
AUGUSTA-RICHMOND COUNTY COLISEUM AUTHORITY

as Authority

And

AUGUSTA, GEORGIA

as Augusta

NEW ARENA INTERGOVERNMENTAL AGREEMENT

Dated as of _____, 2024

THIS NEW ARENA INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made effective the ____ day of _____, 2024, by and between AUGUSTA, GEORGIA (“**Augusta**”) and AUGUSTA RICHMOND COUNTY COLISEUM AUTHORITY, a public corporation (“**Authority**”).

RECITALS

A. Augusta is a political subdivision of the State of Georgia and a consolidated city-county government pursuant to the laws of the State of Georgia.

B. Authority is a public corporation duly created and existing under the laws of the State of Georgia and owns and operates the Augusta Entertainment Complex.

C. Augusta and Authority are authorized under the Constitution and laws of the State of Georgia to enter into this Agreement for the purposes set forth herein.

D. The Augusta Entertainment Complex, located at 601 7th Street, Augusta, Georgia, is composed of the Bell Auditorium, the existing James Brown Arena, and the associated parking facilities (the “Entertainment Complex”).

E. Augusta determined that it is in the best interest of the citizens of Augusta and Richmond County that the Augusta Entertainment Complex be updated by renovating the Bell Auditorium and constructing a new arena to replace the existing James Brown Arena (the “New Arena”).

F. The Augusta-Richmond County Commission adopted a resolution to call for a referendum for the voters of Augusta-Richmond County to decide if a special 0.5 percent sales and use tax should be imposed to fund coliseum capital outlay projects and project costs pursuant to Part 3 of Article 3 of Chapter 8 of Title 49 of the Official Code of Georgia.

G. A referendum was conducted on November 7, 2023 and a majority of the votes cast were in favor of the imposition of a special 0.5 percent sales and use tax should be imposed to fund coliseum capital outlay projects and project costs.

H. Through its prior and current operation of the Augusta Entertainment Complex, Authority possesses unsurpassed experience and knowledge as to the requirements of the Augusta Entertainment Complex, local conditions as well as the resources needed to efficiently operate such facilities and agrees to provide such time, expertise, and knowledge as necessary to develop, design, construct and furnish the facilities contemplated under this Agreement and to operate the facilities in the future for the benefit of the citizens of Augusta.

I. Augusta desires to have Authority undertake and manage the construction of the New Arena, to accept title to the New Arena and to operate the New Arena in the future for the benefit of Augusta and its citizens.

J. Authority is willing to perform such services on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. Definitions. The following words and terms have the meanings set forth below.

“**Agreement**” means this contract, including all Exhibits and any amendments hereto or thereto.

“**Application for Payment**” means the form acceptable to Authority that is to be used by the Contractor during the course of the Work in requesting payment from Authority and that is to be accompanied by such supporting documentation as is required by the Contract Documents.

“**Architect**” means the Design Professional engaged by Authority as the principal architect for the Improvements, to perform or provide the Design Services. The Architect shall be registered and qualified to practice under the laws of the State. The initial Architect is Perkins and Will.

“**Architect Agreement**” means the agreement between Authority and the Architect, that includes the performance of the Design Services, a copy of which is attached hereto as Exhibit “B” and incorporated herein by reference; provided, however, that such Architect Agreement may be amended from time to time without the consent or approval of any other party hereto so long as the Project Budget is not thereby increased.

“**Arena Construction Sub-committee**” means the subcommittee designated by the Authority to oversee the construction of the Project.

“**Authorized Augusta Representative**” means the person at the time designated to act on behalf of Augusta. The Authorized Augusta Representative shall be the individual serving as the Administrator of Augusta, Georgia.

“**Authorized Authority Representative**” means the person at the time designated to act on behalf of Authority by written certificate furnished to Augusta.

“**Bond Documents**” means the bond resolution and related documents adopted or approved by the Augusta-Richmond County Commission in connection with the issuance of the Series 2024 Bonds.

“**Building Permits**” means all of the building permits to be issued by all Governmental Authorities that are required for the construction of the Improvements. “Building Permit” shall mean any one of the Building Permits.

“**Change Order**” means a written order issued after the Effective Date, authorizing a change in the Design Services, the Development Services or the Work and approved by Authority.

“**Commencement Date**” means the date of commencement of the Work.

“**Completion Date**” means the date of completion of the acquisition, construction, and installation of the Project, as that date shall be certified as provided in Section 3.06 hereof.

“**Construction Agreement**” means any agreement between Authority and any Construction Party for the performance of any of the Work, including, without limitation, the Contractor Agreement.

“Construction Contracts” means contracts between Authority and any Construction Party, including the Contractor Agreement and the contracts between Authority and suppliers of materials and Equipment.

“Construction Costs” means all amounts payable by Authority to any Construction Party, and any other costs and expenses paid or incurred by or on behalf of Authority, for the performance of the Work. The Improvements shall be constructed under one agreement with the Contractor.

“Construction Documents” means the architectural and engineering documents setting forth the design for the Project prepared by the Design Professionals, approved by Authority (a copy of which are to be provided to Augusta), as and to the extent provided in Article IV hereof. Construction Documents include, but are not limited to, the Specifications, the Drawings, the Supplementary General Requirements, the General Requirements, and all Addenda (as such terms are defined in the Contractor Agreement).

“Construction Fund” means the separate account established by Augusta into which the proceeds from the sale of the Series 2024 Bonds and all interest earned thereon are deposited to pay or reimburse Construction Costs and Design Costs. The proceeds deposited into the Construction Fund may be further segregated into subaccounts as determined by Augusta, and such proceeds may be allocated or re-allocated between any such subaccounts from time to time as determined by Augusta.

“Construction Party” means the Contractor or any other Person that is engaged directly by Authority to perform any of the Work.

“Construction Phase” means the period of time beginning on the Commencement Date and ending on the date Final Completion occurs.

“Contract Documents” include the executed Contractor Agreement, , the Construction Documents, and all Change Orders (the term “Change Order” as used in this definition of Contract Documents shall have the meaning ascribed thereto in the Contractor Agreement).

“Contractor” means the Person that is selected through a competitive process as described in Article III.

“Contractor Agreement” means the contract to be entered into between Authority and the Contractor for construction of the Improvements, as may be amended from time to time without the consent or approval of Augusta so long as the Project Budget is not increased.

“Costs of the Project” means those costs and expenses in connection with the acquisition, construction, equipping, renovation and installation of the Project permitted by Article III hereof to be paid or reimbursed from proceeds of the Bonds.

“Design Agreement” means any agreement between Authority and any Design Professional for the performance of any Design Services, including, without limitation, the Architect Agreement.

“Design Costs” means the fees and reimbursable expenses payable to the Architect and all other Design Professionals, and any other costs and expenses paid or incurred by or on behalf of Authority, for the Design Services.

“Design Development Documents” consist of plans, elevations, and other drawings and outline specifications, approved by Authority, a copy of which shall be provided to Augusta as provided in Article IV hereof. These documents will fix and illustrate the size and character of the entire Project in its essentials

as to kinds of materials, type of structure, grade, elevations, sidewalks, utilities, roads, parking areas, mechanical and electrical systems, and such other work as may be required.

“Design Documents” means, collectively, the Schematic Design Documents, the Design Development Documents and the Construction Documents.

“Design Phase” means the phase during which the Design Documents are prepared by the Design Professionals and submitted to Authority as provided in Article III hereof, and which may overlap the Construction Phase during completion of the Design Documents.

“Design Professionals” means the Architect and any other architect or engineer or architectural or engineering firm selected by Authority (i) for the design and preparation of Contract Documents governing the construction of the Project, or (ii) for construction contract administration under the Contract Documents, or (iii) for both, all such services and the scope thereof to be set forth in the Design Professional Contract. The Design Professional is not an employee of Authority but is engaged or retained by it for the purpose of performing design and construction administration services for the Project. The term “Design Professional” includes architects, engineers, surveyors, designers, and other consultants retained by the Design Professional.

“Design Services” means those services to be provided by the Architect and other Design Professionals in connection with the design of the Improvements, the installation of furniture, fixtures and equipment therein, and the administration of the Project.

“Owner’s Representative” means the Owner’s Representative engaged by Authority that may perform all or some of the Development Services and serves as the Authorized Authority Representative. The initial Owner’s Representative shall be selected by Authority pursuant to Article III.

“Development Costs” means all costs and expenses of any kind or nature whatsoever (other than Design Costs and Construction Costs) paid or incurred for or in connection with the Development Services, including, but not limited to, any costs or expenses paid to the Owner’s Representative.

“Development Services” means the services required to be performed or procured by Authority pursuant to the terms and provisions of this Agreement, other than the Design Services and the Work, as described in Article IV hereof.

“Effective Date” means the later of the following: (1) the date this Agreement is executed by Augusta, as indicated below its execution hereon; or (2) the date this Agreement is executed by Authority, as indicated below its execution hereon.

“Expiration Date” means the date on which the services to be provided under this Agreement are complete as determined pursuant to Section 3.06 or the termination of this Agreement, whichever occurs sooner.

“Equipment” means the equipment, machinery and furnishings comprising a portion of the Project.

“Event of Default” means any event specified in Article VIII of this Agreement.

“Favorable Opinion of Bond Counsel” means, with respect to any action taken which requires such opinion, or unqualified opinion of Butler Snow LLP or such other independent counsel acceptable to

Augusta to the effect that such action will not adversely affect the tax-exempt status of the Bonds for federal income tax purposes.

“Final Completion” shall mean (i) the occurrence of all of the requirements for “Final Completion” set forth in in the Contractor Agreement and (ii) the installation of all furniture, fixtures and equipment in the Improvements as required by the Construction Documents.

“Force Majeure” means (a) any strike, lockout, or labor dispute not caused by the negligence non-performing party or breach of a labor contract by the non-performing party; (b) the inability to obtain labor or materials not resulting in any way from the negligence or any act or omission of the non-performing party; (c) an Act of God; (d) governmental restrictions; regulations or controls not existing as of the date of this Agreement; (e), enemy or hostile governmental action; (f) civil commotion, insurrection, sabotage, fire or other casualty not resulting from the non-performing party’s negligence or other actions; (g) any form of regional, national or global pandemic that prevents or otherwise prohibits performance; or, (h) any other condition beyond the reasonable control of the responsible party.

“Force Majeure Delay” means any period of time during which the commencement, prosecution or completion of the development, design or construction of the Project, or any aspect thereof, or the performance of the Design Services, the Development Services or the Work, or any of Authority’s other duties and obligations under this Agreement, is delayed by events of Force Majeure, but only to the extent that such delay impacts the critical path of the Design Services, the Development Services or the Work, or any of Authority’s other duties and obligations under this Agreement.

“Governing Body” means, in the case of Authority, the duly appointed members of the Authority and, in the case of Augusta, the Augusta-Richmond County Commission.

“Governmental Authority” means any federal, state, county or municipal governmental authority, including all executive, legislative, judicial and administrative bodies thereof.

“Governmental Requirement” means all federal, state, county, municipal and other governmental constitutions, statutes, ordinances, codes, regulations, resolutions, rules, requirements and directives promulgated by a Governmental Authority and applicable to the Project or the performance by Authority of its duties and obligations under this Agreement.

“Improvements” means those certain facilities and improvements constituting part of the Project and not constituting part of the Equipment, which are or shall be located on the Premises.

“Material Completion” shall mean the date of substantial completion of the Project as provided in Section 3.06.

“Permits” means any and all certificates, licenses, permits, authorizations, consents and other approvals by the applicable Governmental Authority having jurisdiction in such matters required to be obtained, issued, granted or received for the performance of the Work, specifically including, without limitation, the Building Permits, but specifically excluding any rezoning, zoning variance or similar approval, if required.

“Person” means any individual, firm, corporation, partnership, trust, unincorporated business association or Governmental Authority.

“Plans and Specifications” means the detailed plans and specifications for the construction of the Project prepared by the Architect or by architects and engineers acceptable to the Architect, as amended from time to time by Authority, a copy of which is or will be on file with Authority and Augusta.

“Program Management Agreement” means the Program Management Agreement between Authority and the Owner’s Representative, which may be amended from time to time without the consent or approval of any other party hereto so long as the Project Budget is not increased.

“Project” means the facility to be developed, designed and constructed pursuant to this Agreement, which includes the Building (the Building consisting of an arena with a minimum seating capacity of 10,500 seats, 12 premium seating seats, combined back of house areas servicing the new arena and the existing Bell Auditorium, and having an exterior and interior design consistent with the renderings provided to Augusta and as shown on Authority’s www.newaugustarena.com website) and the completion of the renovations to the Bell Auditorium, and which shall include, as the context shall require, the Site, the Improvements, the Equipment, together with all furniture, fixtures and related items installed therein.

“Project Budget” means the detailed estimate of the Project Costs developed by or at the direction of Authority. Modifications to the Project Budget which do not exceed the total of the net proceeds from the sale of the Series 2024 Bonds deposited into the Construction Fund plus any interest earned on such proceeds are not considered an increase in the Project Budget.

“Project Costs” means the sum of (i) all Design Costs, (ii) all Development Costs and (iii) the Construction Costs, including all claims, losses, liens, judgments, settlements, and costs and expenses of litigation, including attorney’s fees, arising from or with respect to the Work pertaining to any part of the Project.

“Project Schedule” means the schedules for all material activities required by this Agreement, required to construct the Improvements and to install all furniture, fixtures and equipment therein and the time periods during which such services are estimated to be completed.

“Request for Payment” means a request by Authority for payment of Project Costs.

“Schematic Design Documents” means the schematic design plans and elevations showing the scale and relationship of Project or its Components, approved by Authority, a copy of which shall be submitted to the Authorized Augusta Representative. Schematic Design Documents consist of written and graphic (drawings, sketches, etc.) presentations that will enable Authority to determine if the intent of the Project is being addressed and shall consist of at least the following: (a) Schematic Site Plan; (b) Floor Plans; and (c) Elevations.

“Series 2024 Bonds” means the general obligation bonds designated “Augusta, Georgia General Obligation Bonds (New Arena Project), Series 2024,” dated the date of their issuance and delivery in the principal amount of \$250,000,000.00 to be issued by Augusta, and any bonds issued in substitution or exchange therefor.

“Site” means the parcel of land upon which the improvements are to be constructed and more fully described in Exhibit “A” attached hereto, which, by this reference thereto, is incorporated herein.

“State” means the State of Georgia.

“**Supplemental Instruction**” means a minor change, including minor changes necessary to clarify a specification or resolve a technical execution problem, during the Construction Phase, involving or resulting in no change in the Project Budget.

“**Surety Bonds**” means the performance and payment bonds required to be obtained by Contractor pursuant to the general conditions of the Construction Contract in the Contractor Agreement.

“**Work**” means all labor, materials, and services necessary to produce the construction of the Project in accordance with the Contract Documents, including the entire construction or the various separately identifiable parts thereof. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all equipment, fixtures, and supplies into such construction, all as required by the Contract Documents.

Section 1.02. Construction of Certain Terms. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

(1) The use of the masculine, feminine, or neuter gender is for convenience only and shall be deemed and construed to include correlative words of the masculine, feminine, or neuter gender, as appropriate.

(2) “This Agreement” means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more agreements of sale supplemental hereto entered into pursuant to the applicable provisions hereof.

(3) All references in this instrument to designated “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this instrument. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, or other subdivision.

(4) The terms defined in this Article shall have the meaning assigned to them in this Article and include the plural as well as the singular.

(5) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as promulgated by the American Institute of Certified Public Accountants, on and as of the date of this instrument.

Section 1.03. Titles and Headings. The titles of the articles, and the headings of the sections of this Agreement are solely for convenience of reference, are not a part of this Agreement, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 1.04. Contents of Certificates or Opinions. Every certificate or opinion with respect to the compliance with a condition or covenant provided for in this Agreement shall include: (i) a statement that the person or persons making or giving such certificate or opinion have read such covenant or condition and the definitions herein relating thereto, (ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (iii) a statement that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such

covenant or condition has been complied with, and (iv) a statement as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by an official of Authority or Augusta may be based, insofar as it relates to legal or accounting matters, upon a certificate or an opinion of counsel or an accountant, which certificate or opinion has been given only after due inquiry of the relevant facts and circumstances, unless such official knows that the certificate or opinion with respect to the matters upon which his certificate or opinion may be based as aforesaid is erroneous or in the exercise of reasonable care should have known that the same was erroneous. Any such certificate or opinion made or given by counsel or an accountant may be based (insofar as it relates to factual matters with respect to information that is in the possession of an official of Authority or Augusta or any third party) upon the certificate or opinion of or representations by an official of Authority or Augusta or any third party on whom counsel or an accountant could reasonably rely unless such counsel or such accountant knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion may be based as aforesaid are erroneous or in the exercise of reasonable care should have known that the same were erroneous. The same official of Authority or Augusta, or the same counsel or accountant, as the case may be, need not certify or opine to all of the matters required to be certified or opined under any provision of this Agreement, but different officials, counsel, or accountants may certify or opine to different matters, respectively.

Section 1.05. Exhibits. The following Exhibits are attached to, and incorporated in, this Agreement:

Exhibit A – Site Description

Exhibit B – Form of Requisition

ARTICLE II

REPRESENTATIONS AND UNDERTAKINGS

Section 2.01. Representations. Each party represents to the other parties hereto that it has the full and complete right, power and authority to enter into this Agreement and perform its duties and obligations under this Agreement in accordance with the terms and conditions of this Agreement.

ARTICLE III

THE PROJECT; ISSUANCE OF THE BONDS; PROJECT FUND

Section 3.01. Selection of Professionals, Agreement to Acquire, Construct, and Install the Project.

Promptly following the issuance and sale of the Series 2024 Bonds, Authority will acquire and construct the Improvements and acquire and install thereon the Equipment pursuant to this Article III. If the Project should be titled at any point in Augusta's name during the construction period, upon completion, the Project will be conveyed to Authority. Authority agrees that its undertakings to acquire and construct the Project shall comply the Georgia Public Works statutes and all other legal requirements applicable to Authority.

In connection with the construction of the Improvements, Augusta and Authority agree to the following:

1. Authority shall engage/re-engage Perkins and Will to serve as the Architect.
2. Subject to conditions contained herein, Authority is authorized to select and engage an Owner's Representative which possesses the requisite expertise in the construction of similar facilities as contemplated by this Agreement.
3. Authority and the Owner's Representative shall develop and disseminate for response, a request for proposals/request for qualifications for the selection of the Contractor which shall enter into the Contractor Agreement. The selection of the Contractor shall be conducted in a manner consistent with all laws applicable to Authority. The Contractor Agreement shall specify the levels of minority participation, the utilization of disadvantaged businesses and local purchasing requirements required to be met by the Contractor, if any.

The selection of the Contractor shall be made by a majority of Authority based on the recommendation of Authority's Arena Construction Sub-committee. Augusta's Finance Director or designee shall serve as an ex-officio, non-voting member of the selection committee.

Authority covenants to cause the Project to be constructed without material deviation from the Plans and Specifications and the Construction Contracts and warrants that this will result in facilities suitable for Authority's intended uses and which will include all necessary or appropriate real and personal property needed for the Project.

Authority agrees that Augusta and its duly authorized agents shall have access to the Project as may reasonably be necessary to ensure that Authority is performing its obligations hereunder. Augusta and its

duly authorized agents shall also be permitted, at all reasonable times, to examine the books, records, reports and other papers of Authority with respect to the Project.

Authority agrees to complete the acquisition, construction, and installation of the Project as promptly as practicable and with all reasonable dispatch after the date of issuance and sale of the Series 2024 Bonds.

Section 3.02. Agreement to Issue the Bonds; Application of Proceeds. Augusta agrees that promptly following the execution and delivery this Agreement, it will issue the Series 2024 Bonds for the purpose of financing the Costs of the Project and Authority agrees to cooperate with Augusta in the issuance of the bonds by timely executing any documents reasonably requested by Augusta. Augusta covenants and agrees that it will promptly deposit the proceeds from the sale of the Series 2024 Bonds in the Construction Fund.

Section 3.03. Application of Moneys in the Construction Fund. Augusta shall in the Bond Documents authorize and direct the use the moneys in the Construction Fund for the following purposes (but for no other purposes):

- (a) payment of Project Costs, including any costs and expenses relating to the Project that would constitute Costs of the Project, Design Costs and Development Costs; and
- (b) all proceeds of the Series 2024 Bonds remaining in the Construction Fund on the Completion Date, less amounts retained or set aside to meet costs not then due and payable or that are being contested, may be used for such purposes permitted by O.C.G.A. §48-8-145 *et. seq.*, subject to Authority and/or Augusta receiving a Favorable Opinion of Bond Counsel.

Section 3.04. Disbursements from the Construction Fund. All disbursements from the Construction Fund shall be made upon requisition directed to the Authorized Augusta Representative:

- (a) A requisition for payment shall be made in the form attached as Exhibit B.
- (b) Any requisition for payment shall be signed by the Chair of the Authority and the Authorized Authority Representative, and be accompanied by such supporting documentation as may be reasonably requested by the Authorized Augusta Representative or the Augusta Finance Department. In the event that a requisition is for payment due under the Construction Contracts, then such requisition shall also be signed by the appropriate contractor under the Construction Contracts, and the Architect. Requisitions for payment under the Construction Contracts shall also be accompanied by a cost breakdown showing the percentage of completion of each line item of the Project Budget and the accuracy of the cost breakdown shall be certified by Authority and the appropriate contractor under the Construction Contracts. The completed construction on the Project shall be reviewed (at the time each requisition is submitted) by the Architect, and the Architect shall certify to Augusta as to (A) the cost of completed construction, (B) the percentage of completion, and (C) compliance with the Plans and Specifications.

Section 3.05. Obligation of the Parties to Cooperate in Furnishing Documents. Authority agrees to furnish to Augusta the documents referred to in Section 3.04 hereof, as well as any other documents which may be reasonably requested by Augusta to effect payments out of the Construction Fund.

Section 3.06. Establishment of Completion Date. The Completion Date shall be evidenced by a certificate of substantial completion listing the items to be completed or corrected, if any, and the amounts to be withheld therefor, signed by the Authorized Authority Representative and the Authorized Augusta

Representative and approved by the Architect stating that, except for amounts retained by Augusta for Costs of the Project not then due and payable, (i) the acquisition, construction, and installation of the Project have been substantially completed without material deviation from the Plans and Specifications and all labor, services, materials, and supplies used in such acquisition, construction, and installation have been paid or provided for, (ii) all other facilities necessary in connection with the acquisition, construction, and installation of the Project have been constructed, acquired, and installed without material deviation from the Plans and Specifications and all costs and expenses incurred in connection therewith have been paid or provided for, and (iii) certificates of occupancy for the Improvements have been issued by appropriate local governmental authorities. Notwithstanding the foregoing, such certificates may state that they are given without prejudice to any rights against third parties that exist at the date of such certificates or that may subsequently come into being. The Architect shall certify the matter covered by clauses (i) and (ii) above. It shall be the duty of Authority to cause the certificates contemplated by this Section 3.06 to be furnished as soon as the acquisition, construction, and installation of the Project shall have been substantially completed.

Section 3.07. Augusta Not Required to Pay Project Costs in Event Construction Fund Insufficient. Authority warrants that the moneys which will be paid into the Construction Fund and which, under the provisions of this Agreement, will be available for payment of the Project Costs will be sufficient to pay all of the Project Costs that will be incurred in that connection and Authority acknowledges that in the event that the moneys in the Construction Fund for payment of the Project Costs are not sufficient to pay the costs thereof, Augusta shall not be required to contribute additional funds for the Project.

Section 3.08. Authorized Augusta and Authority Representatives and Successors. Augusta and Authority, respectively, shall designate, in the manner prescribed in Section 1.01 hereof, the Authorized Augusta Representative and the Authorized Authority Representative. In the event that any person so designated and his or her alternate or alternates, if any, should become unavailable or unable to take any action or make any certificate provided for or required in this Agreement, a successor shall be appointed in the same manner.

Section 3.09. Enforcement of Remedies against Contractors and Subcontractors and their Sureties and Against Manufacturers. Authority covenants that it will take, or cause to be taken, such action and institute, or cause to be instituted, such proceedings as shall be necessary to cause and require all contractors and subcontractors and material suppliers to complete their contracts diligently in accordance with the terms of such contracts, including, without limitation, the correction of any defective work, with all expenses incurred by Authority in connection with the performance of its obligations under this Section 3.09 to be considered part of the Costs of the Project. Authority agrees that Augusta may, from time to time, in its own name, or in the name of Authority, take such action as may be necessary or advisable, as determined by Augusta, to compel Authority to take such action as necessary to ensure the construction of the Project in accordance with the terms of the Construction Contracts and the Plans and Specifications, and to ensure the performance by Authority of all covenants and obligations of Authority under this Agreement, with all costs and expenses incurred by Augusta in connection therewith to be considered as part of the Costs of the Project referred to in Section 3.03 hereof. All amounts recovered by way of penalties, damages, whether liquidated or actual, refunds, adjustments, or otherwise in connection with the foregoing prior to the Completion Date, less any unreimbursed legal expenses incurred to collect the same, shall be paid into the Construction Fund and, after the Completion Date, shall be disbursed pursuant to the provisions of Section 3.03(b) of this Agreement.

Section 3.10. Investment of Construction Fund. Subject to provisions of the Bond Documents, any moneys held as a part of the Construction Fund shall be invested or reinvested in such legally permitted investments as may be designated or determined by Augusta. The investments so purchased shall be held by Augusta and shall be deemed at all times a part of the Construction Fund, and the interest accruing

thereon and any profit realized therefrom shall be credited to the Construction Fund, and any losses resulting from such investments shall be charged to the Construction Fund and paid by Augusta.

ARTICLE IV DEVELOPMENT SERVICES; NATURE OF THE ENGAGEMENT

Section 4.01. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the Expiration Date.

Section 4.02. Performance. Authority hereby covenants and agrees to cause the Development Services, the Design Services and the Work to be performed in a timely and efficient manner.

Section 4.03. Relationship. In the performance of this Agreement, Authority will be acting in the capacity of an independent contractor.

Section 4.04. Non-Interference. Augusta shall not take any action or fail to take any action which will cause Authority to be in default, or which, after the giving of notice or the passage of time, or both, could constitute a default, under any Contract Document; and in the event thereof, Augusta shall take appropriate corrective action to assist Authority to prevent or cure, as the case may be, such default.

Section 4.05. Design Services and Development Services. Commencing on the Effective Date of this Agreement, Authority agrees to procure the Design Services and Development Services for the Project. Augusta acknowledges that Authority shall enter into the Program Management Agreement to satisfy in part its obligation to procure the Development Services.

Section 4.06. Preparation and Submission of Design Documents. For the purposes of procuring the Design Services, Authority shall enter into the Architect Agreement. Authority agrees to administer and enforce all applicable provisions of the Architect Agreement in the best interest of the parties hereto and the Project so that all Design Services are performed in accordance with sound principles of architectural and engineering design and without calculated risks that are inconsistent with sound principles of architectural and engineering design. Nothing in this Agreement or in any Contract Documents shall create any contract rights against Augusta by the Architect or any other Design Professional.

Section 4.07. Project Budget, Project Schedule, Design Development Documents and Construction Document. Within a reasonable time after the Effective Date, Authority shall direct the Design Professionals to prepare and develop the Design Development Documents, Construction Documents, the Project Schedule, and the Project Budget, and provide a copy of such documents along with any supporting documents and notice to proceed to the Authorized Augusta Representative and the Augusta Finance Department.

Section 4.08. Ownership and Use of Design Documents. The Design Documents are instruments of service of the Design Professionals. Upon completion of the Project or upon the earlier request of Augusta and upon payment of all sums due to the Architect, Authority will cause to be delivered to Augusta reproducible copies, together with a computer set of all documents and CAD disks reasonably compatible with Augusta's software, prepared by, under or through the Architect.

Section 4.09. Permits. Except where prohibited by law, Authority or the Contractor shall be the applicant for any and all required Permits and the Building Permits. Authority or the Contractor shall coordinate and manage all professional and technical services required in connection with the preparation and filing of applications for and obtaining all required Permits and the Building Permits. Authority or the Contractor shall be responsible for diligently preparing and filing all applications for, and pursuing and

obtaining, the Permits and the Building Permits. Authority shall use all reasonable efforts to obtain the Building Permits and any other Permits required to commence construction of the Improvements at a time consistent with the Project Schedule. If, despite such efforts, the Building Permits or any other Permits for the Project required to be obtained before commencement of construction have not been obtained or could not have been obtained at a time consistent with the Project Schedule, then Authority shall diligently proceed to exercise reasonable efforts to obtain the Building Permits and any such other Permits as promptly as possible, and the Project Schedule shall be adjusted to reflect all additional time which will be required for the performance of any of the duties or obligations of Authority under this Agreement as a result of the delay in obtaining the Building Permits or Permits, as the case may be.

Section 4.10. Project Schedule. To enable the Project to be planned, scheduled and prosecuted in an orderly and expeditious manner, Authority, pursuant to Section 4.07, shall prepare (and provide a copy to the Authorized Augusta Representative) a Project Schedule which is consistent with the Design Documents at each stage of their preparation. In addition to adjustments to the Project Schedule otherwise provided for by this Agreement, the Project Schedule may be changed from time to time by Authority.

ARTICLE V CONSTRUCTION PHASE

Section 5.01. General.

Authority shall engage the Contractor and shall enter into the Contractor Agreement with the Contractor. The Improvements shall be constructed by the Contractor pursuant to the Contractor Agreement and the Design Documents, under the oversight of Authority as monitored and reviewed by the Architect, in accordance with the terms and provisions of this Agreement. The procurement and installation of furniture, fixtures and equipment in the Improvements shall be performed by one or more Construction Parties pursuant to one or more Construction Agreements, under the oversight of Authority, in accordance with the terms and provisions of this Agreement. Authority agrees to administer and enforce all applicable provisions of the Contractor Agreement and any other Construction Agreements that are in the best interest of the parties hereto and the Project and in the enforcement thereof, to require the Architect to perform his contract administration duties in review of the Work and report whether it is performed in a workmanlike manner and whether all materials are new materials (which may include materials having recycled content) in accordance with the Design Documents.

Section 5.02. Performance of the Work. Authority shall have the responsibility and obligation to engage the Contractor for construction of the Improvements, and one or more Construction Parties for procurement and installation of furniture, fixtures and equipment in the Improvements.

1. Construction Schedule. Authority shall prepare, or cause to be prepared, a construction schedule setting forth in detail the various tasks for construction and completion of the construction of the Improvements and for installation of furniture, fixtures and equipment in the Improvements. Throughout the Construction Phase, Authority shall keep the Authorized Augusta Representative informed of the status of adherence to the Project Schedule, not less frequently than monthly.

2. Commencement of the Work.

- (i) After Authority has provided the Authorized Augusta Representative copies of the Design Development Documents, the Project Budget, and the Project Schedule, Authority shall issue to the Contractor a notice to proceed under the Contractor Agreement.

- (ii) Time being of the essence of this Article 5, and subject to the terms and provisions of this Agreement, Authority shall use its best efforts to cause the Contractor and each other Construction Party to prosecute the Work diligently, using such means and methods of construction as will maintain the progress of the Work substantially in accordance with the Project Schedule, and to cause Material Completion in accordance with the requirements of the Contract Documents not later than the date on which Material Completion is required to be achieved as set forth in the general conditions of the Construction Contract in the Contractor Agreement.

3. Contractor; Subcontractors.

- (i) Augusta will not participate in the selection of any successor Contractor to the initial Contractor; provided, however, that Authority shall follow the same procedure as utilized for the selection of the initial Contractor.
- (ii) Nothing in this Agreement or in any Contract Document shall create any contract rights against Augusta by the Contractor, any other Construction Party or any subcontractor.

4. Surety Bonds. Prior to the Commencement Date, Authority shall cause the Contractor to deliver to Augusta copies of the Surety Bonds. Augusta shall be named by the Contractor and the Surety as an additional obligee on all payment and performance bonds provided pursuant to the Contractor Agreement.

5. Inspection.

- (i) Augusta shall have access to the Site during all working hours, and shall have the right to observe the Work and all facilities where the Work or any part thereof is being fabricated or stored; provided, however, that Augusta shall not delay, hinder or interfere with the performance of the Work.
- (ii) The Architect shall have the right to reject materials and workmanship which are defective or not in conformance with the Contract Documents.

6. Change Orders.

- (i) In the event Authority desires to make a change in the Work that will not result in an increase in the Project Budget and will not have a material aesthetic or functional impact on the Improvements, Authority shall have the right to issue Supplemental Instructions ordering minor changes in the Work without the requirement of any consent or approval by Augusta.
- (ii) No changes shall be requested by Augusta in the quantity or character of the Design Services, the Development Services or the Work (including, without limitation, all changes having a material aesthetic or functional impact on the Improvements).
- (iii) The Contractor shall not start work on any change in the Work requiring an increase in the Project Budget or results in a material change in the Project until a Change Order or proposed Change Order setting forth the adjustments is approved by Authority
- (iv) Upon approval of any Change Order increasing the Project Costs, Authority shall require the Contractor to ensure that the Surety Bonds are increased in an amount reflecting the net increase in the Project Costs.

- (v) Each proposed Change Order shall be submitted by Authority and Authority shall approve or disapprove any requested Change Order within a reasonable time without the necessity of Augusta's consent.

ARTICLE VI

ADDITIONAL COVENANTS

Section 6.01. No Warranty of Condition or Suitability by Authority. AUGUSTA MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE HABITABILITY, MERCHANTABILITY, CONDITION, OR WORKMANSHIP OF ANY PART OF THE PROJECT OR THAT IT WILL BE SUITABLE FOR AUTHORITY'S PURPOSES OR NEEDS.

Section 6.02. Tax Covenants. Augusta and Authority further covenant and agree that each shall comply with the representations and certifications it made in its tax and non-arbitrage certificate dated the date of issuance and delivery of the Series 2024 Bonds and that it shall take no action nor omit to take any action that would cause such representations and certifications to be untrue.

ARTICLE VII

ASSIGNMENT

Section 7.01. No Assignment. This Agreement may not be sold, assigned, or encumbered by either party without the advanced written consent of the other party.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default Defined. The following shall be "Events of Default" under this Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

1. Default by Authority. Authority shall be in default under this Agreement if Authority fails to perform any of its material duties or obligations under this Agreement and does not cure or remedy such failure to perform within thirty (30) days after receipt of written notice from Augusta with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such thirty (30) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such failure to perform if Authority commences such cure within thirty (30) days after receipt of written notice from Augusta and thereafter proceeds diligently and in good faith to cure. Upon the occurrence of a default by Authority under this Agreement, Augusta may pursue, separately or concurrently or in a combination, without further notice or demand whatsoever, an action against Authority to compel performance of its obligations hereunder. The parties hereto acknowledge that there is no other adequate remedy at law or in equity for a default by Authority under this Agreement.

2. Default by Augusta. Augusta shall be in default under this Agreement if Augusta fails to perform any of its material duties or obligations under this Agreement and does not cure or remedy such failure to perform within thirty (30) days after receipt of written notice from Authority with respect thereto; provided, however, that, if such failure to perform shall necessitate longer to cure than such thirty (30) day period, then such cure period shall be extended for such period of time as is reasonably necessary to cure such

failure to perform if Augusta commences such cure within thirty (30) days after receipt of written notice from Authority and thereafter proceeds diligently and in good faith to cure. Upon the occurrence of a default by Augusta under this Agreement, Authority may, without further notice or demand whatsoever, pursue an action against Augusta to compel performance of its obligations hereunder. The parties hereto acknowledge that there is no other adequate remedy at law or in equity for a default by Augusta under this Agreement.

3. Terminating Events; Termination. This Agreement shall be terminated upon the happening of any of the following events pursuant to the provisions described below:

- (i) Any party defaults under this Agreement and a non-defaulting party elects to terminate this Agreement by giving the other parties not less than ten (10) business days prior written notice thereof..
- (ii) The giving of not less than ten (10) business days prior written notice from any party to the other parties in the event (A) any of the following occur: (i) delay that increases the Project Budget; (ii) any delay that increases the Project Budget; (iii) the approval of a Change Order that increases the Project Budget; or (iv) an event of casualty or fire that increases Project Budget in excess of the insurance proceeds available to pay costs in connection therewith, and (B) further funding cannot be found in a timely manner by Augusta to fund the increase in the Project Costs.
- (iii) The giving of written notice from Authority in the event the Contractor terminates the Contractor Agreement pursuant to the general conditions of the Construction Contract in the Contractor Agreement due to events arising from default by Augusta hereunder.

Upon the occurrence of any of the terminating events in this Section 8.01(3), then:

- 1) Authority shall implement a Project termination program; and
- 2) Augusta shall pay to Authority the cost of all services, materials and supplies, if any, which may have been ordered by Authority as a result of its obligations arising under this Agreement, including the reasonable costs incurred by Authority to terminate any contracts which may have been entered into by Authority in accordance with the terms of this Agreement, but which may not have been charged to or paid by Authority and reimbursed under this Agreement at the time of expiration or termination.

4. Authority's Obligations. Upon early termination of this Agreement, Authority shall promptly:

- (i) Subject to Authority's obtaining any consent of any third party required and upon request by Augusta, deliver to Augusta or such other person as Augusta shall designate all materials, supplies, equipment, keys, contracts and documents and all books of account and records maintained pursuant to this Agreement pertaining to this Agreement and the Project.
- (ii) Subject to Authority's obtaining any consent of any third party required, assign all existing contracts relating to the Project to Augusta or such other person or entity as Augusta shall designate.
- (iii) Furnish all such information, take all such other action, and cooperate with Augusta as Augusta shall reasonably require in order to effectuate an orderly and systematic termination of the Development Services and Authority's other duties, obligations and activities hereunder.

- (iv) Unless the termination of this Agreement arises out of a default by Authority under this Agreement, then upon any termination of this Agreement, Authority may terminate the Architect Agreement, the Program Management Agreement, and the Contractor Agreement.

Section 8.02. Effect of Force Majeure Delay. If one or more events of Force Majeure Delay occur and the Force Majeure Delay will increase the Project Budget-and if further funding cannot be found in a timely manner by Augusta in order to pay for such increase in Project Costs, then any party shall have the right to terminate this Agreement in accordance with Subsection 8.01 hereof.

ARTICLE IX MISCELLANEOUS

Section 9.01. Notices. All notices, certificates, and other communications provided for hereunder shall be in writing and sent (a) by registered or certified mail with return receipt requested (postage prepaid), or (b) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent to any party hereto at the following addresses or to such other address as any party hereto shall have specified in writing to the other party:

If to Authority:

601 7th Street
Augusta, Georgia 30901
Attention: Chairman

If to Augusta:

Augusta, Georgia
Suite 910
535 Telfair Street
Augusta, Georgia 30901
Attention: Administrator

And

General Counsel
Building 3000
535 Telfair Street
Augusta, Georgia 30901

Notices under this Section 9.01 will be deemed given only when actually received.

Section 9.02. Construction and Binding Effect. This Agreement constitutes the entire agreement of the parties and supersedes any prior agreements. This Agreement shall inure to the benefit of and shall be binding upon Authority, Augusta, and their respective successors and assigns subject, however, to the limitations contained in Article 7 hereof.

Section 9.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.04. Amounts Remaining in Funds. It is agreed by the parties hereto that any amounts remaining in the Construction Fund or other funds provided for herein upon expiration or sooner termination of this Agreement, as provided in this Agreement, after payment in full of the Series 2024

Bonds, the fees, charges, and expenses of Authority, in accordance with the terms hereof, and all sums due and owing to Authority, shall be administered according to Section 3.03(b).

Section 9.05. Amendments, Changes, and Modifications This Agreement may not be amended, changed, modified, altered, except by a written agreement executed by the parties hereto in the same manner as this Agreement is executed.

Section 9.06. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.07. Law Governing Construction of this Agreement. This Agreement and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed, construed and interpreted according to the laws of the State.

Section 9.08. Immunity of Officials, Officers, and Employees of Authority and Augusta. No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of Authority or Augusta contained in this Agreement or for any claim based hereon or otherwise in respect hereof against any member of a Governing Body, officer, or employee, as such, in his individual capacity, past, present, or future, of Authority, Augusta, or any successor body, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Agreement is solely a corporate obligation of Augusta and Authority payable only from the funds and assets of Augusta and Authority herein specifically provided to be subject to such obligation and that no personal liability whatsoever shall attach to, or be incurred by, any member of a Governing Body, officer, or employee, as such, past, present, or future, of Augusta or Authority, or of any successor corporation, either directly or through Augusta, Authority, or any successor corporation, under or by reason of any of the obligations, covenants, promises, or agreements entered into between Authority and Augusta whether contained in this Agreement or in the Bond Documents or to be implied herefrom or therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member of a Governing Body, officer, and employee is, by the execution of this Agreement and as a condition of and as part of the consideration for the execution of this Agreement, expressly waived and released. The immunity of members of a Governing Body, officers, and employees of Authority and Augusta under the provisions contained in this Section 9.08 shall survive the completion of the Project and the termination of this Agreement.

Section 9.09. Survival of Warranties. All agreements, representations, and warranties of the parties hereunder, or made in writing by or on behalf of them in connection with the transactions contemplated hereby, shall survive the execution and delivery hereof, regardless of any investigation or other action taken by any person relying thereon.

Section 9.11. Authorized Representatives. Any consent, approval, authorization or other action required or permitted to be given or taken under this Agreement by Augusta or Authority, as the case may be, shall be given or taken by one or more of the Authorized Representatives of each. Any party hereto may from time to time designate other or replacement Authorized Representatives to the other party hereto. The written statements and representations of any Authorized Representative of Augusta or Authority shall be binding upon the party for whom such person is an Authorized Representative, and the other parties hereto shall have no obligation or duty whatsoever to inquire into Authority of any such representative to take any action which he proposes to take.

Section 9.12. Exhibits. Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement

by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.

Section 9.13. Non-Waiver. Failure by any party to complain of any action, non-action or default of the other parties shall not constitute a waiver of the aggrieved party's rights hereunder. Waiver by any party of any right arising from any default of any other party shall not constitute a waiver of any other right arising from a subsequent default of the same obligation or for any other default, past, present or future.

Section 9.14. Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement (including, without limitation, those conferred in Article 11 hereof) on the parties shall be cumulative of and in addition to, but not restrictive of or in lieu of, those conferred by law or equity.

Section 9.15. Time of Essence; Prompt Responses. Time is of the essence of this Agreement. Anywhere a day certain is stated for payment or for performance of any obligation, the day certain so stated enters into and becomes a part of the consideration for this Agreement. The parties recognize and agree that the time limits and time periods provided herein are of the essence of this Agreement. The parties mutually agree to exercise their mutual and separate good faith, reasonable efforts to consider and respond promptly and as expeditiously as is reasonably possible notwithstanding any time period provided in this Agreement.

Section 9.16. Holidays. Whenever the time period for performance or the giving of notice under the terms of this Agreement expires on a Saturday or Sunday or on a legal holiday observed in the area of operation of any party hereto, such time period shall be extended to expire on the next following business day, not a Saturday, Sunday or legal holiday.

Section 9.17. Augusta as Third-Party Beneficiary. Authority shall cause Augusta to be a third-party beneficiary of each Construction Agreement, each Design Agreement and the Program Management Agreement.

SIGNATURES AND SEALS

IN WITNESS WHEREOF, Authority has executed this Agreement by causing its name to be hereunto subscribed by its Chairman and by causing the official seal of Authority to be impressed hereon and attested to by its Secretary, and Augusta has executed this Agreement by causing its name to be hereunto subscribed by its Mayor and by causing the official seal of Augusta to be impressed hereon and attested by its Clerk of Commission, all being done as of the day and year first above written.

**AUGUSTA RICHMOND COUNTY
COLISEUM AUTHORITY**

(SEAL)

By:
Chairman

Attest:

Secretary

AUGUSTA, GEORGIA

(SEAL)

By: _____
Mayor

Attest:

Clerk of Commission

Exhibit A
Site Description

All those lots, tracts or parcels of land, with all improvements thereon, situate, lying and being in the State of Georgia, County of Richmond and designated by the Richmond County Tax Commissioner as parcels 047-1-292-00-0, 047-1-291-00-0, 047-1-300-05-0, and commonly known as 501 and 712 Telfair Street and 601 Seventh Street, Augusta, Georgia.

Exhibit B
Form of Requisition

Certificate and REQUISITION for payment

In accordance with the terms of the New Arena Intergovernmental Agreement, dated as of _____, 2024 (the "Agreement"), between Augusta-Richmond County Coliseum Authority ("Authority") and Augusta, Georgia ("Augusta"), Authority hereby requests that the following amounts be disbursed from the Construction Fund to pay the following parties.

This is requisition number _____ from the Construction Fund.

Augusta shall pay the following person the following amount:

<u>Payee Name and Address</u>	<u>Invoice Number(s)</u>	<u>Dollar Amount</u>	<u>Purpose</u>
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In connection with the foregoing, the undersigned hereby represents as follows:

1. If payment relates to a closing cost, an invoice for such closing cost is attached to this Requisition.
2. If payment relates to the acquisition of the Equipment, a Certificate of Acceptance for such Equipment is attached to this Requisition.
3. If all or any portion of the Equipment that is the subject of this Requisition requires a certificate of title, Authority has been listed as the owner on the certificate of title.
4. The requested disbursement has not been the subject of a previous Requisition.

5. If the requisition is for payment due under a Construction Contract, the appropriate contractor and the Architect have signed and approved the requisition.

6. If the requisition is for payment due under a Construction Contract, accompanying the requisition is a cost breakdown showing the percentage of completion of each line item of the Project Budget which has been certified as accurate by Authority and the appropriate contractor under the Construction Contract.

7. If the requisition is for payment due under a Construction Contract, accompanying the requisition is a certificate of the Architect certifying to Augusta as to (A) the cost of completed construction, (B) the percentage of completion, and (C) compliance with the Plans and Specifications.

8. This Requisition contains no items representing payment on account of any percentage entitled to be retained on the date of this Requisition.

Augusta-Richmond County Coliseum Authority

By: Authorized Authority Representative

By: Chair