



**PROFESSIONAL SERVICES AGREEMENT
FOR
EXTERNAL AUDITING SERVICES**

THIS AGREEMENT is made as of July 18, 2023, by and between **Columbia County, Georgia**, a political subdivision of the State of Georgia (the “County”), with an office at 630 Ronald Reagan Drive, Evans, Georgia and **Cherry Bekaert LLP**, a GA Partnership, qualified to conduct business within the State of Georgia, with an office located at 701 Greene Street, Augusta, Georgia, 30901 (the “Consultant”).

RECITALS:

The County desires to engage the Consultant to provide External Auditing Services for the Columbia County Board of Commissioners, and the Consultant desires to accept such engagement, upon and subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the County and the Consultant hereby agree as follows:

**ARTICLE 1
ENGAGEMENT AND SCOPE**

- 1.1 The County hereby engages the Consultant to provide External Auditing Services for the Columbia County Board of Commissioners (the “Work”) in accordance with the Contract Documents (defined in Section 4.1 hereof). The Consultant hereby accepts such engagement, upon the terms and conditions hereinafter set forth.
- 1.2 The Consultant shall provide, furnish and perform all necessary labor and services and provide and furnish all necessary supplies, materials, and equipment required to complete the Work in accordance with the Contract Documents.
- 1.3 If the Consultant is of the opinion that any service requested of it hereunder is beyond the scope of the Work as provided in the Contract Documents, the Consultant shall promptly notify the County in writing of such opinion and the reasons for the same, with specific references to pertinent provisions in the Contract Documents. The County shall be the sole judge as to whether or not such service is in fact beyond the Scope of the Work.
- 1.4 No additional services beyond the Scope of the Work as provided in the Contract Documents shall be performed by the Consultant unless the County shall, in writing, have specifically directed such services to be performed, and a Change Order (hereafter defined) shall have been signed by the County and the Consultant. The Consultant shall neither have nor make any claim for additional compensation for performance of additional services, unless such additional services are defined in a Change Order.
- 1.5 The term “Change Order” as used herein is a written order to the Consultant, issued and signed by the County after execution of this Agreement, authorizing a change in the Work or an adjustment in the Contract Price (hereafter defined) or the Term (hereafter defined). Unless the Consultant requests a modification in such Change Order, the Consultant shall sign the Change Order and return a copy thereof to the County within ten (10) business days after it has received the same. The Consultant shall have ten (10) business days from its receipt of a Change Order within which to request a modification thereto. Failure of Consultant to respond to a Change Order within such ten (10) day period shall be deemed to signify Consultant’s acceptance of such Change Order as if Consultant had signed the same without modification. If Consultant requests a modification of a Change Order, County shall have ten (10) business days from receipt of such request to accept such modification in writing. If not so accepted, such request is deemed to be rejected.

**ARTICLE 2
TERM AND FORCE MAJEURE**

- 2.1 If the Consultant is delayed at any time in the progress of the Work by labor disputes, fire, adverse weather conditions not reasonably anticipated, unavoidable casualties, or any other causes beyond the Consultant’s control and without the fault or negligence of Consultant, the Consultant shall prepare and submit to County within five (5) calendar days of the occurrence of the event giving rise to the delay, a written report of its assessment of the occurrence and any proposed amendment to the Term (a “Notice of Delay”). Failure to provide timely notice shall be deemed as a waiver to request an extension. The County may determine, in its reasonable discretion, after the receipt of such Notice of Delay from the Consultant, whether to terminate this Agreement in accordance with Article 12 hereof or extend the Term by Change Order for such time as the County may determine, such extension shall be consultant’s sole remedy. Notwithstanding the foregoing, if any delay is due to the County, the consultant shall be provided an equitable extension of time.
- 2.2 The term of this Agreement shall commence on August 1, 2023 and terminate on June 30, 2028 subject to Owner’s right to terminate this Agreement, if for any reason the Owner is dissatisfied with the Consultant’s performance. Termination rights shall be governed by Section 12 of this Agreement.

**ARTICLE 3
COMPENSATION AND METHOD OF PAYMENT**

- 3.1 County shall pay Consultant a fee for completion of the Work in accordance with the table listed below. The fee payable to the Consultant hereunder shall correspond to the invoices of completed work, and will not exceed the approved annual total price as approved by the County for each fiscal year listed below unless Consultant requests and County authorizes in writing an increased amount.

FISCAL YEAR	ANNUAL AUDIT FEE	ADDITIONAL INCREMENTAL FEES	TOTAL AMOUNT
2023	\$62,000	\$68,500	\$130,500
2024	\$63,500	\$70,000	\$133,500
2025	\$65,000	\$71,500	\$136,500
2026	\$66,500	\$73,000	\$139,500
2027	\$68,000	\$74,500	\$142,500

- 3.2 Consultant shall submit an invoice based on the satisfactory completion of each phase of the Work. The review and acceptance of or notice of defects in the work performed will not exceed 30 days from receipt of said work. The invoice shall list the charges for each task or portion of the Work performed.
- 3.3 County shall pay each invoice in accordance with Georgia Prompt Pay Act and accompanying financial report, prepared as described herein. If, however, County objects to all or any portion of any invoice, County shall so notify Consultant of the same, stating the reasons for the objection. County shall be entitled to withhold payment of any amounts in dispute, but shall make payments on amounts not in dispute. The parties shall immediately make every effort to settle any disputed portion of the invoice.

**ARTICLE 4
CONTRACT DOCUMENTS**

- 4.1 The Contract Documents consist of this Agreement, Engagement Letters, all Amendments and all accepted Change Orders. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complimentary, and what is required by any one shall be deemed to be required by all.

ARTICLE 5 COUNTY'S RESPONSIBILITIES

- 5.1 The County shall direct its officers, agents and employees to render all reasonable assistance and provide available data to the Consultant in connection with its performance of the Work under this Agreement. The Consultant shall have the duty to make independent inquiry as to the correctness of such data. The County agrees to furnish to the Consultant copies of any previous reports, data and drawings, which may be available and are pertinent to the Work. All such data provided shall remain the property of the County and shall be returned to the County upon termination of this Agreement.

ARTICLE 6 CONSULTANT'S REPRESENTATIONS, AND RESPONSIBILITIES

- 6.1 The Consultant represents to the County that it has the authority to enter into this Agreement and to perform the Work, and that it is licensed and authorized to practice engineering and conduct business in the state of Georgia. The Consultant further represents that all Work performed by it hereunder (a) will be in conformance with the terms of the Contract Documents; (b) will be performed in a skillful and workmanlike manner; (c) will be performed by the proper number of experienced, skilled and licensed personnel, qualified by education and experience to perform their assigned tasks; and (d) will conform to the standard of care, skill and diligence exercised by professional engineers performing the same or similar services in the same locality.
- 6.2 The Consultant shall at all times enforce strict discipline and good order among its employees and any subcontractors and shall not employ for the Work (i) any person, firm or corporation not skilled and licensed, if required, in the task assigned to him, or (ii) anyone who might endanger himself, others or the project. The Consultant shall be responsible to the County for the negligent acts and omissions of its employees, agents, subcontractors and other persons performing any of the Work for the Consultant. The County reserves the absolute right to require the immediate removal of any such unskilled, untrained or unfit person, firm or corporation from participation in the Work.
- 6.3 Indemnification/Duty to Defend. During and after the term hereof, consultant agrees to indemnify and save and hold harmless the County from any and all causes of action, claims, loss or damages, including reasonable attorney's fees incurred in connection therewith, resulting to the County in the performance of this Agreement, provided such damages are the result of consultant's, its directors', officers', agents', or independent contractors' negligence, recklessness or intentional misconduct. Upon written request by County, consultant shall defend and provide legal representation for any claims arising out of this Agreement due to the actions or inactions of consultant or its employees or agents, by attorneys and other professionals approved by County. Notwithstanding the foregoing, County may, in its sole discretion, engage its own attorneys and other professionals to defend or assist them with respect to such matters, and, at the option of County, its attorneys shall control the resolution of such matters. Upon demand, consultant shall pay or, in the sole and absolute discretion of the County, reimburse the County for the payment of reasonable fees and disbursements of attorneys and other professionals in connection therewith. This indemnity obligation does not include liabilities caused by or resulting from the sole negligence of County.
- 6.4 Consultant represents and warrants that the Work will be conducted in such manner to maximize benefit and efficiency for the County, and Consultant shall not take into consideration any potential benefit or detriment to any party other than County, including Consultant, officers, employees or other parties related to Consultant, and other clients of Consultant, in the performance of the Work. Consultant shall disclose in writing to County any interest or potential interest that Consultant, officers, employees or other parties related to Consultant, or other clients of Consultant may have that may be affected by the Work, including without limitation the ownership by any such party of property to be affected by the Work. County shall have the right to terminate this Agreement if County, in its sole discretion, determines that there exists an unacceptable conflict of interest.

- 6.5 The Consultant shall guarantee all work performed under this contract against defective workmanship or materials, and shall replace all such defective work, materials or equipment furnished by the Vendor, for a period of two years from the date of final acceptance of the work, unless a longer period is otherwise provided for within the contract documents.

ARTICLE 7 SUBCONTRACTS

- 7.1 A subcontractor is a person or entity who provides services or performs any portion of the Work for the Consultant or for a subcontractor of Consultant. The Consultant shall not employ any subcontractor without the prior written consent of the County, and shall obtain a written agreement with each subcontractor acknowledging the existence of, and imposing obligations consistent with, this Agreement. As between the County and the Consultant, the Consultant shall be responsible for the negligent acts and omissions of its subcontractors and any portion of the Work performed by a subcontractor. The County may make reasonable requests for information and data concerning any and all subcontractors under this Agreement, and any other matter deemed by the County to be pertinent hereto, and the Consultant hereby agrees to submit such information and data promptly upon request. Consultant's response to any such request shall not provide a basis for a Change Order.

ARTICLE 8 PROTECTION OF PERSONS AND PROPERTY

- 8.1 Consultant agrees to advise fully all of its employees, subcontractors and others working for the Consultant concerning environmental, safety and health procedures required by applicable state or federal law, regulation or order or required by the County; and to take the steps necessary to assure that such procedures are complied with.

ARTICLE 9 INSURANCE

- 9.1 The Consultant agrees at all times during the Term of this Agreement to maintain in full force and effect the following insurance coverage in at least the limits set forth in Section 9.2: Worker's Compensation (including occupational disease in accordance with applicable statutory and regulatory requirements); Employer's liability insurance (including coverage on all of Consultant's employees engaged in the performance of the Work); Comprehensive General Liability insurance (including protective liability covering death or bodily injury and contractual liability); and Professional Liability insurance. Before commencement of any of the Work hereunder, the Consultant agrees to furnish to the County, on an annual renewal basis, certificates of insurance or other evidence satisfactory to the County to the effect that such insurance has been procured and is in force. The certificates shall accurately reflect the required insurance coverage, including any and all limitations, exclusions and restrictions. Consultant shall provide certified policy endorsements that name the County as an additional insured (except Workman's Compensation and Professional Liability) and shall provide that in the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice shall be given to the County except ten (10) days if due to nonpayment.

9.2 Insurance

Consultant shall not commence Work under this Agreement until he has obtained all the insurance required under this paragraph and such insurance has been approved by the County, nor shall Consultant allow anyone acting on their behalf to commence work pursuant to this Agreement until all similar insurance has been so obtained and approved from said person/entity.

- a. Worker's Compensation Insurance: Consultant shall procure and shall maintain during the life of this Agreement Workers Compensation Insurance for all of his employees to be engaged in work on this Agreement.

- b. Public Liability and Property Damage Insurance: Consultant shall take out and maintain during the life of this Agreement such Public Liability and Property Damage Insurance and Automobile Liability Insurance as shall protect him and anyone working on his behalf from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this Agreement, whether such operations are by himself or by any sub-Consultant or by anyone directly or indirectly employed by either of them. The amount of such insurance shall be as follows:
- i. Public Liability and Property Damage Liability Insurance: Consultant shall carry, with respect to the operations he performs, regular Consultant's Public Liability Insurance providing for a limit of not less than two million dollars (\$2,000,000) for all damage arising out of bodily injuries to or death of one person, and subject to that limit for each person a total of two million dollars (\$2,000,000) for all damage arising out of bodily injuries to or death of two or more persons in any one accident and regular Consultant's Property Damage Liability Insurance providing for a limit of not less than two million dollars (\$2,000,000) for all damages arising out of injury to or destruction of property in any one accident and subject to that limit per accident, a total (or aggregate) limit of two million dollars (\$2,000,000) for all damages arising out of injury to or destruction of property during the Policy period. If any part of the work is sublet, similar insurance, in the same amounts as required of the General Consultant shall be provided by or in behalf of the subcontractor to cover their operation.
 - ii. Automobile Liability Insurance (owned, non-owned, hired): (a) Bodily injury in an amount not less than one million dollars (\$1,000,000) including accidental death to any one person and subject to the same limit for each person, in an amount not less than one million dollars (\$1,000,000) on account of one accident. (b) Property damage in an aggregate amount up to one million dollars (\$1,000,000) per accident during the Policy Period.
- c. Proof of Carriage of Insurance: Consultant shall furnish the County with a certificate showing satisfactory proof of carriage of the insurance required. Consultant shall likewise furnish County with a certified endorsement(s) indicating that the County is an additional insured under all relevant policies and showing that said policies may not be modified or cancelled without thirty (30) days or ten (10) days if due to non-payment, written notice to County. All of the insurance hereinbefore specified by Article 9 shall be carried until all work required to be performed under the terms of the Agreement is satisfactorily completed as evidenced by the formal acceptance by County. Should such insurance be canceled before such completion of the Agreement, Consultant shall suspend all work or operations until such time as Consultant shall provide another policy or policies of insurance of equivalent coverage or effect. The certificate holder should read: Columbia County, GA, Attn: Procurement Department., P O Box 498, Evans, GA 30809.

ARTICLE 10 PATENTS, PUBLICATIONS AND TRADE SECRETS

- 10.1 Consultant agrees that it will not at any time, either while engaged hereunder by County or afterwards, make any outside use of, or disclose to any other person or organization, except as authorized in writing by County, any information, whether patentable or not, regarding plans, programs, facilities, designs, processes, products, costs, equipment, operations or customers of County which comes within the knowledge of Consultant in the performance of the Work hereunder.
- 10.2 In the event Consultant creates and desires to publish, produce or use for itself or others, any writings, drawings, photographs or computer software which relates to the business or activities of the County or which contains information received as a result of the Work performed for County by Consultant, a draft manuscript or printout must be provided to County by Consultant prior to publication, production or use. Under no circumstances will any publication, production or use by Consultant relating to the business or activities of County or performance of the Work of the Consultant hereunder be allowed without prior written consent of County. Consultant also agrees that any manuscript, article, book, pamphlet,

advertisement, drawing, photograph or computer software produced for County by Consultant is to be deemed “work for hire” for which County is entitled to all copyrights and other benefits thereunder.

ARTICLE 11 CONFIDENTIAL INFORMATION

- 11.1 Consultant recognizes and acknowledges that it will have access to certain confidential information of the County, and of authorities and other governmental entities affiliated with the County (“Affiliated Entities”), and that such information constitutes valuable, special and unique property of the County, and such other Affiliated Entities. Consultant will not, during or after the term of this Agreement, use or disclose any of such confidential information to any person, firm, corporation, association or other entity, except to authorized representatives of the County and Affiliated Entities, for any reason or purpose whatsoever, other than in furtherance of this Agreement. In the event of a breach or threatened breach by Consultant of the provisions of this Article 11, the County, and Affiliated Entities, shall be entitled to a temporary restraining order and/or a preliminary injunction restraining Consultant from using or disclosing, in whole or in part, such confidential information Nothing herein shall be construed as prohibiting the County, and Affiliated Entities, from pursuing any other remedies available to them for such breach or threatened breach, including the recovery of damages from Consultant.
- 11.2 The obligations of this Article 11 do not apply to information which:
- a. is or becomes part of the public domain without the breach of any obligation of confidentiality owed to the County or the Affiliated Entities; or
 - b. is lawfully in the possession of Consultant at the time it was acquired hereunder without the breach of any obligation of confidentiality owed to the County or the Affiliated Entities; or
 - c. is required to be publicly disclosed under law.

ARTICLE 12 TERMINATION

- 12.1 County may, at any time, without prejudice to any other right or remedy, and upon giving Consultant thirty (30) days written notice, terminate this Agreement. Consultant may, at any time, without prejudice to any other right or remedy, and upon giving County ninety (90) days written notice, terminate this Agreement. Nothing contained herein shall release the County from its obligation to pay Consultant for work performed prior to receiving Notice of Termination.

Upon completion of the Work, as accepted by County, or upon receipt of the aforesaid notice of termination, Consultant shall deliver to County all of the following:

- a. All drawings, documents, reports and all other work relating in any way to any portion of the Work. All Work remains the property of the County and may not be used by the Consultant, except by written agreement of the County, on any other project or for any other person, firm or corporation. Should Vendor refuse to deliver any work, the County is authorized to employ another firm to complete the contract at the expense of Vendor.
- b. Final itemized invoice for payment. Consultant shall be paid for services performed in accordance with the Contract Documents to the date of termination.

ARTICLE 13 DELAYS AND DAMAGES

- 13.1 If the Consultant refuses or fails to prosecute the Work or any separable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to complete said Work within such time, the County may, by written notice to the Consultant, terminate his right to proceed with the Work or such part of the Work as to which there has been delay. In such event, the County may

take over the Work and prosecute the same to completion, by contract or otherwise, and the Consultant and his sureties shall be liable to the County for any excess cost, loss of use of the project, or other damages associated with the delay, occasioned the County thereby. If the Consultant's right to proceed is terminated, the County may take possession of and utilize in completing the Work such materials, and plans, whether or not in final form. If the County does not terminate the right of the Consultant to proceed, the Consultant shall continue the Work, in which event the actual damages for the delay will be impossible to determine and in lieu thereof the Consultant shall pay to the County as fixed, agreed, and liquidated damages for each calendar day of delay until the Work is completed or accepted the amount as set forth in this section and the Consultant and his sureties shall be liable for the amount thereof provided. If the Consultant is delayed at any time in the progress of the Work by any act or neglect of the County or consultant hired by the County, or by an employee of either, or by any separate Consultant employed by the County, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Consultant's control, or by delay authorized by the County, or by any other cause which the County determines may justify the delay, then the time for completion shall be extended by change order for such reasonable time as the County may determine. Any claim for extension of time shall be made in writing by the Consultant to the County not more than ten days after the commencement of the delay; otherwise, it shall be waived. In the case of a continuing delay only one claim is necessary. The Consultant shall provide in its notice an explanation for the delay and the probable effect of the delay on the progress of the Work. Any extension of time to the Consultant pursuant to this paragraph of the contract shall be the sole remedy to Consultant for any such delay, suspension, interruption or effect thereof.

ARTICLE 14 UNAUTHORIZED ACTS

- 14.1 Consultant represents and warrants to the County that it will make no disbursement or other payment of any kind or character or take or authorize the taking of any other action which contravenes any statute or rule, regulation or other order of any jurisdiction, foreign or domestic.
- 14.2 County may, from time to time, during the Term and thereafter, upon reasonable notice to Consultant, make an audit of all records of Consultant as they relate to the Work and any payments made by County to Consultant under this Agreement for the same, and obtain copies of the same.
- 14.3 Consultant agrees to disclose honestly and fully all information and documentation in its possession concerning all transactions or events relating to or affecting the County or Affiliated Entities as and to the extent such information or documentation (i) was acquired or developed by Consultant during its engagement under this Agreement, and (ii) is requested by the County or the authorized representative thereof; provided, that if the Consultant indicates that the information or documentation requested is privileged, confidential or personally sensitive, appropriate steps will be taken to protect such privilege, confidentiality or privacy to the extent possible consistent with the ethical and legal obligations applicable to the Consultant, but such claim of privilege, confidentiality or sensitivity shall not diminish the unconditional obligation to disclose any such information or documentation to the County or its authorized representatives.
- 14.4 Consultant shall, at the request of County, render a certificate or sworn affidavit to County stating that Consultant has not violated any of the terms of this Article 14.

ARTICLE 15 NOTICES

- 15.1 Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when hand delivered or deposited in the U.S. mail, certified or registered, return receipt requested, in a postage prepaid envelope addressed, if to Consultant, at the address set forth at the top of this Agreement and if to County, at the address set forth at the top of this Agreement to the attention of the County Administrator, with a copy to other address(es) as either party shall designate by written notice to

the other.

ARTICLE 16 NONASSIGNMENT

- 16.1 The County has entered into this Agreement in order to receive the professional services of the Consultant. Subject to the provisions of Article 7 hereof, the Consultant will not make any assignment, by operation of law or otherwise, of all or any portion of the services required under this Agreement without first obtaining the written consent of the County. The rights and obligations of the County hereunder shall inure to the benefit of, and shall be binding upon, the successors and assigns of the County.

ARTICLE 17 MISCELLANEOUS

- 17.1 The terms and provisions of Article 6, entitled “Consultant’s Representations, and Responsibilities”, Article 8, entitled “Protection of Persons and Property”, Article 10, entitled “Patents, Publications and Trade Secrets”, Article 11, entitled “Confidential Information”, and Article 13, entitled “Unauthorized Acts”, shall survive the termination of this Agreement, regardless of the reason for termination.
- 16.2 Consultant shall only take instructions from the person or persons who are authorized in writing by the County to give the same.
- 16.3 The Work shall be performed by Consultant in such a manner and at such times so as to not interfere or interrupt County’s operations.
- 16.4 This Agreement does not and shall not be construed to create any partnership or agency whatsoever.
- 16.5 Governing Law/Venue. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement, and concerned with work performed under this Agreement, will be governed by and construed under only Georgia law without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than Georgia. The federal and state law courts having jurisdiction over Columbia County, Georgia shall have the exclusive jurisdiction for all matters arising from this Agreement.
- 16.6 Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or any other provision hereof.
- 16.7 This Agreement may not be modified except by Change Order or written Amendment executed by the parties hereto.
- 16.8 The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.
- 16.9 This Agreement and all other Contract Documents supersede all previous agreements between the County and Consultant concerning the Work.
- 16.10 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute and be one and the same agreement.
- 16.11 Upon final payment, all work product of Consultant, including but not to limited drawings and specifications, shall become the property of County and County shall thereafter maintain all common law, statutory and other reserved rights for such work product, including copyrights.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of July 18, 2023.

COLUMBIA COUNTY, GEORGIA

CHERRY BEKAERT LLP

By: _____
Douglas R. Duncan, Jr., Chairman
Columbia County Board of Commissioners

By: _____
Bonnie Cox, CPA, Audit Partner
Cherry Bekaert LLP

ATTEST:

By: _____
Patrice Crawley, County Clerk
Columbia County Board of Commissioners

Date: _____



RELEASE OF CLAIMS

Reference is made to the External Auditing Services Agreement, together with all Change Orders thereunder (“Agreement”), by and between the undersigned Cherry Bekaert LLP and Columbia County, Georgia (“County”), dated July 18, 2023.

In connection with the Agreement, Consultant warrants that there are no amounts owed by it or by any of its subcontractors, which could become the basis for a claim against the property described in the Agreement or any other property owned by the County, and that there exists no known liens, claims, demands or causes of action against the Consultant or its subcontractors or the County relating to the Work.

Consultant Name: Cherry Bekaert LLP

By: _____
(Corporate Officer Signature)

As Its: _____
(Corporate Officer Title)