

**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.

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