

CONSULTANT AGREEMENT

THIS AGREEMENT ("Agreement"), effective _____, is made between Lamar County, Georgia, a political subdivision of the State of Georgia with an office at 408 Thomaston Street, Suite E, Barnesville, Ga., 30204 ("Owner") and **exp** U.S. Services Inc., incorporated pursuant to the laws of Delaware with an office at 268 Ceburn Kicklighter Rd., Reidsville, GA 30453 ("exp").

WHEREAS Owner wishes to retain the Consultant to provide consulting services described herein to the Owner on the terms and subject to the conditions set out in this Agreement.

NOW THEREFORE, in consideration of the mutual undertakings and subject to the terms contained in the Agreement, the parties agree as follows:

1. SERVICES

The Owner retains the Consultant to provide development of Lamar County Asphalt Paving contracts (Phase 1 – Asphalt roads to include Silver Dollar Road, Weldon Lake Road and Liberty Hill Road and Microsurface Roads – Cauthen Road, Cook Road, Heavy Road, Bush Road, Van Buren Road, Bush Road, Johnstonville Road, Five Points Road Country Kitchen and Brook Road) and complete administration of the Project Letting with all necessary Contractor coordination up to and including the execution of the Construction Services Agreement between Lamar County and the awarded/selected Contractor.

The services will include field evaluations of the County specified roadway segments selected for repaving by EXP's Roadway Maintenance Experts to develop and document a comprehensive list of recommended pavement repairs and quantities; EXP will coordinate with the County to determine which repairs (if any) will be performed by County prior to repaving or if to be included in the Paving Contract (such as shoulder clipping and patching); Development of Construction Contract/Conformed Contract Bid Documents including Bid Advertisement write-up and Engineer's Pre-Bid Cost Estimate; and Administration of Project Letting including Contractor coordination, Bid Tabulation preparation for bids received and Bid Review/Award Recommendation.

Deliverables for the project will include Roadway Segment Maintenance Log, Project Advertisement, Conformed Contract Documents and complete Bid Packages for project letting. Bid Tabulations with Project Award Recommendation will be provided at the conclusion of the Project Letting. Maintenance Log/Recommendations, Bid Advertisement Notice and Complete Contract Documents will be ready for advertising in January 2023.

2. REMUNERATION

In consideration of the provision of the Services by the Consultant, the Owner agrees to pay the Consultant the rates in the amount set forth in Schedule A ("Fees").

The Consultant shall submit invoice once the work has been completed and submitted. The Owner shall notify the Consultant within seven (7) days receipt of the invoice if it disputes any portion of the invoice. The Owner shall pay the undisputed portion of each invoice submitted to it within thirty (30) days of receipt. If the invoice is not paid within thirty (30) days, interest shall accrue on any overdue amounts at a rate of 1% per month, (12%) per year.

3. RELATIONSHIP OF THE PARTIES

In providing the Services, the Consultant shall act as an independent contractor and only to the extent and for the specific purpose described in this Agreement. Neither the Consultant nor any of its directors, officers, employees or agents shall be construed as agents or employees of the Owner.

4. PERMITS, UTILITIES AND ACCESS

The Owner shall apply for and obtain all required permits and licenses required for the Project unless provided otherwise in the Consultant's proposal.

The Owner shall provide the Consultant with the available location of all underground utilities and structures in the vicinity of the work area. The Consultant and Owner shall use their best efforts and due diligence to allow the Services to be completed which includes, but not limited to, providing access to the work site and conducting work underground.

5. STANDARD OF CARE

The Consultant shall perform the Services with a level of skill and care consistent with the procedures, protocols and practices generally accepted in the Consultant's profession for use by practitioners in similar engagements. The Consultant will use commercially reasonable efforts to provide the Services in accordance with all relevant local, provincial and federal laws, regulations, codes, guidelines and standards that are applicable at the time the Consultant provides the Services, and shall not be liable to the Owner for failure to do so unless such noncompliance is due to the negligence or willful misconduct of the Consultant.

Employees or other persons retained by the Consultant to perform the Services will have the necessary skills, training and qualifications to provide the Services in accordance with the provisions of this Agreement.

The Consultant has the power and authority to enter into and carry out all of its obligations under this Agreement.

6. OWNERSHIP AND INTELLECTUAL PROPERTY

All information, material and Intellectual Property Rights, as defined herein, acquired, developed or prepared by the Consultant pursuant to this Agreement shall be the sole and exclusive property of the Owner upon full payment of the Services performed. The Owner releases the Consultant from liability and agrees to defend, indemnify, protect and hold harmless the Consultant from any and all claims, liability, damages or expenses arising, in whole or in part, from unauthorized use. "Intellectual Property Rights" means any copyright, trademark, patent, registered design, design right, topography right, service mark, application to register any of the rights, trade secrets, rights in unpatented know-how, right of confidence and any other intellectual or industrial property right of any nature whatsoever in any part of the world.

7. CONFIDENTIALITY

The Consultant shall use reasonable efforts to maintain confidential and secure all material, information and documentation provided to the Consultant, whether obtained directly or indirectly from the Owner, or belonging to the Owner and in the possession or under the control of the Consultant pursuant to this Agreement. Such confidentiality obligation shall not apply if such material, information or documentation is within the public domain, previously known to the Consultant, obtained from third parties without violating any confidential agreement or required to be produced by the Consultant pursuant to any law or court order.

In the event that any material, information or documentation is required by the Consultant as stated above, the Consultant shall promptly give notice to the Owner.

8. REPORTS

The Owner agrees that any use of or reliance upon any report prepared by the Consultant or its subconsultants (collectively "Report") by a third party are the responsibility of the third party. The Consultant accepts no responsibility for any damages that may be suffered by the third party as a result of decisions made or action taken based upon the Report.

The Owner agrees that the Report is prepared for the account and benefit of the Owner and that the material in the Report will reflect the Consultant's best judgment in light of the information made available to it by the Owner at the time of the preparation of the Report.

The Consultant shall not be liable for the consequences of any amendments, revisions, modifications or alterations made by the Owner to the Report without the consent of the Consultant.

9. INDEMNIFICATION

The Owner agrees to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants against all damages, liabilities or costs (including legal fees) arising out of or in any way connected with the Project, excepting those damages, liabilities or costs attributable to the negligent acts or omissions by the Consultant or those parties for whom the Consultant is responsible at law.

The Consultant agrees to indemnify and hold harmless the Owner, its officers, directors, employees and agents against all damages, liabilities or costs (including legal fees) to the extent arising out of or in any way connected with the Services under this Agreement, excepting those damages, liabilities or costs attributable to the negligent acts or omissions by the Owner or those parties for whom it is responsible at law.

The Consultant shall have no liability for the activities of any contractor, subcontractor, supplier or their respective employees or agents on the Project unless retained by the Consultant.

In no event will either party be liable to the other for such other party's loss of profit and lost revenues or for any special, indirect, incidental or consequential damages arising out of this agreement.

10. LIMITATION OF LIABILITY

In recognition of the relative risks and benefits of the project to both the Owner and Consultant, the parties agree, to the fullest extent permitted by law, to limit the aggregate liability of Consultant, its parent, affiliates and subcontractors, and their respective directors, officers, employees and agents, to \$50,000 or the remuneration for the Services, whichever is greater. This limitation of liability shall apply to all suits, claims, actions, losses, costs and damages of any nature, including but not limited to legal fees and expenses, arising from or related to this Agreement without regard to the legal theory under which such liability is imposed.

11. ENVIRONMENTAL CONDITIONS

The Owner shall be responsible for the environmental condition of the Project. The Owner shall be responsible for and promptly pay for the removal and lawful disposal of contaminants, hazardous materials, asbestos, samples and cuttings unless otherwise agreed in writing. The discovery of such conditions on the Project shall result in the issuance of a change order to the extent that the Services are impacted.

12. FORCE MAJEURE

Notwithstanding any other provision in this Agreement, failure or delay in performance by either party of any term of this Agreement shall be excused to the extent caused by an event beyond such party's reasonable control, provided the party: (i) notifies the other in writing as soon as reasonably possible; (ii) provides reasonable detail of the commencement and nature of such a cause; and (iii) uses its best efforts to render performance in a timely manner utilizing to such end all resources reasonably required in the circumstances, including obtaining supplies or services from other sources if same are reasonably available.

13. INSURANCE

The Consultant shall maintain the following insurance policies for the duration of the Agreement:

Professional Liability Insurance - for errors and omissions in the performance or failure to perform professional services contemplated in this Agreement, in the amount of \$1,000,000 per claim and in the aggregate;

Commercial General Liability Insurance – in the amount of \$1,000,000 per occurrence and in the aggregate.

The Owner shall be named as an additional insured on the Commercial General Liability Insurance policy as its interest may appear.

14. DISPUTES

Any dispute arising under this Agreement shall first be resolved by taking the following steps. A successive step shall be taken if the issue is not resolved at the preceding step: (i) by negotiation between the technical and contractual personnel for each party; (ii) by negotiation between executive management of each party; (iii) by mediation; (iv) by arbitration if both parties agree; and (v) through the courts in the jurisdiction where the Project is located, that is, Lamar County.

15. TERMINATION

Notwithstanding any other provision of this Agreement, either party may terminate this Agreement at any time, in whole or in part, with or without cause, by providing written notice of termination to the other party. Except as otherwise mutually agreed by the Owner and the Consultant, termination shall be effective immediately on notice being received if termination is made by one party where the other party is in material breach of its obligations in this Agreement and otherwise thirty (30) days from receipt of the notice. The Owner shall compensate the Consultant for work properly performed (including demobilization) and reasonable expenditures incurred in connection with this Agreement up to and including the date of any such termination.

16. NOTICES

Any notice or other communication required to be given under the Agreement shall be in writing and delivered by courier, fax, email or registered mail, addressed as follows:

If to Owner:

Lamar County, Georgia

408 Thomaston Street, Suite E
Barnesville, GA 30204

Attention: Mr. Sean Townsend, County Administrator

If to Consultant:
Exp US Services Inc.
268 Ceburn Kicklighter Road
Reidsville, GA 30453

Attention: Mr. Steve Martin, Vice President

If delivered by courier, fax or email, any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a business day, on the next following business day). If mailed, any such notice or other communication shall be deemed to have been given and received on the third business day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter a labor dispute or other event occurs, which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication made under this Agreement shall be delivered or transmitted by fax as provided in this section.

A party to this Agreement may change its address for the purpose of this Section by giving the other party notice of such change of address in the manner provided in this Section.

17. MISCELLANEOUS

Neither party shall assign its interest in this Agreement without the written consent of the other.

No waiver of any breach of any provision of this Agreement will be effective or binding unless it is in writing and signed by the party purporting to give such waiver and, unless otherwise provided, will be limited to the specific breach waived.

This Agreement includes the attached Schedules A and B embodies the entire agreement with regard to the Services. This Agreement supersedes any understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution.

All paragraphs, terms and conditions of this Agreement are severable, and the invalidity, illegality, or unenforceability of any such paragraph, term or condition shall be deemed not to affect the validity, enforceability or legality of the remaining paragraphs, terms and conditions.

No additions, deletions or modifications to the provisions of this Agreement shall be effective unless agreed to in writing by both parties.

The headings preceding the provisions of this Agreement have been inserted for convenient reference only and shall not be deemed to affect the construction or interpretation of this Agreement.

All representations, warranties and covenants of the Consultant and the Owner including any indemnity, shall survive indefinitely the termination of this Agreement.

If there is any inconsistency between this Agreement and any Schedule to this Agreement, this Agreement shall govern.

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF the parties have executed this Agreement.

Lamar County Georgia

By: _____

Title: County Administrator

I have authority to bind the county

EXP US Services Inc.

By: _____

Title: Vice President

I have the authority to bind the corporation

SCHEDULE A

Scope and Fees

EXP US Services Inc. will provide development of Lamar County Asphalt Paving contracts (Phase 1 – Asphalt roads to include Silver Dollar Road, Weldon Lake Road and Liberty Hill Road and Microsurface Roads – Cauthen Road, Cook Road, Heavy Road, Bush Road, Van Buren Road, Bush Road, Johnstonville Road, Five Points Road Country Kitchen and Brook Road) and complete administration of the Project Letting with all necessary Contractor coordination up to and including the execution of the Construction Services Agreement between Lamar County and the awarded/selected Contractor.

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Task 1 – Development of Phase 1 Asphalt Contract for advertisement – Lump Sum fee = \$16,000

Task 2 - Development of Phase 1 Microsurface Contract for advertisement – Lump Sum fee = \$16,000

Task 3 – Bid Coordination/Review/Award Recommendation (Asphalt contract) – Lump Sum fee = \$5,000

Task 4 –Bid Coordination/Review/Award Recommendation (Micro contract) – Lump Sum fee = \$5,000

Any additional services will be provided at rates detailed in Schedule B.

SCHEDULE B

Additional Services

If additional services are required that are in addition to the scope of services, they will be billed on an hourly basis. The following rates will be used depending on the personnel classification during regular working hours. Overtime rates for some classifications will be charged at time and a half. These rates will be applicable through December 31, 2022 and will be automatically increased by 5% beginning January 1, 2023 and every year after. All invoices for time billed after December 31, 2022 will reflect 2023 rates.

| Position | Rate |
|--|-------------|
| Position | Rate |
| Project Principal | \$300.00 |
| Project Manager | \$265.00 |
| Senior Engineer | \$195.00 |
| Engineer 2 | \$160.00 |
| Engineer 1 | \$120.00 |
| Structural Project Manager | \$245.00 |
| Senior Structural Engineer 2 | \$180.00 |
| Structural Engineer 1 | \$150.00 |
| Technician | \$120.00 |
| Technician Aide | \$90.00 |
| CEI Project Manager | \$150.00 |
| CEI Contract Support Specialist | \$88.00 |
| CEI Senior Inspector | \$90.00 |
| CEI Inspector 2 | \$87.00 |
| CEI Inspector 1 | \$85.00 |
| CEI Inspector Aide | \$75.00 |
| Administrative Assistant | \$50.00 |
| Environmental Director | \$283.25 |
| Environmental Manager | \$190.00 |
| Environmental Specialist 1 | \$85.00 |
| Environmental Specialist 2 | \$101.00 |
| Environmental Specialist 3 | \$130.00 |
| Hydraulic/Drainage Project Manager | \$265.00 |
| GIS Administrator Lead | \$140.00 |
| GIS Administrator/Developer 1 | \$109.00 |
| GIS Administrator/Developer 2 | \$124.00 |
| GIS Administrator/Developer 3 | \$130.00 |
| GIS Analyst/Technician 1 | \$95.00 |
| GIS Analyst/Technician 2 | \$112.00 |
| GIS Analyst/Technician 3 | \$120.00 |

Mileage will be billed based on standard IRS rates.
Traffic Counter/Video Monitor \$10.00/day