

CONTRACT

between

AUGUSTA, GEORGIA

And

CAPITALRISE, LLC DESIGN BUILD

in the amount of
\$152,00.00 USD

One Hundred Fifty-Two Thousand Dollars and 0/100
for Fiscal Year **2023**
Providing funding for

LANEY WALKER/BETHLEHEM REVITALIZATION PROJECT

Ace Alley

THIS AGREEMENT (“Contract”), is made and entered into as of the ___ day of _____ 2023 (“the effective date”) by and between Augusta, Georgia, a political subdivision of the State of Georgia (hereinafter referred to as “Augusta”), acting through the Housing and Community Development Department (hereinafter referred to as “HCD”) - with principal offices at 510 Fenwick Street, Augusta, Georgia 30901, as party of the first part, and CAPITALRISE (hereinafter referred to as “CAPITALRISE”), a contractor and developer organized pursuant to the Laws of the State of Georgia, hereinafter called "CAPITALRISE, LLC" as party in the second part.

WITNESSETH

WHEREAS, Augusta is qualified by the U. S. Department of Housing and Urban Development (hereinafter called HUD) as a Participating Jurisdiction, and has received Laney Walker/Bethlehem Bond Financing for the purpose of the installation of a new road known as **Ace Alley**

WHEREAS, CAPITALRISE, LLC a procured contractor and developer with HCD wishes to increase additional construction opportunities within Laney Walker Bethlehem

WHEREAS, Augusta wishes to enter into a contractual Agreement with CAPITALRISE, LLC for the administration of construction activities involving new road installation utilizing Laney Walker Bond Financing; and

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

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

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

WHEREAS, CAPITALRISE, LLC has requested, and Augusta has approved a total of **\$152,00.00** in funding to perform eligible activities as described in Article I; below:

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

ARTICLE I. SCOPE OF SERVICES

A. Scope of Services

Project Description: CAPITALRISE, LLC agrees to utilize approved Laney Walker/Bethlehem Bond financing funds to support project related costs associated with the Laney Walker/Bethlehem Redevelopment Project. Under this Agreement:

- CAPITALRISE, LLC will work with ISM for construction management and inspection for the installation of one (1) road identified as **Ace Alley**.
- CAPITALRISE, LLC will work with Larry McCord to perform all required construction management and project oversight; in accordance with all laws, ordinances, and regulations of Augusta.
- CAPITALRISE, LLC will perform all functions required to ensure delivery of a final product meeting all requirements as set forth by said Agreement to include:
 - Materials list to include brand name and/or model number of materials as specified or agreed to adjustments to specifications including but not limited to: concrete, silt fencing, grading, surveying, as-built, recorded plat, GABC 6-inch, roadway concrete, roll curb/gutter, HC ramps, permanent grass. CAPITALRISE, LLC is to provide a finish schedule with the specifications, brands, and model numbers for all materials within 90 from completion for agreement by HrteCD. Actual material invoices may be requested to verify charges.

B. Use of Funds: Laney Walker/Bethlehem Bond funds shall be used by CAPITALRISE, LLC for the purposes and objectives as stated in Article I, Scope of Services, of this Agreement. The use of funding for any other purpose(s) is not permitted. The following summarizes the proposed uses of funds under this Agreement based on **total material and labor cost of \$15200.00**

1. Profit

An amount not to exceed percent (100%) of the construction cost as outlined and approved in Article I. Scope of Services, Section B. Use of Funds and on the Work Write-Up, shall be paid to CAPITALRISE, LLC for costs identified as necessary operating time and expenses in addition to the profit accrued in the development of one (1) road identified as **Ace Alley**. The design and specifications of the property shall be approved by HCD prior to construction (see Appendix). HCD will have the latitude to pay O&P directly to the procured developer/contractor on a pay for performance basis of the development of one (1) identified as **Ace Alley**.

2. Developer's Fee

\$2,000.00

3. Developer's Fee Disbursements

Developer's Fee shall be dispensed when construction is 100% completed.

C. Program Location and Specific Goals to be Achieved

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

D. Project Eligibility Determination

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

ARTICLE II. BUDGET AND METHOD OF PAYMENT

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

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

1. Augusta agrees to pay CAPITALRISE, LLC, a maximum of **\$152,000.00** under this Agreement for project expenses incurred as outlined in ARTICLE I, Scope of Services, subject to CAPITALRISE, LLC's compliance with all terms and conditions of this Agreement and the procedures for documenting expenses and activities as set forth in said Agreement;

2. The method of payment for construction costs, including only materials and labor as outlined and approved on the Work Write-Up, not to exceed the aforementioned contracted amount of **\$152,000.00** and shall be on a pay for performance basis provided CAPITALRISE, LLC and HCD determine the progress is satisfactory. CAPITALRISE, LLC shall utilize the AIA Form provided by HCD (see Appendix). For invoicing, CAPITALRISE, LLC will include documentation showing proof of completion of work in accordance with the amount requested, inspected, and accepted by HCD, lien waivers for vendors and sub-contractors, as specified in the Work Write-Up found in Exhibit B & E.

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

B. Project Financing

The Augusta Housing and Community Development will provide an amount not to exceed the actual construction costs including only materials and labor as outlined and approved on the Work Write-Up to be expended by CAPITALRISE, LLC for construction costs related to the development of one (1) road identified as **Ace Alley**.

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

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

C. Timetable for Completion of Project Activities

CAPITALRISE, LLC shall be permitted to commence with the expenditure of Laney Walker Bethlehem Bond Financing funds as outlined in said Agreement upon procurement of a construction contractor in accordance with its policies and procedures; and approval of a detailed outline of project expenditures anticipated for the completion of the development within 120 days of said road identified as **Ace Alley**.

Liquidated Damages

CAPITALRISE, LLC agrees to pay as liquidated damages to HCD the sum of two hundred dollars (\$200.00) for each consecutive calendar day after the expiration of the Contract Time of Completion Time, except for authorized extensions of time by Augusta. This section is independent of any section within this Agreement concerning the default of CAPITALRISE, LLC. The

parties agree that these provisions for liquidated damages are not intended to operate as penalties for breach of Contract.

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

Specified excuses

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

Temporary Suspension or Delay of Performance of Contract

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

D. Project Budget: Limitations

All costs associated with construction, O&P, construction management, and/or real estate expenses have been outlined in said Agreement as percentage-based costs related to the development of one (1) road identified as **Ace Alley** as part of the Laney Walker/Bethlehem Revitalization Project. HCD will have the latitude to pay such costs directly to the procured construction contractor. CAPITALRISE, LLC shall be paid a total consideration of no more than **\$152,00.00** for full performance of the services specified under this Agreement. Any cost above this amount shall be the sole responsibility of HCD. It is also understood by both parties to this contract that the funding provided under this contract for this specific project shall be the only funds provided by Augusta unless otherwise agreed to by Augusta and CAPITALRISE, LLC.

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

ARTICLE III. TERM OF CONTRACT

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

ARTICLE IV. DOCUMENTATION AND PAYMENT

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

ARTICLE V. ADMINISTRATIVE REQUIREMENTS

Conflict of Interest

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

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

Employees, Staff, Volunteers and Associates such as Contractors, Sub-contractors and Consultants shall sign and submit a Conflict of Interest Affidavit. (Affidavit form attached as part in parcel to this Agreement)

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

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

ARTICLE VI. OTHER REQUIREMENTS

- A. CAPITALRISE, LLC agrees to comply with 24 CFR Part I, which provides that no person shall be excluded from participation in this project on the grounds of race, color, national origin, or sex; or be subject to discrimination under any program or activity funded in whole or in part with federal funds made available pursuant to the Act.
- B. No person employed in the work covered by this contract shall be discharged or in any way discriminated against because he or she has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable hereunder to his or her employer. (24 CFR 570.603)
- C. CAPITALRISE, LLC agrees that in accordance with the National Environmental Policy Act of 1969 and 24 CFR Part 58, it will cooperate with Augusta/HCD in complying with the Act and regulations, and that no activities will be undertaken until notified by Augusta/HCD that the activity is in compliance with the Act and regulations. Prior to beginning any project development activity, an environmental review must be conducted by HCD pursuant to (24 CFR 570.604).
- D. Consistent with the Flood Disaster Protection Act of 1973 (42 USC 4001-4128), CAPITALRISE, LLC agrees that funds shall not be expended for acquisition or construction in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards (representing the 100-year floodplain). Exceptions will be made if the community is participating in the National Flood Insurance Program or less than a year has passed since FEMA notification and flood insurance has been obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973.
- E. CAPITALRISE, LLC agrees to take all reasonable steps to minimize displacement of persons as a result of assisted activities. Any such activities will be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and the Housing and Community Development Act of 1974 (24 CFR 570.606).
- F. CAPITALRISE, LLC agrees to comply with Executive Order 11246 and 12086 and the regulations issued pursuant thereto (41 CFR 60) which provides that no person shall be

discriminated against on the basis of race, color, religion, sex, or national origin. CAPITALRISE, LLC will in all solicitations or advertisements for employees placed state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or familial status.

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

THE AUGUSTA GOVERNMENT. CAPITALRISE, LLC agrees to comply with any federally mandated requirements as to minority and women owned business enterprises.

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

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

ARTICLE VII. SUSPENSION AND TERMINATION

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

ARTICLE VIII. NOTICES

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

Augusta will receive all notices at the address indicated below:

Office of the Administrator
ATTN: Takiyah Douse, Interim City Administrator
Municipal Building

535 Telfair Street, Suite 910
Augusta, Georgia 30901

With copies to:
Augusta Housing and Community Development Department
ATTN: Hawthorne Welcher, Jr., Director
510 Fenwick Street
Augusta, Georgia 30901

CAPITALRISE, LLC will receive all notices at the address indicated below:

CAPITALRISE, LLC
ATTN: Peter Tuchyna and Frank Klimes
2924 Aylesbury Drive
Augusta, GA 30909

ARTICLE IX. INDEMNIFICATION

CAPITALRISE, LLC will at all times hereafter indemnify and hold harmless Augusta, its officers, agents, and employees, against any and all claims, losses, liabilities, or expenditures of any kind, including court costs, attorney fees and expenses, accruing or resulting from any or all suits or damages of any kind resulting from injuries or damages sustained by any person or persons, corporation, or property, by virtue of the performance of this Agreement. By execution of this Agreement, CAPITALRISE, LLC specifically consents to jurisdiction and venue in the Superior Court of Richmond County, Georgia and waives any right to contest jurisdiction or venue in said Court.

Should it become necessary to determine the meaning or otherwise interpret any work, phrase or provision of this Agreement, or should the terms of this Agreement in any way be the subject of litigation in any court of laws or equity. It is agreed that the laws of the State of Georgia shall exclusively control the same.

The parties hereto do agree to bind themselves, their heirs, executors, administrators, trustees, successors, and assigns, all jointly and severally under the terms of this Agreement.

ARTICLE X. PRIOR AND FUTURE AGREEMENTS

This Document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. HCD is not obligated to provide funding of any kind to CAPITALRISE, LLC beyond the term of this Agreement.

CAPITALRISE, LLC warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by CAPITALRISE, LLC for the purpose of securing business and that CAPITALRISE, LLC has not received any non-Augusta fee related to this Agreement without the prior written consent of HCD. For breach or violation of this warranty, HCD shall have the right to annul this

Agreement without liability or at its discretion to deduct from the Agreement prices of consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI. LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of any law or regulations and clause required by law or regulation to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein and if, through mistake or otherwise, any such provision is not inserted or is not correctly inserted, then upon application of either party this Agreement shall forthwith be amended to make such insertion.

ARTICLE XII. DISCLAIMER

Any and all language in this Agreement pertaining to HUD regulations and/or the utilizations of HOME funding is deemed voidable when utilizing Laney Walker Bond funds in its entirety. However, if there are any federal funds utilized by this project, including Homebuyer Subsidy funds, this Agreement will be enforceable in its entirety.

ARTICLE XIII. COUNTERPARTS

This Agreement is executed in two (2) counterparts— each of which shall be deemed an original and together shall constitute one and the same Agreement with one counterpart being delivered to each party hereto.

ARTICLE XIV. INSURANCE

The DEVELOPER/CONTRACTOR shall provide, at all times that this Agreement is in effect, Insurance with limits of not less than:

- A. Workmen’s Compensation Insurance – in accordance with the laws of the State of Georgia.
- B. Public Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars for injuries, including those resulting in death to any one person, and in an amount of not less than One Million (\$1,000,000) Dollars on account of any one occurrence.
- C. Property Damage Insurance – in an amount of not less than One Million (\$1,000,000) Dollars from damages on account of an occurrence, with an aggregate limit of One Million (\$1,000,000) Dollars.
- D. Valuable Papers Insurance – in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the Project.
- E. Professional Liability Insurance – in an amount of not less than One Million (\$1,000,000) Dollars or an amount that correlates to the aggregate fee on the project should it exceed \$1,000,000.

DRAFT

IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first written above:

Approved as to Form by (please initial here):
Augusta, GA Law Department

Date: _____

By: _____
Garnett L. Johnson, as its Mayor

Date: _____

By: _____
Takiyah Douse, as its Interim City
Administrator

Date: _____

By: _____
Hawthorne Welcher, Jr., as its Director

Date: _____

Affix Seal Here:

By: _____
Lena Bonner, as its Clerk of Commission

ATTEST: **CAPITALRISE, LLC**

By: _____
Owner

Owner

Date: _____

APPENDIX 1
Architectural Plans/Designs

DRAFT

APPENDIX 2
Statutes: (Available on Request)

OMB Circular A-110 - Uniform Administrative Requirements for Grants and Agreement with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

OMB Circular A- 122 - Cost Principles for Non-Profit Organizations

OMB Circular A-133 - Audits of Institutions of Higher Education & other Non-Profit Institutions

40 USC 276 Davis-Bacon Act

40 USC 327 Contract Work Hours and Safety Standard Act

Uniform Relocation Assistance and Real Property Acquisition Policies Act

Lead Based Paint Poisoning Prevention Act

24 CFR 35 – HUD Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally-Owned Residential Property being sold, Final Rule

Augusta, Georgia- Richmond County Procurement Policy

Conflict of Interest Affidavit

APPENDIX 4
CONSTRUCTION REQUIREMENTS

1. All construction projects shall comply with Federal, State, and local codes and ordinances, including, but not limited to, the following:
 - A. All work shall be in compliance with the International Building Code current edition of National Electric Code, International Plumbing and Mechanical Code, and ADA 2010 Guidelines.
 - B. Georgia Energy Code International Energy Conservation Code (IECC-2015).
 - C. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596.
 - D. Part 1910 – Occupational Safety and Health Standards, Chapter XVII of Title 29, Code of Federal Regulations (Federal Register, Volume 37, Number 202, October 18, 1972).
 - E. Part 1926 - Safety and Health Regulations for Construction, Chapter XVII of Title 29, Code of Federal Regulations (Federal Register, Volume 37, Number 243, December 16, 1972).
 - F. Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).
2. Project Review. All plans, specifications, work write-ups, projected cost estimates, punch lists or other means of outlining work on a particular project will be submitted in writing to HCD for review and approval prior to bidding. HCD Construction and Rehabilitation Inspectors or HCD's agent will review these items for compliance with new construction and/or rehabilitation standards and materials use.
3. Rehabilitation Standards. All rehabilitation work will comply with the "Uniform Physical Condition Standards for HUD Housing." Workmanship and material standards will comply with the Antioch Ministries, Inc. -Richmond County Housing & Community Development Department Contractors Manual and Performance Standards. A copy of this manual is provided to every contractor when included on the HCD Approved Contractors List. A copy is enclosed for inclusion.
4. Inspections. All projects will be inspected and approved by an HCD Construction and Rehabilitation Inspector or HCD's agent prior to release of the funds for that project.

APPENDIX 5

CONTRACTOR ACKNOWLEDGEMENT

LARRY MCCORD acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioner and approval of the Mayor. Under Georgia law, LARRY MCCORD is deemed to possess knowledge concerning HCD's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to HCD under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that LARRY MCCORD may be precluded from recovering payment for such unauthorized goods or services. Accordingly, LARRY MCCORD agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if LARRY MCCORD, 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 LARRY MCCORD. LARRY MCCORD assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia (Laney Walker/Bethlehem Revitalization Project), and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized including, without limitation, all remedies at law or equity. This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

Name
LARRY MCCORD DESIGN BUILD, Owner

CONSTRUCTION MANAGEMENT ACKNOWLEDGEMENT

ISM acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioner and approval of the Mayor. Under Georgia law, ISM is deemed to possess knowledge concerning HCD's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to HCD under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that ISM may be precluded from recovering payment for such unauthorized goods or services. Accordingly, ISM agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if ISM, 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 ISM. ISM assumes all risks of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia (Laney Walker/Bethlehem Revitalization Project), and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized including, without limitation, all remedies at law or equity. This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts.

Name
ISM, Owner

EXHIBIT A
PROJECT SCHEDULE OF COMPLETION

CAPITALRISE, LLC MUST PROVIDE A COMPLETED SCHEDULE OF COMPLETION AS EXHIBIT A- WITH APPROPRIATE PROJECT MILESTONES WITHIN 10 TO 15 DAYS AFTER SIGNING THIS AGREEMENT. THIS SCHEDULE MUST BE PROVIDED IN SUFFICIENT DETAIL TO PERMIT HCD TO MONITOR AND ASSESS PROGRESS IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT. A SAMPLE SCHEDULE IS PROVIDED.

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EXHIBIT B
WORK WRITE-UP

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EXHIBIT C
PROJECT DEVELOPMENT AND MANAGEMENT PROCEDURES

1. HCD must review and approve all new construction work, project specifications and total development cost for each residential development project before work is commenced and before funds can be released for payment reimbursement. Construction payments will be released to CAPITALRISE, LLC in accordance with the attached drawdown schedule and budget.
2. HCD will provide the lot on which all new construction efforts will be performed under this Agreement and in connection with the project.
3. With HCD approval, CAPITALRISE, LLC may use funds under this Agreement for the following purposes:
 - a. To support development costs as outlined in Item 6 below.
4. Completion delays, remedies, and penalties.
 - a. If the Contractor fails to complete the work within the time frame specified in the contract, plus any authorized delays, HCD may:
 - i. Terminate the contractor in accordance with the “Provisions for Augusta Housing and Community Development Department (HCD)” clause of this contract.
 - ii. Assess liquidated damages of Two Hundred Dollars (\$200) per working day from the schedule of completion to the date of final acceptance of the project. The total amount of liquidated damages will be deducted from the total contract price, plus any change order amounts.
 - b. The contractor shall not be charged with liquidated damages for any delays in the completion of the work due:
 - i. To any acts of the Federal, State, or City/County Government; including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other National, State, or City/County emergency.
 - ii. To any acts of the Owner that hinder the progress of the work;
 - iii. To cause not reasonable foreseeable by the parties in this contract at the time the execution of the contract which are beyond the control and without the fault or negligence of the Contractor; including but not restricted to acts of God; acts of the public enemy; acts of another contractor in the performance of some other contract with the owner; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and weather or unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; and
 - iv. To any delay of the subcontractor occasioned by any other causes specified in subparagraphs A and B above. Provided, however, that the contractor promptly (within 10 days) notifies HCD and CAPITALRISE, LLC in writing of the cause of the delay. If the facts show the delay to be properly excusable under the terms of this contract, HCD shall extend the contract time by a period commensurate with the period of authorized delay to the completion of the work as whole; in the form of an amendment to this contract.
5. New Construction Costs and Requirements

- a. CAPITALRISE, LLC will provide construction management for the project to ensure that construction work is being carried out in accordance with plans, specifications and the project budget.
- b. CAPITALRISE, LLC must make sure contractors obtain and post all permits on job site.
- c. CAPITALRISE, LLC must collect progress and final lien releases from the contractor, subcontractors, and material suppliers prior to making a payment to a contractor.
- d. HCD or its agent may continually inspect the road for contract compliance and to determine the percent of completion prior to processing a draw request and releasing payment. HCD may choose not to release payments if the work being performed is not of acceptable quality to HCD and if the road is not being built or rehabilitated in accordance with plans and specifications, or if the project is not on schedule.

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