

## **AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES**

**THIS AGREEMENT** is effective as of August 15, 2023, (Effective Date) between City of Cartersville, Georgia (OWNER) and Lindsay Engineering & Consulting, LLC (ENGINEER). OWNER's Project (OWNER may or may not be the property owner), of which ENGINEER's services under this Agreement are a part, is generally identified as follows: On-call engineering and consulting related to water, wastewater, and stormwater programs and infrastructure, as authorized from time to time by written Task Orders issued by OWNER and accepted by ENGINEER, each designated as a Project. A completed Task Order form is attached to this Agreement as Exhibit A.

### **ARTICLE 1 – ENGINEER'S SERVICES**

ENGINEER shall provide the Services set forth herein and in Task Orders under Exhibit A. Upon this Agreement becoming effective, ENGINEER is authorized to begin Services as set forth in Exhibit A. ENGINEER will be compensated for Services as set forth in each Task Order as specified therein.

### **ARTICLE 2 – OWNER'S RESPONSIBILITIES**

#### **2.01 Owner shall:**

- A. Provide ENGINEER with OWNER's requirements, criteria and information for the Project; furnish copies of all design and construction standards which OWNER will require to be included in the drawings and specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable; and furnish any other available information pertinent to the Project including reports and data relative to previous designs or investigation at or adjacent to the site.
- B. Furnish or otherwise make available such additional Project-related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following: (1) property descriptions; (2) zoning, deed, and other land use restrictions; (3) property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points; (4) explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof; (5) environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas; (6) data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto; (7) all surveys will be provided in hard copy in addition to digital format.
- C. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any Constituent of Concern or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.
- D. Authorize ENGINEER to provide Additional Services as set forth in Exhibit A of the Agreement as required.
- E. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.
- F. Examine all alternate solutions, studies, reports, sketches, drawings, specifications, proposals, and other documents presented by ENGINEER and render in writing timely decisions pertaining thereto.
- G. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- H. Provide all legal, insurance and accounting services, including auditing services, which may be reasonably necessary at any time for the Project to meet the OWNER's needs and interests.
- I. Advise ENGINEER of the identity and scope of services of independent consultants employed by OWNER and coordinate the services of such consultants with those services provided by ENGINEER.
- J. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may assist OWNER in collating the various cost categories which comprise Total Project Costs.
- K. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.

L. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an Exhibit hereto that is to be mutually agreed upon and made a part of this Agreement before such services begin.

M. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment observation reviews.

N. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.

O. Provide ENGINEER with the findings and reports generated by the entities providing services to OWNER pursuant to this paragraph.

P. Inform ENGINEER in writing of any specific requirements of safety or security programs that are applicable to ENGINEER, as a visitor to the Site.

### **ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES**

#### **3.01 General**

A. ENGINEER shall complete its obligations within a reasonable time. If specific periods of time for rendering services or specific dates by which services are to be completed are set forth in Exhibit A. In providing such periods of time, it is recognized that Engineer has no control over the meeting/review times or schedules of the Owner or authorities having jurisdiction over the Project. The project duration is based on Engineer's reasonable professional judgment and experience and does not in any way whatsoever constitute a warranty, express or implied, that the provided periods of time will not vary from the Owner's expected schedule or from any additional project schedules prepared by Engineer or others as the project progresses. Any construction activity timing or scheduling provided by Engineer is provided only for planning information and will be superseded by a detailed construction schedule(s) provided by the Contractor at a later date.

B. 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. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of ENGINEER's services, and the rates and amounts of ENGINEER's compensation, shall be adjusted equitably.

#### **3.02 Suspension**

A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.

B. If ENGINEER's services are delayed or suspended by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

### **ARTICLE 4 – ENGINEER'S COMPENSATION**

**4.01 Methods of Payment for Services and Reimbursable Expenses** - OWNER shall pay ENGINEER for Basic Services as set forth in Exhibit A.

#### **4.02 Other Provisions Regarding Compensation**

A. Preparation of Invoices. Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit A.

B. Payment of Invoices. Invoices are due and payable within 30 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.5% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. Disputed Invoices. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

- D. Payments Upon Termination. In the event of:
1. any termination, ENGINEER will be entitled to invoice and be paid by OWNER in accordance with Exhibit A for all services performed and all Reimbursable Expenses incurred through the effective date of termination.
  2. by OWNER for convenience or by ENGINEER for cause, ENGINEER shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit A.

## **ARTICLE 5 - OPINIONS OF COST**

**5.01 Opinions of Construction Cost** - ENGINEER's opinions of probable construction cost are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment 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 from opinions of probable construction cost prepared by ENGINEER. If Owner requires greater assurance as to probable construction cost, Owner must employ an independent cost estimator.

**5.02 Opinions of Total Project Costs** - ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

## **ARTICLE 6 - GENERAL CONSIDERATIONS**

### **6.01 Standards of Performance**

A. Standard of Care. 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, time and location. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

B. 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.

C. Consultants. ENGINEER may employ such consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by OWNER.

D. Right to rely. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such documentation in performing or furnishing services under this Agreement.

E. Reliance on Others. Subject to the standard of care set forth herein, ENGINEER and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

F. Compliance with Laws and Regulations. ENGINEER and OWNER shall comply with applicable laws or regulations. ENGINEER shall comply with OWNER-mandated standards, subject to the standard of care set forth herein and to the extent compliance is not inconsistent with professional practice requirements. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.

G. Certifications. ENGINEER shall not be required to sign any documents that would result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

H. General Conditions. The general conditions for any construction contract documents prepared hereunder are to be the current edition "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee unless both parties mutually agree to use other general conditions.

I. Contractor's Means and Methods. 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, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.

J. Contractor's Performance and Actions. 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. ENGINEER shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier, or of any of their employees or of any other persons (except ENGINEER's own agents, employees, and consultants) at the Site or otherwise furnishing or performing any 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.

K. Site Safety. While at the Site, ENGINEER's employees and representatives shall comply with the specific applicable requirements of Contractor's and OWNER's safety programs of which ENGINEER has been informed in writing.

**6.02 Authorized Project Representatives** –ENGINEER and OWNER shall designate specific individuals to act as 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 transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party so as to not delay ENGINEER's services.

**6.03 Design Without Construction Phase Services** - ENGINEER shall be responsible only for those construction phase services expressly required of ENGINEER in Exhibit A. With the exception of such expressly required services, ENGINEER shall have no design, shop drawing review, or other obligations during construction and OWNER waives all claims against the ENGINEER that may be connected in any way to construction phase engineering or professional services except for those services that are expressly required in Exhibit A

#### **6.04 Use of Documents**

A. All Documents are instruments of service in respect to this Project, and ENGINEER and its consultants shall retain an ownership and property interest therein (including copyright and right of reuse) whether or not the Project is completed.

B. Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER or its consultants. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER are only for convenience. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

C. The party receiving electronic files agrees that it will perform acceptance tests or procedures within 3 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 3-day acceptance period will be corrected by the party delivering the electronic files.

D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

E. If OWNER and ENGINEER intend to transmit the Materials or any other information or documentation in digital form during the design and/or construction phases of the Project, OWNER and ENGINEER agree to use ENGINEER's digital document management software system (OneDrive) to which ENGINEER shall provide OWNER and the contractor access. Should OWNER not agree to use ENGINEER's document management software or, at the request of the contractor, OWNER directs ENGINEER to use a different such software for transmission and management of construction phase documentation, ENGINEER's fees and time schedules shall be equitably adjusted.

F. ENGINEER grants OWNER a non-exclusive license to use the Documents on the Project and to make and retain copies of Documents for reference in connection with extensions of the Project, and for related uses of the OWNER, subject to receipt by ENGINEER of full and prompt payment for all services relating to preparation of the Documents. OWNER acknowledges that: (1) such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by ENGINEER; (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 to its officers, directors, members, partners, employees, and consultants, and OWNER specifically indemnifies and holds ENGINEER harmless for such use, reuse or modification; and (3) such limited license to OWNER shall not create any rights in third parties.

G. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

#### **6.05 Insurance**

A. ENGINEER shall maintain insurance coverage as follows:

1. COMMERCIAL GENERAL LIABILITY insurance with \$1,000,000 per occurrence, \$2,000,000 aggregate.

2. COMMERCIAL AUTOMOBILE LIABILITY insurance with \$1,000,000 combined single limit each accident.
  3. PROFESSIONAL LIABILITY insurance with \$1,000,000 each claim and \$1,000,000 annual aggregate.
  4. WORKER'S COMPENSATION insurance in amounts required by state law.
- B. ENGINEER shall provide Certificates of Insurance evidencing coverage as applicable prior to commencement of services.
- C. OWNER shall require Contractor to purchase and maintain general liability insurance and other insurance as specified in the Contract Documents and to cause ENGINEER and its consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. All policies of property insurance relating to the Project shall contain provisions to the effect that ENGINEER's and its consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against ENGINEER or its consultants, or any insureds, additional insureds, or loss payees thereunder.

#### **6.06 Termination**

A. 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 this clause, 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.

**6.07 Lien Rights** - Within 15 days after receipt of a written request from the Engineer, the Owner shall furnish any requested information as necessary and relevant for the Engineer to evaluate, give notice of, or enforce lien rights. Evaluation, notice and enforcement of lien rights shall be determined at the Engineer's discretion.

**6.08 Controlling Law** - This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

#### **6.09 Claims and Dispute Resolution**

A. For all conflicts arising out of this Agreement or the Project, OWNER and ENGINEER agree to negotiate disputes between them in good faith for a period of 60 days after notice.

B. OWNER and ENGINEER agree that any disputes not settled between them shall be submitted to non-binding mediation, unless the parties mutually agree otherwise. The mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and shall include a list of no less than three nor more than six names, addresses and qualifications of industry-experienced mediators which the filing party will accept to conduct the mediation. Mediation shall proceed in advance of legal or equitable proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

C. If such mediation is unsuccessful in resolving a dispute, then either party may seek to have the dispute resolved by a court of competent jurisdiction. In the event of litigation arising from or related to this Agreement or the services provided under this Agreement, the prevailing party shall be entitled to recover in accordance with State law.

D. OWNER and ENGINEER shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law in effect at the time this Agreement was executed, but, in any case, not more than 10 years after the date of Substantial Completion of the Work. Owner and Engineer waive all claims and causes of action not commenced in accordance with this Paragraph 6.09 D.

#### **6.10 Environmental Condition of Site**

A. OWNER has disclosed to ENGINEER in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location and represents to ENGINEER that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing exist at the Site.

B. If ENGINEER encounters or learns of an undisclosed Constituent of Concern at the Site, then ENGINEER shall notify (1) OWNER and (2) appropriate governmental officials if ENGINEER reasonably concludes that doing so is required by applicable laws or regulations.

D. Both parties acknowledge that ENGINEER's scope of services does not include any services related to Constituents of Concern. If an undisclosed Constituent of Concern is encountered, or if investigative, remedial action or other professional services are necessary with respect to disclosed or undisclosed Constituents of Concern, then 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 Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable laws and regulations.

E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause.

F. Owner acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in CERCLA, as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

#### **6.11 Allocation of Risks**

##### **A. Indemnification.**

1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER and OWNER's officers, directors, members, partners, consultants, and employees from and against any and all costs, losses, and damages (including but not limited to reasonable fees and charges of all professionals, and all court costs) to the extent caused by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, or consultants in the performance services under this Agreement.

2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and consultants from and against any and all costs, losses, and damages (including but not limited to reasonable fees and charges of all professionals, and all court costs) to the extent caused by the OWNER or OWNER's officers, directors, partners, employees, consultants or contractors with respect to this Agreement or the Project.

3. To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent contributor, shall not exceed the percentage share that the party's negligence bears to the total negligence of all negligent contributors.

4. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and consultants from and against all claims, costs, losses, and damages, including but not limited to reasonable fees and charges of all professionals, and all court costs, (collectively Claim) caused by, arising out of or resulting from a Constituent of Concern, provided that (1) any such Claim is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

B. Mutual Waiver. To the fullest extent permitted by law, OWNER and ENGINEER waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. Both the OWNER and ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

C. Limitation of Liability. In recognition of the relative risk of benefits of the project to both OWNER and ENGINEER, the risks have been allocated such that OWNER agrees, to the fullest extent permitted by law, to limit the liability of ENGINEER and its consultants to the OWNER and to all construction contractors and subcontractors on the project for any and all claims expenses from any cause or causes, so that the total aggregate liability of ENGINEER and its consultants to all those named shall not exceed ENGINEER's total compensation for services rendered on the Project, up to \$1,000,000. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

D. Premium Cost. If, after the construction has begun, an error or omission is discovered and the item can still be provided in the planned sequence of construction without a premium cost to the OWNER; then the OWNER will pay for this entire item just as if it had been included in the original Contract Documents. If this error or omission is discovered out of sequence with the planned construction schedule resulting in a premium cost to add or correct the item, but such premium cost falls within twenty percent (20%) of the defined construction cost, then such cost shall be borne by OWNER as if it had been included in the original Contract Documents.

#### **6.12 Successors, Assigns and Beneficiaries**

A. The OWNER and ENGINEER, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement.

B. Neither the OWNER nor ENGINEER shall assign this Agreement without the written consent of the other.

C. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the OWNER or ENGINEER.

### **6.13 Miscellaneous Provisions**

A. Notices. Notices will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

B. Survival and Severability. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason. Should any provisions of this Agreement be determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such provision shall be deemed void and all remaining provisions shall continue in force. Further, such provision so determined shall be amended by the parties hereto so as to make it valid, legal and enforceable, but keeping it close to the original meaning as possible.

C. Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

D. Accrual of Claims: To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

E. Photographic or Artistic Representations: Engineer shall have the right to include photographic or artistic representations of the design of the Project among the Engineer's promotional and professional materials. Engineer shall be given reasonable access to the completed Project to make such representations. However, Engineer's material shall not include Owner's confidential or proprietary information if Owner has previously advised engineer in writing of the specific information considered by Owner to be confidential or proprietary. Owner shall provide professional credit for Engineer in Owner's promotional materials for the Project.

F. 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.

### **6.14 Definitions**

A. Constituent of Concern. Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (CERCLA); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (RCRA); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

B. Contract Documents. Those items so designated in the construction contract, including the drawings, specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the construction contract are Contract Documents. Approved shop drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

C. Contractor. The entity or individual with which Owner has entered into a construction contract.

D. Documents. Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.

E. Substantial Completion. The time at which the Work has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

F. Total Project Costs. The sum of the construction cost, allowances for contingencies, and the total costs of services of Engineer and all design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

G. Work. The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

**ARTICLE 7 – SCOPE OF THIS AGREEMENT**

**7.01 Total Agreement** - This Agreement and the Exhibits thereto represents the entire and integrated agreement between OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties.

**7.02** The Exhibits to this Agreement include:

Exhibit A – Engineer’s Scope and Compensation of Services (Task Order Template and Task Order No. 01)

**IN WITNESS WHEREOF**, OWNER and ENGINEER have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date written herein.

**OWNER: City of Cartersville, GA**

**By:** \_\_\_\_\_ **Attest:** \_\_\_\_\_

**Name/Title:** Matthew J. Santini, Mayor **Name/Title:** Julia Drake, City Clerk

**Date:** \_\_\_\_\_ **[affix seal]**

*Designated Representative:*

J. Sidney Forsyth, Water Department Director  
Cartersville Water Department  
148 Walnut Grove Road  
Cartersville, GA 30120  
(770) 607-6234  
sforsyth@cityofcartersville.org

**ENGINEER: Lindsay Engineering & Consulting, LLC**

**By:** Rebecca J. Lindsay

**Name/Title:** Rebecca Lindsay, President

**Date:** August 15, 2023

*Address for Giving Notices:*

881 Adams Road  
Jefferson, GA 30549  
(678) 300-9789  
[rebecca@lindsay-engineering.com](mailto:rebecca@lindsay-engineering.com)



**Exhibit A – Engineer’s Scope and Compensation of Services (Task Order Template)**

Task Order No. 01 – On-Call General Consulting Services

**SCOPE:**

Engineer’s services for this Project are described as follows: Consulting, advisement, assessment, and peer review as requested by the City Water Department.

**COMPENSATION:**

For the specified category of service, the OWNER shall pay ENGINEER an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class as presented hereafter. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified below.

**Standard Hourly Rates**

1. Principal Engineer, \$230/hour.
2. Peer Review, \$150.00/hour.
3. Project Controls, \$137.50/hour.
4. GIS, \$126.50/hour.
5. Additional staff categories and rates may be proposed by Engineer for Owner’s consideration as-needed or upon request.

**Reimbursable Expenses**

1. Mileage, billed at the current federal GSA rate.
2. Reproduction, billed at cost.

The Standard Hourly Rates and Reimbursable Expenses Schedule may be adjusted annually as of July 1<sup>st</sup> (beginning in 2024) to reflect equitable changes in the compensation payable to Engineer, with notice to the Owner.

All provisions of this Task Order are as set forth in the Agreement dated August 15, 2023. The Effective Date of this Task Order is August 15, 2023.

**OWNER: City of Cartersville, GA**

**By:** \_\_\_\_\_

**Name/Title:** \_\_\_\_\_

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

**ENGINEER: Lindsay Engineering & Consulting, LLC**

**By:** Rebecca J. Lindsay \_\_\_\_\_

**Name/Title:** Rebecca Lindsay, President \_\_\_\_\_

**Date:** August 15, 2023 \_\_\_\_\_