

**AGREEMENT
BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES
TASK ORDER EDITION**

THIS IS AN AGREEMENT effective as of this the **1st day of January, 2024** (“Effective Date”) between **CITY OF CARTERSVILLE, GEORGIA**, a political subdivision of the State of Georgia, (“Owner”) and **SWEITZER ENGINEERING, INC.**, a corporation authorized to conduct business in the State of Georgia, (“Engineer”).

From time to time Owner may request that Engineer provide professional services for Specific Projects. Each engagement for a Specific Project will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

- 1.01 *Scope:* Engineer’s services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided. Basic and Additional Services that may be included in a Task Order are set forth in Exhibit A, "Engineer's Services."
- 1.02 *Task Order Procedure:* Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement, Articles 1 through 8.
- 1.03 *Previous Task Orders:* Task Orders duly authorized under previous terms of this Agreement, and which remain active as of the effective date of this Agreement, shall carry forward under the terms and conditions of this current Agreement. The previous Task Orders which are to be carried forward as of the date of this Agreement are listed in Article 9 herein.

ARTICLE 2 - OWNER’S RESPONSIBILITIES

- 2.01 Owner shall have the responsibilities set forth herein and in each Task Order.
- 2.02 Owner shall compensate Engineer as set forth in each Task Order, pursuant to the applicable terms of Exhibit B.
- 2.03 For each Task Order Owner shall provide Owner’s requirements including project scope, design objectives and constraints; capacity and performance requirements, make available all pertinent existing data; make known any special or extraordinary considerations or special services needed; examine and respond promptly to Engineer's submissions; and give prompt notice to Engineer whenever any defect in the Work is observed by, or otherwise becomes known to, the Owner.
- 2.04 For each Task Order Owner shall advise Engineer in writing at an early date if there are budgetary limitations and employ an independent cost estimator if formal cost estimates are required.
- 2.05 Whenever required and authorized by the Owner, upon recommendation of the Engineer, furnish and pay for services of others, such as, analytical laboratory services; geotechnical investigations and subsurface explorations, with appropriate professional interpretation thereof; field surveys such as property, boundary, easement, rights-of-way, topographic, and utility surveys; all of which Engineer may rely upon in performing

his services for each Task Order. Payment for such services shall be made by Owner directly to the providers of the services.

- 2.06 Authorize Engineer to provide appropriate Additional Services as required and set forth in the Task Orders.
- 2.07 Furnish approvals and permits from all governmental agencies and other issuing authorities having jurisdiction over the Specific Projects and pay any applicable filing fees and sales or other tax applicable thereto.
- 2.08 Owner shall require Contractors to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Specific Projects as set forth in the Owner-approved Standard General Conditions. Owner shall require Contractor to name Engineer and its Consultants as additional insureds with respect to such liability and other insurance purchased and maintained by Contractors.

ARTICLE 3 - TERM; TIMES FOR RENDERING SERVICES

- 3.01 *Term:* This Agreement shall be effective and applicable to Task Orders issued hereunder until December 31, 2025. Thereafter, the parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.
- 3.02 *Times for Rendering Services:* The times for performing services or providing deliverables will be stated in each Task Order. If no times are so stated, Engineer will perform services and provide deliverables within a reasonable time. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- 3.03 *Times for Construction-related Services:* For Task Orders including construction-related professional services, Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding the number of months indicated in the Task Order. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

ARTICLE 4 - INVOICES AND PAYMENTS

- 4.01 *Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.
- 4.02 *Payments:* If Owner fails to make any payment due Engineer within 60 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 7% per annum and Engineer, after giving seven days written notice to Owner, may suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.

ARTICLE 5 - OPINIONS OF CONSTRUCTION COST

- 5.01 Any and all opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's estimate as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary significantly from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner shall employ an independent cost estimator.

ARTICLE 6 - GENERAL CONSIDERATIONS

- 6.01 *Standards of Performance:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Subsequently evolved standards shall not be applied in judging Engineer's services. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- 6.02 *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- 6.03 *Compliance with Laws and Regulations:* Engineer and Owner shall comply with applicable Laws and Regulations. Engineer shall comply with Owner-provided policies and procedures pursuant to the standard of care set forth in Paragraph 6.01, and to the extent compliance is not inconsistent with professional practice requirements.
- 6.04 *Certifications:* Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such certification.
- 6.05 *General Conditions of the Construction Contract:* The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless both parties mutually agree in a Task Order to use other General Conditions.
- 6.06 Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for the safety precautions and programs incident thereto, for security or safety at the Site(s), nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- 6.07 It is understood that during construction phase services Engineer will endeavor to protect Owner against defects and deficiencies in the Work of contractor(s), however Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- 6.08 Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at a Site or otherwise furnishing or performing any of a Contractor's work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification of the Contract Documents other than those made by Engineer.
- 6.09 *Design without Construction Review:* It is Owner's intent that Engineer's services under this Agreement include customary services during each Specific Project's bidding/negotiation and construction phases. Engineer shall be responsible only for those Construction Phase services itemized and expressly required of Engineer in the authorizing Task Order. However, if Owner does not authorize Engineer to provide services during the Construction Phase of any project, or terminates this Agreement prior to completion of construction of any project, then Owner assumes full responsibility for the application and interpretation of the Contract Documents, for contract administration, construction observation and review, or other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be in any way connected to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in the authorizing Task Order.

- 6.10 *Use of Documents:* All Documents are instruments of service in respect to a Specific Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants. Owner may make and retain copies of Documents for information and reference in connection with use on the Specific Project by Owner. Engineer grants Owner a limited license to use the Documents on the Specific Project, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; and (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or its Consultants. Engineer acknowledges that Documents prepared under this Agreement and submitted to Owner are subject to the Open Records Act, O.C.G.A. § 50-18-70.
- 6.11 *Insurance:* At all times when any Task Order is under performance, Engineer shall procure and maintain insurance as set forth in Exhibit D, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer which is applicable to a Specific Project. Engineer shall deliver certificates of insurance evidencing the coverages indicated in Exhibit D. In the event that a specific project exceeds the insurance requirements referenced in Exhibit D, the Engineer, if it accepts said project, may procure project specific insurance in the amount of the project.
- 6.12 *Suspension:* Owner may suspend a Task Order for any reason upon seven days written notice to Engineer. If Engineer's services are substantially delayed through no fault of Engineer, then Engineer, after giving seven days written notice to Owner, may suspend services under a Task Order.
- 6.13 *Termination:* The obligation to provide further services under this Agreement, or under an individual Task Order, may be terminated by either party upon 7 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement or any Task Order through no fault of the terminating party. In the event of any termination under Paragraph 6.13, Engineer will be entitled to invoice Owner and to receive full payment for all services performed and all Reimbursable Expenses incurred through the effective date of termination.
- 6.15 *Successors, Assigns, and Beneficiaries:* Owner and Engineer each is hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other. No assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- 6.16 *Dispute Resolution:* Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice of dispute. If the parties fail to resolve a dispute through negotiation, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights under law.
- 6.17 *Environmental Condition of Sites:* With respect to each Task Order, Specific Project, and Sites, the parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous

Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- 6.18 *Engineer's Limitation of Liability:* To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants, to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to a Specific Project or Task Order from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty, express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants, shall not exceed the total compensation received by Engineer under such Task Order or \$1,000,000 for such Task Order, whichever amount is greater.

ARTICLE 7 – MISCELLANEOUS PROVISIONS

- 7.01 *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- 7.02 *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 7.03 *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- 7.04 *Defined Terms:* Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in a Task Order, or in "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition).
- 7.05 *Designated Representatives:* With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to negotiate and execute Task Orders, transmit instructions, receive information, and render decisions relative to the Agreement on behalf of each respective party.
- 7.06 *Conflict of Interest:* Engineer agrees to comply, during the entire duration of this Agreement, with all provisions of "O.C.G.A. § 36-80-28. Role of consultants; disclosures; application" and shall (1) avoid any appearance of impropriety, follow the policies and procedures of Owner; (2) immediately disclose to the Owner any material transaction or relationship that reasonably could be expected to give rise to a conflict of interest; and, (3) acknowledge that any violation or threatened violation of the agreement will entitle Owner to seek injunctive relief in addition to all other legal remedies.
- 7.07 *Immigration Reform Compliance:* Engineer agrees to comply, during the entire duration of this Agreement, with all provisions of the "Georgia Security and Immigration Compliance Act" {O.C.G.A. § 13-10-91 and O.C.G.A. § 50-36-1 et seq.} and the Immigration Reform and Control Act of 1986 {8 USC § 1621 (c)} and will provide the required documentation regarding said compliance. The Contractor affirms it has registered with, is authorized to use, and uses the federal work authorization program (also known as E-Verify), and that it will contract for the physical performance of services only with subcontractors who present an affidavit with the same information required of the Engineer. Engineer also affirms it will designate a person to provide the required SAVE affidavit and associated secure and verifiable document.

- 7.08 *Acknowledgement per O.C.G.A. §36-80-28(c)(3).* Engineer acknowledges that any violation or threatened violation of the agreement may cause irreparable injury to the county, municipality, school board, or other local governmental entity, entitling such county, municipality, school board, or other local governmental entity to seek injunctive relief in addition to all other legal remedies.
- 7.09 *Total Agreement:* This Agreement (including the expressly incorporated attachments) constitutes the entire agreement between Owner and Engineer for Task Order services and supersedes all prior oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.
- 7.10 *Controlling Law:* This Agreement is to be governed by the law of the State of Georgia.

ARTICLE 8 - EXHIBITS

- 8.01 Exhibits: The following Exhibits and attachments are hereby made a part of this Agreement:

Attachment 1, Task Order Form
Attachment 2, Previous Task Orders to be carried forward under this Agreement
Exhibit A, Engineer's Services
Exhibit B, Payments to Engineer for Services and Reimbursable Expenses
Exhibit C, Duties, Responsibilities and Limitations of Authority of Resident Project Representative
Exhibit D, Insurance

ARTICLE 9 – PREVIOUS TASK ORDERS CARRIED FORWARD

- 9.01 Task Order No. 1: General Consultation – Water and Sewerage Systems
- 9.02 Task Order No. 2A: Grassdale Road Water Main Relocation – Bidding Phase and
- 9.03 Task Order No. 2B: Grassdale Road Water Main Relocation – Construction Phase.
- 9.04 Task Order No. 3: Overlook Parkway Gravity Sewer - Study Phase through Bidding Phase.
- 9.05 Task Order No. 4: Overlook Parkway Sewer Pump Station – Prelim Design through Bidding Phase.
- 9.06 Task Order No. 5A: Altitude and Check Valve Replacements – Construction Phase.
- 9.07 Task Order No. 6: West Side Water Tank - Preliminary Design Phase.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

**OWNER:
CITY OF CARTERSVILLE, GEORGIA**

**ENGINEER
SWEITZER ENGINEERING, INC.**

By: _____
Matthew J. Santini, Mayor

By: _____

Attest: _____
Julia Drake, City Clerk

Name: _____

Title: _____

[AFFIX SEAL]

Date
Signed: _____

Date
Signed: _____

Address for giving notices:

Address for giving notices:

PO Box 1390

680 Douthit Ferry Road

Suite 105

Cartersville, Georgia 30120

Cartersville, Georgia 30120

DESIGNATED REPRESENTATIVE
(Paragraph 7.05):

DESIGNATED REPRESENTATIVE
(Paragraph 7.05):

J. Sidney Forsyth

John H. Sweitzer, P.E.

Title: Water Department Director

Title: President

Phone Number: 770-607-6234

Phone Number: 678-569-4290

Facsimile Number: 770-606-2386

Facsimile Number: 678-569-4294

E-Mail sforsyth@cityofcartersville.org
Address: _____

E-Mail jsweitzer@sweitzerengineering.com
Address: _____