

PROFESSIONAL SERVICES CONTRACT No. 2021-22-123

This Contract for Professional Services (“**Contract**”), with an effective date as that accepted by the County below, is hereby entered into between **HORRY COUNTY**, a political subdivision of the State of South Carolina, whose Administrative Office is at 1301 Second Avenue, Conway, SC 29526 (“**County**”); and **Thomas and Hutton Engineering Company (“Provider”)**, a corporation organized and existing under the laws of the State of Georgia and authorized to conduct business in the County of Horry and in the State of South Carolina.

1. GENERAL TERMS OF CONTRACT

1.1. Headings: Headings to paragraphs in this Contract shall not interpret or alter the meaning of the words in the respective paragraph, nor any other provision of this Contract.

1.2. Time of Performance: The timely performance by **Provider** of the services described in this Contract is of the essence, and shall commence on the Effective Date. Failure to perform timely, except for cause occasioned by Act of God, shall permit County to declare this Contract voided and of no further effect.

1.3. Arbitration: This contract is not subject to arbitration.

1.4. Dispute Resolution: If the parties hereto cannot settle any difference arising between them without litigation, any such litigation shall take place in the South Carolina Circuit Court in Conway, South Carolina.

1.5. Merger, Amendment, and Waiver: This Contract contains all the terms of all agreements, oral or written, between the parties, and is the only document

containing all such terms. This Contract merges all prior contracts, agreements, and understandings between **County** and **Provider** concerning the scope of work described herein. The Scope of Services described in this Contract, and all other terms of this Contract, shall not be amended or varied except by a written instrument signed by a duly authorized signatory of **County** and **Provider**. Forbearance by **County** from enforcing the strict terms of this Contract shall not be a waiver of any other term of this Contract, nor shall such forbearance entitle **Provider** to rely upon such forbearance in the event of another similar breach by **Provider** of the terms of this Contract. Any variance to the terms of this Contract shall be attached as an Exhibit hereto, and shall have effect as from the effective date thereof as set forth on such Exhibit.

1.6. Compliance with EEOC and other State and Federal Laws: To the extent set forth in the respective statutes, **Provider** shall comply with the provisions of:

1.6.1. Titles VI & VII of the Civil Rights Act of 1964;

1.6.2. Age Discrimination in Employment Act of 1967;

1.6.3. Title I of the Americans with Disabilities Act of 1990;

1.6.4. Equal Pay Act of 1963;

1.6.5. Fair Labor Standards Act of 1938;

1.6.6. Immigration Reform and Control Act of 1986;

1.6.7. South Carolina Payment of Wages Act, S.C. Code §§ 41-10-10 *et seq.*;

1.6.8 South Carolina Worker's Compensation Act, S.C. Code §§ 42-1-10 *et seq.*;

1.6.9 South Carolina Illegal Immigration Reform Act, including without limitation Chapters 14&29, Title 8, and Chapter 8, Title 41, S.C. Code of Laws;

1.6.10 Part 681, Title 16 of the Code of Federal Regulations, Sections 114 and 315 of the Fair and Accurate Credit Transactions Act (FACTA) of 2003; the South Carolina Act 190 of 2008; Financial and Identity Theft Protection Act; and the Horry County Privacy / Identity Theft Policy.

Provider, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Provider shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Provider to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County or aggrieved party deems appropriate.

1.7. By entering into this Contract, **Provider** affirmatively warrants that **Provider** is currently in compliance with such laws, and further warrants that during the term of this Contract, **Provider** shall remain in compliance therewith.

2. SCOPE OF SERVICES:

2.1. **Provider** shall perform those tasks set forth in Exhibit "A", attached hereto and incorporated herein by reference. The anticipated scope of work shall be considered the minimum service to be provided under this Contract. If any term contained in Exhibit "A" shall conflict with any of the terms of this Contract, then such term as set forth on Exhibit "A" shall not bind **County**.

2.2. All services to be performed by **Provider** under this Contract shall be performed within the term set forth on Exhibit "B", not to exceed five (5) years.

3. PAYMENT FOR SERVICES:

3.1. The costs of services are set forth in Exhibit “B” of this Contract. The total projected cost of \$380,200.00 shall be a guaranteed maximum price (GMP) for the services to be provided. **Provider’s** invoice to County will be on a basis of net 30 days after receipt by **County** of invoice.

3.2. Services not included in the Scope of Services constitute additional charges to **County**, at rates and intervals to be agreed upon between **County** and **Provider** in a written Amendment executed by both parties prior to the performance of such services.

4. WARRANTIES OF PROVIDER AND COUNTY:

4.1. County warrants that:

4.1.1. **County** has the lawful authority required under State law and **County’s**

Ordinances to enter into and perform this Contract;

4.1.2. **County** shall not offer employment to any employee of **Provider** for a

period of two (2) years after the termination, except for cause, of this

Contract.

4.2. Provider warrants that Provider has:

4.2.1. All necessary licenses and consents required for **Provider** to enter into

and fully perform the Scope of Services set forth on Exhibit “A”, and is in

good standing in the State of South Carolina;

4.2.2. All required insurances, including Worker's Compensation Insurance and General Liability Insurance, to indemnify County against any and all claims arising under or as a result of the performance of this Contract, in at least the following amounts (or in those amounts, if specified, as set forth in **County's** Invitation to Bid or Request for Proposals, that formed the basis of the Scope of Services of this Contract):

Worker's compensation shall include a minimum limit of \$100,000 per accident and comprehensive general liability coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for premises/operations, products/completed operations, contractual liability, errors and omissions (professional liability), independent contractors and vehicles used in premises/operations. Insurance shall indemnify **County** against any and all claims arising under or as a result of the performance of the contract. The **County** shall be named as an additional insured on all liability policies. The **County** must be provided with notice prior to cancellation, modification or reduction in limits of any stipulated insurance.

4.2.3. No conflict of interest with any other contract with a third party that might cause a claim to arise against County by the entry into or performance of this Contract by **Provider**.

4.3. Provider warrants that Provider shall throughout the term of this Contract:

4.3.1. Perform all tasks required under the Scope of Services with a degree of skill and care of reputable members of the same profession in South Carolina;

4.3.2. Maintain all insurances required by law or this Contract, including worker's compensation, premises liability, general liability, and professional malpractice coverage in those amounts set forth herein;

4.3.3. Properly withhold from all wages, commissions, salaries, and fees paid by **Provider** to third parties or employees, agents, or sub-contractors of **Provider**, all amounts required by State or Federal law to be withheld for or on account of taxes, social security payments, or other withholdings mandated by law or regulation;

4.3.4. Ensure that any third party, employee, agent, or sub-contractor of **Provider** shall comply with the terms of this Contract concerning employment discrimination, insurances, and withholdings, so far as concerns this Contract;

4.3.5. Comply with all lawful demands made pursuant to the South Carolina Freedom of Information Act, S.C. Code § 30-4-10 *et seq.* or the Federal Freedom of Information Act, 5 U.S.C.S. § 552;

4.3.6. Make no offer of employment to any **County** employee for a period of two (2) years after the termination of this Contract.

5. OWNERSHIP OF PROJECT MATTER: Unless otherwise agreed between **County** and **Provider**, and approved by County's attorney:

5.1. All plans, reports, surveys, and other professional work product of **Provider** concerning this Contract (but not internal working files, drafts, memoranda, and

equipment) shall become the property of **County** during and at the completion or termination of this Contract;

5.2. All materials supplied or loaned by **County** to **Provider** during the term of this Contract shall remain the property of **County**;

5.3. All intellectual property provided to **County** by **Provider** and originating from this Contract shall become and remain the property of **County**, and **Provider** shall not, without the written consent and license from **County**, use such intellectual property for another commercial purpose;

5.4. **County** shall not become the owner, assignee, or licensee of any standard routine, programs, development tools, techniques, interfaces, texts, or other work existing prior to the date of this Contract that may be used by **Provider** in providing the services or intellectual property subject to this Contract, except as may be specifically agreed in writing between the parties.

6. EARLY TERMINATION OF CONTRACT: **County** and **Provider** shall have the right, upon sixty (60) days written notice, to terminate this Contract, and thereafter **County** shall have no obligation to pay for services provided to **County** except up to the effective date of termination of this Contract. In the event **Provider** exercises its right to terminate this Contract, **Provider** will not cease services for a reasonable period of time, not to exceed One-Hundred Twenty (120) days, to allow **County** to procure another provider.

7. INDEPENDENT CONTRACTOR STATUS: **Provider** shall not, by entering into this Contract, become a servant, agent, or employee of **County**, but shall remain at all

times an independent contractor to **County**. This Contract shall not be deemed to create any joint venture, partnership, or common enterprise between **Provider** and **County**, and the rights and obligations of the parties shall not be other than as expressly set forth herein.

8. NOTICES TO PARTIES: All notices to each party to this Contract, except routine notices of performance of the Scope of Services during the Contract term, shall be in writing, and sent as follows:

8.1. To County:

8.1.1.

Thom Roth, Horry County Stormwater Department
4401 Privetts Road
Conway, SC 29526

with a copy to:

Horry County Attorney
1301 Second Avenue
Conway, SC 29526
(Tel: 843-915-5270; fax 843-915-6270)

8.2. To Provider:

8.2.1.

Mr. James J. Collins, PE
Thomas and Hutton Engineering Company
611 Burroughs & Chapin Blvd.
Suite 202
Myrtle Beach, SC 29577
(Tel: 843-839-3565)
collins.j@tandh.com

8.3. Form of Notice: All notices required or permitted under this Contract shall be effective:

8.3.1. On the third (3rd) business day after mailing by depositing the notice in the United States Mail, certified mail, return receipt requested, postage prepaid, addressed as set forth above; or on the day of receipt of such notice (whether by mail, courier, hand delivery, or otherwise), whichever is the earlier date of receipt; or

8.3.2. On the first day after receipt of a facsimile transmission of the written notice, with delivery confirmed, provided that such notice is also thereafter sent by first class mail as set forth above.

9. INDEMNIFICATION AND HOLD HARMLESS AGREEMENT: The **Provider** will indemnify and hold harmless the **County** and its agents and employees from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the performance of the Work provided that any such claims, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, injury to or destruction of tangible property, including the loss of use resulting therefrom, and is caused by any negligent or willful act or omission of the **Provider**, and anyone directly or indirectly employed by it or anyone for whose acts any of them may be liable. In any and all claims against the **County** or any of their agents or employees by an employee of the **Provider**, and anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way to the amount or type of damages, compensation or benefits payable by or for the **Provider** under the

workman's compensation acts, disability benefit acts, or other employee benefit acts.

The obligation of the **Provider** under this paragraph shall not extend to the liability of the **County** or its agents or employees arising out of reports, surveys, change orders, designs, or specifications that are un-attributable to the **Provider**.

10. ASSIGNMENT: **Provider** shall not assign, permit the assumption of or in any manner transfer any interest in this Contract, or any part thereof, without the prior written consent of the **County**. If **Provider** assigns, permits the assumption of or in any manner attempts a transfer of its interest in this Contract, **County**, in its sole discretion, may declare this entire Contract null and void.

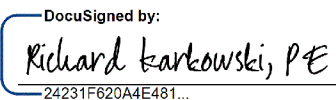
IN WITNESS WHEREOF, the parties have executed this Contract in three (3) originals, each of which shall be deemed to be an original on the Effective Date first above written.

Provider:

By (signature)  Date: 10/12/2022
DocuSigned by: James J. Collins, PE
9B239466052A4C6...

Print Name: James J. Collins

Title: Senior Vice-President

Witness: 
DocuSigned by: Richard Karkowski, PE
24231F620A4E481...

County:

By (signature)  Date: 10/13/2022
DocuSigned by: David Gilreath, PE
9FF7FEAFF27F45A...

Print Name: David Gilreath

Title: Assistant County Administrator

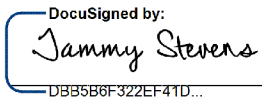
Witness: 
DocuSigned by: Jammy Stevens
DBB5B6F322EF41D...

EXHIBIT A

SCOPE OF SERVICES AND TERMS

The scope of services and work for this contract are specified in the following documents and are hereby incorporated, in their entirety, into this contract by reference in the following Order of Precedence:

- a. Thomas and Hutton Proposed Project Budget dated August 12, 2022
- b. Thomas and Hutton Scope of Services with Horry County revision dated August 12, 2022
- c. Thomas and Hutton submittal for RFQ # 2021-22-123 dated April 27, 2022
- d. Addendum #1 to RFQ # 2021-22-123 dated April 20, 2022
- e. Horry County Request for Qualifications (RFQ) # 2021-22-123, Civil Engineering Design Services for McCormick Rd Roadway and Drainage Improvements

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EXHIBIT B**TERM OF CONTRACT AND PAYMENT FOR SERVICES**

The term of this contract shall be for a (3) year term.

Pricing will be as follows:

<u>PHASE/TASK</u>	<u>FEE</u>
General Consulting (Time and Expense)	\$38,300.00
Survey (Lump Sum)	\$15,500.00
Study/Report (Lump Sum)	\$25,900.00
Design (Geotechnical) (Lump Sum)	\$42,000.00
Design (Lump Sum)	\$26,500.00
Right-of-way/Easement Acquisition (Per Parcel) \$14,200.00 x 2 =	\$28,400.00
Permitting (Other) (Time and Expense)	\$76,000.00
Permitting (SCDOT) (Time and Expense)	\$25,000.00
Bidding Assistance (Time and Expense)	\$24,100.00
Construction Services (Time and Expense)	\$78,500.00
TOTAL	\$380,200.00

Requests to perform additional services or need for additional expenses will be submitted to the Horry County Community Development Office for pre-approval prior to the execution of any services.

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