

**CONTRACT**

Between

**AUGUSTA, GEORGIA**

And

**MCKIE HAYES ENTERPRISE, LLC**

In the amount of

**\$ 97,641.00**

**Ninety-Seven Thousand Six Hundred Forty-One Dollars & 00/100**

For Fiscal Year **2023**

Providing Funding From

**HOME INVESTMENT PARTNERSHIPS PROGRAM**

*“1344 Swanee Quintet Blvd. – Single Family”*

**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, acting through the Housing and Community Development Department (hereinafter referred to as “*HCD*”) – with principal offices at 510 Fenwick , Augusta, Georgia 30901, as party of the first part (hereinafter called “*Augusta*”), and McKie Hayes Enterprise, LLC., a developer, organized pursuant to the Laws of the State of Georgia (hereinafter called “*MCKIE HAYES*”) as party in the second part.

**WITNESSETH**

**WHEREAS**, Augusta is qualified by the U.S. Department of Housing and Urban Development (hereafter called HUD) as a HOME Program Participating Jurisdiction, and Augusta has received HOME Investment Partnerships Act (hereinafter called HOME or the HOME Program) funds from HUD for the purpose of providing and retaining affordable housing for eligible families; as defined by HUD; and

**WHEREAS**, McKie Hayes will be involved in HOME eligible activities; and

**WHEREAS**, Augusta wishes to increase homeownership opportunities and preserve and increase the supply of affordable housing for HOME Program eligible low and moderate income families through eligible uses of its HOME Program grant funds, as described in the Augusta-Richmond County Consolidated Plan 2020-2024; and the Year 2023 Annual Action Plan; and

**WHEREAS**, Augusta wishes to enter into a contractual agreement with McKie Hayes for the administration of HOME eligible affordable housing development activities; and

**WHEREAS**, this activity has been determined to be an eligible HOME activity according to 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.

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

**WHEREAS**, McKie Hayes has requested, and Augusta has approved a total of \$ 97,641.00 in HOME funds 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**

#### **a. Project Description**

McKie Hayes agrees to utilize approved HOME funds to support project related costs associated with property located at 1344 Swanee Quintet Blvd., one (1) single family unit to be construct and sold to an eligible low-income buyer. This project is an affordable housing effort which involves development and construction. Under this agreement:

- i. Perform new construction services for a single family unit.*
- ii. Will participate in bi-weekly construction meetings.*
- iii. Perform all required and requested marketing and advertising activities; in accordance with “Fair Housing” regulations*
- iv. All projects are to posses the following components:*
  1. Evidence of additional financing resources “Leveraging”
  2. Evidence of Site Control
  3. At the time of sales, evidence that a qualified homebuyer has been identified, received and completed a comprehensive home buying

education course(s) and pre-purchase housing counseling program, prior to the completion of the assigned home.

4. If at the time of construction, there is no approved homebuyer, MCKIE HAYES must utilize the services of a licensed Realtor to market and sale the unit.

**B. Use of Funds**

HOME Program funds shall be used by McKie Hayes for the purposes and objectives stated in Article I, Scope of Services, and Exhibit “A” of this Agreement. The use of HOME funds for any other purpose(s) is not permitted. The following summarizes the proposed uses of funds under this agreement:

**a. Construction Costs**

An amount not to exceed \$ **97,641.00** in a HOME funds shall be expended by McKie Hayes from Year 2021 HOME Program funds for construction costs related to the development of one (1) single family unit at 1344 Swanee Quintet Blvd. in the Turpin Hill Community. The design and specifications must be approved by HCD prior to construction (Exhibit A). Funds will be used to assist with the cost of all construction-related fees. Sales price will be determined by an as built appraisal as submitted by MCKIE HAYES. This unit will be constructed by McKie Hayes and made available for purchase by HOME Program eligible low and moderate income homebuyers.

The address for this project is:

- i. 1344 Swanee Quintet Blvd., Augusta, Georgia 30909

Initial: \_\_\_\_\_

**C. Program Location and Specific Goals to be Achieved**

McKie Hayes shall conduct project development activities and related services in its project area known as Turpin Hille that incorporates the following boundaries:

Wrightsboro Road on the North, Gordon Highway to the West, 15<sup>th</sup> Street on the South and Walton Way on the East and its designated geographic boundaries approved by AHCD.

**D. Project Eligibility Determination**

It has been determined that the use of HOME Program funds by McKie Hayes will be in compliance with 24 CFR Part 92. The project has been underwritten and reviewed in accordance with underwriting standards and criteria of Augusta and the amount of subsidy provided is appropriate. Notwithstanding any other provisions of this contract, McKie Hayes 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. MCKIE HAYES will comply with § 92.300(a)(1) & §92.300(a)(2)

**ARTICLE II. BUDGET AND METHOD OF PAYMENT**

McKie Hayes will be compensated in accordance with this Article II, Budget and Method of Payment, that specifically identifies the use of HOME funds and any other project funding as represented in Article II. C. 2 of this Agreement. McKie Hayes will carry out this project with implementation oversight provided by HCD. McKie Hayes agrees to perform the required services under the general coordination of HCD. In addition, and upon approval by Augusta, McKie Hayes, may engage the services of outside professional services, consultants, and contractors to help carry out the program and project.

**A. Funds**

Augusta shall designate and make HOME Program funds available in the following manner: **\$97,641.00** loan under this agreement for project expenses incurred as outlined in ARTICLE I, Scope of Services, subject to McKie Hayes compliance with all terms and conditions of this agreement and the procedures for documenting expenses and activities as set forth in ARTICLE V.

- a. The method of payment shall be on a reimbursement basis. The Reimbursement Form can find in Appendix B. For invoicing, McKie Hayes will include documentation showing proof of payment in the form of a cancelled check attached with its respective invoice and completed reimbursement form that includes amount requested, amount remaining and specific line-item names that relate to the contract budget found in Appendix A.
- b. HCD will monitor the progress of the project and McKie Hayes performance on a weekly basis with regards to the production and overall effectiveness of the project.

- c. McKie Hayes and contractor will participate in bi-weekly construction meetings as set by HCD.
- d. Upon the termination 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.
- e. Funds may not be transferred from line item to line item in the project budget without prior written approval of Augusta thru HCD.
- f. The use of funds described in this agreement is subject to the written approval of the U. S. Department of Housing and Urban Development.
- g. This Agreement is based upon the availability of HOME Program funds. Funds may be requested on a n as needed basis but not more than once a week.

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**B. Project Financing**

HCD will fund fifty percent (50%) of the total construction costs in the amount of \$97,641.00 of this single project and seeks to provide McKie Hayes with the necessary HOME Agreement.

The Augusta Housing and Community Development Department (AHCD) will fund no more than \$ 97,641.00 of the total development costs of a single project, and seeks to provide potential homebuyer with the necessary HOME funding upon receipt of the preliminary closing documents.

HCD will place a lien on the property to ensure proper proceeds are received at the sale of the property.

HCD agrees to allow MCKIE HAYES to retain 25% of sales proceeds to further future HOME development. (Example: 1344 Swanee Quintet Blvd. sales for \$195,000; MCKIE HAYES retains \$48,750.00 (25%) and pays HCD \$ 48,891.00)

*Initial:* \_\_\_\_\_

**C. Timetable for Completion of Project Activities**

McKie Hayes shall obligate the designated HOME Program funds within five months of the date of execution of this Agreement. Based on the budget outlined in D below, McKie Hayes will provide a detailed outline of critical project milestones and projected expenditures during the development project as Exhibit B. These documents will become an official part of the contractual agreement and provide the basis for overall project performance measurements.

a. Liquidated Damages

- i. *McKie Hayes shall complete this project no later than 150 Days from the effective date of the Notice To Proceed, unless otherwise approved by Director of HCD. The penalty for non-completion is \$50 a day for every day over the stated deadline.*

*Initial: \_\_\_\_\_*

**D. Project Budget: Limitations**

1. McKie Hayes shall be paid a total consideration of no more than **\$ 97,641.00** for full performance of the services specified under this Agreement. Any cost above this amount shall be the sole responsibility of McKie Hayes 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 McKie Hayes

2. McKie Hayes shall adhere to the following budget in the performance of this contract:

**Construction** \$ **97,641.00**

**TOTAL HOME PROJECT COST:** \$ **97,641.00**

*Initial: \_\_\_\_\_*

**ARTICLE III. RESALE/RECAPTURE PROVISIONS [24 CFR 92.254(5)]**

The Resale/Recapture Provisions in this Article III shall ensure compliance with the HOME Program "Period of Affordability" requirements pursuant to 24 CFR 92.254(a)(4). 24 CFR 92.254 required that Augusta, its subrecipients, and CHDOs follow certain resale/recapture restrictions regarding its HOME-funded homebuyer program. Each property sold to a homebuyer will remain affordable for the duration of the affordability period or Augusta will use the recapture option.

If the eligible homebuyer (who received down payment assistance [HOME Program] or other development subsidy funds from Augusta) sells their property, then HCD shall capture the

HOME funds which will ensure that the recaptured HOME Program funds are reinvested in other affordable housing in Augusta for low and moderate-income persons. This shall be accomplished through deed restrictions, property liens, and contractual obligations, as described in Article I.B of this Agreement.

#### **ARTICLE IV. TERM OF CONTRACT**

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

#### **ARTICLE V: DOCUMENTATION AND PAYMENT**

- A. This is a pay-for-performance contract and in no event shall Augusta provide advance funding to McKie Hayes or any contractor/subcontractor hereunder. All payments to McKie Hayes by Augusta will be made on a per performance request through the AIA Document.
- B. McKie Hayes shall maintain a separate account and accounting process for HOME funding sources.
- C. McKie Hayes shall not use these funds for any purpose other than the purpose set forth in this Agreement.
- D. Subject to McKie Hayes compliance with the provisions of this Agreement, Augusta agrees to reimburse all budgeted costs allowable under federal, state, and local guidelines.
- E. 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.
- F. Requests by McKie Hayes for payment shall be accompanied by proper documentation and shall be submitted to HCD, transmitted by a cover memo, for approval no later than their (30) calendar days after the last date covered by the request. For purposes of this section, proper documentation includes: “Reimbursement Request Form” supplied by HCD, copies of invoices, receipts, other evidence of indebtedness, budget itemization and description of specific activities undertaken. Invoices shall not be honored if received by HCD later than sixty (60) calendar days after expiration date of Agreement. The reimbursement request form is in Appendix B.
- G. McKie Hayes shall maintain an adequate financial system and internal fiscal controls.

- H. Unexpended funds shall be retained by Augusta. Upon written request, Augusta may consider the reallocation of unexpended funds to eligible projects proposed by McKie Hayes.

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## **ARTICLE VI. REPAYMENT/PROGRAM INCOME**

- A. Augusta will be responsible for monitoring the reuse of the proceeds.
- B. Any real property under McKie Hayes control that was acquired or improved in whole or in part with HOME funds in excess of \$25,000 must either:
- a. Be used to meet one of the national objectives in 24 CFR 570.208 for at least five years after the expiration of this Agreement; or
  - b. Be disposed of in a manner that results in Augusta being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-HOME funds for acquisition of, or improvement to, the property.
- C. Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in §92.252 or §92.254, as applicable, must be repaid by McKie Hayes.
- D. Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by McKie Hayes.
- E. If McKie Hayes is found to be in non-compliance with the HOME Program laws and regulations as described in 24 CFR Part 92, the organization will be required to reimburse Augusta for the funding associated with the noncompliance issues.

## **ARTICLE VII. RECORD KEEPING, REPORTING AND MONITORING REQUIREMENTS**

McKie Hayes shall carry out its HOME assisted activities in compliance with all HOME Program laws and regulations described in 24 CFR Part 92 Subpart E (Program Requirements), Subpart F (Project Requirements), and Subpart H (Other Federal Requirements). These compliance activities include, but are not limited to:

- a. Maximum acquisition prices [24 CFR 92.205A.2]
- b. Maximum per unit HOME Program subsidy amount [Section 221(d)(3)]



- c. Combined affordability of assisted units
- d. Income eligibility of assisted units
- e. Inspection of the homebuyer units to comply with HUD required Property Standards
- f. Acquisition, Displacement and Relocation Requirements [24 CFR 92.353]
- g. Environmental Review
- h. Lead-based Paint Abatement
- i. Property Value [Section 203(b) Limits]

To document low and moderate-income benefits required in 24 CFR 570.200(a)(2). McKie Hayes shall maintain records that document all clients served with HOME funds. In addition, McKie Hayes shall document each client's race, family size, annual household income, and whether or not the family is female-headed. Augusta shall supply "Income Verification" forms which, when completed by those clients served by McKie Hayes, shall provide the information and verification described above.

McKie Hayes shall prepare and submit reports relative to this project to Augusta at Augusta's request. Augusta shall supply McKie Hayes with the following report forms and require the same to be completed as requested by Augusta: "Monthly Services", "Quarterly Progress", "Quarterly Financial" and "Annual Report". Further explanation and report due dates are found in Appendix B below.

McKie Hayes shall maintain books and records in accordance with generally accepted accounting principles. Documents shall be maintained in accordance with practices that sufficiently and properly reflect all expenditure of funds provided by Augusta under this Agreement.

McKie Hayes shall make all records for this project available to Augusta, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives for the purpose of making audits, examinations, excerpts and transcriptions.

In compliance with OMB Circular A-110 regarding retention and custodial requirements for records, McKie Hayes shall maintain financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a period of three years, with the following qualifications:

- a. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.
- b. Records for non-spendable personal property acquired with HOME grant funds shall be retained for three years after its final disposition. Non-expendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.

In connection with the expenditure of federal funds, McKie Hayes shall provide to Augusta and organization – wide audited financial statement consisting of a balance sheet, income statement and a statement of changes in its financial position. All documents shall be prepared by certified public accountant. Such financial disclosure information shall be filed with Augusta within one hundred fifty (150) calendar days after the close of McKie Enterprises’ fiscal year. McKie Hayes is responsible for any cost associated with the audit. Failure to comply may result in the reallocation of funding and termination of the contract. McKie Hayes shall supply, up on request, documentation maintained in accordance with practices which sufficiently and properly reflect all expenditures of funds provided by Augusta under this Agreement.

Open Records Disclosure: McKie Hayes’ records related to this Agreement and the services to be provided under the agreement may be a public record subject to Georgia’s Open Records Act (O.C.G.A. §50-18-70). McKie Hayes agrees to comply with the Open Records Act should a request be submitted to it. Further, McKie Hayes agrees to comply with the provision of the Open Meetings Law and the following compliance measures will be taken:

- a. McKie Hayes will provide notice to the Augusta Chronicle and the Augusta Focus or the Metro Courier of its regular board meeting schedule and of any special called meetings except emergency meetings.

- b. McKie Hayes will post notices of its meetings in a public place at the meeting sites and it will keep a written agenda, minutes, attendance, and voting record for each meeting and make the same available for inspections by the press, the public and the Grantee, subject to the provision of the Open Meetings Law.
- c. The press, public, and the Grantee shall not be denied admittance to McKie Hayes' board meetings, except for such portions of the meeting as may be closed pursuant to the Open Meetings Law.
- d. McKie Hayes shall provide the Grantee a tentative annual schedule of the Board of Director's meetings. Publications and minutes of each meeting shall be submitted to Grantee within 30 days after each meeting.

## **ARTICLE VIII ADMINISTRATIVE REQUIREMENTS**

### **A. Conflict of Interest**

McKie Hayes agrees to comply with the conflict-of-interest provisions contained in 24 CFR 92.356 (f) 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 McKie Hayes. No person described above who exercises, may exercise or has exercised any functions or responsibilities with respect to the HOME 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 Contract. The McKie Hayes 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 Contract.

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

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

## **ARTICLE IX. OTHER REQUIREMENTS**

### A. Fair Housing

McKie Hayes agrees that it will conduct and administer HOME activities in conformity with Pub. L. 88-352, "Title VI of the Civil Rights Act of 1964", and with Pub. L. 90-284 "Fair Housing Act", and that it will affirmatively further fair housing. One suggested activity is to use the fair housing symbol and language in McKie Hayes publications and/or advertisements. (24 CFR 570.601).

### Non-Discrimination and Accessibility

McKie Hayes 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. Reasonable accommodations will be offered to all disabled persons who request accommodations due to disability at any time during the application, resident selection and rent up process.

### Enforcement Provisions

1. HCD will conduct yearly on-site inspections of assisted units to verify they are maintained in standard condition and meet applicable housing quality standards to include ongoing maintenance requirements.
2. Breach of Agreement or default: Breach occurs when a party to a contract fails to fulfill his or her obligation as described in the contract or communicates an intent to fail the obligation or otherwise appears not to be able to perform his or her obligation under the contract. Any obligations by either party not being upheld by said agreement will constitute as noncompliance and result in termination of agreement. HCD will notify McKie Hayes if the agreement is in default or has been breached in any manner.
3. Repayment of HOME Funds: If property does not comply with 24 CFR 92.252 funding will be paid back with nonfederal funds.

### D. Labor Standards

1. General: McKie Hayes agrees that in instances in which there is construction work over \$2,000 financed in whole or in part with HOME funds under this Contract, McKie Hayes will adhere to the Davis-Bacon Act (40 USC 276), as

amended, which requires all laborers and mechanics working on the project to be paid not less than prevailing wage-rates as determined by the Secretary of Labor. By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 USC 327 et seq.) also applies. These requirements apply to the rehabilitation of residential property only if such property contains eight or more units. (24 CFR 92.354)

2. Labor Matters: 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 92.354)

E. Environmental Standards

McKie Hayes 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 following the Act and regulations. Prior to beginning any project development activity, an environmental review must be conducted by the Augusta-Richmond County Planning Department pursuant to (24 CFR 92.352).

F. Flood Insurance

Consistent with the Flood Disaster Protection Act of 1973 (42 USC 4001-4128), McKie Hayes agrees that HOME funds shall not be expended for acquisition or construction in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards (representing the 100-year floodplain). Exceptions will be made if the community is participating in the National Flood Insurance Program or less than a year has passed since FEMA notification and flood insurance has been obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973.

G. Displacement and Relocation

McKie Hayes agrees to take all reasonable steps to minimize displacement of persons as a result of HOME assisted activities. Any such activities assisted with HOME funds 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 92.353).

H. Non-Discrimination in Employment

McKie Hayes 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. McKie Hayes will in all solicitations or advertisements for employees placed by or on behalf of

McKie Hayes; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin or familial status.

I. Employment and Business Opportunities

McKie Hayes agrees that low- and moderate-income persons residing within Augusta-Richmond County; and that contracts for work in connection with the project be awarded to eligible business concerns which are located in or owned in substantial part by persons residing in Augusta-Richmond County - (24 CFR 570.697).

J. Lead-Based Paint

In accordance with Section 92.355 of the HOME Regulations and Section 570.608 of the CDBG Regulations, McKie Hayes agrees to comply with the Lead Based Paint Poisoning Prevention Act pursuant to prohibition against the use of lead-based paint in residential structures and to comply with 24 CFR 570.608 and 24 CFR 35 with regard to notification of the hazards of lead-based paint poisoning and the elimination of lead-based paint hazards.

K. Debarred, Suspended or Ineligible Contractor

McKie Hayes agrees to comply with 24 CFR 570.609 with regards to the direct or indirect use of any contractor during any period of debarment, suspension, or placement in ineligibility status. No contract will be executed until such time that the debarred, suspended or ineligible contractor has been approved and reinstated by HCD.

L. Drug Free Workplace

In accordance with 24 CFR part 24, subpart F, McKie Hayes agrees to administer a policy to provide a drug-free workplace that is free from illegal use, possession or distribution of drugs or alcohol by its beneficiaries as required by the Drug Free Workplace Act of 1988.

M. Publicity

Any publicity generated by McKie Hayes for the project funded pursuant to this Contract, during the term of this Contract or for one year thereafter, will make reference to the contribution of Augusta-Richmond County in making the project possible. The words "Augusta-Richmond County Department of Housing and Community Development" will be explicitly stated in any and all pieces of publicity; including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews, and newspaper articles.

N. Timely Expenditure of Funds

In accordance with 24 CFR 85.43, if McKie Hayes fails to expend its grant funds in a timely manner, such failure shall constitute a material failure to comply with this Contract and invoke the suspension and termination provisions of ARTICLE X. For purposes of this Contract, timely expenditure of funds means McKie Hayes shall obligate and expend its funds as designated under ARTICLE II. (B).

O. Compliance with Laws and Permits

McKie Hayes 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. McKie Hayes agrees to obtain all necessary permits for intended improvements or activities.

P. Assignment of Contract

McKie Hayes shall not assign any interest in this contract or transfer any interest in the same without the prior written approval of Augusta.

Q. Equal Employment Opportunity

McKie Hayes 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. Affirmative Action

McKie Hayes will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or familial status. McKie Hayes will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, or McKie Hayes social 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. McKie Hayes 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. McKie Hayes agrees to make efforts to encourage the use of minority and women-owned business enterprises in connection with HOME supported activities.

S. Affirmative Marketing Plan



McKie Hayes and managing agent shall adopt the affirmative marketing procedures and requirements as specified in the HOME Final Rule 92.351.

T. Religious Influence

McKie Hayes 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. McKie Hayes will not discriminate against any person applying for shelter on the basis of religion. McKie Hayes will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing and exert no religious influence in the provision of shelter and other eligible activities funded by this grant.

U. Indirect Costs

Indirect costs will only be paid if McKie Hayes has indirect cost allocation plan approved by the Department of Housing and Urban Development prior to the execution of this Contract.

V. Travel

If applicable, McKie Hayes shall obtain prior written approval from the Grantee for any travel outside the State of Georgia with funds provided under this contract. All Federal Travel Regulations are applicable (41 CFR Part 301).

W Construction Requirements - SEE APPENDIX C

All housing units [*rehabilitated, reconstructed or newly constructed*] and assisted with HOME Program funds must, before occupancy, meet the Property Standards specified at 25 CFR 92.251 [the HOME Program Regulations]. The Property Standards at 24 CFR 92.251 require that the units receiving HOME Program funds must meet all local codes for new construction. In the absence of local codes, properties must meet the HUD Section 8 Housing Quality Standards [HQS]. All units assisted under this Contract is “new construction” by HOME Program definition and therefore must meet the local building codes for new housing in Augusta-Richmond County, as applicable. All units must meet applicable property standards upon project completion.

**ARTICLE X. SUSPENSION AND TERMINATION**

A. In the event McKie Hayes 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 I, Scope of Services, Augusta may withhold cash payments until McKie Hayes cures any breach of the contract. If McKie Hayes fails to cure the breach, Augusta may suspend or terminate the current award of HOME funds for Wheeler Road project.



- B. Notwithstanding the above, McKie Hayes shall not be relieved of its liability to Augusta for damages sustained as a result of any breach of this contract. In addition, to any other remedies it may have at law or equity, Augusta may withhold any payments to McKie Hayes for the purposes of set off until such time as the exact amount of damages is determined.
- C. In the best interest of the program and to better serve the people in the target areas and fulfill the purposes of the Act, the City of Augusta can terminate this contract if McKie Hayes breach this contract or violate any regulatory rules. The City of Augusta can terminate the contract in 30 days and call the note due.
- D. Notwithstanding any termination or suspension of this Contract, McKie Hayes shall not be relieved of any duties or obligations imposed on it under ARTICLES V, VI, VII, VIII, IX, XI, and XII of this agreement with respect to HOME funds previously disbursed or income derived therefrom.

**ARTICLE XI. 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 notice at the address indicated below:

Office of the Administrator  
Municipal Building  
535 Telfair Street  
Augusta, GA 30911

With copies to:

Augusta Housing and Community Development Department  
510 Fenwick Street  
Augusta, GA 30901

McKie Hayes will receive all notices at the address indicated below:

McKie Hayes  
5950 Bowdens Pond Road  
Dearing, Georgia 30808

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by U.S. mail.

## **ARTICLE XII. INDEMNIFICATION**

McKie Hayes 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 Contract. By execution of this agreement, McKie Hayes 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 Contract, or should the terms of this Contract 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 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 Contract.

## **ARTICLE XIII. INSURANCE AND BONDING**

McKie Hayes shall acquire adequate insurance coverage to protect all contract assets from loss or damage resulting from theft, fraud or physical damage. All policies and amounts of coverage shall be subject to approval by Augusta. Additionally, McKie Hayes shall procure and provide for approval by Augusta a blanket fidelity bond in the amount of at least \$100,000.00 covering all personnel of McKie Hayes handling or charged with the responsibility for handling funds and property pursuant to this contract. MCKIE HAYES shall procure and provide, for approval by Augusta, comprehensive general liability insurance in the amount of at least \$1,000,000.00 insuring the Grantee and adding as named insured the City of Augusta, the Mayor, Commissioners, and Augusta's officers, agents, members, employees, and successors.

Additionally, McKie Hayes shall procure officers and directors liability insurance under policies to be approved by Augusta. All of the above policies shall provide that no act or omission of the grantee, its agents, servants, or employees shall invalidate any insurance coverage required to be provided by McKie Hayes hereunder shall be cancelable without at least fifteen (15) days advance written notice to the Grantee. All insurance policies required hereunder or copies thereof shall be promptly submitted for approval by Augusta.

## **ARTICLE XIV. 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. Augusta is not obligated to provide funding of any kind to McKie Hayes beyond the term of this Contract.

**ARTICLE XV. 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 Contract shall be deemed to be inserted herein and this Contract 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 Contract shall forthwith be amended to make such insertion.

**ARTICLE XVI. ANTI-LOBBYING**

To the best of the jurisdiction's knowledge and belief:

No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**ARTICLE XVII. 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.

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

ATTEST:

AUGUSTA, GEORGIA

(Augusta)

Approved as to form: \_\_\_\_\_  
Augusta, GA Law Department

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Garnett L. Johnson  
As its Mayor

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Takiyah A. Douse  
As its Interim Administrator

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Hawthorne Welcher, Jr.  
As its Director, HCD

Date: \_\_\_\_\_

SEAL

\_\_\_\_\_  
Lena Bonner  
As its Clerk

ATTEST:

McKie Hayes  
(Grantee)

BY: \_\_\_\_\_  
Its: \_\_\_\_\_ Date

\_\_\_\_\_  
Plain Witness Date

## APPENDIX A

### Statutes:

24 CFR Part 92, HOME Investment Partnerships Program (“HOME”)

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-Richmond County Procurement Policy

Conflict of Interest Affidavit

### **Forms:**

AIA Construction Document

Contract and Subcontract Activity Report

Monthly Report

Quarterly Report

Annual Report

## APPENDIX B

### REPORTING REQUIREMENTS

McKie Hayes shall submit to the Grantee the following reports for the term of this agreement and maintain applicable documentation for the full term of the affordability period. Augusta reserves the right to change reporting requirements, as needed as well as the right to review records and reports for the public, HUD, IG or any other interested party as deemed appropriate.

1. *Monthly/Quarterly Progress & Financial Reports  
Due the 15<sup>th</sup> of the month for each new quarter.*
2. *Annual Progress Report (January 16th)*
3. *Audit/Financial Report by April 30<sup>th</sup>*
4. *Contract & Subcontract Activity Report Due with each Request for Payment*
5. *Grantee shall maintain files on each person assisted. Each file shall contain, but is not restricted to, income data and verification for each person assisted; Rental housing application, worker order requests, inspection reports, payment history, pest control log, violation report; and any other document that will provide proof of needed service(s) and subsequent provision of such service(s) as allowed under this contract.*
6. *McKie Hayes shall establish and maintain an Affirmative Marketing file to hold advertisements, flyers, and other public information. Must also keep records of its activities in implementing the affirmative marketing plan, including other community outreach efforts and its annual analysis.*
7. *McKie Hayes shall keep up-to-date records based on census data, applications, and surveys about community residents, applicants, residents of the project, and records about tenant selection or rejection.*

## APPENDIX C

## **CONSTRUCTION REQUIREMENTS**

1. All construction projects shall comply with Federal, State, and local codes and ordinances, including, but not limited to, the following:
  - A. "Standard Building Code", 2000 Edition, Southern Building Congress, International, Inc., Birmingham, Alabama.
  - B. "Standard Plumbing Code", latest edition, Southern Building Congress, International, Inc., Birmingham, Alabama.
  - C. Standard Mechanical Code, latest edition, Southern Building Congress, International, Inc., Birmingham, Alabama.
  - D. "National Electric Code", latest edition, National Fire Protection Association, Quincy, Massachusetts.
  - E. Model Energy Code, 1997, Council of American Building Officials.
  - F. "ADA Accessibility Guidelines for Buildings and Facilities", Department of Justice, American with Disabilities Act of 1990".
  - G. Williams-Steiger Occupational Safety and Health Act of 1970, Public Law 91-596.
  - H. 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).
  - I. 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).
  - J. Section 106 of the National Historic Preservation Act (16 U.S.C. 470f).
2. Eligible Contractors: Any contractor desiring to bid on HOME projects may apply for inclusion on the HCD Approved Contractor List. Applications will be processed and either approved or disapproved within 10 working days. Under no circumstances will barred, disapproved, or otherwise ineligible contractors be allowed to bid on federally funded projects.
3. 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 will review these items for compliance with new construction and/or rehabilitation standards and materials use.

4. **Change Orders:** Change orders are a part of doing business in but will be managed by written request to HCD for approval. No one can give a verbal change order on site. Documentation must be submitted and approved by Program Manager and Director of HCD.
5. Retainage for 10% of each draw will be withheld until all the work is complete.
6. **Property Standards:** 92.251(a)(1) requires new construction projects to meet State and local codes, ordinances, and zoning requirements. In the absence of an applicable State or local code for new construction, HOME-assisted projects must meet the International Code Council's (ICC's) International Residential Code or International Building Code, whichever is applicable to the type of housing being developed.

§92.251(a)(2) incorporates or specifies additional standards:

- Accessibility requirements as applicable, in accordance with Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Fair Housing Act. These requirements are not new.
- Disaster mitigation standards, in accordance with State and local requirements or as established by HUD, where they are needed to mitigate the risk of potential disasters (such as earthquakes, hurricanes, flooding, and wildfires). This is a new requirement.

§92.251(a)(iv) and (v) adds requirements to improve project oversight for new construction. HCD must:

- Review and approve written cost estimates, construction contracts, and construction documents.
  - Conduct construction progress and final inspections to ensure that work is done in accordance with the applicable codes, the construction contract, and construction documents.
7. **Inspections.** The project will be inspected and approved by an HCD Construction and Rehabilitation Inspector prior to release of the funds for that project.
  8. HOME-assisted rental housing must meet the required property standards at the time of the project completion and must be maintained in accordance with applicable housing quality standards throughout the affordability period.

## **EXHIBIT "A"**



## PROJECT DEVELOPMENT AND MANAGEMENT PROCEDURES

1. Augusta through the Housing and Community Development Department agrees to provide up to **\$97,641.00** in Year 2023 HOME Investment Partnerships Funds to McKie Hayes. These funds will support new construction with the production of approximately one single-family affordable unit.
2. HCD must review and approve all residential design plans, 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 McKie Hayes in accordance with the attached drawdown schedule and budget.
3. With HCD approval, McKie Hayes may use HOME funds under this contract for all 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
    1. Terminate the contractor in accordance with the “Provisions for Augusta Housing and Community Development Department (HCD)” clause of this contract.
    2. Assess liquidated damages of fifty dollars (\$50.00) 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:
    1. 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 or war, National Defense, or other National, State or City/County emergency.
    2. To any acts of the Owner that hinder the progress of the work.
    3. To causes not reasonable foreseeable by the parties to this contract at the time of 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; as of the

public enemy; acts of another contractor in the performance of some other contract with the owner; fires; epidemics; quarantine restrictions; strikes; freight embargoes; and weather of unusual severity such as hurricanes, tornadoes, cyclones, and other extreme weather conditions; and

4. 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 in writing of the cause of the delay. If the fact shows 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.

**6. Construction Costs and Requirements**

- a. The amount that can be used to pay for development costs will be identified on a project-by-project basis in EXHIBIT B. In no case will this amount exceed the maximum per unit amount as defined at 24 CFR 92.250.
- b. McKie Hayes 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.
- c. McKie Hayes must make sure contractor obtains and posts all permits on job site. Prior to releasing final payment on each unit, McKie Hayes must also secure a Certificate of Occupancy from the contractor that has been issued by the Department of Licenses and Inspection.
- d. McKie Hayes must collect from the contractor a copy of the construction supply invoice and submit to HCD at time of Notice to Proceed.
- e. McKie Hayes must collect progress and final lien releases from the contractor, subcontractors, and material suppliers prior to making a payment to a contractor.
- f. HCD may continually inspect each unit for contract compliance and to determine the percent of completion prior to processing a draw request and releasing payment. HCD may elect to make up to five (5) payments per unit. HCD may choose not to release payments if the work being performed is not of acceptable quality to HCD and if the unit is not being built or rehabilitated in accordance with plans and specifications, or if project is not on schedule.

EXHIBIT "B"

**PROJECT SCHEDULE OF COMPLETION**

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