

**Action Requested/Required:**

- ☒ Vote/Action Requested
☐ Discussion or Presentation Only
☐ Public Hearing
Report Date: _____
Hearing Date: _____
Voting Date: _____

Department: Cultural Arts **Presenter(s) & Title:** Kristin Norton Green, Theatre Events and Facilities
Director

Agenda Item Title:

Discussion and Possible Approval of Construction Agreement with Calm Water for Canton Theatre Exterior Renovation Project

Summary:

In April 2024, the City published a Request for Proposals for Exterior Renovations for the Historic Canton Theatre. The scope of work encompasses paint work including windows, doors, and trim, restoration of the "Canton Theatre" exterior lights, and design and execution of additional decorative elements to better incorporate the digital marquees into the look of the historic facade. A \$20,000 Grant has been awarded to the City of Canton from Fox Gives and the Fox Theatre for this work.

Staff has obtained estimates from 2 contractors and the estimate from Calm Water is the staff recommendation in the amount of \$48,658.00.

Budget Implications:

Budgeted? ☐ Yes ☒ No ☐ N/A

Total Cost of Project: \$ 48,658.00 Check if Estimated ☒

Fund Source: General Fund ☐ Water & Sewer ☐ Sales Tax ☐ Other: _____

Staff Recommendations:

Staff recommends Council consider: Motion to approve Construction Agreement with Calm Water for completion of the Canton Theatre Exterior Renovation Project in the amount of \$48,658.00.

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? ☒ Yes ☐ No

Attachments:

Calm Water Construction Agreement



CONSTRUCTION AGREEMENT

Contract No.: 202206784

This CONSTRUCTION AGREEMENT (this "Agreement"), dated as of this __4th__ day of December, 2024 (the "Effective Date"), is made by and between CITY OF CANTON (COC) ("Owner"), and CALM WATER LLC (CWLLC) ("Contractor"), a Georgia corporation (collectively, the "Parties").

RECITALS

WHEREAS, Owner wishes to enter into the following Agreement with Contractor to have Contractor furnish expertise, management, supervision, materials, labor and equipment for a particular project (the "Project"), described with more particularity by the provisions herein and the attachments to this Agreement.

WHEREAS, Contractor, having reviewed and examined the particular documents relating to the Project (the "Contract Documents"), has agreed to perform the services and work as described therein.

NOW THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties, intending to be legally bound, hereby agree as follows:

TERMS AND CONDITIONS

1. **Scope of Work.** Contractor agrees to complete the services and work as particularly described within the Contract Documents, which may consist of **statements of work**, based on the work plans, schematics, and any duly executed work orders, change orders, and amendments thereto, attached to this Agreement as **Exhibits A** (the "Work"). In furtherance of performing the Work, Contractor will furnish all expertise, management, supervision, materials, labor and equipment as may be specified within said Contract Documents or otherwise required to satisfactorily complete the Work. All materials purchased for incorporation into the Work shall be procured to match the requirements of the plans and specifications OR as equals approved by the Owner.



Exhibit A = CWLLC Estimate

2. **Changes in Work.** Owner may from time to time order changes in the Work which would result in an adjustment of the Contract Price, as defined below. To be effective, any and all such orders and adjustments shall be in writing and executed by both Parties, subject to the terms and conditions of this Agreement. If Contractor determines that the changes in the Work will likely result in extra costs, such extra costs must be submitted in writing to the Owner and approved before Contractor begins performance on the change of Work. Contractor allowed 20% total fee to all Changes in Work.
3. **Premises.** The Work shall be performed on the property of the Owner, located at:
Canton Theatre
171 E Main St,
Canton, GA 30114
4. **Contractor Representations.** Contractor assumes full responsibility for having familiarized himself with the nature and extent of the Contract Documents, the Work, the Premises, To the extent reasonable, the Work shall be performed in accordance with general standard of workmanship within the industry, as well as in accordance with the Contract Documents and all applicable building codes. No deviations from the requirements thereof shall be made without the prior approval of the Owner.
5. **Payment to Contractor; Contract Price.** Subject to the terms and conditions of this Agreement and all attachments hereto, including Owner's satisfaction as to the progress and performance of the work which shall not be unreasonably withheld, Owner shall pay Contractor for completed performance of the Work a total amount of: \$ 48,658.00 (the "Contract Price") to be paid as per Contractor's Application for Payment. Contractor shall submit interim, final and request for retainage pay applications on the 1st and 15th of every month. Requested dollar values will be represented on the interim pay application as percentages of completed work. Owner or Owner's Representative will meet with the Contractor on site, on or about the 1st and 15th of every month to review and approve the interim pay application. Any agreed adjustments to the interim pay



application will be executed by the close of this site meeting. Approved interim pay applications will be paid by the Owner within 15 days of submittal date.

In the event Owner fails to pay any installment, of approved interim or final application for payment, without submitting prior written notice by email to johnwinnenberg@hotmail.com , shall be considered a default under the payment provisions of this Agreement. In that event, Contractor shall give written notice of the default to Owner by email to kristin.green@cantonga.gov . Owner shall then have 5 days from the date of the email within which to cure the payment default. Should Owner fail to cure the default, Contractor may terminate this Agreement and cease performance under the Agreement.

6. As a condition precedent to any payment of an approved pay application, Contractor will provide the Owner with executed interim and conditional lien waivers from subcontractors and suppliers providing goods and services directly to the Contractor.
7. **Regulations and Permits.** Permit to be obtained by Contractor and paid by Owner. All necessary regulations to obtains permit documents to be provided by Owner and Contractor appropriately.
8. **Inspection and Notice of Completion.** Owner may, from time to time, inspect the Contractor's ongoing performance of the Work, so long as such inspection is reasonable and does not materially interfere with the Contractor's performance under this Agreement. In connection with any inspection visit to the Premises, Owner shall ensure its representatives wear the proper attire and personal protective equipment as required under the Occupational Safety and Health Act, which may be provided by Contractor upon request.
9. **Time of Performance.** Contractor shall begin upon obtaining Contract, All applicable permits and Notice to Proceed being fully executed by Owner and Contractor.
Projected time of construction is 36 days from obtaining above items. (If project can start on December 20, 2024 as planned, estimated date of completion is January 24, 2025)
Except as otherwise provided in this Agreement, upon commencement of Work, Contractor shall diligently and uninterruptedly pursue completion of all Work.
10. **Delays of Performance.** Contractor shall not be liable to Owner for delay in the completion of the Work if the delay is due to any cause by the Owner or beyond its control, including an act



of God, war, act of government, fire, flood, strike, sabotage or inclement weather. The prior listed items are considered excused delays. In the event of such delay, the time of performance shall be extended for a reasonable period of time lost by reason of such delay, and the Contractor shall make every reasonable effort to minimize the effect of such delay.

11. **Contractor's Insurance.** Contractor agrees to obtain or otherwise present proof of ownership of comprehensive general liability insurance in the amount of \$1,000,000.00 per occurrence and worker's compensation insurance in the amounts required by statute.
12. **Contractor's Use of Premises.** During performance of the Work, Contractor, including any agents and employees thereof, agree to comply with the various rules and regulations of the Premises, which have been included in Exhibit A provided by _____ CWLLC _____, if applicable. Regardless, Contractor shall be responsible for assuring that all Work is performed with due regard to the safety of persons and property, including strict adherence to all applicable municipal, state, or other government codes required in the particular trade or industry.
13. **Indemnification.** Contractor agrees to indemnify and hold harmless Owner and its agents, employees, and representatives, from any and all claims, damages, or losses, arising out of or resulting from the intentional bad acts, negligence, or material breaches of this Agreement by the Contractor or its employees, agents, or representatives during the scope of performance under this Agreement.
14. **Independent Contractor.** Contractor is an independent contractor, and none of the provisions of this Agreement shall be interpreted or deemed to create any relationship between the Parties other than that of an independent contractor. Nothing contained in this Agreement shall be construed to create a relationship of employer and employee, master and servant, or principal and agent between the Owner and Contractor, between the Owner and any employee of Contractor, or between Contractor and any employee of the Owner. The Company shall have no right to control or direct the details, manner, or means by which Contractor performs the Work hereunder, provided that such Work shall be performed to the Company's reasonable satisfaction.
15. **Notice.** Any notice required by this Agreement shall be deemed effective if in writing and sent via United States Mail or electronic mail, addressed to the other Party at the following addresses:



A. To the Owner:

City of Canton
110 Academy Street
Canton, GA 30114

B. To the Contractor:

Calm Water LLC
PO Box 2151
Cartersville GA 30120

16. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia.

17. **Waiver.** The waiver of any breach of this Agreement by a Party shall not be construed or otherwise operate as a waiver for any other breach or default that may arise between the Parties under the terms and conditions of this Agreement.

18. **Modification and Amendment.** No waiver, modification, or amendment of any term, condition, or provision of the Agreement shall be valid unless made in writing and signed by the Parties hereto.

19. **Assignment.** Each Party agrees not to assign this Contract or any portion thereof to any person, partnership, company, or other entity unless otherwise consented to in writing by the other Party.

20. **Conflicting Provisions.** Any question in dispute among the Parties involving a controversy or claim arising out of or relating to this Agreement which cannot be otherwise amicably settled between the Parties after good faith efforts shall be settled in the state of Georgia via arbitration upon the notice of request for arbitration submitted by either Party. The dispute shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof.

21. **Captions.** The captions used in this Agreement are inserted for convenience and shall not be in any way construed as part of this Agreement or as a limitation of the scope of any particular provisions herein.

21. **Entire Agreement.** This Agreement, including the Contract Documents incorporated by reference herein, sets forth the entire agreement between the Owner and the Contractor with respect to



the subject matter thereof. All prior negotiations and dealings, in writing or otherwise, regarding the subject matter of this agreement are superseded and merged into the Agreement.

22. Exclusions and Provisions:

Exclusions pertain to any unforeseen and necessary work not included in the estimate dated 7/24/2024 or Contract Documents. Provisions for any and all unforeseen and necessary work will be handled as per paragraph 2 "Changes in Work".

23. Subcontracts. A subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work which is the subject of this Agreement. Contractor shall identify to Owner any subcontractors it will use for the Work and shall not contract with any subcontractor to whom the Association or its agents have made reasonable and timely objection. Subcontractors shall be bound by the terms of this Agreement. Contractor shall be fully responsible for paying subcontractors for any and all services and materials provided by subcontractor, and Contractor shall indemnify Owner and its agents against any claims that a subcontractor may bring against Owner or its agents arising out of the Work.



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement through their undersigned duly authorized representatives.

OWNER:

City of Canton
110 Academy Street
Canton GA 30114

CONTRACTOR

Calm Water, LLC.
PO Box 2151
Cartersville, GA 30120

By: _____

By: _____

Name: _____

Name: Jake Winnenberg

Title: _____

Title: Project Manager

Date: / /2024

Date: 12/4/2024



PO BOX 2151
CARTERSVILLE, GA
30120

Estimate

Date	Estimate #
7/24/2024	202206784

Name / Address
CITY OF CANTON 2525 RIDGE ROAD CANTON, GA 30114

Project
CANTON THEATR...

Item	Description	Qty	Rate	Total
CONSTRUCTION SERVIC...	ALL MATERIALS AND LABOR TO: PAINT ENTIRE FRONT EXTERIOR SIDE OF BUILDING INCLUDING OVERHANG (COLORS MATCH EXISTING). EXECUTE STUCCO REPAIR AT TOP OF BUILDING WHERE PREVIOUS PATCH IS VISIBLY POOR QUALITY REPLACE BACK DOOR AND INSTALL NEW PUSH BAR INSTALL / REPLACE EXISTING CAN LIGHTS WITH NEW LED CAN LIGHTS ON EXTERIOR OVERHANG INSTALL / REPLACE EXISTING 2 GLOBE LIGHTS ON TOP OF EXTERIOR OVERHANG WITH NEW LEDS REPAIR / REPLACE LOCKS ON 2 EXTERIOR POSTER BOXES AND ADD HANDLES / HARDWARE TO OPEN AND CLOSE INSTALL NEW SILICONE, REPLACE THE TALKING VENT AND TICKET PASS-THROUGH, AND PAINT TRIM ON THE TICKET BOOTH SAND AND PREP, REPAINT, RETRO-FIT THEATRE CHANNEL LETTERS WITH NEW LEDS AND POWER SUPPLIES INSTALL NEW CHANNEL LETTERS, SAME SIZE AND FONT AS EXISTING ON CANTON LETTERS	1	48,658.00	48,658.00T

www.calmwaterconstruct.com	678-634-9416	Subtotal	\$48,658.00
		Sales Tax (0.0%)	\$0.00
		Total	\$48,658.00