



Procurement Department

Andy Penick, CPSM, GCPM, GCPA, MBA
Procurement Director

STATE OF GEORGIA
AUGUSTA, GEORGIA

CONTRACT # _____

Contract For Professional Services

for the Provision of

Water Park Feasibility Study

ARTICLE #101 – INTRODUCTION

This Contract for Water Park Feasibility Study Services for the Augusta Recreational and Parks Department (hereinafter "Services") is made and entered into as of _____ (execution date) is by and between Augusta, Georgia (Hereinafter "Augusta", "CITY") located at 535 Telfair Street, Suite 605, Augusta GA 30901, and CPL Architects, Engineers and Landscape Architect, D.P.C. (P.C.) which is principally located at 3011 Sutton Gale Drive, Suite 130, Suwanee, GA 30024 (hereinafter "CONSULTANT").

WHEREAS CONSULTANT is an entity that is legally registered and qualified and holding any such licenses and certifications as may be required to render Services to do business in the State of Georgia. CITY and CONSULTANT are known individually as a "Party" and collectively as the "Parties", and,

WHEREAS nothing contained in this Contract shall be construed to convert the CONSULTANT or any of its employees, agents, into a partner, employee, or agent of the CITY, nor shall either Party to this Contract have any authority to bind the other in any respect, and,

WHEREAS CONSULTANT represents that it complies with the State of Georgia requirements for corporations and has signified a willingness to provide Services to the CITY and the CITY has relied on such representation, and,

WHEREAS the Parties mutually desire to enter into this Contract to document the provision of Services by the CONSULTANT to the CITY in exchange for payment as compensation; and,

WHEREAS this contract will become legally binding upon signature and execution by both Parties; to include the RFP# 26-905, its Exhibits, and the Bidder's response., and

WHEREAS any documents, including bid advertisements, exhibits, attachments, plans, maps, or other, are all incorporated herein by reference, and,

NOW THEREFORE, and in consideration of the mutual promises, terms, conditions, covenants, and agreements made as expressed and contained herein, or attached, incorporated, and made a part hereof, and other good and valuable consideration expressed by a valid offer and acceptance, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereto agree as follows:

ARTICLE #102 – CONTRACT

- A. CONSULTANT agrees to provide the Services to the CITY as detailed in the RFP #26-905 Document as SECTION III SCOPE OF SERVICES, and in the Letter of Engagement. Unapproved work outside the Scope of Services may not be compensated.
- B. CITY agrees to pay as compensation any fees listed under Compensation, which shall be fixed and firm for the duration of the contract unless modified by mutual consent via Amendment or Renewal.

ARTICLE #103 – NOTICES

To the extent that either Party to this Contract is required to provide notice(s) to the other Party in compliance herewith, then the Party shall direct notice(s) to the following people:

ISSUING OFFICER

Andy Penick, CPSM
Director of Procurement
Augusta, Georgia Government
535 Telfair Street, Suite 605,
Augusta, GA 30901
Ph: (678) 684-2482
Email: apenick@augustaga.gov

CITY PROJECT MANAGER

Tameka D. Williams
Director
Augusta Recreation & Parks
2027 Lumpkin Road
Augusta, GA 30906
Office (706) 821-2400
tdwilliams@augustaga.gov

CONSULTANTS CONTACT INFORMATION

Contact Name(s): James L. Sipes, Project Manager, CPL
Company Name: CPL Architects, Engineers and Landscape Architect, D.P.C..
Physical Address: 3011 Sutton Gate Drive, Suite 130, Suwanee, GA 30024 missing address
Phone(s): Mobile: (762) 383-4820, Office
Direct: [678.684.2482](tel:678.684.2482)
Email(s): JSipes@cplteam.com
Remit to Address (if different): N/A

ARTICLE #104 – NON-EXCLUSIVE RIGHTS

The Contract is not exclusive. The CITY reserves the right to select other CONSULTANTS to provide the Services similar to those described in this Contract during the term of the Contract should the need arise, or the CONSULTANT fails to

perform.

ARTICLE #105 – CONTRACT TERM

Consultant will commence performance no later than 30 days after the execution of this Contract. Consultant will complete performance of the Contract within 180 days after the Commencement Date.

Task	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Task 1. Project Management and Engagement Plan						
Task 2. Community Engagement						
Task 2.1. Community Survey						
Task 2.2. Focus Groups (2) with Officials and Stakeholders						
Task 2.3. Public Community Meetings and Workshops (3)						
Task 3. Site Analysis — What Do You Have?						
Task 4. Concept Development						
Task 5. Financial Modeling and Implementation Planning — Can It Work?						
Task 6. Final Feasibility Report and Presentation						
Task 6.3. Final Presentation to the Augusta-Richmond County Commission.						

ARTICLE # 106 - COMPENSATION:

- A. The CITY will pay the CONSULTANT for the Services provided pursuant to this Contract and in accordance with the prices quoted and conditions set forth in the Bidder's response on Waterpark Feasibility Study Request for Clarification For Fee Proposal, dated 07/30/2026 and show below, for the total sum not to exceed; **Seventy-Nine Thousand Twenty Dollars and 00/100 (\$79,020.00)**, which is incorporated into this Contract as if fully set forth herein, for services outlined below.

SCOPE OF SERVICES - CLARIFICATION FOR FEE PROPOSAL		
Task	Description	Fee Proposal
A	Market & Demand	\$ 3,780
B	Site Analysis	\$ 9,833
C	Concept Development	\$ 21,831
D	Financial Analysis	\$ 9,753

E	Reserved (Community Engagement)	\$ 14,380
F	Risk Analysis	\$ 2,300
G	Implementation Plan	\$ 3,130
H	Reserved (Illustrations	\$ 1,233
I	Final Deliverables	\$ 12,780

- B. **Payments will be made monthly, in arrears, in the sum of \$13,170,** to the CONSULTANT after acceptance of the CONSULTANT's delivered Services by the CITY, and after receiving receipt of undisputed invoices to the CITY.
- C. Prices quoted shall be firm and fixed throughout the term of this Contract, unless otherwise Amended or Modified by mutual agreement.
- D. Cost may be prorated for Services added or removed under this Contract to align cost with the remaining term of Contract.
- E. It is understood that this bid or proposal is made without collusion or fraud. CONSULTANT understands and acknowledges that collusive bidding is a violation of state and federal law and may result in the cancellation of the Contract.

ARTICLE #107 – REMEDIES AND CONTRACT PERFORMANCE

- A. In the event that Party to this Contract breaches this Contract, including failure to meet the timetables set forth herein, the non-breaching Party shall provide a written Notice-to-Cure to the breaching Party which describes the breach of this Contract. The breaching Party shall have thirty (30) days from the date of receipt of the written Notice-to-Cure the breach or to otherwise negotiate a resolution of the breach.
- B. If the breach has not been cured and the Parties hereto have not resolved the issue described in the Notice-to-Cure by thirty (30) days after receipt of the letter, the Party authoring the letter shall be entitled to seek any and all remedies allowed by Georgia law, including damages, equitable relief, declaratory relief, specific performance, and/or relief as to any bonds issued hereon. Additional provisions are:
 - 1. Delay or Impossibility of Performance. Any failure or delay must be beyond the reasonable control of and without the fault or negligence of the CONSULTANT. If the Services to be provided to the CITY are interrupted by a force majeure event, as defined below, the CITY will grant an equitable extension of all affected Contract deadlines and completion dates for the period of delay attributable to the Force Majeure Event. If delay results from a third-party's negligent conduct or failure to perform, the CONSULTANT shall not be excused from compliance with the terms and obligations of the Contract.
 - 2. Neither Party shall be held liable or responsible to the other Party nor

be deemed to have defaulted under or breached this Contract for failure or delay in fulfilling or performing any obligation under this Contract when such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party including, but not limited to, fire, floods, embargoes, acts of war, civil unrest, insurrections, riots, strikes, lockouts or other labor disturbances, or acts of God; provided, however, that the Party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs because of force majeure.

3. Omitted Reserved
4. Obligations Beyond Contract Term. The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to *ARTICLE #108 – TERMINATION PROVISIONS*.

ARTICLE #108 – TERMINATION PROVISIONS

The CITY may terminate this Contract by providing thirty (30) days' written Notice-of-Termination to the CONSULTANT at any time. Should the CITY terminate this Contract prior to the date of automatic termination, CONSULTANT shall provide the CITY with all deliverables up to the date of termination thirty (30) days after the Notice-of-Termination is issued. The CITY shall pay the CONSULTANT for all work properly performed in compliance with the terms of this Contract up to the date of termination. In the event the City reuses or modifies the deliverables without retaining the Consultant and its consultant(s), the Consultant and its consultant(s) shall not be responsible or liable for any claims, damages, or losses arising solely from such reuse or modification.

- A. **Termination for Convenience.** Following thirty (30) days' written notice, the CITY may terminate the Contract in whole or in part for any reason without the payment of any penalty or incurring any further obligation to the CONSULTANT.
- B. **Termination for Cause.** The occurrence of any of the following events shall constitute cause for the CITY to declare the CONSULTANT in default of its obligations under the Contract:
 1. The CONSULTANT fails to deliver or has delivered nonconforming Services or fails to perform, to the CITY's satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract including, but without limitation, the expressed warranties made by the CONSULTANT.
 2. The CITY determines that CONSULTANT's unsatisfactory performance substantially endangers completion or that default is likely to occur.
 3. The CONSULTANT fails to make substantial and timely progress toward performance of the Contract.
 4. The CONSULTANT becomes subject to any Bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including Bankruptcy laws; the CONSULTANT terminates

or suspends its business; or the CITY reasonably believes that the CONSULTANT has become insolvent or unable to pay its obligations as they accrue consistently with applicable federal or state law.

5. The CONSULTANT has failed to comply with applicable federal, state, and local laws, rules, CITY ordinances, regulations, and orders when performing within the scope of the Contract.
6. The CONSULTANT has engaged in conduct that materially and adversely exposed the CITY or the State to actual or reasonably anticipated liability.
7. The City's material breach of the terms of the Contract by the CITY upon CITY's failure to cure such material breach after written notice thereof has been delivered in accordance with ARTICLE #108.C below constitutes cause for the CONSULTANT to declare that the CITY is in default of its obligations under the Contract.

C. **Notice of Default.** If either Party causes any of the default events set out in *ARTICLE #108 – TERMINATION PROVISIONS*, then either Party shall issue a written Notice-of-Default to the Party that causes one (1) or more of the default events requesting that the breach or noncompliance be remedied within the period of time specified in the Notice-of-Default. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the non-breaching Party may:

1. Immediately terminate the Contract for default without additional written notice; and/or,
2. In the event of a breach by the CONSULTANT, the CITY may procure substitute Services from another source and charge the difference between the Contract and the substitute Contract to the defaulting CONSULTANT; and,
3. Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

D. **Termination Due to Non-Availability of Funds.** This Contract will terminate immediately and absolutely if the CITY determines that adequate funds are de-appropriated such that the CITY cannot fulfill its obligations under the Contract, such determination being at the CITY's sole discretion and conclusive. CITY agrees to provide prompt written notice to CONSULTANT in the event of any de-appropriation.

E. **Termination due to Failure of CONSULTANT to Act.** The CITY may terminate the Contract for any of the following reasons effective immediately without advance notice:

1. If the CONSULTANT must be certified or licensed as a condition precedent to providing the Services, the revocation, suspension, or other loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect.
2. The CITY determines that the actions, or failure to act, of the CONSULTANT, its agents, employees, have caused, or reasonably could cause, life, health, or safety to be jeopardized.

3. The CONSULTANT furnished any statement, representation, or certification in connection with the Contract or the bidding process, which is materially false, deceptive, criminal, or maliciously incorrect.
- F. **Payment Limitation in Event of Termination.** In the event of termination of the Contract for any reason by CITY, the CITY shall pay only those amounts, if any, due and owing to the CONSULTANT for Services actually received and accepted by the CITY up to and including the date of termination of the Contract and for which the CITY is obligated to pay pursuant to the Contract.
- G. **CONSULTANT's Termination Duties.** Upon receipt of a Notice of Termination, the CONSULTANT shall:
1. Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs and furnish a report within thirty (30) days of the date of Notice of Termination describing the status of all work under the Contract including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the CITY may require, unless the City has been declared in default of its obligations under the Contract. What constitutes default by City?
 2. Immediately cease to use and return to the CITY any personal property or materials, whether tangible or intangible, provided by the CITY to the CONSULTANT.
 3. Comply with the CITY's instructions for the timely transfer of any active files and work product produced by the CONSULTANT under the Contract, unless the City has been declared in default of its obligations under the Contract.
 4. Cooperate in good faith with the CITY, its employees, agents, and CONSULTANTS during the transition period between the Notification of Termination and the substitution of any replacement CONSULTANT, unless the City has been declared in default of its obligations under the Contract.
 5. CONSULTANT is to immediately return any payments made by the CITY for goods and services that were not delivered by the CONSULTANT.

ARTICLE #109 – NO DEFENSE OR INDEMNIFICATION BY CITY

The Parties agree that the CITY shall not be responsible for defending or indemnifying any CONSULTANT from any claim brought by any third party against the CONSULTANT.

ARTICLE #110 – ASSIGNMENT AND DELEGATION BY CONSULTANT

The CONSULTANT shall not assign or delegate this Contract, or any performance required by it, in whole or in part, without the prior expressed written consent of the CITY.

ARTICLE #111 – USE OF THIRD PARTIES

This Contract is for the benefit of the Parties hereto only and is not intended to benefit any third party or give rise to any duty or causes of action for any third party. All restrictions, obligations, and responsibilities of the CONSULTANT under

the Contract shall also apply to third parties, if allowed in writing by the CITY. Any Contract with a third-party must also preserve the rights of the CITY.

ARTICLE #112 – ENTIRE CONTRACT

This Contract, as executed and approved, shall constitute the entire agreement between the Parties and supersedes all other prior and contemporaneous statements, agreements, and understandings between the Parties. No written or oral statements, agreements, or understandings that are not set out, referenced, or specifically incorporated in this Contract shall in any way be binding or of effect between the Parties.

ARTICLE #113 – SEVERABILITY

If any paragraph, sub-paragraph, sentence, clause, phrase, or portion of this Contract is declared invalid or unconstitutional by any Court of competent jurisdiction or if the provisions of any part of this Contract as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the remaining portions of this Contract not so held to be invalid or the application of this Contract to other circumstances not so held to be invalid.

ARTICLE #114 – RECORDS

A. Public Records Request. The Georgia Open Records Act, as provided in O.C.G.A. § 50-18-70 et seq, requires procurement records and all other records received by or prepared or maintained on behalf of the CITY shall be made open to public inspection unless otherwise provided by law.

B. Record Retention and Access. The CONSULTANT shall maintain books, records, and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the CITY throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.

ARTICLE #115 – ADDITIONAL TERMS AND CONDITIONS

The CITY shall not be bound by any terms and conditions included in any CONSULTANT's sales-orders, literature, packaging, invoice, catalog, brochure, technical data sheet, on-line representation, warranties or service level agreement, or other document which attempts to impose any condition in variance with or in addition to the terms and conditions contained herein.

ARTICLE #116 – WAIVER

The failure of any Party hereto to seek a remedy for any alleged breach of this Contract shall not constitute a waiver of any claim, cause of action, or remedy allowed by Georgia law for breach thereof.

ARTICLE #117 – CONSULTANT AND CITY RIGHTS AND OBLIGATIONS

- A. The CITY has the right at any time to require the CONSULTANT to put an immediate stop to any procedure, or the use of any equipment, chemical, material, personnel, etc. considered by the CITY to be hazardous or toxic to people, buildings, or surfaces. The CONSULTANT will utilize acceptable substitutes approved by the CITY as quickly as possible. In the event of such replacement, CONSULTANT shall (1) notify CITY of any resulting replacement, (2) introduce the individual serving as the replacement to CITY, and/or (3) provide CITY with a résumé and any other information regarding the individual that may be reasonably requested by CITY.
- B. The CITY has the right to require the CONSULTANT to reassign or remove any employee from the premises temporarily or permanently when, in the CITY's sole opinion, the employee is not suitable. The CITY's decision shall be final, and CONSULTANT will remove the employees immediately and replace them with a person of at least equivalent training, experience, and requisite qualifications as quickly as possible, subject to the CITY's approval.
- C. CONSULTANT agrees to obtain prior written approval from the CITY for the use of sub-CONSULTANT(s) to provide the Services described in Scope of Services prior to sub-CONSULTANT(s) performance of work. CONSULTANT agrees to supply the CITY with a copy of any contract it enters into with any sub-CONSULTANT. Such non-disclosure of sub-CONSULTANTS may result in non-payment for Services.

ARTICLE #118 – INSURANCE REQUIREMENTS (If required)

The CONSULTANT must procure and maintain insurance policies at the CONSULTANT's own expense and must furnish the CITY with a certificate of insurance (COI) providing evidence of proof of coverage at least in the amounts indicated in this subsection. The COI must list "Augusta, Georgia" as the certificate holder and as an additional insured under the commercial general, automobile, and umbrella liability policies as follows: "Augusta, Georgia its Board of Commission, officers, employees, servants, and agents, located at 535 Telfair Street, Augusta, GA 30901". The policy must protect the CONSULTANT and the CITY (as an additional insured) from any claims for bodily injury, property damage, or personal injury covered by the indemnification obligations set forth herein throughout the duration of the Contract. The CONSULTANT must maintain the following insurance coverage during the term of the Contract, in at least the minimum amounts set forth below, to cover all loss and liability for damages or destruction of property caused by or arising from any and all services carried on and any and all work performed by the CONSULTANT pursuant to this Contract:

Workers' Compensation Insurance:

\$1,000,000 Bodily Injury by Each Accident

Additional Provisions: Waiver of Subrogation. The insurer agrees to waive all rights of subrogation against Augusta, Georgia Board of Commission, its elected or appointed officers, officials, agents, authorized volunteers, and employees for losses paid under the terms of this policy which arise from work performed by the

Named Insured for Augusta, Georgia. This provision applies regardless of whether or not Augusta, Georgia has received a waiver of subrogation from the insurer.

General Liability Insurance: Required for all service contracts.

A. \$1,000,000 Each Occurrence

B. \$2,000,000 General Aggregate

Commercial Auto Liability Insurance: Required for all service contracts, except for goods and/or services that are remote in nature and/or are delivered by a professional delivery service.

\$1,000,000 Combined Single Limit

Additional Provisions:

A. Uninsured motorists' coverage should be equal to the per occurrence limit except for contracts with other governmental entities.

B. Coverage shall be included for any owned, leased, hired, or non-owned autos.

Professional Liability Insurance (Errors & Omissions): Required for all professional service contracts. This shall include any consultants, medical, legal, technical, insurance agents, or other professions that require proper licenses.

A. \$1,000,000 Each Claim/Wrongful Act

B. \$2,000,000 General Aggregate

ARTICLE # 119 – NO WAIVER:

A. **Authority to Enter into Contract.** The CONSULTANT represents and warrants that it has full authority to enter into and perform its obligations under the Contract and that the Contract constitutes a legal, valid, and binding obligation upon the CONSULTANT in accordance with its terms. The representatives of the parties hereto also represent and warrant that they are authorized to sign this Contract on behalf of each party hereto."

B. **Solicitation.** The CONSULTANT warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.

C. **Vehicles and Equipment.** Except for any specified CITY Owned Equipment and Vehicles listed herein, CONSULTANT warrants that no CONSULTANT employees, sub-CONSULTANTS or others will not use CITY owned vehicles or equipment in the performance of this Contract without express written consent. CONSULTANT shall be responsible for providing all transportation necessary to deliver Services under the Contract.

ARTICLE # 120 – INTELLECTUAL PROPERTY RIGHTS and OWNERSHIP:

The CONSULTANT agrees it will not use the name or any intellectual property, including but not limited to, CITY trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the CITY.

ARTICLE #121 – CONTRACT AMENDMENTS AND MODIFICATION

- A. This Contract may only be modified, amended, or changed in writing and fully executed by both Parties hereto. This Contract constitutes the sole and entire Contract and understanding between the Parties as to the subject matter hereof, and no verbal promises have been made by either Party in relation hereto.
- B. CONSULTANT 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, CONSULTANT is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of CONSULTANT'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 CONSULTANT may be precluded from recovering payment for such unauthorized goods or services. Accordingly, CONSULTANT agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the CONSULTANT 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 CONSULTANT. CONSULTANT 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.

ARTICLE #122 – CITY PAYMENT TO CONSULTANT

- A. Upon Contract execution, the CITY will issue a LETTER OF ENGAGEMENT and a Purchase Order ("PO") to the CONSULTANT. The terms of this Contract shall be incorporated by reference into any PO(s) issued prior to the expiration or termination of this Contract. The CITY will issue the LETTER OF ENGAGEMENT and PO(s) by electronic mail (e-mail) to the CONSULTANT's representative in ARTICLE #103 – NOTICES.
- B. The CONSULTANT shall not deliver any Services, equipment, devices, or components thereof until authorized in writing by the CITY. Any work including, but not limited to, travel, preliminary meetings, planning, etc. performed outside of the terms and conditions of and before the issuance of a Notice-to-Proceed (NTP) will not be considered for payment. CONSULTANTS are not to begin work or ship any product on any verbal communication from the CITY. The CITY will not be liable for payment for any work or product with the issuance of a verbal communication.

- C. The Scope of Services shall remain in effect from the ENGAGEMENT LETTER date to substantial completion of the project. The Parties agree that the CITY will not pay or otherwise compensate the CONSULTANT for any Services, materials, equipment, devices, or components thereof outside of the Scope of Work and/or beyond the term of this Contract, unless specifically authorized in writing as evidenced by an amendment pursuant to ARTICLE #106 – CONTRACT AMENDMENTS AND MODIFICATION, a time extension letter, or otherwise authorized by the CITY.
- D. Invoice/Payment
1. CONSULTANT shall invoice the CITY via email each month sent solely to Accounts Payable at 535 Telfair Street, , Augusta, GA 30901 and only after the CITY inspects and accepts the Services provided. Receipt of the Services and/or materials do not constitute acceptance. Invoice amounts shall not exceed the CONSULTANT's pricing set forth in Fee Proposal).
 2. Each properly prepared invoice must be sent in accordance with the instructions listed on the PO. Each invoice shall include the CONSULTANT's current "Remit to" address, a description of the Services provided, the invoice amount, the Contract number, and the associated PO number issued.
 3. Standard payment terms are net 30 days (N30) in arrears from the date the invoice is accepted. The CITY does not pay for services not yet received but only in arrears except by written acceptance of pre-payment or deposit.
 4. The CONSULTANT shall be solely responsible for paying all costs, expenses, and charges it incurs in connection with its performance under the Contract.
 5. CONSULTANT must submit Applications for Payment (Pay Apps) in accordance with the Conditions of the Contract.
 6. If monthly progress payments are agreed upon, then CITY will make such payments upon inspection of services completed by the CITY's Project Manager. Additionally, the CITY may employ Engineers of Record.
- E. Unsatisfactory Performance/Delay of Payment
- If the CITY determines that the quality of the Services provided are deficient, unacceptable, or unsatisfactory the CITY's Project Manager identified in ARTICLE #103 – NOTICES shall issue a written Notice-to-Cure to CONSULTANT. CONSULTANT agrees that upon receipt of the written Notice-to-Cure it shall make every effort to correct the deficiency(ies) within the timeframe prescribed therein. If the CONSULTANT fails to timely correct the deficiency(ies), the CITY reserves the right to delay or deny payment pursuant to this ARTICLE or terminate the Contract pursuant to ARTICLE #108 – TERMINATION PROVISIONS.
- F. Delay of Payment Due to CONSULTANT's Failure. If the CITY determines that the CONSULTANT has failed to perform or deliver any Services as required by the Contract, the CONSULTANT shall not be entitled to any

compensation for disputed amounts under the Contract until such Services are delivered and accepted. In this event, the CITY may withhold that portion of the CONSULTANT's compensation, which represents payment for Services that were not delivered. To the extent that the CONSULTANT's failure to perform or deliver in a timely manner causes the CITY to incur actual documented costs, the CITY may deduct the amount of such costs incurred from any amount payable to CONSULTANT. The CITY's authority to deduct such incurred costs shall not in any way affect the CITY's authority to terminate the Contract.

- G. Set-Off Against Sums Owed by the CONSULTANT. If the CONSULTANT owes the CITY any sum under the terms of this Contract, pursuant to any judgment or pursuant to any law, the CITY shall pay all undisputed amounts when due, and any setoff shall be limited to the amount reasonably supported by documentation.
- H. Final Payment. CONSULTANT shall issue an invoice for final payment to the CITY no later than thirty (30) days following the expiration or termination date of the Contract.
- I. The CONSULTANT shall not factor or assign payments to another entity or a financial institution. The CITY will only pay the Party with whom it is contracted. The CITY will not pay for a third party under any circumstances.

ARTICLE #123 – PERFORMANCE AND PAYMENT BONDS (if required)**NOT REQUIRED FOR PROFESSIONAL SERVICES.**

ARTICLE #124 – RETAINAGE – NOT REQUIRED FOR THIS PROJECT.

ARTICLE #125 – VENUE AND GOVERNING LAW

The Parties agree that this Contract shall be interpreted, construed, and enforced in accordance with the laws of the State of Georgia. Should either party bring a legal suit to enforce the terms of this Contract, including suit in equity, the Parties agree and consent to file any such suit in the Superior Court of Augusta, Georgia.

ARTICLE #126 – NOTICE OF INTENT TO LITIGATE

CONSULTANT hereby agrees not to file any civil action of disputes or claims relating to the Contract except after first giving thirty (30) days written notice to the CITY of the claim and the intent to initiate a civil action.

ARTICLE #127 – GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT

- A. By signing this Contract, the CONSULTANT certifies that prior to and throughout the performance of all applicable work under this Contract it will remain in full compliance with all federal and state immigration laws including, but not limited to, 8 U.S.C. § 1324a and the Georgia Security and Immigration Compliance Act (O.C.G.A. §13-10-90 et seq.), as amended by the Illegal Immigration Reform and Enforcement Act of 2011 regarding the verification of employment eligibility of employees under the Immigration Reform and

Control Act of 1986.

- B. CONSULTANT will ensure that only persons who are citizens or nationals of the United States or non-citizens authorized under federal immigration laws are employed to perform services under this Contract or any subcontract or sub-subcontract hereunder.
- C. CONSULTANT further certifies its compliance with the aforementioned federal and state immigration laws set forth by signing a sworn affidavit, the Georgia Security and Immigration Compliance Act Affidavit (herein known as Exhibit E – E-Verify Affidavit), notarized by an Official Notary Public and incorporated herein by reference providing services pursuant to this Contract.

ARTICLE #128 – ORDER OF PRECEDENCE

In the event of any inconsistency, ambiguity, or conflict among the specific provisions of the Contract and the CONSULTANT's response, the order of precedence shall be as follows:

- A. Any amendments to the Contract, including all exhibits thereto.
- B. The Contract itself, including all exhibits thereto.
- C. Attachments appended to the Contract.
- D. All other Contract attachments appended to the Contract.

ARTICLE #129 – CONTRACT EXHIBITS AND ATTACHMENTS

The Parties mutually acknowledge that all exhibits and attachments listed below are made a part of this Contract, as though expressly written in the solicitation documents and the Bidder's response, are herein incorporated by reference.

ARTICLE #130 – SALES TAX EXEMPTION STATUS

The CITY is exempt from State of Georgia Local Sales and Use Tax. The Consultant understands and acknowledges that they are responsible for any sales and use tax they may incur. The Consultant will not charge the CITY for any sales and use tax as a separate line item. The CONSULTANT may request a copy of the CITY's Georgia Sales and Use Tax Exemption Certificate.

ARTICLE #131 – HOLD HARMLESS AGREEMENT

The successful respondent hereby agrees to indemnify, hold free and harmless CITY of Augusta Government, CITY Commissioners, its agents, servants, employees, officers, directors, elected officials, or any other person(s) against any loss or expense.

This includes attorney fees because of any liability imposed by law upon the CITY, except in cases of the CITY's sole negligence, sustained by any person(s) on account of bodily injury or property damage arising out of or in the consequence of this Contract.

ARTICLE #132 – NOT A JOINT VENTURE

The CITY shall not be bound by any terms and conditions included in any CONSULTANT quote, packaging, invoice, catalog, brochure, technical data

sheet, on-line representation, warranties or service level agreement, or other document which attempts to impose any condition in variance with or in the addition to the terms and conditions contained herein. In all cases the CITY's Terms and Conditions shall govern and supersede any CONSULTANT's Terms and Conditions.

ARTICLE #133 – NON-DISCRIMINATION

During the performance of this Contract, the CONSULTANT agrees as follows:

1. **Equal Opportunity.** The CONSULTANT shall not discriminate against any employee, applicant for employment, subconsultant, vendor, or participant in the performance of this Contract on the basis of race, color, religion, sex, pregnancy, national origin, age, disability, genetic information, veteran status, or any other characteristic protected by applicable federal, state, or local law.
2. **Employment Practices.** The CONSULTANT shall ensure that all employment practices, including recruitment, hiring, promotion, compensation, training, discipline, and termination, are conducted without unlawful discrimination.
3. **Access to Programs and Services.** In performing this Contract, the CONSULTANT shall provide services and benefits in a manner that does not unlawfully discriminate against any person and shall comply with all applicable provisions of:
 - a. Title VI of the Civil Rights Act of 1964;
 - b. Title VII of the Civil Rights Act of 1964;
 - c. The Americans with Disabilities Act of 1990 (ADA), as amended;
 - d. Section 504 of the Rehabilitation Act of 1973;
 - e. The Age Discrimination Act of 1975;
 - f. Any other applicable federal, state, and local nondiscrimination laws and regulations.
4. **Subconsultants.** The CONSULTANT shall include this non-discrimination provision in every subcontract and purchase order entered into under this Contract and shall require compliance by all subconsultants and CONSULTANTS.
5. **Compliance and Remedies.** Failure to comply with this provision shall constitute a material breach of the Contract and may result in suspension, termination, withholding of payment, or such other remedies as may be authorized by law or by the terms of the Contract.

The CONSULTANT shall comply with all applicable civil rights requirements and shall not retaliate against any individual for exercising rights protected under federal, state, or local anti-discrimination laws or for participating in any investigation or proceeding concerning alleged discrimination.

ARTICLE #134 – CONTRACT TERMS AND CONDITIONS

1. All purchases must comply with the Augusta-Richmond CITY, GA Official Code

of Ordinances, Guidelines & Procedures, Chapter 10 (as amended).

2. If any conflict or ambiguity arises between the terms and conditions herein and the Official Code of Augusta, the latter will govern.
3. The terms and conditions set forth herein shall supersede and govern all CONSULTANT's terms and conditions or service level agreements.
4. The CITY retains the right to "red line" sections of the CONSULTANT's terms and conditions if such are in conflict with the best interest of the CITY.
5. Acceptance of a Purchase Order ("PO") and delivery of goods or services serves as the CONSULTANT's full and complete acceptance of the CITY's terms and conditions.
6. The terms "CONSULTANT", "CONSULTANT", "bidder", "offeror", "CONSULTANT", "designer", "distributor", "dealer" or "manufacturer" or otherwise purveyor or source of supply or performance of service shall mean one and the same, herein denoted as "CONSULTANT" for goods and "CONSULTANT" for services.
7. The terms "goods", "materials", "commodities", "components", "drawings", "drafts", "renderings", "plans" (physical or digital), software, SaaS, capital asset equipment, vehicles, heavy earth-moving or other equipment (purchased or leased), or other such deliverables are herein denoted as "goods" and shall mean one and the same.
8. "Services" shall mean all services, either financial, advisory, consultative, labor, staff augmentation, construction, rehabilitation, restoration, repair, support or maintenance, communication, telephony, internet, TV or streaming, pest control, grounds maintenance, custodial and janitorial, street or paved surfaces cleaning, drain cleaning, or otherwise where services are offered for consideration.
9. The CONSULTANT shall transfer and deliver all goods or services described by the respective PO for the consideration set forth herein.
10. The CONSULTANT shall only deliver goods and services as described in the respective PO and within the Scope of Work and the CONSULTANT's bid response.
11. The CITY holds no obligation to pay for goods delivered or services rendered unless specified on a written PO or a Change Order of such.
12. The CONSULTANT shall not construe any verbal consent to purchase goods or services as valid.
13. The CITY does not accept substitutions of services or goods that do not comply with the Scope of Work or specifications set forth in the PO, Contract, or Agreement, unless mutually agreed in writing by both Parties.
14. The CITY does not accept automatic contract renewals except for monthly subscription services.
15. In all cases, the jurisdiction shall be the State of Georgia, Augusta, GA, for arbitration or other legalities.
16. CONSULTANT agrees not to assign, in full or in part, this Contract to another party without the CITY's expressed written consent. Any attempted assignment or delegation shall void and make ineffectual this Contract for all intents and purposes.

17. The CITY is exempt from Federal Excise Tax and Georgia Sales and Use Tax.
18. All media production, recordings, videos, photography, artwork, plates, embroidery tape, silk screen, engravings, and other printed or digital media materials paid for in full by the CITY are considered CITY property and shall be delivered to the CITY upon request.
19. The CONSULTANT may be suspended, terminated, or debarred if it is determined that the CONSULTANT has made false certification(s) or has violated such certification(s) by failure to carry out the requirements herein. Thus, the CONSULTANT certifies that it and its sub-CONSULTANTS have not been debarred, suspended, or declared ineligible by any agency of the CITY, State of Georgia, or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch. 1 Subpart 9.4.
20. The CONSULTANT certifies that it is not currently engaged in an active or pending lawsuit or other grievance, injunction, or levy against the CITY.
21. The CITY does not pay late fees nor interest charges.

ARTICLE # 135 All claims, disputes, and other matters in question between the City and Consultant arising out of or relating to the Agreement, or the breach thereof, shall be decided in the appropriate state or federal court located in Augusta, Georgia. Consultant, by executing this Agreement, specifically consents to venue in Augusta and waives any right to contest such venue.

IN WITNESS WHEREOF, said Parties have hereunto affixed their signatures and seals on the day, month, and year below. CONSULTANTS must print their company's full legal company name below as it appears on their W-9 form.

CONSULTANT's Full Legal Name:

Owner:

AUGUSTA, GEORGIA

By: _____

By: _____

Print Name: _____

Garnett L. Johnson
Mayor, Augusta, Georgia

Title: _____

Date: _____

Date: _____

Sworn to and subscribed before me this

Attestation: _____

_____ Day of _____, 202__.

Clerk of Commission

Notary Public: _____

Notary commission expires: _____

[Affix Locus Sigilli – Seal or Stamp]