

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (the “Agreement”) is made and entered into by and between Evans General Contractors, LLC, a Georgia Limited Liability Company, (“EGC”) and the party who receives Confidential Information (“Receiver”).

Recitals

A. **WHEREAS**, Receiver will receive from EGC information of a non-public nature for use by Receiver and its employees in connection with a construction project (“Project”) for which EGC is or may be designing, building, constructing, or otherwise consulting upon or providing services for on behalf of one of EGC’s clients or prospective clients (“Client”) and/or the Client’s tenant and/or prospective tenant or end-user of the Project (“Prospect”);

B. **WHEREAS**, in the course of its discussions with EGC relating to the Project, Receiver will receive certain private and proprietary information from or about EGC, the Project, the Client, and/or the Prospect including but not limited to, project plans and requirements, construction design information, prototypical plans and specifications, technical and business information regarding business operations and affairs, financial data, sales and marketing information, specifications, drawings, sketches, data, documentation, correspondence or any other private or proprietary ideas or information (“Confidential Information”); and

C. **WHEREAS**, EGC and Receiver desire to establish terms governing the disclosures of Confidential Information that will be made by EGC to Receiver;

NOW, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of EGC providing information about EGC, the Project, the Client, and/or the Prospect to Receiver which EGC will not provide without EGC’s receipt of this executed Agreement, Receiver, intending to be legally bound, agrees as follows:

1. **Incorporation of Recitals.** The above and foregoing Recitals, including any defined terms set forth above, are incorporated into and made a part of this Agreement.

2. **Consideration.** Receiver and EGC each enter into this Agreement for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and the parties hereto further acknowledge and agree that the undertakings and obligations on the part of Receiver under this Agreement are being entered into, taken on, made and given by Receiver for and in consideration Receiver’s receipt of all and any part of the Confidential Information and also for and in consideration of the EGC providing Receiver with the opportunity to prepare and submit a proposal(s) and/or bid(s) or otherwise have the opportunity to compete for the ability to participate in the construction and development of the Project, regardless of whether or not the Receiver actually or ultimately furnishes any proposal(s) and/or bid(s) relative to the Project and regardless of whether Receiver is or is not awarded any contract for all or any part of the Project.

3. **Confidential Information.** Receiver hereby acknowledges and agrees that: (a) the term “Confidential Information” as used herein also includes: (i) the fact that the Confidential Information has been made available to Receiver; (ii) the fact that Receiver is discussing the Project with EGC; and (iii) any of the terms, conditions or other facts with respect to the Project or other related transactions, including the status thereof; and (b) any Confidential Information supplied by EGC prior to the execution of this Agreement shall be subject to the same treatment as the Confidential Information made available after the execution of this Agreement.

4. Use of Confidential Information. With respect to the Confidential Information, Receiver shall: (a) hold the Confidential Information in strict confidence using at least the same care and caution Receiver affords Receiver's own confidential information, but in no case less than a reasonable degree of care; (b) take any and all steps which may be necessary and reasonable to protect the Confidential Information from disclosure; (c) use the Confidential Information only in connection with the Project and for EGC's benefit; (d) reproduce the Confidential Information only to the extent necessary in connection with the Project; and (e) restrict disclosure of the Confidential Information only to employees, subcontractors, agents, or vendors: (i) whose duties justify the need to know the Confidential Information in connection with the Project, (ii) who are advised as to the confidential and proprietary nature of the Confidential Information, and (iii) who are required to comply with the provisions of this Agreement. The obligations of Receiver to maintain the confidentiality of the Confidential Information Receiver receives under this Agreement shall survive the completion of the Project. Other than as set forth above, Receiver shall not disclose Confidential Information to any other person or entity for any reason without the prior written approval of EGC. Accordingly, without limitation of the foregoing, Receiver shall not:

- A. Disclose any of the Confidential Information to any reporting agency (including, but not limited to, Dodge Reports, Industrial Services, Dunn & Bradstreet, Duff & Phelps, Moody's, Standard and Poor's or any other construction industry or credit reporting agency);
- B. Issue any press release or otherwise make any public announcement or statement with respect to the transactions contemplated in connection with the Project without the prior written consent of EGC;
- C. Contact any public or governmental officer, authority or agency concerning the Project and agrees that if Receiver requires any information concerning permits, approvals, or other entitlements relative to the Project that Receiver will request such information from EGC; or
- D. Post or otherwise host any posting of any of the Confidential Information on any internet website or on-line "plan room" regardless of whether the same is password protected or otherwise secure.

The obligations with respect to the Confidential Information under this Agreement shall not apply to any Confidential Information which Receiver can show, by written evidence (a) is in the public domain (provided that such information has not or does not come into the public domain as the result of a disclosure by Receiver); (b) is received by Receiver on a non-confidential basis from a source other than EGC (provided that such source is not bound by a confidentiality agreement with EGC or another party); or (c) is required to be disclosed by operation of law. However, Receiver agrees that (i) promptly following receipt of a legal request and prior to making such disclosure, Receiver will notify EGC of such request so that EGC may take action to safeguard EGC's and/or Client/Prospect's interests, and (ii) Receiver shall cooperate with EGC in seeking to preserve the confidentiality of the Confidential Information to the extent allowed by law.

5. Return of Confidential Information. EGC may, by written request to Receiver, demand the return of the Confidential Information, whether written, printed, digital, electronic, and/or in any other medium or form, from Receiver at any time, and upon receipt of such written request, Receiver shall promptly return the Confidential Information to EGC.

6. Indemnification. Receiver shall indemnify, defend, save and hold EGC harmless from and against any and all claims, suits, causes of action, losses, damages, penalties, cost and expenses (including without limitation attorney's fees, costs of litigation, and enforcement costs) suffered or incurred by EGC pertaining to, attributable to, arising out of, or resulting from Receiver's breach, or alleged breach, of any of Receiver's obligations under this Agreement.

7. **Enforcement.** Receiver acknowledges and agrees that money damages represent an inadequate remedy for the breach of any of Receiver's covenants, agreements, and promises contained in this Agreement and that EGC shall be entitled to injunctive relief and specific performance as remedies for any such breach or threatened breach of this Agreement by Receiver, and Receiver agrees to waive and does hereby waive any requirement for EGC to provide security or post bond in connection with such equitable remedies. The remedies of specific performance and injunctive relief shall be in addition to any other remedies to which EGC may be entitled under this Agreement or available at law or equity, and all remedies shall be cumulative rather than alternative. IN ADDITION TO THE FOREGOING, BUT WITHOUT LIMITATION ON ANY OF THE FOREGOING, RECEIVER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT UPON ANY BREACH OF OR DEFAULT UNDER THIS AGREEMENT THAT RECEIVER WILL NOT BE AWARDED A CONTRACT FOR THE PROJECT, OR ANY PREVIOUSLY AWARDED CONTRACT FOR THE PROJECT SHALL BE TERMINATED FOR BREACH, AND THAT RECEIVER MAY BE SUBJECT TO BEING BARRED FROM PARTICIPATING IN ANY SUBSEQUENT PRJOJECTS.

8. **Miscellaneous.** This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof and supersedes all other prior agreements and understandings, both written and oral, between the parties or any of them with respect to the subject matter hereof. This Agreement may be amended only by a written instrument executed the party against whom enforcement of the amended document is sought. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws. The parties hereto (a) irrevocably consent to the jurisdiction and venue of the state and federal courts within Fulton County, Georgia and designate the same as the mandatory forum for any and all actions related to this Agreement or the enforcement hereof, and irrevocably waive any and all objections thereto. No failure or delay by EGC in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

9. **Third Party Beneficiaries.** Receiver acknowledges and agrees that Client and Prospect shall have no obligations or liability to Receiver under this Agreement or otherwise but that Client and Prospect are and shall be third-party beneficiaries of all EGC's rights under this Agreement.

Receiver's consent and agreement to be bound by the terms of this Agreement will be shown and confirmed, and serve as Receiver's acceptance of this Agreement, by any action taken by Receiver to acquire Confidential Information from EGC after being alerted to the existence of this Agreement, by commencing work on a Project with EGC, entering into a contract or agreement with EGC relating to a Project for which Receiver has received Confidential Information, or by signing below.

IN WITNESS WHEREOF, Receiver has executed and delivered this Confidentiality and Nondisclosure Agreement this ____ day of _____, 20__.

(Receiver's Legal Name)

By (Signature): _____

Printed Name: _____

Title: _____