

**INVENTORY FUNDING AGREEMENT  
BETWEEN  
THE CITY OF JACKSONVILLE  
AND  
OVERFLOW HEALTH ALLIANCE, INC.**

**THIS INVENTORY FUNDING AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), by and between the **CITY OF JACKSONVILLE**, a consolidated government under the laws of the State of Florida whose address is 117 West Duval Street, Jacksonville, Florida 32202 (the “City”), and **OVERFLOW HEALTH ALLIANCE, INC.**, a Florida not for profit corporation whose address is 3416 Moncrief Road, Suite 101, Jacksonville, Florida 32209 (“Recipient”).

**RECITALS:**

**WHEREAS**, in Ordinance 2018-195-E, the City Council earmarked funding from the Northwest Jacksonville Economic Development Trust Fund (“NWJEDF”) to incentivise the operation of new supermarkets and healthy food programs within the northwest area of Jacksonville (the “Northwest Area”); and

**WHEREAS**, such supermarket incentives and healthy food programs are intended to alleviate the food desert areas within the Northwest Area and thus benefit the health, safety, and public welfare of Northwest Area residents; and

**WHEREAS**, in April of 2020, Recipient founded Making Ends Meat Grocery Store at 4220 Moncrief Road (the “Grocery Store”) in order to operate a community-based store as a source of affordable, healthy food options and provide access to food, services for the elderly, and educational sessions for the preparation of healthy foods; and

**WHEREAS**, in order to provide as much fresh food as possible to residents in the Northwest Area community, Jacksonville, through its Office of Economic Development, desires to supplement the operational costs of the Grocery Store, including by providing necessary upgrades to the ceiling and air conditioning system of the Grocery Store and by purchasing additional food inventory; now therefore

**IN CONSIDERATION** of the Agreement and of other good and valuable consideration acknowledged by the parties to be sufficient, the parties agree as follows:

1. The recitals above are true and correct and are incorporated into this Agreement by this reference.
2. The term of this Agreement shall begin on the Effective Date and shall expire on the date that is one year from the Effective Date.
3. Ordinance 2021-\_\_\_\_-E appropriates a grant in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) to this Agreement, which amount is the maximum indebtedness of City pursuant to this Agreement. The funds are to be used by Grocery Store to purchase additional merchandise and make minor improvements to the Grocery Store. The total amount of City funding may include any combination of approximately \$3,000.00 to repair and replace the ceiling, approximately \$2,000.00 to service and repair the air conditioning unit, and approximately \$20,000.00 to purchase

additional food to be sold. Subject to the terms of this Agreement, Recipient accepts the funds appropriated **only** for these purposes and may not be held to the preceding amounts listed.

4. Recipient agrees:

- (a) To expend all funds within one year from the effective date of this Agreement or return unspent amounts.
- (b) To provide monthly reports detailing the permissible purchases provided for in this Agreement until all dispersed City funds are accounted for. Reports shall consist of the following information:
  - (1) The amount of funds that have been spent to date.
  - (2) The purpose for which the funds were used.
  - (3) Copies of all applicable invoices, receipts, or other proof of payment acceptable to the Office of Economic Development for the expenditures listed on each report.

5. Payment to Recipient shall be made in one lump-sum installment, with payment due within fifteen (15) days of the Effective Date of the Agreement. City's funding shall be spent only on the permissible uses contained herein. Recipient shall provide a financial true-up at the conclusion of the term of this Agreement whereby any unspent funding or any expenditures deemed to be disallowed by City's Office of Economic Development shall be remitted to City within thirty (30) days of the end date of the Agreement.

6. Recipient consents to:

- (a) Such audits of the financial affairs of Recipient by the Council Auditor's Office as the Council Auditor may require.
- (b) Producing the documents required by the Office of Economic Development (OED).

7. Notwithstanding the reporting requirements of this Agreement and the Ordinance Code, Recipient shall not submit any information to City in violation of privacy rights under the provisions of applicable federal, state, and local laws.

8. Recipient agrees to perform the services for which the appropriations are made under the general coordination of the Office of Economic Development, City of Jacksonville. City's contact and address for notices is:

Economic Development Officer  
City of Jacksonville  
Office of Economic Development  
117 West Duval Street, Suite 275  
Jacksonville, Florida 32202

Recipient's notice information is as written above in the preamble.

9. Recipient shall indemnify City as provided for in **Exhibit A**, attached hereto and incorporated herein by this reference.

10. Recipient shall procure and maintain at its sole expense during the life of this Agreement (one year from the date of execution) insurance of the types and in amounts not less than the amounts required by **Exhibit B**, attached hereto and incorporated herein by this reference.

11. Recipient shall not assign any rights or duties under this Agreement to any other party without the prior written permission of City. If Recipient attempts to assign any rights or duties without securing prior written permission, this Agreement shall be void and Recipient shall remit to City all payments made pursuant to this Agreement for the entire term of the Agreement within five days from demand.

12. In case of a breach of this Agreement other than one that endangers the life or health of a person or otherwise will create imminent harm in the opinion of City, Recipient will have 30 days after notice from City to cure the defect. If the defect is not timely cured, City will have all of its remedies at law and in equity to enforce this Agreement or collect its damages arising from the breach by Recipient of this Agreement.

13. As required by Section 126.306, *Ordinance Code*, Recipient warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Recipient, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Recipient, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of these provisions, City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

14. In its performance of this Agreement, Recipient must comply with any and all applicable federal, state, and local laws, rules, regulations, and ordinances (hereinafter collectively referred to as the "Laws") with respect to the Services, as such Laws exist and may be amended from time to time. Such Laws shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes, (the Florida Sunshine Law).

15. Recipient represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age, or handicap in all areas of employment relations throughout the term of this Agreement. Recipient agrees that on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms, and other pertinent data and records by the Executive Director of the Community Relations Commission or successor agency or commission for the purpose of investigation to ascertain compliance with the non-discrimination provisions of this Agreement; *provided however*, that Recipient shall not be required to produce for inspection records covering periods of time more than 1 year prior to the day and year first above written. Recipient agrees that if any of the Services to be provided pursuant to this Agreement for the Project are to be performed by a subcontractor, the provisions of this Section 15 shall be incorporated into and become a part of the subcontract.

16. Time is of the essence in the performance by any party of its obligations hereunder. If any date of significance hereunder falls upon a Saturday, Sunday, or legal holiday, such date shall be deemed moved forward to the next day which is not a Saturday, Sunday or legal holiday. Saturdays, Sundays, and legal holidays shall not be considered business days.

17. The failure or delay by either party in asserting any of its rights or remedies as to any default hereunder shall not constitute a waiver of such default or any other default or of related rights or remedies. If any provision of this Agreement is determined to be invalid and the invalid provision is not a material part of this Agreement in the opinion of City, the invalidity of the provision shall not impair the operation of or have any other effect on the remaining provisions of this Agreement.

18. This Agreement represents the entire Agreement between the parties with respect to its subject matter. No statement, understanding, writing, course of action, or course of conduct by the parties or their authorized representatives is binding unless contained in this Agreement. This Agreement may be amended only by written amendment signed by the authorized representatives of the parties.

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement in duplicate the day and year first above written.

**WITNESS:**

**OVERFLOW HEALTH ALLIANCE, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
As: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**ATTEST:**

**CITY OF JACKSONVILLE**

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry  
Mayor

Form Approved:

\_\_\_\_\_  
Office of General Counsel

## Exhibit A INDEMNIFICATION

Recipient and its subcontractors (the “Indemnifying Parties”) shall hold harmless, indemnify, and defend the City of Jacksonville and City’s members, officers, officials, employees, and agents (collectively the “Indemnified Parties”) from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs, and expenses of whatsoever kind or nature which may be incurred by, charged to, or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties’ performance of the Agreement, operations, services, or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement contemplates environmental exposures arising from or in connection with any environmental, health, and safety liabilities, claims, citations, clean-up, or damages whether arising out of or relating to the operation or other activities performed in connection with the Agreement; and

3. Intellectual Property Liability, to the extent this Agreement contemplates intellectual property exposures arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Agreement constitutes an infringement of any copyright, patent, trade secret, or any other intellectual property right. If in any suit or proceeding the Services or any product generated by the Services is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall immediately make every reasonable effort to secure within 60 days for the Indemnified Parties a license authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer, so that the Service or product is non-infringing.

If an Indemnified Party exercises its rights under this Agreement, the Indemnified Party will (1) provide reasonable notice to Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from and shall not be limited by any insurance provided pursuant to the Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08, Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08, Florida Statutes, will be modified to comply with said statutes.

**EXHIBIT B  
INSURANCE REQUIREMENTS**

Without limiting its liability under this Agreement, Recipient shall procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Recipient shall require its subcontractors, laborers, materialmen, and suppliers to provide, as applicable), insurance of the types and in amounts not less than the amounts stated below:

**Insurance Coverages**

Schedule	Limits
<b>Worker's Compensation</b>	Florida Statutory Coverage
<b>Employer's Liability</b>	\$ 100,000 Each Accident \$ 500,000 Disease Policy Limit \$ 100,000 Each Employee/Disease

This insurance shall cover Recipient (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

<b>Commercial General Liability</b>	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by City's Office of Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

<b>Automobile Liability</b>	\$1,000,000	Combined Single Limit
Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement		

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, and must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

**Pollution Liability**

\$1,000,000 per Loss  
\$2,000,000 Annual Aggregate

Any subcontractors hired to perform services as part of this contract for environmental or pollution related concerns shall maintain Pollution Liability coverage. Such Coverage will include bodily injury, sickness, disease, mental anguish, or shock sustained by any person, including death; property damage, including physical injury to or destruction of tangible property, including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense, including costs charges, and expenses incurred in the investigation, adjustment, or defense of claims for such compensatory damages; and, coverage for losses caused by pollution conditions that arises from the operations of the contractor, including transportation.

**Pollution Legal Liability**

\$1,000,000 per Loss  
\$2,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

**Additional Insurance Provisions**

- A. **Certificates of Insurance.** Recipient shall provide to City certificates of insurance that show the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above, and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- B. **Additional Insured:** All insurance except Workers' Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees, and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2026, and for Automobile Liability in a form no more restrictive than CA2048.
- C. **Waiver of Subrogation.** All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers, employees, and agents.
- D. **Recipient's Insurance Primary.** The insurance provided by Recipient shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by City or any City members, officials, officers, employees, or agents.
- E. **Deductible or Self-Insured Retention Provisions.** All deductibles and self-insured retentions associated with coverages required for compliance with the Agreement shall remain the sole and exclusive responsibility of the named insured Recipient. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to the Agreement.
- F. **Recipient's Insurance Additional Remedy.** Compliance with the insurance requirements of this Agreement shall not limit the liability of Recipient or its subcontractors, employees, or agents to City or others. Any remedy provided to City or City's members, officials, officers, employees, or agents

shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.

- G. Waiver/Estoppel. Neither approval by City of, nor its failure to disapprove, the insurance furnished by Recipient shall relieve Recipient of its full responsibility to provide insurance as required under this Agreement.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to Chapter 624, Florida Statutes, or a company that is declared as an approved Surplus Lines carrier under Chapter 626, Florida Statutes. Such insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. Recipient shall provide an endorsement issued by the insurer to provide City thirty (30) days' prior written notice of any change in the above insurance coverage limits or cancellation, including through expiration or non-renewal. If such endorsement is not provided, Recipient, as applicable, shall provide thirty (30) days' written notice of any change in the above coverages or limits, or of coverages' being suspended, voided, or cancelled, including through expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of Recipient under this Agreement shall survive and not be terminated, reduced, or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Recipient shall present this Agreement and **Exhibit A** and **Exhibit B** to its insurance agent affirming: 1) that the agent has personally reviewed the insurance requirements of the Agreement, and (2) that the agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Recipient.