

REQUEST FOR PROPOSAL

23—RFQu-061

INDEFINITE DELIVERY CONTRACT FOR PROFESSIONAL ENGINEERING AND ARCHITECTURAL SERVICES



Effingham County
804 S Laurel Street
Springfield, GA 31329

Effingham County
REQUEST FOR PROPOSAL

23-RFQu—061

Indefinite Delivery Contract for Professional Engineering and
Architectural Services

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1. Services Contract

Services Contract Between

This Contract (hereinafter referred to as "Contract" or "Agreement") is made and entered into by and between the Board of Commissioners of Effingham County, Georgia (hereinafter referred to as the "Board" and/or "County") and Thomas & Hutton, 50 Park of Commerce Way, Savannah, GA 31405, (hereinafter called the "CONSULTANT"). This Contract shall be effective and binding on the date that the last authorized signature is affixed.

WITNESSETH

WHEREAS, the Board desires to engage a qualified company as specified in #23-RFQu-061 - Indefinite Delivery Contract for Professional Engineering and Architectural Services; and

WHEREAS, the CONSULTANT has represented to the Board that it is experienced, licensed and qualified to provide the services contained herein, and the Board has relied upon such representation; and

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, it is agreed by and between the Board and the CONSULTANT as follows:

2. TERMS AND CONDITIONS OF THIS CONTRACT

2.1. TERMS OF SERVICE.

The initial contract term will be for a 12-months period commencing July 1, 2024 and terminating on June 30, 2025, with two automatic renewal options for two (2) additional one (1) year terms, provided that consultant scope of services and fees for each extension period have been mutually agreed upon by both parties.

2.2. CONTRACT

This Contract is an indefinite delivery contract based on specific professional engineering services to be scoped on an on-call basis. Specific service scope and fee will be negotiated and awarded via Task Order based on work requested and proposals provided by the Consultant and approved by the County Manager and/or County Engineer. Task Orders will become part of this agreement upon execution by both parties.

2.3. REQUIREMENT FOR MANDATORY PERFORMANCE.

The words "shall", "will" and "must" may be used interchangeably in this Contract and in any case will indicate mandatory.

2.4. PERSONNEL AND EQUIPMENT.

The CONSULTANT represents that it has secured and will secure, at its own expense, all personnel and equipment necessary to perform the services of this Contract, none of whom shall be employees of, nor have any contractual relationship with Effingham County. the services required hereunder will be performed by the CONSULTANT under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

2.5. CHANGES TO THIS CONTRACT

The County may, at any time, request changes in the Scope of Services of the CONSULTANT to be performed hereunder. Such changes, including any increase or decrease in term, rate, or amount of the CONSULTANT's compensation, as more fully described elsewhere herein, which are mutually agreed upon by and between the County and the CONSULTANT shall be incorporated in written amendments to this Contract.

2.6. TERMINATION

In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment

provisions of this Agreement.

The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days written notice for any of the following reasons:

- Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of the Consultant, the Client shall pay the Consultant, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

2.7. INDEMNIFICATION.

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its officers, directors and employees (collectively, County) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the Consultant is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

2.8. STANDARD OF CARE

In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

2.9. COVENANT AGAINST CONTINGENT FEES.

The CONSULTANT shall comply with the relevant requirements of all Federal, State, County or other local

laws. The CONSULTANT warrants this it has not employed or retained any company, person, other than a bona fide employee working solely for the CONSULTANT, for any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this contract.

For breach or violation of this warranty, the Board shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

2.10. PROHIBITED INTERESTS

A. Conflict of Interest. The CONSULTANT and subconsultant warrant that they presently have no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The CONSULTANT further agrees that, in the performance of the Contract no person having such interest shall be employed.

B. Statement of disclosure: CONSULTANT must provide a statement of disclosure which will allow the County to evaluate possible conflicts of interest.

Interests of Public officials.

CONSULTANT warrants for itself that no elected or appointed official or employee of Effingham County, Georgia, has any interest in their bid or the proceeds of any contract/agreement which may result thereof. In the event that an elected or appointed official or employee acquires any interest in any contract/agreement which may result from this bid, or the proceeds thereof, the CONSULTANT agrees to disclose such interest to the County immediately by written notice. For breach or violation of this clause, the County may annul any contract/agreement resulting from this bid without liability, terminate any contract/agreement resulting from this bid for default, or take other remedial measures. "Interest" as used herein means direct or indirect pecuniary or material benefit accruing to a county commissioner, official or employee as a result of a matter which is or which is expected to become the subject of an official action by or with the county, except for such actions which, by their terms and by the substance of their provisions, confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. The term "interest" shall not include any remote interest. For purposes of this bid, a county commissioner, official or employee shall be deemed to have an interest in the affairs of: (1) his or her family; (2) any business entity in which the county commissioner, official or employee is a member, officer, director, employee, or prospective employee; and (3) any business entity as to which the stock, legal ownership, or beneficial ownership of a county commissioner, official or employee is in excess of five percent of the total stock or total legal and beneficial ownership, or which is controlled or owned directly or indirectly by the county commissioner, official or employee. Remote interest as used herein means the interest of (1) a volunteer director, officer, or employee of a nonprofit corporation; (2) a holder of less than 5 percent of the legal or beneficial ownership of the total shares of a business; (3) any person in a representative capacity, such as a receiver, trustee, or administrator. Family as used herein means the spouse, parents, children, and

siblings, related by blood, marriage, or adoption, of a county official or employee.

2.11. AUDITS AND INSPECTIONS

At any time during normal business hours and as often as the County may deem necessary, the CONSULTANT shall make available to the County and/or representatives of the County, examination of its records with respect to all matters covered by this Contract. It shall also permit the County and/or representatives of the County to audit, inspect, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Contract. All documents to be audited shall be available for inspection at all reasonable times in the main offices of the County or at the offices of the CONSULTANT as requested by the County. County must provide reasonable notice and shall cover all costs associated with audits and inspections.

2.12. INDEPENDENT CONSULTANT

CONSULTANT hereby covenants and declares that it is an independent business and agrees to perform the Work as an independent CONSULTANT and not as the agent or employee of the County. The CONSULTANT agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies, and/or materials necessary to complete the Work; hiring of consultants, agents, or employees to complete the Work; and the payment of employees, including compliance with Social Security, withholding, and all other regulations governing such matters. The CONSULTANT agrees to be solely responsible for its own acts and those of its subordinates and subconsultants during the life of this Agreement.

2.13. NOTICES

All notices shall be in writing and any notices, demands, and other papers or documents to be delivered to Effingham County, Georgia, under this Contract shall be delivered in person or transmitted by certified mail, postage prepaid to 804 South Laurel Street, Springfield, Georgia 31329, or at any such other place as may be subsequently designated by written notice to the CONSULTANT.

All written notices, demands, and other papers or documents to be delivered to the CONSULTANT under this Contract shall be transmitted by certified mail, postage prepaid, to Thomas & Hutton ; Attn: Kevin Smith, PE, 50 Park of Commerce Way, Savannah, GA 31405. It shall be CONSULTANT's responsibility to inform the County of any change to this contact address.

2.14. COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all applicable Federal, State, and local laws, ordinances, rules, and regulations relating to the work, including but not limited to Effingham County building code and permitting requirements and other local requirements as applicable at the time services are rendered.

2.15. ASSIGNABILITY

Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement, including but not limited to monies that are due or monies that may be due, without the prior written consent of the other party. Subcontracting to subconsultants, normally contemplated by the Consultant as a generally accepted business practice, shall not be considered an

assignment for purposes of this Agreement.

2.16. LIMITS OF LIABILITY

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 County or the CONSULTANT. The CONSULTANT's services under this Agreement are being performed solely for the County's benefit, and no other party or entity shall have any claim against the CONSULTANT because of this Agreement or the performance or nonperformance of services hereunder.

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the CONSULTANT and the CONSULTANT's officers, directors, partners, employees and subconsultants, and any of them, to the County and anyone claiming by or through the County (including, but not limited to construction contractors and subcontractors), for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert-witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Contract from any cause or causes shall not exceed \$500,000 or the CONSULTANT's fee for services rendered under this Contract, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. This liability cap may be increased by mutual consent of both parties and in exchange for additional compensation.

2.17. CONSEQUENTIAL DAMAGES

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the County nor the CONSULTANT, their respective officers, directors, partners, employees, contractors, or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Contract. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the County and the CONSULTANT 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.

2.18. GOVERNING LAW

This Contract shall be governed by the laws of Georgia, with venue in Effingham County.

3. COMPENSATION, FINANCIAL ADMIN AND GUARANTEES

3.1. COMPENSATION FOR CONSULTANT SERVICES

The County shall pay the CONSULTANT for his services as detailed in the proposal submitted by the CONSULTANT:

- These rates and fees shall remain in effect until 06/30/2025, without exception. All invoices shall contain the following:
 - Date services performed
 - Detailed account of services performed Location of services performed
 - Name of employee providing said services
 - Name of County employee requesting said services
- No work shall take place without advanced written approval of the County. If the CONSULTANT commences any work prior to receiving written approval, he does so at his own risk.
- No work outside the scope of work contained in the RFP will be performed without the advanced written approval of the County's Board of Commissioners.
- Advance payments prior to any work shall not be granted unless specified in writing. Progress payments shall be monthly in accordance with the scope of services and fees noted in

Notwithstanding any other payment provisions of this contract, failure of the CONSULTANT to submit required reports when due or failure to perform or deliver required work, supplies, or services, may result in the withholding of payment under this contract unless such failure arises out of causes beyond the control, and without the fault or negligence of the CONSULTANT. The County will immediately notify the CONSULTANT of its intention to withhold payment of any invoice or voucher submitted.

3.2. PAYMENT OF TAXES AND FEES

The CONSULTANT shall pay the cost of any taxes, permits, fees, or licenses required to complete and satisfy the requirements of this Contract.

3.3 QUANTITIES GUARANTEED

The CONSULTANT represents, understands and agrees that this is an "ON CALL" / "LUMP SUM" contract, to guarantee for services contained herein.

4. INSURANCE REQUIREMENTS

4.1. INSURANCE PROVISIONS

CONSULTANT shall be required to procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, employees or subconsultants. Contract work will not proceed unless Effingham County has in their possession, a current Certificate of Insurance. Effingham County invokes the defense of sovereign immunity. The County is not to be included as an additional insured on insurance contracts.

General Information that shall appear on a Certificate of insurance:

1. Name of Producer (CONSULTANT's insurance Broker/Agent).
2. Companies affording coverage (there may be several).
3. Name and address of the Insured (this should be the Company or Parent of the firm Effingham County is contracting with).
4. A Summary of all current insurance for the insured (includes effective dates of coverage).
5. A brief description of the operations to be performed, the specific job to be performed, or contract number.
6. Certificate Holder (This is to always include Effingham County).

Limits of Insurance:

Effective coverage shall have the following limits:

- A. Commercial General Liability of \$1,000,000 (one million dollars) per occurrence and \$2,000,000 (two million dollars) aggregate for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting there from. Excess or umbrella liability coverage shall be required for contracts pertaining to road construction or repairs, automotive or motor vehicle repairs, or for contracts over \$1,000,000.00.
- B. Commercial Automobile Liability (owned, non-owned, hired) of \$1,000,000 (one million dollars) per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- C. Workers' Compensation limits as required by the State of Georgia and Employers Liability limits of \$1,000,000 (one million dollars) per accident or disease.

Special Requirements:

- A. Claims-Made Coverage: The limits of liability shall remain the same as the occurrence basis, however, the Retroactive date shall be prior to or coincident with the date of any contract, and the Certificate of Insurance shall state the retroactive date and the coverage is claims made.
- B. Extended Reporting Periods: The CONSULTANT shall provide the County with a notice of the election to initiate any Supplemental Extended Reporting Period and the reason(s) for invoking this option,
- C. Reporting Provisions: Any failure to comply with reporting provisions of the policies shall not affect coverage.

D. Cancellation/Non-Renewal Notification: Each insurance policy shall be endorsed to state that it shall not be suspended, voided, or canceled, except after thirty (30) days prior to written notice by certified mail, return receipt, has been given to the County.

E. Proof of Insurance: Effingham County shall be furnished with certificates of insurance and original endorsements affecting coverage required by this invitation. The certificates and endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All certificates of insurance are to be submitted prior to, and approved by, the County before services are rendered. The CONSULTANT must ensure Certificates of Insurance are updated for the entire term of the Contract.

F. Insurer Acceptability: Insurance is to be placed with an insurer having an A.M. Best's rating of A and a five (5) year average financial rating of not less than V. If an insurer does not qualify for averaging on a five year basis, the current total Best's rating will be used to evaluate insurer acceptability.

G. Lapse in Coverage: A lapse in coverage shall constitute grounds for contract termination by Effingham County Board of Commissioners.

H. Deductible and Self-Insured Retention: Any deductibles or self-insured retention must be declared to, and approved by, the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as related to the County, its officials, officers, employees, and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of related suits, losses, claims and related investigation, claim administration and defense expenses

Additional Coverage for Engineering, Architectural and Surveying Services:

Professional Liability: Insure errors or omission on behalf of architects, engineers, attorneys, medical professionals, and consultants.

Limits: \$1,000,000 per claim/occurrence and \$1,000,000 in aggregate

If "claims made," retroactive date must precede or coincide with the contract effective date or the date of the Notice to Proceed. The professional must state if "tail" coverage has been purchased and the duration of the coverage.

5. WAIVERS AND EXCEPTIONS

No failure by County to enforce any right or power granted under this Contract, or to insist upon strict compliance by CONSULTANT with this Contract, and no custom or practice of County at variance with the terms and conditions of this Contract shall constitute a general waiver of any future breach or default or affect the County's right to demand exact and strict compliance by CONSULTANT with the terms and conditions of this Contract.

6. GENERAL PROVISIONS

This Contract supersedes any and all agreements, both oral and written, between the parties with respect to the rendering of services by CONSULTANT for County and contains all of the covenants and agreements between the parties with respect to the rendering of these services in any matter whatsoever. Each party acknowledges that no representations, inducements, promises, or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Contract. Any modification of this Contract will be effective only if set forth in writing and signed by the party to be charged.

CONSULTANT warrants that it will not, in the performance of this Contract, illegally discriminate on the basis of race, color, sex, or national origin.

This Contract will be governed by and construed in accordance with the laws of the State of Georgia. If any provision in this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

If CONSULTANT dies or is dissolved prior to the completion of this Contract, any moneys that may be due to CONSULTANT from County for services rendered prior to the date of death or dissolution shall be paid to CONSULTANT's executors, administrators, heirs, personal representative, successors, or assigns.

5. AUTHORITY TO EXECUTE AND ENTER AGREEMENT

By his, her, or their signature(s) below, the person or persons signing on behalf of CONSULTANT warrant that

(1) they are authorized to sign on behalf of CONSULTANT; (2) that to the extent CONSULTANT is an entity rather than an individual, the entity is currently in existence and is validly registered with appropriate government officials; and (3) that the individual and entity contracting herein are in compliance with all Georgia requirements related to federal and state immigration laws and the use of E-Verify and shall remain in compliance during the term of this Contract.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this Contract to be signed, sealed and delivered.

This ____ day of _____, 20 ____

Thomas & Hutton

Signature

WESLEY CORBITT, CHAIRMAN

Witness - Signature

BOARD OF COMMISSIONERS OF
EFFINGHAM COUNTY, GEORGIA

Title

Witness - Title

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COMMISSION APPROVAL DATE: _