

## Master Agreement for Professional Services

THIS AGREEMENT is made and entered into this 15th day of ~~June~~ <sup>September</sup>, 2020, by and between **The Board of Commissioners of Effingham County**, a political subdivision of the State of Georgia, (hereinafter "Owner"), whose address for any formal notice is 601 N. Laurel Street, Springfield, GA 31329, and **EOM Operations, a Division of EOM Public Works LLC**, a limited liability company existing under the Laws of the State of Georgia and domiciled in Bryan County, Georgia, (hereinafter "Consultant"), whose address for any formal notice is 480 Edsel Drive, Suite 100, Richmond Hill, GA 31324.

Owner and EOM agree:

### 1 GENERAL CONDITIONS

- 1.1 This agreement shall be governed by and interpreted in accordance with the Laws of the State of Georgia.
- 1.2 This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party will assign this Agreement without prior written consent of the other party. Consent shall not be unreasonably withheld.
- 1.3 All notices shall be in writing and transmitted by certified mail to the addresses noted in this Agreement. Electronic communication (e-mail) may be used for general communication between Owner and Consultant.
- 1.4 This Agreement sets forth the general terms and conditions which shall govern the relationship and performance of Owner and Consultant. Consultant shall provide services as set forth in the Agreement and subsequent amendments including Task Orders.
- 1.5 This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "Owner" and "Consultant" shall include their respective officers, agents, directors, elected or appointed officials, and employees.
- 1.6 From time to time Owner may request that Consultant provide services. Each request shall be documented in a Task Order consistent with the format of Exhibit A to this Agreement, and, upon acceptance by Owner and Consultant, shall be considered an amendment to this Agreement.
- 1.7 Upon execution of this Agreement, Owner and Consultant shall designate specific individuals to act as Owner's and Consultant's representatives with respect to the services performed or furnished under this Agreement. Such individual shall have authority to transmit instructions, receive information, and render decisions with respect to materials, equipment, elements and systems pertinent to Consultant's services.

### 2 SCOPE OF SERVICES

- 2.1 Each Task Order will describe services to be performed, compensation for those services and deliverables, if any, to be provided. Consultant shall not be obligated to perform any prospective Task Order unless and until Owner and Consultant agree as to the scope of services, compensation and time of performance. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- 2.2 Services described in a specific Task Order approved by Owner shall be commenced promptly and not later than the beginning date specified in the Task Order.

### **3 OWNER'S RESPONSIBILITIES**

- 3.1 Owner shall provide Consultant with all access to Owner's facilities relating to the services specified in each Task Order.
- 3.2 Owner shall maintain and renew warranties, guarantees, easements, permits, authorizations, and licenses that have been granted to the Owner, to the extent doing so is not a responsibility of Consultant hereunder.
- 3.3 The Owner agrees to not offer employment or other compensation to Consultant personnel working on this project for a period of two (2) years after the termination or expiration of this Agreement or said employee's reassignment from this project.
- 3.4 Owner will provide to Consultant all data in Owner's possession relating to the services specified in each Task Order. Consultant will reasonably rely upon the accuracy and completeness of the information provided by the Owner.

### **4 OPINION OF PROBABLE COST**

- 4.1 Consultant's opinion on probable construction costs, if included in services of a specific Task Order, shall be based on reasonable judgement as a professional engineer. Owner acknowledges Consultant has no control over cost of labor, materials, equipment, services furnished by others or over contractors' methods of determining prices, or over competitive bidding or market conditions. Consultant cannot and does not warranty or guarantee that proposals, bids or actual construction costs will not vary from Consultant's opinion of probable cost.

### **5 STATUS DURING CONSTRUCTION**

- 5.1 If construction observation is included in services of a specific Task Order, the Consultant shall visit the project site at intervals appropriate to the stage of construction or as agreed in writing by the Owner and the Consultant in order to observe the progress and quality of work completed by Contractor. Visits and observations performed by Consultant are not intended to be an exhaustive check or a detailed inspection of Contractor's work but rather allow Consultant to become familiar with the work in progress and to determine if the work is proceeding in accordance with the construction documents.

- 5.2 Consultant shall keep Owner informed of progress of work and shall notify Owner of any observed deficiencies in work.
- 5.3 Consultant shall not supervise, direct, control or have charge or authority over the Contractor's work nor shall Consultant 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 in connection with the work, security or safety at the site, nor failure of any contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- 5.4 Consultant shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the work, or any agents or employees of any of them. The Consultant does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the construction contract documents or any applicable laws, codes, rules or regulations.

## **6 COMPENSATION AND PAYMENT**

- 6.1 Consultant shall prepare invoices in accordance with the terms established in the specific Task Order and shall submit its invoices to Owner on a monthly basis.
- 6.2 All other compensation to Consultant is due on receipt of Consultant's invoice and payable within fifteen (15) days.
- 6.3 Owner shall pay interest at an annual rate equal to nine percent (9%), said amount of interest not to exceed any limitation provided by law, on payments not paid and received within fifteen (15) calendar days, such interest being calculated from the due date of payment.

## **7 TERM**

- 7.1 Subject to Owner's annual fiscal year budget appropriation approval process, the initial term of this Agreement shall be for one (1) year commencing on July 1, 2020. Thereafter, subject to Owner's annual fiscal year budget approval process, the Owner may renew the Agreement for an additional one (1) year, after which time this Agreement shall expire. Thereafter, the parties may negotiate a new Agreement which shall be subject to approval of both parties.
- 7.2 Either party may terminate this Agreement for material breach of this Agreement by the other party after giving written notice of the breach and allowing the other party a reasonable time to correct the breach. Excepting breaches by Owner for non-payment of Consultant's invoices, neither party shall terminate this Agreement without giving the other party thirty (90) day's written notice of intent to terminate.

## **8 INDEMNITY AND LIABILITY**

- 8.1 Consultant hereby covenants and agrees to defend, indemnify and hold Owner harmless from and against any and all claims, demands, liabilities, fines, penalties, loss, damages (including without limitation economic loss, property damage or bodily injury, including death), costs and expenses, as well as Owner's attorney's fees and costs and expenses of litigation resulting from, arising out of, or related to Consultant's negligence or negligent performance or non-performance of services under this Agreement, whether or not such negligence or negligent performance or non-performance of services be by Consultant or by any subcontractor of Consultant. Consultant's indemnity obligations include payment of Owner's costs in obtaining any court order or ruling requiring Consultant to honor its indemnity and liability obligations set forth in this Agreement.

## **9 INSURANCE**

- 9.1 Consultant shall provide the following insurances throughout the term of this Agreement, and shall provide to Owner Certificates of Insurance demonstrating compliance with this provision:
- 9.1.1 Statutory Worker's Compensation and Employer's Liability Insurance, as required by the State in which the work is performed.
- 9.1.2 Comprehensive Automobile and Vehicle Liability Insurance with One Million Dollars (\$1,000,000.00) combined single limits, covering claims for injuries to members of the public and/or damages to property of others arising from the use of EOM-owned or -leased motor vehicles, including onsite and offsite operations.
- 9.1.3. Commercial General Liability Insurance with limits of One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate, covering EOM's indemnity obligations set forth in this Agreement, as well as claims for injuries to members of the public or damages to property of others arising out of any covered act or omission of EOM or any of its employees or subcontractors.
- 9.2 Owner will maintain the following insurances throughout the term of the Agreement, and shall provide Consultant with Certificates of Insurance to demonstrate compliance with this provision.
- 9.2.1 Property Damage Insurance for all property, including Owner owned vehicles and equipment, for the full fair market value of such property.
- 9.3 Owner and Consultant hereby waive all rights of subrogation against the other for all damages and claims for damages which are covered under any insurance policies required to be carried hereunder.

## **10 LABOR DISPUTES**

- 10.1 In the event activities by Consultant employee groups or unions causes disruption in Consultant's ability to perform services under this Agreement, Consultant may seek

appropriate injunctive court orders during any such disruption. Consultant shall offer services on a best efforts basis until any such disruptions cease, but Consultant cannot assure compliance with all contract conditions during such disruptions.

## **11 FORCE MAJEURE**

11.1 Neither party shall be liable to the other for damages, delays or failure to perform its obligations under this Agreement if performance is made impractical, abnormally difficult or abnormally costly, which is beyond the responsible control of the party relying thereon as a result of: (i) fire, flood, strike, acts of God, acts of public enemy, acts of terrorism, war blockage, sabotage, electronic attack, insurrection, riot or civil disturbance or a pandemic event; (ii) change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, state, federal or other government body; (iii) labor disputes, strikes, work slowdowns or work stoppages, but excluding labor disputes, strikes, work slowdowns or stoppages by employees or Consultant; (iv) the presence of Biologically Toxic Substances in the influent or the presence of hazardous wastes, materials or liquids in the influent or raw water supply which detrimentally affect the machinery, infrastructure or processes at the Project; and (v) loss or inability to obtain service from a utility necessary to furnish power for the operation and maintenance of the Project. The party invoking this *Force Majeure* clause shall notify the other party immediately by verbal communication and in writing of the nature and extent of the contingency immediately, and no later than ten (10) working days after its occurrence, and shall take reasonable measures to mitigate any impact of *Force Majeure*.

## **12. INDEPENDENT CONTRACTOR**

12.1 It is hereby agreed and understood that Consultant is entering into this Agreement as an independent contractor and that all of Consultant's personnel engaged in work to be done under the terms of this Agreement are to be considered as employees of Consultant and under no circumstances shall they be construed or considered to be employees of Owner. Consultant shall supervise the performance of its own employees in providing services for Owner and shall have control over the manner and means by which the Services are performed, subject to the terms of this Agreement as well as any written and mutually agreed upon amendments thereto. Nothing in this Agreement will be interpreted as creating any relationship of principal and agent, partnership or joint venture between the parties. Neither Consultant nor Owner will represent in any manner to any third party that Consultant is an agent of, or affiliated with, Owner in any capacity other than as an independent contractor, and nothing in this Agreement shall be construed to be inconsistent with such status.

## **13 NO THIRD-PARTY BENEFICIARIES**

13.1 This Agreement gives no rights or benefits to anyone other than Owner and Consultant and their officers, agents, directors, elected or appointed officials, and employees, and this Agreement has no third-party beneficiaries.

**14 JURISDICTION**

14.1 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia. In the event that any dispute or disagreement between the parties cannot otherwise be amicably resolved, the parties consent to jurisdiction and venue in the Superior Court of Effingham County, Georgia.

**15 SEVERABILITY**

15.1 If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. A party's failure to require strict compliance with any provision of this Agreement shall not constitute a waiver or estoppel to later demand strict compliance with that or any other provision(s) of this Agreement.

**16 ENTIRE AGREEMENT**

16.1 Should any provisions of this Agreement or the execution thereof be declared or determined to be unlawful under any statute, ordinance, law, ruling or regulation, then, in such an event, the parties hereto agree that either of them may cancel this Agreement in its entirety, regardless of the remaining term or terms, and incur no penalty or liquidated damages whatsoever, or, in the alternative, may mutually agree to a modification of this Agreement as to make the same fully comply with all applicable laws.

16.2 This Agreement, together with all Appendices attached hereto, contains all representations and the entire understanding between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda or agreements, whether or not such correspondence, memoranda or agreements are in conflict with this Agreement, are intended to be replaced in total by this Agreement and its Appendices. The parties mutually declare there are no oral understandings or promises not contained in the Agreement, which contains the complete, integrated, and final agreement between the parties.

**17 EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED – E-VERIFY AFFIDAVIT**

17.1 Pursuant to O.C.G.A §13-10-91, Owner shall not enter into a contract for the physical performance of services unless Consultant provides evidence on County-provided forms, attached hereto as Exhibits "B" and "C" affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A §16-10-71, that Consultant and its subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A §13-10-91, and that they will continue to use the federal work authorization program throughout the contract term.

In the event Consultant employs or contracts with any subcontractor(s) in connection with this Agreement, Consultant agrees to secure from such subcontractor(s)

attestation of the subcontractor's compliance with O.C.G.A §13-10-91 and Rule 300-10-1-02 by subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as "Exhibit C", which subcontractor affidavit shall become part of the Consultant/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is an individual licensed and in good standing in accordance with O.C.G.A §13-10-91. If a subcontractor affidavit is obtained, Consultant agrees to provide a completed copy to the Owner within five (5) business days of receipt from any subcontractor. Consultant and its subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract.

EOM agrees that the employee-number category designated below is applicable to Consultant. [Information only required if contractor affidavit is required pursuant to O.C.G.A §13-10-91.]

- 500 or more employees.
- 100 or more employees.
- Fewer than 100 employees.

Consultant hereby agrees that, in the event Consultant employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A §13-10-91, Consultant will secure from the subcontractor(s) such subcontractor(s) indication of the above employee-number category that is applicable to the subcontractor. The above requirements shall be in addition to the requirements of state and federal law, and shall be construed to be in conformity with those laws.

**18 CONFLICT OF INTEREST**

18.1 Consultant agrees that it shall not engage in any activity or conduct that would result in a violation of state or local ethics laws or regulations. Consultant certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the work.

**19 NONDISCRIMINATION**

19.1 In accordance with Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C §2000d, section 303 of the Age Discrimination Act of 1975, as amended 42 U.S.C §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C §12132, and all other provisions of Federal law, Consultant agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Consultant agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

**20 WAIVER; SOVEREIGN IMMUNITY**

20.1 No express or implied waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated. Nothing contained in this Agreement shall be construed to be a waiver of Owner's sovereign immunity or any individual's qualified, good faith or official immunities.

**21 AUTHORITY**

21.1 Both parties represent and warrant to the other party that the execution, delivery, and performance of this Agreement has been duly authorized by the responsible parties thereof. Both parties warrant that all required approvals have been obtained and the executing party below has such authority to bind the party.

Both parties indicate their approval of this Agreement by their signatures below.

**EOM OPERATIONS**

Authorized Signature:

  
\_\_\_\_\_

Name:

president  
\_\_\_\_\_

Title:

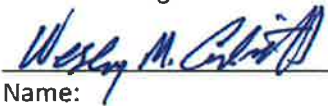
9.23.2020  
\_\_\_\_\_

Date:

\_\_\_\_\_

**The Board of Commissioners of Effingham County**

Authorized Signature:

  
\_\_\_\_\_

Name:

Chairman  
\_\_\_\_\_

Title:

09/15/2020  
\_\_\_\_\_

Date:

\_\_\_\_\_



**EXHIBIT A  
SAMPLE TASK ORDER**



DATE

The Board of Commissioners of Effingham County  
ATTN: Charles George  
601 N Laurel Street  
Springfield, GA 31329

Re: **XXX Services Task Order Request**

Dear Mr. George,

EOM Operations, a full scale public works operations, engineering, and utilities construction firm is pleased to provide civil engineering consulting services as described below. The services described herein shall be performed in accordance with and shall be subject to the terms and conditions of the Master Agreement for Professional Services executed by and between Owner and Consultant on \_\_\_\_ day of \_\_\_\_\_, 2020.

**SCOPE SERVICES  
EXCLUSIONS  
COMPENSATION**

Signatures below indicate the acceptance of the proposed Task Order items listed above.

**The Board of Commissioners of  
Effingham County**

**EOM Operations**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**TASK ORDER NO.** \_\_\_\_\_

**COMMENCEMENT DATE** \_\_\_\_\_

**COMPLETION DATE** \_\_\_\_\_

**EXHIBIT B  
CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation that is contracting with Effingham County has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91, and shall agree to use this program for any newly hired employees throughout the duration of the contract.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with Effingham County, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. The contractor further agrees to provide notice to the County of the identity of each subcontractor hired under the contract within five (5) business days of entering into a contract for hire. Such notice shall include a copy of the Subcontractor Affidavit for each subsequent subcontractor attesting to the subcontractor's name, address, user identification number, and date of authorization to use the federal work authorization program. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the Effingham County within five (5) days of the time the subcontractor(s) is retained to perform such service.

759319                      2/28/14  
EEV/ Basic Pilot Program\* User Identification Number  
EOM Public Works, LLC  
Company Name  
[Signature]                      9.23.2020  
BY: Authorized Officer or Agent                      Date  
(Signature)  
president  
Title of Authorized Officer or Agent  
Melissa L Hurd  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE  
23<sup>rd</sup> DAY OF September 2020  
[Signature]  
Notary Public  
My Commission Expires: January 10, 2023



\* As of the effective date of O.C.G.A. § 13-10-91, the applicable federal work authorization program is the "EEV/ Basic Pilot Program" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**EXHIBIT C  
SUBCONTRACTOR AFFIDAVIT**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation that is engaged in the physical performance of services under a contract with (name of contractor) on behalf of Effingham County has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and will agree to use this program for any newly hired employees throughout the duration of the contract. The subcontractor further agrees to provide a copy of the executed Subcontractor Affidavit to the contractor in order to be provided to the County within five (5) days entering into the contract for hire.

\_\_\_\_\_  
EEV / Basic Pilot Program\* User Identification Number

\_\_\_\_\_  
Date of E-Verify Authorization

\_\_\_\_\_  
Address

\_\_\_\_\_  
BY: Authorized Officer or Agent                              Date  
(Subcontractor Name)

\_\_\_\_\_  
Title of Authorized Officer or Agent of Subcontractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_, 20\_\_\_\_

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV/Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).