

CITY OF AUGUSTA

AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 2021, by and between the CITY OF AUGUSTA, a municipal corporation existing under the laws of the State of Maine and located in the County of Kennebec, State of Maine (hereinafter "CITY "), and _____ (hereinafter "CONTRACTOR"),

WITNESSETH:

In consideration of the mutual covenants and conditions contained herein, the CITY and the CONTRACTOR agree as follows:

SPECIFICATIONS:

1. The CONTRACTOR shall furnish all of the material and perform all of the work per RFSB. 221077- 2nd Floor South Exit Stairs and Electrical Concrete Room Enclosure Assessment.

COMPLETION DATE:

2. The work to be performed under this Agreement shall commence January 1, 2022 and continue through March 31, 2022, with extensions granted as needed.

CONTRACT PRICE:

3. The CITY shall pay the CONTRACTOR for the performance of the Agreement based on the items listed in the bid documents.

CITY 'S RIGHT TO TERMINATE CONTRACT:

4. If the CONTRACTOR should be adjudged as bankrupt, or if it should make a general assignment for the benefit of creditors, or if a receiver should be appointed on account of its insolvency, or if it should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if it should fail to make prompt payment to subcontractors or for material or labor, or persistently disregard laws and ordinances, or otherwise be guilty of a substantial violation of any provision of the Agreement, then the CITY, when sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving the CONTRACTOR, and his surety, seven (7) days written notice, terminate the employment of the CONTRACTOR and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it may deem expedient. In such case, the CONTRACTOR shall not be entitled to receive any further payment until the work

is finished. If the unpaid balance of the Agreement price shall exceed the expense of finishing the work, including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the CONTRACTOR. If such expense shall exceed such unpaid balance, the CONTRACTOR shall pay the difference to the CITY.

CONTRACTOR'S LIABILITY INSURANCE:

5. The CONTRACTOR shall not commence work under this Agreement until he has obtained all insurance required under this RFSB as described in the Bid Documents and such insurance has been approved by the CITY, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all similar insurance required of subcontractor has been so obtained and approved.
 - a. Certificates of Insurance of the types and in the amounts required shall be delivered to the CITY prior to the commencement of any work by the CONTRACTOR, subcontractor or lower tier CONTRACTOR or any person or entity working at the direction or under control of the CONTRACTOR. The CONTRACTOR shall assume the obligation and responsibility to confirm insurance coverage for all subcontractors or lower tier CONTRACTORS who will participate in the project.
 - b. The Certificate of Insurance and the policies of insurance shall include a sixty (60) day notice to the CITY of cancellation, non-renewal or material change in coverage or form.
 - c. It is recommended that the CITY be named as an Additional Insured on the General Liability and Automobile Liability policies.
 - d. The CONTRACTOR and his surety shall indemnify and save harmless the CITY, his officers and employees from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of the operations of the said CONTRACTOR; or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in construction of the work; or because of any act or omission, neglect, or misconduct of said CONTRACTOR; or because of any claims or amounts recovered from any infringements or patent trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act" or of any other law, ordinance, order or decree; and so much of the money due to the said CONTRACTOR under and by virtue of his/her contract as shall be considered necessary by the CITY for such purpose, may be retained; or in case no money is due, his surety may be held until such suit or suits, action or actions, claim or claims, for injuries or damages as aforesaid shall have been settled and suitable evidence to that effect furnished to the CITY.

e. **Waiver of Subrogation**

Payment of any claim or suit including any expenses incurred in connection therewith by the CITY, or any insurance company on behalf of the CITY shall not constitute a waiver of subrogation against the CONTRACTOR, subcontractors or any lower tier CONTRACTOR in the event that such claim or suit was caused by or contributed to as a result of the negligent acts of the CONTRACTOR, any subcontractors or lower tier CONTRACTORS.

f. **Construction Agreement**

The CONTRACTOR shall and does hereby agree to indemnify, save harmless and defend the CITY from the payment of any sum or sums of money to any person whomsoever on account of claims or suits growing out of injuries to persons, including death, or damages to property, caused by the CONTRACTOR, his employees, agents or subcontractors or in any way attributable to the performance and execution of the work herein contracted for, including (but without limiting the generality of the foregoing), all claims for service, labor performed, materials furnished, provisions and suppliers, injuries to persons or damage to property, liens, garnishments, attachments, claims, suits, costs, attorney's fees, costs of investigation and defense. It is the intention of this paragraph to hold the CONTRACTOR responsible for the payment of any and all claims, suits, or liens, of any nature character

in any way attributable to or asserted against the CITY, or the CITY and the CONTRACTOR, which the CITY may be required to pay. In the event the liability of the CONTRACTOR shall arise by reason of the sole negligence of the CITY and/or the sole negligence of the CITY's agents, servants or employees, then and only then, the CONTRACTOR shall not be liable under the provisions of this paragraph.

DAMAGES:

6. The CONTRACTOR shall defend, indemnify and save harmless the CITY and all persons acting for or on behalf of it against all claims for injuries (including death), loss or damage, arising out of the performance of this contract.

LIENS:

7. Neither the final payment nor any part of the retained percentage shall become due until the CONTRACTOR, if required, shall deliver to the CITY a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof and, if required in either case, an affidavit that so far as it has knowledge or information the releases and receipts include all the labor and material for which a lien could be filed; but the CONTRACTOR may, if any SUBCONTRACTOR refuses to furnish a release or receipt in full, furnish a bond satisfactory to the CITY to indemnify it against any lien. If any lien remains unsatisfied after all payment(s) are made, the CONTRACTOR shall refund to the CITY all moneys that the latter may be compelled to pay in discharging such a lien, including all costs and a reasonable attorney's fee.

ASSIGNMENT:

8. Neither party to the Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any moneys due or to become due to it hereunder, without the previous written consent of the CITY.

SUBCONTRACTS:

9. The CONTRACTOR shall not sublet any part of this Agreement without the written permission of the CITY. The CONTRACTOR agrees that it is as fully responsible to the CITY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

WORK COMMENCEMENT:

10. "NOTICE TO COMMENCE WORK" - Upon receipt of executed contracts, bonds, and insurance as required, the CITY will promptly send a "Notice to Commence Work" to the CONTRACTOR. The CONTRACTOR agrees to perform no work under this Agreement until it receives said Notice.

It is agreed that the CITY shall deduct, as liquidated damages, from any monies due or which may become due by the CONTRACTOR for work performed, an amount as determined by for each day that the work may remain uncompleted after the time specified for the completion of the work.

11. "INSPECTION APPROVAL" - The CONTRACTOR will perform the work to the satisfaction of the Responsible CITY Official who shall have the right of inspection at all times, and whose approval and acceptance of the work shall be a condition precedent to payments by the CITY under this Contract.
12. "CONTRACT DISPUTE" - In the event of any dispute as to the amount, nature or scope of the work required under this Contract, the decision and judgment of the Responsible CITY Official shall be final and binding.

USE OF PREMISES:

13. The CONTRACTOR shall confine its apparatus; the storage of materials and operations of its workers to limits indicated by law, ordinance and permits and shall not otherwise unreasonably encumber the premises with its materials. If any part of the project is completed and ready for use, the CITY may, by written and mutual consent, without prejudice to any of its rights or the rights of the CONTRACTOR, enter in and make use of such completed parts of the project. Such use or occupancy shall in no case be construed as an acceptance of any work or materials.

CLEANING UP:

14. The CONTRACTOR shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the project, and all its tools, and surplus materials and shall leave its work "broom-clean" or its equivalent, unless more exactly specified. In case of dispute, the CITY may remove the rubbish and charge the cost to the CONTRACTOR.

PAYMENTS:

15. The CITY shall make payments on account of the Agreement as follows:

As invoices are submitted for work completed to the satisfaction of the CITY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CITY OF AUGUSTA, MAINE

BY: _____ BY: _____
Witness Susan E. Robertson, City Manager

CONTRACTOR NAME

BY: _____ BY: _____
Witness (Name and title)