment, change order, modification, addition of deliverables, or similar document, until it has received said certified copy of the legislative authorization, and that WeeCare shall not be liable under this Agreement, or under law or equity, for any delays which are due to its not timely receiving said legislative authorization

(d) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement

or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties will negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(e) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the law of the State of Georgia without regard to any conflict of law rules of such state. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this

Agreement. The Parties hereby acknowledge and agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement will be brought in the federal and state courts sitting in Richmond County, Georgia, so long as one of such courts will have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement will be deemed to have arisen from a transaction of business in the State of Georgia, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court, and each Party hereby irrevocably consents to service of process in connection with any such suit, action or proceeding by registered mail to such Party at the applicable address set forth in Section 7(b).

(f) Assignment. Neither Party may assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without the other Party's express prior consent. Notwithstanding the foregoing, WeeCare may assign this Agreement without consent to a successor in interest or acquirer in case of merger, acquisition or sale by WeeCare of all or substantially all of its shares or the assets to which this Agreement relates or to a successor entity in connection with an internal reorganization or entity conversion; provided that any such assignee agrees in writing to be bound by all the obligations of WeeCare under this Agreement. Any attempt to assign or transfer this Agreement in contravention of the foregoing will be null and of no effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

(g) Force Majeure. Neither Party will be responsible for any failure or delay in its performance under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, communications failure or degradation, ordinary course mechanical or electrical degradation and/or failure, material changes in law, pandemics, epidemics, public health emergencies, war, terrorism, riot, or acts of God.

(h) Subcontracting. WeeCare may use subcontractors, vendors and other third-party providers in connection with the performance of its obligations hereunder as it deems appropriate; provided that the WeeCare remains responsible for the performance of each such subcontractor, vendor or third-party provider and its compliance with the terms of this Agreement.

(i) No Third Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and permitted assigns.

(j) Georgia Open Records Act. WeeCare acknowledges that this Agreement and certain documentation that the Customer may receive may be subject to the Georgia Open Records Act (OCGA §50-18-70, et seq.) (hereinafter the "Act"). WeeCare shall cooperate in a commercially reasonable manner in

responding to such requests and shall make relevant non-exempt records that may be in its possession as defined in, and which are subject to the Act, available for inspection and copying as required under the Act. Confidential and Proprietary documentation and/or information that the Customer may receive from WeeCare shall be marked as such and shall attach an affidavit attesting to the confidential and proprietary nature of the documentation and/or information, and shall be subject to the relevant exclusions pursuant to the Act.

(k) Prohibition on Contingent Fees. WeeCare warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by WeeCare for the purpose of securing business and that WeeCare has not received any non-Client fee related to this Agreement without the prior written consent of Customer. For breach or violation of this warranty, Customer shall have the right to terminate this Agreement pursuant to this Section or at its discretion to deduct from the Agreement, the full amount of such commission, percentage, brokerage or contingent fee.

(l) Independent Contractor. The relationship of WeeCare to Customer is that of independent contractor and not that of partner, member, joint venturer, employee or agent. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties. This Agreement shall not be construed to make either Party the agent or legal representative of the other Party for any purpose whatsoever, and neither Party is granted any right or authority to assume or create any obligations for, on behalf of, or in the name of the other Party. Each Party agrees that it will neither represent, nor allow itself to be held out as an agent of, or partner or joint venturer with the other Party.

(m) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

7

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

WeeCare, Inc.

By:

Name: Greg Crisci

Title: Head of Childcare Benefits

Augusta, Georgia, a political subdivision of the
State of GA

By:

Name:

Title:

EXHIBIT A

SOW 1

This SOW dated December 30th, 2022 (“**SOW 1**”) is made and entered into by and between WeeCare, Inc., a Delaware corporation (“**WeeCare**”), and Augusta, Georgia, a political subdivision of the State of GA (“**Customer**”) pursuant to the terms of the WeeCare Services Agreement between the WeeCare and Customer dated December 30th, 2022 (the “**Agreement**”).

Except as otherwise set forth in this SOW 1, this SOW 1 incorporates by reference, and is deemed to be a part of the Agreement. Any additional terms and conditions of this SOW 1 not included in the Agreement will apply only to the services covered by this SOW 1 (“**Services**”) and not to services covered by any other SOW issued pursuant to the Agreement. Capitalized terms used, but not otherwise defined, in this SOW 1 will have the meanings set forth in the Agreement.

1. **Description and Scope of Services:**

(a) **Dedicated Care Management.** WeeCare will provide the following Services to Customer:

For each employee of Customer who opts-in to receiving access to and use of the WeeCare Platform (each an “**Active Employee**”) in connection with the Agreement:

- i Concierge matchmaking, tour scheduling, placement, post-enrollment and parent support for Active Employees through dedicated care specialists who will be available 24 hours a day, and 7 days a week in connection with the WeeCare Platform.
- ii Priority access to placement and waitlist at in-network childcare locations available through the WeeCare Platform.

(b) **Employer Reporting.** WeeCare will provide Customer with aggregate monthly reporting and analytics, which will include reporting in aggregate form regarding the number of its employees that are Active Employees along with other usage trends with respect to the WeeCare Platform and Services in any given month.

2. **Fees:** Customer will pay WeeCare an annual fee equal to \$28,000 for a total Initial Term fee of \$56,000.

3. **Term:** The term of this SOW 1 will commence on the Contract Start Date and continue for a period of twelve (24) months (the “Initial Term”), unless earlier terminated in accordance with the terms herein. Thereafter, this SOW 1 shall automatically renew for subsequent twelve (24) month periods (each, a “Renewal Term”) unless either party notifies the other party in writing at least sixty (60) days prior to the scheduled expiration of the Initial Term or any Renewal Term of its intention not to renew this SOW 1. The Initial Term and Renewal Terms are collectively referred to herein as the “Term”.

Contract Start Date: December 30th, 2022 (work commencement date)

Launch Date: January 23rd, 2023 (the date program will launch for employees)

IN WITNESS WHEREOF, the Parties hereto have executed this SOW 1 as of the date referenced above.

WeeCare, Inc.
By:
Name:
Title:

Augusta, Georgia, a political subdivision of the State of GA
By:
Name:
Title:

Statement of Work #2 to WeeCare Master Services Agreement

This Statement of Work #2 dated December 30th, 2022 (“**SOW 2**”) is made and entered into by and between WeeCare, Inc., a Delaware corporation (“**WeeCare**”), and Augusta, Georgia, a political subdivision of the State of GA corporation (“**Customer**”) pursuant to the terms of the WeeCare Master Services Agreement between the WeeCare and Customer dated December 30th,, 2022 (the “**Agreement**”).

Except as otherwise set forth in this SOW 2, this SOW 2 incorporates by reference, and is deemed to be a part of the Agreement. Any additional terms and conditions of this SOW 2 not included in the Agreement will apply only to the services covered by this SOW 2 (“**Services**”) and not to services covered by any other SOW issued pursuant to the Agreement. Capitalized terms used, but not otherwise defined, in this SOW 2 will have the meanings set forth in the Agreement.

1. Term; Termination:

The term of this SOW 2 will commence on the date of this SOW 2 and continue for a period of twelve (24) months (the “**Initial Term**”), unless earlier terminated in accordance with the terms herein. Thereafter, the SOW 2 shall automatically renew for subsequent twelve (24) month periods (each, a “**Renewal Term**”) unless either party notifies the other party in writing at least sixty (60) days prior to the scheduled expiration of the Initial Term or any Renewal Term of its intention not to renew this SOW 2. The Initial Term and Renewal Terms are collectively referred to herein as the “**Term**”.

1. Description and Scope of Services:

(a) Baseline Annual Credits. At the start of the Initial Term, Customer will purchase **200 credits** from WeeCare that may be utilized by Customer’s employees solely towards the purchase of back-up care services through the WeeCare Platform (“**Backup Care Credits**”) in an amount equal to **\$29,000** (the “**Baseline Annual Credit Amount**”). For purpose of clarity, back-up care services are defined as temporary drop-in care at our Family Child Care homes or may be redeemed within our network of Nannies & Babysitters who are enrolled, active, and background checked for a day or more; anything less than a day of care will be counted as a day. Each Backup Care Credit is worth \$145. Depending on whether the Active Employee redeems a Backup Care Credit at one of our Family Child Care homes or within our network of Nannies & Babysitters, the Active Employee will be prompted to redeem the number of credits to cover that provider's cost. For example, a WeeCare Family Child Care home may require a single (1) Backup Care Credit while a Nanny or Babysitter may require two (2) Backup Care Credits. Any unused Backup Care Credits at the end of the Initial Term or any Renewal Term will roll over into and may be used during the subsequent Renewal Term. At the start of any Renewal Term, Customer will purchase additional Backup Care Credits to ensure that its balance of unused Backup Care Credits meets the Baseline Annual

Credit Amount; provided that the parties may mutually agree in writing on a new Baseline Annual Credit Amount that would apply on a going forward basis to the upcoming Renewal Term.

(b) Credit Usage and Distribution. Customer may distribute Backup Care Credits to its employees based on eligibility criteria that it determines in its discretion, and WeeCare will work with Customer to facilitate such distribution to Customer's employees through the WeeCare Platform. Backup Care Credits may not be transferred to any person or entity other than Customer's employees. Unused Backup Care Credits will expire upon the termination or expiration of this SOW 2 if not renewed pursuant to Section 1(a), and Customer will not be

(c) entitled to any refund from WeeCare for any unused Backup Care Credits as of any such termination or expiration.

(d) Reporting. Within fifteen (15) days after the end of each calendar month during the Term, WeeCare will provide Customer with a written or electronic report covering utilization of Backup Care Credits by Customer's employees, which will include Customer's then-current balance of unused Backup Care Credits as of the end of such month.

(e) Additional Credit Ordering. Customer may purchase additional Backup Care Credits by issuing a written or electronic purchase order or other written request to WeeCare (each, an "**Order**"), which will be deemed binding on the parties once confirmed or accepted by WeeCare. In the event of any conflict between an Order and this SOW 2, this SOW 2 will control.

2. **Fees.** Customer will pay WeeCare for any Backup Care Credits purchased (a) at the start of the Initial Term or any Renewal Term pursuant to Section 2(a) within thirty (30) days after the start of such Initial Term or Renewal Term, as applicable; and (b) pursuant to any Order within thirty (30) days after the date that such Order was issued.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of this SOW 2.

WeeCare, Inc.
By:
Name: Greg Crisci
Title: Head of Childcare Benefits

Augusta, Georgia, a political subdivision of the State of GA
By:
Name:
Title:



Administrative Services Committee

Meeting Date: 01/31/2023

HCD_ Laney Walker/Bethlehem new construction of two (2) single family home(s) approval request

Department: HCD

Presenter: Hawthorne Welcher, Jr. and/or HCD Staff

Caption: Development of (2) single-family workforce homes, new construction.

Background: In 2008, the Augusta Commission passed legislation supporting community development in Laney Walker/Bethlehem. Since that time, the Augusta Housing & Community Development Department has developed a master plan and development guidelines for the area, set up financial incentive programs for developers and home buyers, selected a team of development partners to focus on catalytic change, and created a marketing strategy to promote the overall effort.

This project involves the new construction of two (2) single family home(s) identified as 1508 & 1512 Twiggs Street, within Laney Walker/Bethlehem.

<u>Address</u>	<u>Budget</u>	<u>Project Type</u>
1508 Twiggs Street Augusta, GA 30901	\$205,167.56	New Construction
1512 Twiggs Street Augusta, GA 30901	\$205,167.56	New Construction

Note: 100% of funding returned to HCD upon home sale

Analysis: The approval of the contract will allow for development activities on these sites to begin.

Financial Impact: HCD utilizes Laney Walker Bethlehem Revitalization Project funds.
Contract Amount 1508 & 1512 Twiggs Street - \$205,167.56

Alternatives: Deny

Recommendation:

Motion to approve Housing and Community Development Department's (HCD's) request to provide Laney Walker/Bethlehem Revitalization Funding to contract with Volume Income Properties, "VIP" and Capitalrise LLC, to develop new construction of two (2) single family units, identified as 1508 & 1512 Twiggs Street, within Laney Walker/Bethlehem.

Funds are available in the following accounts:

Funding: Laney Walker Bethlehem Revitalization Project Funds
GL Code: 298-07-7343-5413150

**REVIEWED AND
APPROVED BY:**

Procurement
Finance
Law
Administrator
Clerk of Commission

CONTRACT**between****AUGUSTA, GEORGIA****And****VOLUME INCOME PROPERTIES**

in the amount of

\$205,167.56 USD

Two Hundred Five Thousand and One Hundred Sixty Seven Dollars and 56/100for Fiscal Year **2022**

Providing funding for

LANEY WALKER/BETHLEHEM REVITALIZATION PROJECT**1508 Twiggs Street**

THIS AGREEMENT (“Contract”), is made and entered into as of the ____ day of _____ 2021 (“the effective date”) by and between Augusta, Georgia, a political subdivision of the State of Georgia (hereinafter referred to as “Augusta”), acting through the Housing and Community Development Department (hereinafter referred to as “HCD”) - with principal offices at 510 Fenwick Street, Augusta, Georgia 30901, as party of the first part, and Volume Income Properties, a developer, organized pursuant to the Laws of the State of Georgia, hereinafter called ““VIP” ” as party in the second part.

WITNESSETH

WHEREAS, Augusta is qualified by the U. S. Department of Housing and Urban Development (hereinafter called HUD) as a Participating Jurisdiction, and has received Laney Walker/Bethlehem Bond Financing for the purpose of providing and retaining affordable and market rate housing for eligible families; and

WHEREAS, “VIP”, a procured developer and contractor with HCD wishes to increase homeownership opportunities and preserve and increase the supply of affordable/market rate housing for eligible families; and

WHEREAS, Augusta wishes to enter into a contractual Agreement with “VIP” for the administration of eligible affordable and market rate housing development activities utilizing Laney Walker Bond Financing; and

WHEREAS, this activity has been determined to be an eligible activity in accordance with 24 CFR 92.504(c)(13) and will meet one or more of the national objectives and criteria outlined in Title 24 Code of Federal Regulations, Part 92 of the Housing and Urban Development regulations; and

WHEREAS, “VIP” has been selected and approved through a solicitation process for development partners to assist in the redevelopment of Laney Walker and Bethlehem communities; and

WHEREAS, “VIP” has agreed to provide services funded through this contract free from political activities, religious influences or requirements; and

WHEREAS, “VIP” has requested, and Augusta has approved a total of **\$205,167.56** in funding to perform eligible activities as described in Article I; below:

NOW, THEREFORE, the parties of this Agreement for the consideration set forth below, do here and now agree to the following terms and conditions:

ARTICLE I. SCOPE OF SERVICES

A. Scope of Services

Project Description: “VIP” agrees to utilize approved Laney Walker/Bethlehem Bond financing funds to support project related costs associated with the Laney Walker/Bethlehem Redevelopment Project. “VIP” agrees to match Laney Walker/Bethlehem Bond funds 50% of total construction cost in the form of reimbursement. Under this Agreement:

- ✚ “VIP” will perform as procured developer, with Laney Walker/Bethlehem.
- ✚ “VIP” will perform new construction for one (1) single family detached home identified as property number **1508 Twiggs Street**.
- ✚ “VIP” will perform all required construction management and project oversight, in accordance with all laws, ordinances, and regulations of Augusta.
- ✚ “VIP” will perform all functions required to ensure delivery of a final product meeting all requirements as set forth by said Agreement to include:
 - Materials list to include brand name and/or model number of materials as specified or agreed to adjustments to specifications including but not limited to: appliances, windows, HVAC, fixtures and First Quality lumber. “VIP” is to provide a finish schedule with the specifications, brands, and model numbers for all interior finishes 90 days from completion for agreement by HCD. Actual material invoices may be requested to verify charges.

B. Use of Funds: Laney Walker/Bethlehem Bond funds shall be used by “VIP” for the purposes and objectives as stated in Article I, Scope of Services, of this Agreement. The use of funding for any other purpose(s) is not permitted. The following summarizes the proposed uses of funds under this Agreement based on **total material and labor cost of \$205,167.56**

1. Profit

An amount not to exceed percent (50%) of the construction cost as outlined and approved in Article I. Scope of Services, Section B. Use of Funds and on the Work Write-Up, shall be paid to “VIP” for costs identified as necessary operating time and expenses in addition to the profit accrued in the development of one single family detached home identified as **1508 Twiggs Street**. The design and specifications of the property shall be approved by HCD prior to construction (see Appendix). HCD will have the latitude to pay O&P directly to the procured developer/contractor on a pay for performance basis or upon the sale of the single family detached home identified as **1508 Twiggs Street**.

2. Developer's Fee

N/A

3. Developer's Fee Disbursements

Developer's Fee shall be dispensed when construction is 100% completed and certificate of occupancy is received. Developer's Fee is dispensed upon sale of the home and should not exceed sixteen percent (16%).

C. Program Location and Specific Goals to be Achieved

"VIP" shall conduct project development activities and related services in its project area Laney Walker/Bethlehem that incorporates the following boundaries: Fifteenth Street, R.A. Dent, Wrightsboro Road, Twiggs Street, MLK Boulevard and Walton Way.

D. Project Eligibility Determination

It has been determined that the use of Laney Walker/Bethlehem Bond Financing funds by "VIP" will be in compliance with legislation supporting community development in Laney Walker/Bethlehem as authorized under the Urban Redevelopment Authority which acts in behalf of the Augusta Commission to provide oversight of the operation of the Laney Walker/Bethlehem Redevelopment Project. Notwithstanding any other provisions of this contract, "VIP" shall provide activities and services as described in the description of the project, including use of funds, its goals and objectives, tasks to be performed and a detailed schedule for completing the tasks for this project as provided in Exhibit A of this contract.

ARTICLE II. BUDGET AND METHOD OF PAYMENT

"VIP" will carry out and oversee the implementation of the project as set forth in this Agreement and agrees to perform the required services under the general coordination of HCD. In addition, and upon approval by Augusta, "VIP" may engage the services of outside professional services consultants and contractors to help carry out the program and projects.

A. Augusta shall designate and make funds available in the following manner:

1. Augusta agrees to pay "VIP", a maximum of **\$205,167.56** under this Agreement for project expenses incurred as outlined in ARTICLE I, Scope of Services, subject to "VIP" 's compliance with all terms and conditions of this Agreement and the procedures for documenting expenses and activities as set forth in said Agreement.
2. The method of payment for construction costs, including only materials and labor as outlined and approved on the Work Write-Up, not to exceed the aforementioned contracted amount of \$205,167.56 **and** shall be on a pay for performance basis provided "VIP" and HCD determine the progress is satisfactory. "VIP" shall utilize the AIA Form provided by HCD (see Appendix). For invoicing, "VIP" will include documentation showing proof of completion of work in accordance with the amount requested, inspected, and accepted by HCD, lien waivers for vendors and sub-contractors, as specified in the Work Write-Up found in Exhibit B & E.
3. When nearing 50%, the Developer, "VIP", should be prepared to pay their 50%: **\$102,583.78** as agreed to HCD for material and labor only.

4. HCD will monitor the progress of the project and “VIP” ’s performance on a weekly basis with regards to the production of housing units and the overall effectiveness of project.
5. Upon the completion of this Agreement, any unused or residual funds remaining shall revert to Augusta and shall be due and payable on such date of the termination and shall be paid no later than thirty (30) days thereafter. “VIP” and HCD shall share in the cost and proceeds of developing the residence at **1508 Twiggs Street** as follows:
6. Funds may not be transferred from line item to line item in the project budget without the prior written approval of Augusta Housing and Community Development.
7. This Agreement is based upon the availability of funding under the Laney Walker/Bethlehem Revitalization Project. Should funds no longer be available, it is agreed to by both parties that this contract shall terminate and any “VIP” deemed satisfactorily progress made within the contracted construction only amount not to exceed fifty percent (50%) shall be paid to “VIP” .
8. HCD will retain ten percent (10%) of an amount within the one hundred percent (100%) of construction costs, including only materials and labor as outlined and approved on the Work Write-Up, after the Certificate of Occupancy has been issued until “VIP” and HCD determine that all HCD punch-list items have been satisfied.

B. Project Financing

The Augusta Housing and Community Development will provide an amount not to exceed the actual construction costs including only materials and labor as outlined and approved on the Work Write-Up to be expended by “VIP” for construction costs related to the development of one single family detached home identified as **1508 Twiggs Street**.

Additionally, HCD will provide 100% of all change orders (where applicable) as approved by HCD and “VIP” in writing.

All funding is being provided as payment for services rendered as per this Agreement.

C. Timetable for Completion of Project Activities

“VIP” shall be permitted to commence with the expenditure of Laney Walker Bethlehem Bond Financing funds as outlined in said Agreement upon procurement of a construction contractor in accordance with its policies and procedures; and approval of a detailed outline of project expenditures anticipated for the completion of the development within 120 days of said home identified as **1508 Twiggs Street**.

Liquidated Damages

“VIP” agrees to pay as liquidated damages to HCD the sum of two hundred dollars (\$200.00) for each consecutive calendar day after the expiration of the Contract Time of Completion Time, except for authorized extensions of time by Augusta. This section is independent of any section within this Agreement concerning the default of “VIP”. The parties agree that these provisions for liquidated damages are not intended to operate as penalties for breach of Contract.

The liquidated damages set forth above are not intended to compensate Augusta for any damages other than inconvenience and loss of use or delay in services. The existence or recovery of such liquidated damages shall not preclude Augusta from recovering other damages in addition to the payments made hereunder which Augusta can document as being attributable to the documented failure of “VIP”. In addition to other costs that may be recouped, Augusta may include costs of personnel and assets used to coordinate, inspect, and re-inspect items within this Agreement as well as attorney fees if applicable.

Specified excuses

“VIP” is not responsible for delay in performance caused by hurricanes, tornados, floods, and other severe and unexpected acts of nature. In any such event, the contract price and schedule shall be equitably adjusted.

Temporary Suspension or Delay of Performance of Contract

To the extent that it does not alter the scope of this Agreement, Augusta may unilaterally order a temporary stopping of the work or delaying of the work to be performed by “VIP” under this Agreement.

D. Project Budget: Limitations

All costs associated with construction, O&P, construction management, and real estate expenses have been outlined in said Agreement as percentage-based costs related to the development of one single family detached home identified as **1508 Twiggs Street** as part of the Laney Walker/Bethlehem Revitalization Project. HCD will have the latitude to pay such costs directly to the procured construction contractor. “VIP” shall be paid a total consideration of no more than **\$205,167.56** for full performance of the services specified under this Agreement. Any cost above this amount shall be the sole responsibility of HCD. It is also understood by both parties to this contract that the funding provided under this contract for this specific project shall be the only funds provided by Augusta unless otherwise agreed to by Augusta and “VIP”.

Augusta shall adhere to the budget as outlined in the Work Write-Up (Exhibit B) in the performance of this contract.

ARTICLE III. TERM OF CONTRACT

The term of this Agreement shall commence on the date when this Agreement is executed by Augusta and “VIP” (whichever date is later) and shall end at the completion of all program activities, within the time specified in Article II.C, or in accordance with ARTICLE X: Suspension and Termination.

ARTICLE IV. DOCUMENTATION AND PAYMENT

- A. This is a pay-for-performance contract and in no event shall HCD provide advance funding to “VIP”, or any subcontractor hereunder.

- B. “VIP” shall not use these funds for any purpose other than the purpose set forth in this Agreement.
- C. Subject to “VIPs” compliance with the provisions of this Agreement, Augusta agrees to reimburse all budgeted costs allowable under federal, state, and local guidelines.
- D. All purchases of capital equipment, goods and services shall comply with the procurement procedures of OMB Circular A-110 "Uniform Administrative Requirements for Grant Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" as well as the procurement policy of Augusta.
- E. Requests by “VIP” for payment shall be accompanied by proper documentation and shall be submitted to HCD, transmitted by a cover memo, for approval no later than thirty (30) calendar days after the last date covered by the request. For purposes of this section, proper documentation includes Updated Exhibit A- schedule (Gantt Chart), Updated Exhibit B- Work Write-Up, and AIA Form.
- F. “VIP” shall maintain an adequate financial system and internal fiscal controls.
- G. Unexpended Funds: Unexpended funds shall be retained by Augusta upon written request, Augusta may consider the reallocation of unexpended funds to eligible projects proposed by “VIP”.
- H. The terms of this Agreement supersede any and all provisions of the Georgia Prompt Pay Act.
- I. Upon the sale of the detached single-family home at **1508 Twiggs Street**, HCD is to provide “VIP” with any outstanding payments on approved invoices and related costs received within ten (10) business days.

ARTICLE V. ADMINISTRATIVE REQUIREMENTS

Conflict of Interest

“VIP” agrees to comply with the conflict of interest provisions contained in 24 CFR 85.36, 570.611, OMB Circular A-110 and OMB Circular A-102 as appropriate.

This conflict of interest provision applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of “VIP”. No person described above who exercises, may exercise or has exercised any functions or responsibilities with respect to the activities supported under this contract; or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain any financial interest or benefit from the activities, or have a financial interest in any contract, sub-contract, or agreement with respect to the contract activities, either for themselves or those with whom they have business or family ties, during their tenure or for one year thereafter. For the purpose of this provision, "family ties", as defined in the above cited volume and provisions of the Code of Federal Regulations, include those related as Spouse, Father, Mother, Father-in-law, Mother-in-law, Step-parent, Children, Step-children, Brother, Sister, Brother-in-law, Sister-in-law, Grandparent, Grandchildren of the individual holding any interest in the subject matter of this Agreement. “VIP” in the persons of Directors, Officers, Employees, Staff, Volunteers and Associates such as Contractors, Sub-contractors and Consultants shall sign and submit a Conflict of Interest Affidavit. (Affidavit form attached as part in parcel to this Agreement).

Augusta may, from time to time, request changes to the scope of this Agreement and obligations to be performed hereunder by “VIP”. In such instances, “VIP” shall consult with HCD/Augusta on any changes that will result in substantive changes to this Agreement. All such changes shall be made via written amendments to this Agreement and shall be approved by the governing bodies of both Augusta and “VIP”.

Statutes, regulations, guidelines, and forms referenced throughout this Agreement are listed in Appendix A and are attached and included as part in parcel to this Agreement.

ARTICLE VI. OTHER REQUIREMENTS

- A. “VIP” agrees that it will conduct and administer activities in conformity with Pub. L. 88-352, "Title VI of the Civil Rights Act of 1964", and with Pub. L. 90-284 "Fair Housing Act" and that it will affirmatively further fair housing. One suggested activity is to use the fair housing symbol and language in “VIP” publications and/or advertisements. (24 CFR 570.601).
- B. “VIP” agrees that the ownership in the housing assisted units must meet the definition of “homeownership” in §92.2.
- C. “VIP” agrees to comply with 24 CFR Part I, which provides that no person shall be excluded from participation in this project on the grounds of race, color, national origin, or sex; or be subject to discrimination under any program or activity funded in whole or in part with federal funds made available pursuant to the Act.
- D. No person employed in the work covered by this contract shall be discharged or in any way discriminated against because he or she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his or her employer. (24 CFR 570.603)
- E. “VIP” agrees that in accordance with the National Environmental Policy Act of 1969 and 24 CFR Part 58, it will cooperate with Augusta/HCD in complying with the Act and regulations, and that no activities will be undertaken until notified by Augusta/HCD that the activity is in compliance with the Act and regulations. Prior to beginning any project development activity, an environmental review must be conducted by HCD pursuant to (24 CFR 570.604).
- F. Consistent with the Flood Disaster Protection Act of 1973 (42 USC 4001-4128), “VIP” agrees that funds shall not be expended for acquisition or construction in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards (representing the 100-year floodplain). Exceptions will be made if the community is participating in the National Flood Insurance Program or less than a year has passed since FEMA notification and flood insurance has been obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973.
- G. “VIP” agrees to take all reasonable steps to minimize displacement of persons as a result of assisted activities. Any such activities will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the Housing and Community Development Act of 1974 (24 CFR 570.606).

- H. "VIP" agrees to comply with Executive Order 11246 and 12086 and the regulations issued pursuant thereto (41 CFR 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin. "VIP" will in all solicitations or advertisements for employees placed state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or familial status.
- I. "VIP" will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or familial status. "VIP" will take appropriate action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, national origin, or familial status. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or advertising; lay-off or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. "VIP" agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Augusta setting forth the provisions of this nondiscrimination clause.
- J. In accordance with Section 570.608 of the CDBG Regulations, "VIP" agrees to comply with the Lead Based Paint Poisoning Prevention Act pursuant to prohibition against the use of lead-based paint in residential structures and to comply with 24 CFR 570.608 and 24 CFR 35 with regard to notification of the hazards of lead-based paint poisoning and the elimination of lead-based paint hazards.
- K. "VIP" agrees to comply with 24 CFR 570.609 with regards to the direct or indirect use of any contractor during any period of debarment, suspension, or placement in ineligibility status. No contract will be executed until such time that the debarred, suspended, or ineligible contractor has been approved and reinstated by HCD.
- L. In accordance with 24 CFR part 24, subpart F, "VIP" agrees to administer a policy to provide a drug-free workplace that is free from illegal use, possession or distribution of drugs or alcohol by its beneficiaries as required by the Drug Free Workplace Act of 1988.
- M. Any publicity generated by "VIP" for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of HCD in making the project possible. The words "Augusta, Georgia Department of Housing and Community Development" will be explicitly stated in any and all pieces of publicity; including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles.
- N. "VIP" shall comply with all applicable laws, ordinances and codes of the federal, state, and local governments and shall commit no trespass on any public or private property in performing any of the work embraced by this contract. "VIP" agrees to obtain all necessary permits for intended improvements or activities.
- O. "VIP" shall not assign any interest in this contract or transfer any interest in the same without the prior written approval of Augusta.
- P. "VIP" agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HCD, setting forth the provisions of this nondiscrimination clause. Except as prohibited by law or the March 14, 2007, Court Order in the case Thompson Wrecking, Inc. v. Augusta, Georgia, Civil Action No. 1:07-CV-019 (S.D.

GA 2007). **ANY LANGUAGE THAT VIOLATES THIS COURT ORDER IS VOIDABLE BY THE AUGUSTA GOVERNMENT.** “VIP” agrees to comply with any federally mandated requirements as to minority and women owned business enterprises.

- Q. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor in connection with the physical performance of services pursuant to its contract with Augusta, Georgia, the contractor will secure from such subcontractors each subcontractor’s E-Verify number as evidence of verification of compliance with O.C.G.A §13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to HCD at the time the subcontractors are retained to perform such physical services.
- R. “VIP” agrees that low and moderate income persons reside within Augusta-Richmond County and that contract for work in connection with the project be awarded to eligible businesses which are located in or owned in substantial part by persons residing in Richmond County. (24 CFR 570.697) **Utilization of contractors and/or subcontractors outside of the Augusta, Georgia- Richmond County area is not desirable.**
- S. “VIP” agrees to comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146 and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. For purposes of the emergency shelter grants program, the term dwelling units in 24 CFR Part 8 shall include sleeping accommodations.
- T. “VIP” will not discriminate against any employee or applicant for employment on the basis of religion and will not give preference of persons on the basis of religion. “VIP” will not discriminate against any person applying for shelter on the basis of religion. “VIP” will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no religious influence in the provision of shelter and other eligible activities funded by this grant.
- U. Indirect costs will only be paid if “VIP” has indirect cost allocation plan approved by the Augusta Housing and Community Development prior to the execution of this Contract.
- V. HCD shall not approve any travel or travel related expenses to “VIP” with funds provided under this.

W. Construction Requirements

In the absence of local codes, properties must meet the HUD Section 8 Housing Quality Standards [HQS]. All housing assisted under this Agreement is “new construction” by definition and therefore must meet the local building codes for new housing in Augusta, Georgia, as applicable.

“VIP” is required by state and local laws, to dispose of all site debris, trash, and rubble from the project be transported to and disposed of at the Augusta, Georgia Solid Waste Landfill in accordance with local and state regulations. The contractor shall provide evidence of proper disposal of, the name and location of the disposal facility, date of disposal and all related fee. Augusta, Georgia may, at reasonable times, inspect the part of the plant, place of business, or work site of “VIP” or any subcontractor of “VIP” or subunit thereof which is pertinent to the performance of any contract awarded or to be awarded by Augusta Housing & Community Development Department.

ARTICLE VII. SUSPENSION AND TERMINATION

- A. In the event “VIP” materially fails to comply with any terms of this Agreement, including the timely completion of activities as described in the timetable and/or contained in ARTICLE II.C, Augusta, Georgia may withhold cash payments until “VIP” cures any breach of the Agreement. If “VIP” fails to cure the breach, Augusta may suspend or terminate the current award of funds. “VIP” will not be eligible to receive any other funding.
- B. Damages sustained as a result of any breach of this Agreement. In addition, to any other remedies it may have at law or equity, HCD may withhold any payments to “VIP” for the purposes of offsetting the exact amount of damages once determined.
- C. In the best interest of the project and to better serve the people in the target areas and fulfill the purposes of the Laney Walker/ Bethlehem Revitalization project, either party may terminate this Agreement upon giving thirty (30) day notice in writing of its intent to terminate, stating its reasons for doing so. In the event Augusta terminates this Agreement, Augusta shall pay “VIP” for documented committed eligible costs incurred prior to the date of notice of termination.
- D. Notwithstanding any termination or suspension of this Agreement, “VIP” shall not be relieved of any duties or obligations imposed on it under this Agreement with respect to HCD funds previously disbursed or income derived therefrom.
- E. To the extent that it does not alter the scope of this Agreement, Augusta, GA may unilaterally order a temporary stopping of the work or delaying of the work to be performed by “VIP” under this contract.

ARTICLE VIII. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice.

Augusta will receive all notices at the address indicated below:

Office of the Administrator
ATTN: Takiyah Douse, Interim City Administrator
Municipal Building
535 Telfair Street, Suite 910
Augusta, Georgia 30901

With copies to:
Augusta Housing and Community Development Department
ATTN: Hawthorne Welcher, Jr., Director
510 Fenwick Street
Augusta, Georgia 30901

“VIP” will receive all notices at the address indicated below:

Volume Income Properties
ATTN: Lamont Brothers
14151 Montfort Dr. 229
Dallas, TX 75254

With copies to:
Capitalrise LLC
ATTN: Peter Tuchnya & Frank Klimes
2924 Aylesbury Drive
Augusta, GA 30909

ARTICLE IX. INDEMNIFICATION

“VIP” will at all times hereafter indemnify and hold harmless Augusta, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs, attorney fees and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the performance of this Agreement. By execution of this Agreement, “VIP” specifically consents to jurisdiction and venue in the Superior Court of Richmond County, Georgia and waives any right to contest jurisdiction or venue in said Court.

Should it become necessary to determine the meaning or otherwise interpret any work, phrase or provision of this Agreement, or should the terms of this Agreement in any way be the subject of litigation in any court of laws or equity. It is agreed that the laws of the State of Georgia shall exclusively control the same.

The parties hereto do agree to bind themselves, their heirs, executors, administrators, trustees, successors, and assigns, all jointly and severally under the terms of this Agreement.

ARTICLE X. PRIOR AND FUTURE AGREEMENTS

This Document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. HCD is not obligated to provide funding of any kind to “VIP” beyond the term of this Agreement.

“VIP” warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by “VIP” for the purpose of securing business and that “VIP” has not received any non-Augusta fee related to this Agreement without the prior written consent of HCD. For breach or violation of this warranty, HCD shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement prices of consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI. LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of any law or regulations and clause required by law or regulation to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

ARTICLE XII. DISCLAIMER

Any and all language in this Agreement pertaining to HUD regulations and/or the utilizations of HOME funding is deemed voidable when utilizing Laney Walker Bond funds in its entirety. However, if there are any federal funds utilized by this project, including Homebuyer Subsidy funds, this Agreement will be enforceable in its entirety.

ARTICLE XIII. COUNTERPARTS

This Agreement is executed in two (2) counterparts– each of which shall be deemed an original and together shall constitute one and the same Agreement with one counterpart being delivered to each party hereto.

ARTICLE XIV. INSURANCE

The DEVELOPER/CONTRACTOR shall provide, at all times that this Agreement is in effect, Insurance with limits of not less than:

- A. Workmen’s Compensation Insurance – in accordance with the laws of the State of Georgia.
- B. Public Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars for injuries, including those resulting in death to any one person, and in an amount of not less than One Million (\$1,000,000) Dollars on account of any one occurrence.
- C. Property Damage Insurance – in an amount of not less than One Million (\$1,000,000) Dollars from damages on account of an occurrence, with an aggregate limit of One Million (\$1,000,000) Dollars.

D. Valuable Papers Insurance – in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project.

E. Professional Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars or an amount that correlates to the aggregate fee on the project should it exceed \$1,000,000.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first written above:

Approved as to Form by (please initial here):
Augusta, GA Law Department

Date: _____

By: _____
Mayor Garnett L. Johnson, as its Mayor

Date: _____

By: _____
Takiyah Douse, as its Interim City
Administrator

Date: _____

By: _____
Hawthorne Welcher, Jr., as its Director

Date: _____

Affix Seal Here:

By: _____
Lena Bonner, as its Clerk of Commission

ATTEST: Volume Income Properties

By: _____
Owner

Owner

Date: _____

APPENDIX 1
Architectural Plans/Designs

APPENDIX 2
American Institute of Architects (AIA) Form - Sample

APPENDIX 3
Statutes: (Available on Request)

OMB Circular A-110 - Uniform Administrative Requirements for Grants and Agreement with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

OMB Circular A- 122 - Cost Principles for Non-Profit Organizations

OMB Circular A-133 - Audits of Institutions of Higher Education & other Non-Profit Institutions

40 USC 276 Davis-Bacon Act

40 USC 327 Contract Work Hours and Safety Standard Act

Uniform Relocation Assistance and Real Property Acquisition Policies Act

Lead Based Paint Poisoning Prevention Act

24 CFR 35 – HUD Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally-Owned Residential Property being sold, Final Rule

Augusta, Georgia- Richmond County Procurement Policy

Conflict of Interest Affidavit

APPENDIX 4
CONSTRUCTION REQUIREMENTS

1. All construction projects shall comply with Federal, State, and local codes and ordinances, including, but not limited to, the following:
 - A. All work shall be in compliance with the International Building Code current edition of National Electric Code, International Plumbing and Mechanical Code, and ADA 2010 Guidelines.
 - B. Georgia Energy Code International Energy Conservation Code (IECC-2015).
 - C. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596.
 - D. Part 1910 – Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations (Federal Register, Volume 37, Number 202, October 18, 1972).
 - E. Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations (Federal Register, Volume 37, Number 243, December 16, 1972).
 - F. Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).
2. Project Review. All plans, specifications, work write-ups, projected cost estimates, punch lists or other means of outlining work on a particular project will be submitted in writing to HCD for review and approval prior to bidding. HCD Construction and Rehabilitation Inspectors or HCD's agent will review these items for compliance with new construction and/or rehabilitation standards and materials use.
3. Rehabilitation Standards. All rehabilitation work will comply with the "Uniform Physical Condition Standards for HUD Housing." Workmanship and material standards will comply with the Antioch Ministries, Inc. -Richmond County Housing & Community Development Department Contractors Manual and Performance Standards. A copy of this manual is provided to every contractor when included on the HCD Approved Contractors List. A copy is enclosed for inclusion.
4. Inspections. All projects will be inspected and approved by an HCD Construction and Rehabilitation Inspector or HCD's agent prior to release of the funds for that project.

APPENDIX 5
CONTRACTOR ACKNOWLEDGEMENT

Capitalrise LLC acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioner and approval of the Mayor. Under Georgia law, Capitalrise LLC is deemed to possess knowledge concerning HCD ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to HCD under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that Capitalrise LLC may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Capitalrise LLC agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if Capitalrise LLC provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Capitalrise LLC assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia (Laney Walker/Bethlehem Revitalization Project), and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized including, without limitation, all remedies at law or equity. This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

Name

CAPITALRISE LLC, Owner

EXHIBIT A

PROJECT SCHEDULE OF COMPLETION

“VIP” MUST PROVIDE A COMPLETED SCHEDULE OF COMPLETION AS EXHIBIT A- WITH APPROPRIATE PROJECT MILESTONES WITHIN 10 TO 15 DAYS AFTER SIGNING THIS AGREEMENT. THIS SCHEDULE MUST BE PROVIDED IN SUFFICIENT DETAIL TO PERMIT HCD TO MONITOR AND ASSESS PROGRESS IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. A SAMPLE SCHEDULE IS PROVIDED.

EXHIBIT B
WORK WRITE-UP

EXHIBIT C
PROJECT DEVELOPMENT AND MANAGEMENT PROCEDURES

1. HCD must review and approve all new construction work, project specifications and total development cost for each residential development project before work is commenced and before funds can be released for payment reimbursement. Construction payments will be released to “VIP” in accordance with the attached drawdown schedule and budget.
2. HCD will provide the lot on which all new construction efforts will be performed under this Agreement and in connection with the project.
3. With HCD approval, “VIP” may use funds under this Agreement for the following purposes:
 - a. To support development costs as outlined in Item 6 below.
4. Completion delays, remedies, and penalties.
 - a. If the Contractor fails to complete the work within the time frame specified in the contract, plus any authorized delays, HCD may:
 - i. Terminate the contractor in accordance with the “Provisions for Augusta Housing and Community Development Department (HCD)” clause of this contract.
 - ii. Assess liquidated damages of Two Hundred Dollars (\$200) per working day from the schedule of completion to the date of final acceptance of the project. The total amount of liquidated damages will be deducted from the total contract price, plus any change order amounts.
 - b. The contractor shall not be charged with liquidated damages for any delays in the completion of the work due:
 - i. To any acts of the Federal, State, or City/County Government; including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other National, State, or City/County emergency.
 - ii. To any acts of the Owner that hinder the progress of the work;
 - iii. To cause not reasonable foreseeable by the parties in this contract at the time the execution of the contract which are beyond the control and without the fault or negligence of the Contractor; including but not restricted to acts of God; acts of the public enemy; acts of another contractor in the performance of some other contract with the owner; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and weather or unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; and
 - iv. To any delay of the subcontractor occasioned by any other causes specified in subparagraphs A and B above. Provided, however, that the contractor promptly (within 10 days) notifies HCD and “VIP” in writing of the cause of the delay. If the facts show the delay to be properly excusable under the terms of this contract, HCD shall extend the contract time by a period commensurate with the period of authorized delay to the completion of the work as whole, in the form of an amendment to this contract.
5. New Construction Costs and Requirements

- a. “VIP” will provide construction management for the project to ensure that construction work is being carried out in accordance with plans, specifications, and the project budget.
 - b. “VIP” must make sure contractors obtain and post all permits on job site.
 - c. “VIP” must collect progress and final lien releases from the contractor, subcontractors, and material suppliers prior to making a payment to a contractor.
 - d. HCD or its agent may continually inspect each house for contract compliance and to determine the percent of completion prior to processing a draw request and releasing payment. HCD may choose not to release payments if the work being performed is not of acceptable quality to HCD and if the house is not being built or rehabilitated in accordance with plans and specifications, or if the project is not on schedule.
6. Permanent Financing and Sales Prices
- a. The sales price of each home sold in accordance with this Agreement must be based on a formal appraisal. Unless otherwise agreed to by HCD, the sales price of each house shall not exceed the appraised value of the house.
 - b. The purchasers of houses constructed must meet the Augusta, GA requirements.
 - c. Buyers will be required to borrow no less than 80% of the sale prices of the house from a private lending institution unless otherwise agreed to by HCD.

CONTRACT**between****AUGUSTA, GEORGIA****And****VOLUME INCOME PROPERTIES**

in the amount of

\$205,167.56 USD

Two Hundred Five Thousand and One Hundred Sixty Seven Dollars and 56/100for Fiscal Year **2022**

Providing funding for

LANEY WALKER/BETHLEHEM REVITALIZATION PROJECT**1512 Twiggs Street**

THIS AGREEMENT (“Contract”), is made and entered into as of the ____ day of _____ 2021 (“the effective date”) by and between Augusta, Georgia, a political subdivision of the State of Georgia (hereinafter referred to as “Augusta”), acting through the Housing and Community Development Department (hereinafter referred to as “HCD”) - with principal offices at 510 Fenwick Street, Augusta, Georgia 30901, as party of the first part, and Volume Income Properties, a developer, organized pursuant to the Laws of the State of Georgia, hereinafter called ““VIP” ” as party in the second part.

WITNESSETH

WHEREAS, Augusta is qualified by the U. S. Department of Housing and Urban Development (hereinafter called HUD) as a Participating Jurisdiction, and has received Laney Walker/Bethlehem Bond Financing for the purpose of providing and retaining affordable and market rate housing for eligible families; and

WHEREAS, “VIP”, a procured developer and contractor with HCD wishes to increase homeownership opportunities and preserve and increase the supply of affordable/market rate housing for eligible families; and

WHEREAS, Augusta wishes to enter into a contractual Agreement with “VIP” for the administration of eligible affordable and market rate housing development activities utilizing Laney Walker Bond Financing; and

WHEREAS, this activity has been determined to be an eligible activity in accordance with 24 CFR 92.504(c)(13) and will meet one or more of the national objectives and criteria outlined in Title 24 Code of Federal Regulations, Part 92 of the Housing and Urban Development regulations; and

WHEREAS, “VIP” has been selected and approved through a solicitation process for development partners to assist in the redevelopment of Laney Walker and Bethlehem communities; and

WHEREAS, “VIP” has agreed to provide services funded through this contract free from political activities, religious influences or requirements; and

WHEREAS, “VIP” has requested, and Augusta has approved a total of **\$205,167.56** in funding to perform eligible activities as described in Article I; below:

NOW, THEREFORE, the parties of this Agreement for the consideration set forth below, do here and now agree to the following terms and conditions:

ARTICLE I. SCOPE OF SERVICES

A. Scope of Services

Project Description: “VIP” agrees to utilize approved Laney Walker/Bethlehem Bond financing funds to support project related costs associated with the Laney Walker/Bethlehem Redevelopment Project. “VIP” agrees to match Laney Walker/Bethlehem Bond funds 50% of total construction cost in the form of reimbursement. Under this Agreement:

- ✚ “VIP” will perform as procured developer, with Laney Walker/Bethlehem.
- ✚ “VIP” will perform new construction for one (1) single family detached home identified as property number **1512 Twiggs Street**.
- ✚ “VIP” will perform all required construction management and project oversight, in accordance with all laws, ordinances, and regulations of Augusta.
- ✚ “VIP” will perform all functions required to ensure delivery of a final product meeting all requirements as set forth by said Agreement to include:
 - Materials list to include brand name and/or model number of materials as specified or agreed to adjustments to specifications including but not limited to: appliances, windows, HVAC, fixtures and First Quality lumber. “VIP” is to provide a finish schedule with the specifications, brands, and model numbers for all interior finishes 90 days from completion for agreement by HCD. Actual material invoices may be requested to verify charges.

B. Use of Funds: Laney Walker/Bethlehem Bond funds shall be used by “VIP” for the purposes and objectives as stated in Article I, Scope of Services, of this Agreement. The use of funding for any other purpose(s) is not permitted. The following summarizes the proposed uses of funds under this Agreement based on **total material and labor cost of \$205,167.56**

1. Profit

An amount not to exceed percent (50%) of the construction cost as outlined and approved in Article I. Scope of Services, Section B. Use of Funds and on the Work Write-Up, shall be paid to “VIP” for costs identified as necessary operating time and expenses in addition to the profit accrued in the development of one single family detached home identified as 1512 Twiggs Street. The design and specifications of the property shall be approved by HCD prior to construction (see Appendix). HCD will have the latitude to pay O&P directly to the procured developer/contractor on a pay for performance basis or upon the sale of the single family detached home identified as **1512 Twiggs Street**.

2. Developer's Fee

N/A

3. Developer's Fee Disbursements

Developer's Fee shall be dispensed when construction is 100% completed and certificate of occupancy is received. Developer's Fee is dispensed upon sale of the home and should not exceed sixteen percent (16%).

C. Program Location and Specific Goals to be Achieved

"VIP" shall conduct project development activities and related services in its project area Laney Walker/Bethlehem that incorporates the following boundaries: Fifteenth Street, R.A. Dent, Wrightsboro Road, Twiggs Street, MLK Boulevard and Walton Way.

D. Project Eligibility Determination

It has been determined that the use of Laney Walker/Bethlehem Bond Financing funds by "VIP" will be in compliance with legislation supporting community development in Laney Walker/Bethlehem as authorized under the Urban Redevelopment Authority which acts in behalf of the Augusta Commission to provide oversight of the operation of the Laney Walker/Bethlehem Redevelopment Project. Notwithstanding any other provisions of this contract, "VIP" shall provide activities and services as described in the description of the project, including use of funds, its goals and objectives, tasks to be performed and a detailed schedule for completing the tasks for this project as provided in Exhibit A of this contract.

ARTICLE II. BUDGET AND METHOD OF PAYMENT

"VIP" will carry out and oversee the implementation of the project as set forth in this Agreement and agrees to perform the required services under the general coordination of HCD. In addition, and upon approval by Augusta, "VIP" may engage the services of outside professional services consultants and contractors to help carry out the program and projects.

A. Augusta shall designate and make funds available in the following manner:

1. Augusta agrees to pay "VIP", a maximum of **\$205,167.56** under this Agreement for project expenses incurred as outlined in ARTICLE I, Scope of Services, subject to "VIP" 's compliance with all terms and conditions of this Agreement and the procedures for documenting expenses and activities as set forth in said Agreement.
2. The method of payment for construction costs, including only materials and labor as outlined and approved on the Work Write-Up, not to exceed the aforementioned contracted amount of \$205,167.56 **and** shall be on a pay for performance basis provided "VIP" and HCD determine the progress is satisfactory. "VIP" shall utilize the AIA Form provided by HCD (see Appendix). For invoicing, "VIP" will include documentation showing proof of completion of work in accordance with the amount requested, inspected, and accepted by HCD, lien waivers for vendors and sub-contractors, as specified in the Work Write-Up found in Exhibit B & E.
3. When nearing 50%, the Developer, "VIP", should be prepared to pay their 50%: **\$102,583.78** as agreed to HCD for material and labor only.

4. HCD will monitor the progress of the project and “VIP” ’s performance on a weekly basis with regards to the production of housing units and the overall effectiveness of project.
5. Upon the completion of this Agreement, any unused or residual funds remaining shall revert to Augusta and shall be due and payable on such date of the termination and shall be paid no later than thirty (30) days thereafter. “VIP” and HCD shall share in the cost and proceeds of developing the residence at **1512 Twiggs Street** as follows:
6. Funds may not be transferred from line item to line item in the project budget without the prior written approval of Augusta Housing and Community Development.
7. This Agreement is based upon the availability of funding under the Laney Walker/Bethlehem Revitalization Project. Should funds no longer be available, it is agreed to by both parties that this contract shall terminate and any “VIP” deemed satisfactorily progress made within the contracted construction only amount not to exceed fifty percent (50%) shall be paid to “VIP” .
8. HCD will retain ten percent (10%) of an amount within the one hundred percent (100%) of construction costs, including only materials and labor as outlined and approved on the Work Write-Up, after the Certificate of Occupancy has been issued until “VIP” and HCD determine that all HCD punch-list items have been satisfied.

B. Project Financing

The Augusta Housing and Community Development will provide an amount not to exceed the actual construction costs including only materials and labor as outlined and approved on the Work Write-Up to be expended by “VIP” for construction costs related to the development of one single family detached home identified as 1512 Twiggs Street.

Additionally, HCD will provide 100% of all change orders (where applicable) as approved by HCD and “VIP” in writing.

All funding is being provided as payment for services rendered as per this Agreement.

C. Timetable for Completion of Project Activities

“VIP” shall be permitted to commence with the expenditure of Laney Walker Bethlehem Bond Financing funds as outlined in said Agreement upon procurement of a construction contractor in accordance with its policies and procedures; and approval of a detailed outline of project expenditures anticipated for the completion of the development within 120 days of said home identified as 1512 Twiggs Street.

Liquidated Damages

“VIP” agrees to pay as liquidated damages to HCD the sum of two hundred dollars (\$200.00) for each consecutive calendar day after the expiration of the Contract Time of Completion Time, except for authorized extensions of time by Augusta. This section is independent of any section within this Agreement concerning the default of “VIP”. The parties agree that these provisions for liquidated damages are not intended to operate as penalties for breach of Contract.

The liquidated damages set forth above are not intended to compensate Augusta for any damages other than inconvenience and loss of use or delay in services. The existence or recovery of such liquidated damages shall not preclude Augusta from recovering other damages in addition to the payments made hereunder which Augusta can document as being attributable to the documented failure of “VIP”. In addition to other costs that may be recouped, Augusta may include costs of personnel and assets used to coordinate, inspect, and re-inspect items within this Agreement as well as attorney fees if applicable.

Specified excuses

“VIP” is not responsible for delay in performance caused by hurricanes, tornados, floods, and other severe and unexpected acts of nature. In any such event, the contract price and schedule shall be equitably adjusted.

Temporary Suspension or Delay of Performance of Contract

To the extent that it does not alter the scope of this Agreement, Augusta may unilaterally order a temporary stopping of the work or delaying of the work to be performed by “VIP” under this Agreement.

D. Project Budget: Limitations

All costs associated with construction, O&P, construction management, and real estate expenses have been outlined in said Agreement as percentage-based costs related to the development of one single family detached home identified as **1512 Twiggs Street** as part of the Laney Walker/Bethlehem Revitalization Project. HCD will have the latitude to pay such costs directly to the procured construction contractor. “VIP” shall be paid a total consideration of no more than **\$205,167.56** for full performance of the services specified under this Agreement. Any cost above this amount shall be the sole responsibility of HCD. It is also understood by both parties to this contract that the funding provided under this contract for this specific project shall be the only funds provided by Augusta unless otherwise agreed to by Augusta and “VIP”.

Augusta shall adhere to the budget as outlined in the Work Write-Up (Exhibit B) in the performance of this contract.

ARTICLE III. TERM OF CONTRACT

The term of this Agreement shall commence on the date when this Agreement is executed by Augusta and “VIP” (whichever date is later) and shall end at the completion of all program activities, within the time specified in Article II.C, or in accordance with ARTICLE X: Suspension and Termination.

ARTICLE IV. DOCUMENTATION AND PAYMENT

- A. This is a pay-for-performance contract and in no event shall HCD provide advance funding to “VIP”, or any subcontractor hereunder.

- B. “VIP” shall not use these funds for any purpose other than the purpose set forth in this Agreement.
- C. Subject to “VIPs” compliance with the provisions of this Agreement, Augusta agrees to reimburse all budgeted costs allowable under federal, state, and local guidelines.
- D. All purchases of capital equipment, goods and services shall comply with the procurement procedures of OMB Circular A-110 "Uniform Administrative Requirements for Grant Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" as well as the procurement policy of Augusta.
- E. Requests by “VIP” for payment shall be accompanied by proper documentation and shall be submitted to HCD, transmitted by a cover memo, for approval no later than thirty (30) calendar days after the last date covered by the request. For purposes of this section, proper documentation includes Updated Exhibit A- schedule (Gantt Chart), Updated Exhibit B- Work Write-Up, and AIA Form.
- F. “VIP” shall maintain an adequate financial system and internal fiscal controls.
- G. Unexpended Funds: Unexpended funds shall be retained by Augusta upon written request, Augusta may consider the reallocation of unexpended funds to eligible projects proposed by “VIP”.
- H. The terms of this Agreement supersede any and all provisions of the Georgia Prompt Pay Act.
- I. Upon the sale of the detached single-family home at 1512 Twiggs Street, HCD is to provide “VIP” with any outstanding payments on approved invoices and related costs received within ten (10) business days.

ARTICLE V. ADMINISTRATIVE REQUIREMENTS

Conflict of Interest

“VIP” agrees to comply with the conflict of interest provisions contained in 24 CFR 85.36, 570.611, OMB Circular A-110 and OMB Circular A-102 as appropriate.

This conflict of interest provision applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of “VIP”. No person described above who exercises, may exercise or has exercised any functions or responsibilities with respect to the activities supported under this contract; or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain any financial interest or benefit from the activities, or have a financial interest in any contract, sub-contract, or agreement with respect to the contract activities, either for themselves or those with whom they have business or family ties, during their tenure or for one year thereafter. For the purpose of this provision, "family ties", as defined in the above cited volume and provisions of the Code of Federal Regulations, include those related as Spouse, Father, Mother, Father-in-law, Mother-in-law, Step-parent, Children, Step-children, Brother, Sister, Brother-in-law, Sister-in-law, Grandparent, Grandchildren of the individual holding any interest in the subject matter of this Agreement. “VIP” in the persons of Directors, Officers, Employees, Staff, Volunteers and Associates such as Contractors, Sub-contractors and Consultants shall sign and submit a Conflict of Interest Affidavit. (Affidavit form attached as part in parcel to this Agreement).

Augusta may, from time to time, request changes to the scope of this Agreement and obligations to be performed hereunder by “VIP”. In such instances, “VIP” shall consult with HCD/Augusta on any changes that will result in substantive changes to this Agreement. All such changes shall be made via written amendments to this Agreement and shall be approved by the governing bodies of both Augusta and “VIP”.

Statutes, regulations, guidelines, and forms referenced throughout this Agreement are listed in Appendix A and are attached and included as part in parcel to this Agreement.

ARTICLE VI. OTHER REQUIREMENTS

- A. “VIP” agrees that it will conduct and administer activities in conformity with Pub. L. 88-352, "Title VI of the Civil Rights Act of 1964", and with Pub. L. 90-284 "Fair Housing Act" and that it will affirmatively further fair housing. One suggested activity is to use the fair housing symbol and language in “VIP” publications and/or advertisements. (24 CFR 570.601).
- B. “VIP” agrees that the ownership in the housing assisted units must meet the definition of “homeownership” in §92.2.
- C. “VIP” agrees to comply with 24 CFR Part I, which provides that no person shall be excluded from participation in this project on the grounds of race, color, national origin, or sex; or be subject to discrimination under any program or activity funded in whole or in part with federal funds made available pursuant to the Act.
- D. No person employed in the work covered by this contract shall be discharged or in any way discriminated against because he or she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his or her employer. (24 CFR 570.603)
- E. “VIP” agrees that in accordance with the National Environmental Policy Act of 1969 and 24 CFR Part 58, it will cooperate with Augusta/HCD in complying with the Act and regulations, and that no activities will be undertaken until notified by Augusta/HCD that the activity is in compliance with the Act and regulations. Prior to beginning any project development activity, an environmental review must be conducted by HCD pursuant to (24 CFR 570.604).
- F. Consistent with the Flood Disaster Protection Act of 1973 (42 USC 4001-4128), “VIP” agrees that funds shall not be expended for acquisition or construction in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards (representing the 100-year floodplain). Exceptions will be made if the community is participating in the National Flood Insurance Program or less than a year has passed since FEMA notification and flood insurance has been obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973.
- G. “VIP” agrees to take all reasonable steps to minimize displacement of persons as a result of assisted activities. Any such activities will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the Housing and Community Development Act of 1974 (24 CFR 570.606).

- H. "VIP" agrees to comply with Executive Order 11246 and 12086 and the regulations issued pursuant thereto (41 CFR 60) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin. "VIP" will in all solicitations or advertisements for employees placed state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or familial status.
- I. "VIP" will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or familial status. "VIP" will take appropriate action to ensure that applicants are employed, and that employees are treated fairly during employment, without regard to their race, color, religion, sex, national origin, or familial status. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or advertising; lay-off or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. "VIP" agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Augusta setting forth the provisions of this nondiscrimination clause.
- J. In accordance with Section 570.608 of the CDBG Regulations, "VIP" agrees to comply with the Lead Based Paint Poisoning Prevention Act pursuant to prohibition against the use of lead-based paint in residential structures and to comply with 24 CFR 570.608 and 24 CFR 35 with regard to notification of the hazards of lead-based paint poisoning and the elimination of lead-based paint hazards.
- K. "VIP" agrees to comply with 24 CFR 570.609 with regards to the direct or indirect use of any contractor during any period of debarment, suspension, or placement in ineligibility status. No contract will be executed until such time that the debarred, suspended, or ineligible contractor has been approved and reinstated by HCD.
- L. In accordance with 24 CFR part 24, subpart F, "VIP" agrees to administer a policy to provide a drug-free workplace that is free from illegal use, possession or distribution of drugs or alcohol by its beneficiaries as required by the Drug Free Workplace Act of 1988.
- M. Any publicity generated by "VIP" for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of HCD in making the project possible. The words "Augusta, Georgia Department of Housing and Community Development" will be explicitly stated in any and all pieces of publicity; including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles.
- N. "VIP" shall comply with all applicable laws, ordinances and codes of the federal, state, and local governments and shall commit no trespass on any public or private property in performing any of the work embraced by this contract. "VIP" agrees to obtain all necessary permits for intended improvements or activities.
- O. "VIP" shall not assign any interest in this contract or transfer any interest in the same without the prior written approval of Augusta.
- P. "VIP" agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by HCD, setting forth the provisions of this nondiscrimination clause. Except as prohibited by law or the March 14, 2007, Court Order in the case Thompson Wrecking, Inc. v. Augusta, Georgia, Civil Action No. 1:07-CV-019 (S.D.

GA 2007). **ANY LANGUAGE THAT VIOLATES THIS COURT ORDER IS VOIDABLE BY THE AUGUSTA GOVERNMENT.** “VIP” agrees to comply with any federally mandated requirements as to minority and women owned business enterprises.

- Q. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor in connection with the physical performance of services pursuant to its contract with Augusta, Georgia, the contractor will secure from such subcontractors each subcontractor’s E-Verify number as evidence of verification of compliance with O.C.G.A §13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to HCD at the time the subcontractors are retained to perform such physical services.
- R. “VIP” agrees that low and moderate income persons reside within Augusta-Richmond County and that contract for work in connection with the project be awarded to eligible businesses which are located in or owned in substantial part by persons residing in Richmond County. (24 CFR 570.697) **Utilization of contractors and/or subcontractors outside of the Augusta, Georgia- Richmond County area is not desirable.**
- S. “VIP” agrees to comply with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and implementing regulations at 24 CFR part 146 and the prohibitions against otherwise qualified individuals with handicaps under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. For purposes of the emergency shelter grants program, the term dwelling units in 24 CFR Part 8 shall include sleeping accommodations.
- T. “VIP” will not discriminate against any employee or applicant for employment on the basis of religion and will not give preference of persons on the basis of religion. “VIP” will not discriminate against any person applying for shelter on the basis of religion. “VIP” will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no religious influence in the provision of shelter and other eligible activities funded by this grant.
- U. Indirect costs will only be paid if “VIP” has indirect cost allocation plan approved by the Augusta Housing and Community Development prior to the execution of this Contract.
- V. HCD shall not approve any travel or travel related expenses to “VIP” with funds provided under this.

W. Construction Requirements

In the absence of local codes, properties must meet the HUD Section 8 Housing Quality Standards [HQS]. All housing assisted under this Agreement is “new construction” by definition and therefore must meet the local building codes for new housing in Augusta, Georgia, as applicable.

“VIP” is required by state and local laws, to dispose of all site debris, trash, and rubble from the project be transported to and disposed of at the Augusta, Georgia Solid Waste Landfill in accordance with local and state regulations. The contractor shall provide evidence of proper disposal of, the name and location of the disposal facility, date of disposal and all related fee. Augusta, Georgia may, at reasonable times, inspect the part of the plant, place of business, or work site of “VIP” or any subcontractor of “VIP” or subunit thereof which is pertinent to the performance of any contract awarded or to be awarded by Augusta Housing & Community Development Department.

ARTICLE VII. SUSPENSION AND TERMINATION

- A. In the event “VIP” materially fails to comply with any terms of this Agreement, including the timely completion of activities as described in the timetable and/or contained in ARTICLE II.C, Augusta, Georgia may withhold cash payments until “VIP” cures any breach of the Agreement. If “VIP” fails to cure the breach, Augusta may suspend or terminate the current award of funds. “VIP” will not be eligible to receive any other funding.
- B. Damages sustained as a result of any breach of this Agreement. In addition, to any other remedies it may have at law or equity, HCD may withhold any payments to “VIP” for the purposes of offsetting the exact amount of damages once determined.
- C. In the best interest of the project and to better serve the people in the target areas and fulfill the purposes of the Laney Walker/ Bethlehem Revitalization project, either party may terminate this Agreement upon giving thirty (30) day notice in writing of its intent to terminate, stating its reasons for doing so. In the event Augusta terminates this Agreement, Augusta shall pay “VIP” for documented committed eligible costs incurred prior to the date of notice of termination.
- D. Notwithstanding any termination or suspension of this Agreement, “VIP” shall not be relieved of any duties or obligations imposed on it under this Agreement with respect to HCD funds previously disbursed or income derived therefrom.
- E. To the extent that it does not alter the scope of this Agreement, Augusta, GA may unilaterally order a temporary stopping of the work or delaying of the work to be performed by “VIP” under this contract.

ARTICLE VIII. NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice.

Augusta will receive all notices at the address indicated below:

Office of the Administrator
ATTN: Takiyah Douse, Interim City Administrator
Municipal Building
535 Telfair Street, Suite 910
Augusta, Georgia 30901

With copies to:
Augusta Housing and Community Development Department
ATTN: Hawthorne Welcher, Jr., Director
510 Fenwick Street
Augusta, Georgia 30901

“VIP” will receive all notices at the address indicated below:

Volume Income Properties
ATTN: Lamont Brothers
14151 Montfort Dr. 229
Dallas, TX 75254

With copies to:
Capitalrise LLC
ATTN: Peter Tuchnya & Frank Klimes
2924 Aylesbury Drive
Augusta, GA 30909

ARTICLE IX. INDEMNIFICATION

“VIP” will at all times hereafter indemnify and hold harmless Augusta, its officers, agents and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs, attorney fees and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation or property, by virtue of the performance of this Agreement. By execution of this Agreement, “VIP” specifically consents to jurisdiction and venue in the Superior Court of Richmond County, Georgia and waives any right to contest jurisdiction or venue in said Court.

Should it become necessary to determine the meaning or otherwise interpret any work, phrase or provision of this Agreement, or should the terms of this Agreement in any way be the subject of litigation in any court of laws or equity. It is agreed that the laws of the State of Georgia shall exclusively control the same.

The parties hereto do agree to bind themselves, their heirs, executors, administrators, trustees, successors, and assigns, all jointly and severally under the terms of this Agreement.

ARTICLE X. PRIOR AND FUTURE AGREEMENTS

This Document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. HCD is not obligated to provide funding of any kind to “VIP” beyond the term of this Agreement.

“VIP” warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by “VIP” for the purpose of securing business and that “VIP” has not received any non-Augusta fee related to this Agreement without the prior written consent of HCD. For breach or violation of this warranty, HCD shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement prices of consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI. LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of any law or regulations and clause required by law or regulation to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

ARTICLE XII. DISCLAIMER

Any and all language in this Agreement pertaining to HUD regulations and/or the utilizations of HOME funding is deemed voidable when utilizing Laney Walker Bond funds in its entirety. However, if there are any federal funds utilized by this project, including Homebuyer Subsidy funds, this Agreement will be enforceable in its entirety.

ARTICLE XIII. COUNTERPARTS

This Agreement is executed in two (2) counterparts– each of which shall be deemed an original and together shall constitute one and the same Agreement with one counterpart being delivered to each party hereto.

ARTICLE XIV. INSURANCE

The DEVELOPER/CONTRACTOR shall provide, at all times that this Agreement is in effect, Insurance with limits of not less than:

- A. Workmen’s Compensation Insurance – in accordance with the laws of the State of Georgia.
- B. Public Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars for injuries, including those resulting in death to any one person, and in an amount of not less than One Million (\$1,000,000) Dollars on account of any one occurrence.
- C. Property Damage Insurance – in an amount of not less than One Million (\$1,000,000) Dollars from damages on account of an occurrence, with an aggregate limit of One Million (\$1,000,000) Dollars.

D. Valuable Papers Insurance – in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project.

E. Professional Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars or an amount that correlates to the aggregate fee on the project should it exceed \$1,000,000.

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first written above:

Approved as to Form by (please initial here):
Augusta, GA Law Department

Date: _____

By: _____
Mayor Garnett L. Johnson, as its Mayor

Date: _____

By: _____
Takiyah Douse, as its Interim City
Administrator

Date: _____

By: _____
Hawthorne Welcher, Jr., as its Director

Date: _____

Affix Seal Here:

By: _____
Lena Bonner, as its Clerk of Commission

ATTEST: Volume Income Properties

By: _____
Owner

Owner

Date: _____

APPENDIX 1
Architectural Plans/Designs

APPENDIX 2
American Institute of Architects (AIA) Form - Sample

APPENDIX 3
Statutes: (Available on Request)

OMB Circular A-110 - Uniform Administrative Requirements for Grants and Agreement with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

OMB Circular A- 122 - Cost Principles for Non-Profit Organizations

OMB Circular A-133 - Audits of Institutions of Higher Education & other Non-Profit Institutions

40 USC 276 Davis-Bacon Act

40 USC 327 Contract Work Hours and Safety Standard Act

Uniform Relocation Assistance and Real Property Acquisition Policies Act

Lead Based Paint Poisoning Prevention Act

24 CFR 35 – HUD Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally-Owned Residential Property being sold, Final Rule

Augusta, Georgia- Richmond County Procurement Policy

Conflict of Interest Affidavit

APPENDIX 4
CONSTRUCTION REQUIREMENTS

1. All construction projects shall comply with Federal, State, and local codes and ordinances, including, but not limited to, the following:
 - A. All work shall be in compliance with the International Building Code current edition of National Electric Code, International Plumbing and Mechanical Code, and ADA 2010 Guidelines.
 - B. Georgia Energy Code International Energy Conservation Code (IECC-2015).
 - C. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596.
 - D. Part 1910 – Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations (Federal Register, Volume 37, Number 202, October 18, 1972).
 - E. Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations (Federal Register, Volume 37, Number 243, December 16, 1972).
 - F. Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).
2. Project Review. All plans, specifications, work write-ups, projected cost estimates, punch lists or other means of outlining work on a particular project will be submitted in writing to HCD for review and approval prior to bidding. HCD Construction and Rehabilitation Inspectors or HCD's agent will review these items for compliance with new construction and/or rehabilitation standards and materials use.
3. Rehabilitation Standards. All rehabilitation work will comply with the "Uniform Physical Condition Standards for HUD Housing." Workmanship and material standards will comply with the Antioch Ministries, Inc. -Richmond County Housing & Community Development Department Contractors Manual and Performance Standards. A copy of this manual is provided to every contractor when included on the HCD Approved Contractors List. A copy is enclosed for inclusion.
4. Inspections. All projects will be inspected and approved by an HCD Construction and Rehabilitation Inspector or HCD's agent prior to release of the funds for that project.

APPENDIX 5
CONTRACTOR ACKNOWLEDGEMENT

Capitalrise LLC acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioner and approval of the Mayor. Under Georgia law, Capitalrise LLC is deemed to possess knowledge concerning HCD ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to HCD under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that Capitalrise LLC may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Capitalrise LLC agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if Capitalrise LLC provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Capitalrise LLC assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia (Laney Walker/Bethlehem Revitalization Project), and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized including, without limitation, all remedies at law or equity. This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

Name

CAPITALRISE LLC, Owner

EXHIBIT A

PROJECT SCHEDULE OF COMPLETION

“VIP” MUST PROVIDE A COMPLETED SCHEDULE OF COMPLETION AS EXHIBIT A- WITH APPROPRIATE PROJECT MILESTONES WITHIN 10 TO 15 DAYS AFTER SIGNING THIS AGREEMENT. THIS SCHEDULE MUST BE PROVIDED IN SUFFICIENT DETAIL TO PERMIT HCD TO MONITOR AND ASSESS PROGRESS IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. A SAMPLE SCHEDULE IS PROVIDED.

EXHIBIT B
WORK WRITE-UP

EXHIBIT C
PROJECT DEVELOPMENT AND MANAGEMENT PROCEDURES

1. HCD must review and approve all new construction work, project specifications and total development cost for each residential development project before work is commenced and before funds can be released for payment reimbursement. Construction payments will be released to “VIP” in accordance with the attached drawdown schedule and budget.
2. HCD will provide the lot on which all new construction efforts will be performed under this Agreement and in connection with the project.
3. With HCD approval, “VIP” may use funds under this Agreement for the following purposes:
 - a. To support development costs as outlined in Item 6 below.
4. Completion delays, remedies, and penalties.
 - a. If the Contractor fails to complete the work within the time frame specified in the contract, plus any authorized delays, HCD may:
 - i. Terminate the contractor in accordance with the “Provisions for Augusta Housing and Community Development Department (HCD)” clause of this contract.
 - ii. Assess liquidated damages of Two Hundred Dollars (\$200) per working day from the schedule of completion to the date of final acceptance of the project. The total amount of liquidated damages will be deducted from the total contract price, plus any change order amounts.
 - b. The contractor shall not be charged with liquidated damages for any delays in the completion of the work due:
 - i. To any acts of the Federal, State, or City/County Government; including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other National, State, or City/County emergency.
 - ii. To any acts of the Owner that hinder the progress of the work;
 - iii. To cause not reasonable foreseeable by the parties in this contract at the time the execution of the contract which are beyond the control and without the fault or negligence of the Contractor; including but not restricted to acts of God; acts of the public enemy; acts of another contractor in the performance of some other contract with the owner; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and weather or unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; and
 - iv. To any delay of the subcontractor occasioned by any other causes specified in subparagraphs A and B above. Provided, however, that the contractor promptly (within 10 days) notifies HCD and “VIP” in writing of the cause of the delay. If the facts show the delay to be properly excusable under the terms of this contract, HCD shall extend the contract time by a period commensurate with the period of authorized delay to the completion of the work as whole, in the form of an amendment to this contract.
5. New Construction Costs and Requirements

- a. “VIP” will provide construction management for the project to ensure that construction work is being carried out in accordance with plans, specifications, and the project budget.
 - b. “VIP” must make sure contractors obtain and post all permits on job site.
 - c. “VIP” must collect progress and final lien releases from the contractor, subcontractors, and material suppliers prior to making a payment to a contractor.
 - d. HCD or its agent may continually inspect each house for contract compliance and to determine the percent of completion prior to processing a draw request and releasing payment. HCD may choose not to release payments if the work being performed is not of acceptable quality to HCD and if the house is not being built or rehabilitated in accordance with plans and specifications, or if the project is not on schedule.
6. Permanent Financing and Sales Prices
- a. The sales price of each home sold in accordance with this Agreement must be based on a formal appraisal. Unless otherwise agreed to by HCD, the sales price of each house shall not exceed the appraised value of the house.
 - b. The purchasers of houses constructed must meet the Augusta, GA requirements.
 - c. Buyers will be required to borrow no less than 80% of the sale prices of the house from a private lending institution unless otherwise agreed to by HCD.



Administrative Services Committee

Meeting Date: 1/31/2023

Emergency – Craig Houghton Water Mitigation

Department:	Central Services Department
Presenter:	Ron Lampkin
Caption:	Receive as information the emergency request for water mitigation and drying of structure at Craig Houghton in the amount of \$64,231.71 by ServPro of Augusta.
Background:	Due to the low temperature experienced during the 2022 Christmas weekend, the pipes that provide water to the fire sprinkler system became frozen and burst, causing leaks throughout the building. These leaks caused water damage to the structure and could potentially cause mold. It is imperative that the remediation process takes place to preserve the integrity of the structure.
Analysis:	ServPro of Augusta will perform the mitigation to prevent further damage to the facility.
Financial Impact:	\$64,231.71; GL: 101016223 / 53.19120
Alternatives:	A – Receive as information B – Do not receive as information
Recommendation:	Receive as information the emergency request for water mitigation and drying of structure at Craig Houghton in the amount of \$64,231.71 by ServPro of Augusta.
Funds are available in the following accounts:	GL: 101016223 / 53.19120




Central Services Department

Ron Lampkin, Interim Director
Maria Rivera-Rivera, Deputy Director

2760 Peach Orchard Road, Augusta, GA 30906
(706) 828-7174 Phone (706) 796-5077 Fax

MEMORANDUM

TO: Geri Sams, Director, Procurement Department

FROM: ~~Ron Lampkin~~, Interim Director, Central Services Department


DATE: December 29, 2022

SUBJECT: Emergency Memo – Craig Houghton Sprinkler Mold Remediation

In accordance with §1-10-57 Emergency Procurements, we respectfully ask you to accept this communication as notification of an emergency at Craig Houghton Elementary regarding mold remediation.

During the previous weekend, due to the low temperatures, the pipes that provide water to the sprinklers at Craig Houghton Elementary became frozen and then burst, causing leaks throughout the building. These leaks could potentially cause water damage and mold within the facility. Our current environmental concerns heighten the need to keep the facility and air clean. As per CDC recommendations, good air quality needs to be maintained in public facilities to reduce the spread of communicable vires/diseases thus prevent a threat to public health.

Please process a purchase order for ServPro of Augusta in the amount of \$64,231.71 for the mold remediation services.

If you have any questions or concerns, please contact the Central Services Department.

RL/mcrr

AUGUSTA-RICHMOND COUNTY GEORGIA
PURCHASING DEPARTMENT

REQUISITION

DEPARTMENT NAME: Central Services Department
DEPARTMENT NUMBER: 101016223/53.11110
DEPARTMENT HEAD: 

REQUISITION:
REQUISITION DATE: 12/29/22
PURCHASE ORDER NUMBER:
PURCHASE ORDER DATE:

		VENDOR		NAME OF BIDDER		NAME OF BIDDER		NAME OF BIDDER	
		PHONE NUMBER		ServPro					
		QUOTED BY		(706) 750-0200					
ITEM NO	DESCRIPTION	Quantity	Unit Price	Total Price	Unit Price	Total Price	Unit Price	Total Price	
1	Mold Remediation Services Needed at Craig Houghton Elementary	1	\$ 64,231.71	\$ 64,231.71					
2									
3									
4									
5									
6	*Emergency								
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
21									
22									
TOTAL BID			\$	64,231.71					
SHIPPING CHARGES									
DELIVERY TIME FROM RECEIPT OF PURCHASE ORDER									



Official Proposal: Prepared for Maria Rivera-Rivera

Date: 01/04/2022
Craig Houghton Elementary School
1001 4th Street, Augusta, GA 30901

Qualifications

SERVPRO® of AUGUSTA is the national leader in Water Mitigation, Fire Restoration, Mold Remediation, Disinfection Services and Bio-Hazard Cleanup. Our expertise equips us to quickly restore commercial structures that have been impacted by flooding, fire, mold, and biohazard events. We dispatch expert teams and industry-leading equipment directly from our Augusta Offices and can respond onsite to most CSRA venues within 30 minutes to address small or large-scale events. ***We are available 24/7/365 to respond quickly to the call of any emergency or large-scale cleanup.***

Required Scope of Services



Cleaning Requirements Details:

The following outlines the minimum requirements of the specifications. Vendors proposed service is to include but not limited to the following:



Clean up and removal of water damage

- Removal of all building materials containing water damage.
- Application of an EPA approved anti-microbial agent.
- Pump elevator shaft
- Set fans and dry for a minimum of 3 days.
- Monitor equipment.
- Clean affected areas.
- Another application of an EPA approved anti-microbial agent.
- Perform post remedial visual inspection in the areas.



AFFECTED Areas - Defined

- Hallways
- Downstairs classrooms
- Upstairs classroom
- Ceiling
- Any other affected areas

TOTAL INVESTMENT:

Total Cost for Preliminary Cleaning/Demo Services per included scope:

\$64,231.71

*Pricing based on receipt of full payment within 2 weeks of final visual inspection/walk-through.

*SERVPRO® of Augusta presently serves or has agreements in place with the U.S. Army, all major healthcare systems in the CSRA, Augusta University, and global companies operating in an around the CSRA. Services range from haz-mat cleanup to water/fire/mold/disinfection projects.

"Like it never even happened."

www.servproaugusta.com

(706) 750-0200

office@servproaugusta.com



Administrative Services Committee Meeting

Meeting Date: 01/31/2023

GA State Veterans Cemetery

Department:	Administrator's Office
Presenter:	Don Clark, Co-Chair, Ga State Veterans Cemetery (Augusta) Committee
Caption:	Receive as information an update on the Georgia State Veterans Cemetery.
Background:	N/A
Analysis:	N/A
Financial Impact:	N/A
Alternatives:	N/A
Recommendation:	N/A
Funds are available in the following accounts:	N/A
<u>REVIEWED AND APPROVED BY:</u>	N/A



Administrative Services Committee

Meeting Date: January 31, 2023

Minutes

Department:	Clerk of Commission
Presenter:	N/A
Caption:	Motion to approve the minutes of the Administrative Services Committee held on January 9, 2023.
Background:	N/A
Analysis:	N/A
Financial Impact:	N/A
Alternatives:	N/A
Recommendation:	N/A
Funds are available in the following accounts:	N/A
<u>REVIEWED AND APPROVED BY:</u>	N/A



Administrative Services Committee Meeting Commission Chamber - 1/9/2023

ATTENDANCE:

Present: Hons. Garnett Johnson, Mayor; Scott, Chairman; Lewis, Vice Chairman; Johnson, member.

Absent: Hon. Frantom, member.

ADMINISTRATIVE SERVICES

1. Motion to approve the lease of two sewer vacuum trucks for the Augusta Utilities Department - Construction and Maintenance Division from Environmental Products of Georgia in the amount of \$965,800.00 for the lease and authorize the Mayor and Law Department to execute any necessary documents (ITB 22-275).

**Item
Action:**
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

2. Motion to approve the Animal Service Department to affix custom decals for the Mobile Adoption Van.

**Item
Action:**
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

3. Motion to approve Augusta's legislative agenda priorities for the 2023 legislative session.

**Item
Action:**
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

4. Award the contract for partial replacement of the carpet in the Main Library on Telfair Street to CCS Flooring Tech, LLC of Augusta in the amount of \$34,984.35.

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

5. Approve Change Order # 3 as presented by 2KM in the amount of \$104,259.77 to complete the renovation of the three-story structure on Fenwick Street for DFACS.

Item
Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

6. Receive an update on the city's current Disparity Study and recommended next steps. **(Requested by Commissioner Stacy Pulliam)**

Item
Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
	It was the consensus of the committee that this item be received as information without objection.			

7. Discuss filling the four ARC vacancies on the DBHDD Advisory Council. (Requested by Commissioner Stacy Pulliam)

Item
Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
	It was the consensus of the committee that this item be received as information without objection.			

8. Motion to approve Augusta, Georgia's receipt of \$3,960,000.00 from the Office of Lead Hazard Control and Healthy Homes (OLHCHH) U.S. Department of Housing and Urban Development (HUD). Motion to a) Accept OLHCHH funds from HUD b) Allow HCD to move forward with implementation of recommended usage plan, c) Allow HCD to hire three (3) additional FT staff persons (concurrent with the term of grant)/provide supplemental pay (where applicable) for all affected employees, and d) Instruct Finance department to add available funding to HCDs budget for immediate use and implementation (upon receipt).

Item
Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Delete				Passes

Motion to approve deleting this item from the agenda.
Motion Passes 3-0.

Commissioner Jordan Johnson
Commissioner Francine Scott

Item 8.

9. Motion to approve Housing and Community Development Department's (HCD's) request to provide additional funding to support the construction of three (3) single family ADA accessible rental units on Lee Beard Way through Laney Walker Development Corporation.

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

10. Motion to approve HCD's request for partnership with WDC and BBNCT to identify/develop up to thirty (30) workforce units at 1102 Laney Walker Blvd within Laney Walker/Bethlehem.

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

11. Motion to approve HCD's contract procedural process relative to authorization of Agreements/Contracts/HUD Forms related to HCD's federally funded programs for the first quarter of calendar year 2023.

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

12. Motion to approve HCD's Laney Walker/Bethlehem Revitalization Project contract procedural process relative to authorization of Agreements/Contracts/Task Orders, for the first quarter of calendar year 2023.

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

13. Motion to approve the minutes of the Administrative Services Committee held on November 29, 2022.

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

Item 8.

14. Motion to approve the second year of a three-year contract with Holland & Knight LLP for State Lobbying and Legislative Representation Services (22-300) for a total not to exceed \$102,000.00 for the year.

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

15. **Discuss/approve** amending the current Administrator's Job Description **1)** six (6) months of experience as an Administrator **2)** advertising for the position starting December 1, 2022 for 30-45 days and **3)** with interviews starting February 1, 2023. **(Referred from the September 6, 2022 Commission meeting)**

Item Action:
Approved

Motions

Motion Type	Motion Text	Made By	Seconded By	Motion Result
Approve	Motion to approve amending the current Administrator job description by requiring six months of experience as an Administrator, start advertising the position on March 1 and with interviews to begin 60 days thereafter. Motion Passes 3-0.	Commissioner Jordan Johnson	Commissioner Francine Scott	Passes

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