

RESOLUTION NO. 2015 - 372

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO AWARD RFQ 15-70 AND TO EXECUTE AGREEMENTS FOR GEOTECHNICAL SERVICES.**

**RECITALS**

**WHEREAS**, the County desires to enter into a contract with Ellis & Associates, Inc. to perform geotechnical services for St. Johns County; and

**WHEREAS**, the scope of the services shall include completion of design and construction documents, bidding phase services, construction administration services and project close out services for the new St. Johns County Public Works Complex; and

**WHEREAS**, through the County's formal RFQ process Ellis & Associates, Inc. was selected as a qualified respondent to enter into a contract with the County to perform the work referenced above; and

**WHEREAS**, the County has reviewed the material terms, provisions, conditions and requirements of the proposed contract (attached hereto, an incorporated herein) and finds that entering into such a contract serves a public purpose; and

**WHEREAS**, the proposed contract will be finalized after negotiations with Ellis & Associates, Inc. and will be in substantially the same form and format as the attached draft.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to award RFQ 15-70 to Ellis & Associates, Inc., and to conduct negotiations to provide the services set forth therein.

Section 3. The County Administrator, or designee, is further authorized to execute an agreement in substantially the same form and format as the attached draft with Ellis & Associates, Inc. on behalf of the County to provide the scope of services as specifically provided in RFQ 15-70.

Section 4. If after negotiations with Ellis & Associates, Inc. an agreement cannot be reached, to negotiate with the next successively ranked respondent (s) until an agreement is reached.

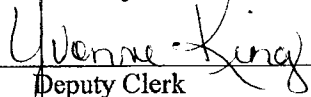
Section 5. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 15<sup>th</sup> day of September, 2015.

**BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**

By:  Priscilla L. Bennett, Chair

**ATTEST:** Cheryl Strickland, Clerk

By:  Deputy Clerk

DATE September 17, 2015

**DRAFT**

**STANDARD CONTRACT  
FOR  
CONSULTING/PROFESSIONAL SERVICES  
RFQ 15-70**

This contract is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the St. Johns County (the County), a political subdivision of the state of Florida, and Ellis & Associates, Inc., 7064 Davis Creek Road, Jacksonville, FL 32256, (904) 880-0960 (the Consultant), a Corporation in Florida licensed to do business in the State of Florida.

In consideration of the mutual promises contained herein, the County and the Consultant agree as follows:

**ARTICLE 1 - SERVICES**

The Consultant's responsibility under this contract is to provide professional/consultation services in the area of Geotechnical services. Consultant shall provide the County all necessary geotechnical services required for the St. Johns County NW Fire Station, as specifically set forth per the Scope of Work attached as **Exhibit A**.

The Work shall be performed on or before the dates set forth in the Contract Schedule attached as **Exhibit B**.

Services of the Consultant shall be under the general direction of Kevin R. Wiseman, Director Facilities Management, who shall act as the County's representative during the performance of this contract.

**ARTICLE 2 - PAYMENTS TO CONSULTANT**

A. The County shall pay the Consultant an amount not to exceed \_\_\_\_\_00/100 Dollars \$\_\_\_\_\_ for services satisfactorily performed, which includes all direct charges, indirect charges, and reimbursable expenses. The Consultant will bill the County on a monthly basis in the amounts set forth in the Schedule for Payment attached as **Exhibit C** for services rendered toward the completion of the Scope of Work. The amounts billed shall represent the approximate completion of services outlined in the Scope of Work. The signature of the Consultant's authorized representative on the invoice shall constitute the Consultant's certification to the County that:

- (1) The Consultant has billed the County for all services rendered by it and any of its consultants or subconsultants through the date of the invoice;
- (2) As of the date of the invoice, no other outstanding amounts are due from the County to the Consultant for services rendered;

- (3) The reimbursable expenses, if any, have been reasonably incurred; and
  - (4) The amount requested is currently due and owing.
- B. Notwithstanding any other provision of this contract, the maximum amount of compensation available to the Consultant under this contract 00/100 Dollars is \$\_\_\_\_\_. However, nothing in this contract shall entitle the Consultant to receive the maximum amount of compensation if the Consultant would not otherwise be entitled to the compensation based on services satisfactorily performed and billed to the County as provided above.
- C. The County shall review each invoice received from the Consultant pursuant to this contract to ensure that services have been rendered in accordance with the terms of this contract. The Consultant shall reference this contract on each invoice submitted to the County. Payment shall be made periodically in accordance with the Schedule for Payment.
- D. The Consultant's acceptance of the County's payment of an invoiced amount shall release the County from any claim by the Consultant, or by the Consultant's consultants or subconsultants, for work performed but not invoiced during the time period indicated on the invoice for which payment was issued.
- E. The Consultant's final invoice to the County under this contract shall be labeled "Final Invoice". This label shall indicate that all services required under the contract have been performed and all charges and costs have been invoiced to the County. Following the County's payment of the final invoice, the County shall not be responsible for payment of any charges that were not included on an invoice submitted pursuant to this contract. Any such charges shall be deemed to have been waived by the Consultant.

### **ARTICLE 3 - TRUTH-IN-NEGOTIATION CERTIFICATE**

The signing of this contract by the Consultant shall act as the execution of a truth-in-negotiation certificate certifying that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current as of the date of this contract.

The original contract price and any additions thereto will be adjusted to exclude any significant sums by which the County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments shall be made within 1 year following the end of the contract.

### **ARTICLE 4 - TERMINATION**

This contract may be terminated by the Consultant upon 30 days prior written notice to the County in the event of substantial failure by the County to perform according to the terms of this contract through no fault of the Consultant.

This contract may be terminated by the County, with or without cause, immediately upon written notice to the Consultant. Unless the Consultant is in breach of this contract, the Consultant shall be paid for services rendered to the County's satisfaction through the date of termination. After receipt of a termination notice, and except as otherwise directed by the County, the Consultant shall:

- A. Stop work on the date to the extent specified;
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work;
- C. Transfer all work in process, completed work, and other material related to the terminated work to the County; and
- D. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 5 - PERSONNEL**

The Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County.

All of the services required hereunder shall be performed by the Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

Any changes or substitutions in the Consultant's key personnel, as may be listed in **Exhibit D**, must be made known to the County's representative. Written approval must be granted by the County before such change or substitution can become effective.

The Consultant warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. The Consultant is responsible for the professional quality, technical accuracy, and timely completion of all work performed under this agreement, and shall, without additional compensation, correct or revise any errors or deficiencies in the work.

#### **ARTICLE 6 - TAXES**

The County is exempt from payment of Florida state sales and use taxes. The County will sign an exemption certificate submitted by the Consultant for any exempt transaction entered into under this contract. The Consultant shall not be exempted from paying tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is the Consultant authorized to use the County's tax exemption number in securing such materials.

The Consultant shall be responsible for payment of its own FICA and Social Security benefits with respect to this contract.

## ARTICLE 7 - AVAILABILITY OF FUNDS

The Consultant acknowledges that the County's obligations under this contract are contingent upon the appropriation of sufficient funds for that purpose by the Board of County Commissioners. Pursuant to the requirements of Section 129.07, Florida Statutes, payment made under this contract shall not exceed the amount appropriated in the County's budget for such purpose in that fiscal year. Nothing in this contract shall create any obligation on the part of the Board of County Commissioners to appropriate such funds for the payment of services provided under this contract during any given fiscal year.

## ARTICLE 8 - INSURANCE

### A. INSURANCE REQUIREMENTS

A. The CONSULTANT shall not commence work under this Contract until he/she has obtained all insurance required under this section and such insurance has been approved by the COUNTY. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The CONSULTANT shall furnish proof of Insurance to the COUNTY prior to the commencement of operations. The Certificate(s) shall clearly indicate the CONSULTANT has obtained insurance of the type, amount, and classification as required by contract and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically include the COUNTY as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. Compliance with the foregoing requirements shall not relieve the CONSULTANT of its liability and obligations under this Contract.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084

### B. **Standard Contract for Service: \$500,000 or less with no unusual hazards**

The CONSULTANT shall maintain during the life of this Contract, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect the CONSULTANT from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this contract, whether such operations be by the CONSULTANT or by anyone directly employed by or contracting with the CONSULTANT.

The CONSULTANT shall maintain during the life of the contract, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000, if applicable.

The CONSULTANT shall maintain during the life of this Contract, Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect the CONSULTANT from claims for damages for bodily injury,

including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by the CONSULTANT or by anyone directly or indirectly employed by a CONSULTANT.

The CONSULTANT shall maintain during the life of this Contract, adequate Workers' Compensation Insurance in at least such amounts as required by the law for all of its employees per Florida Statute 440.02.

#### **ARTICLE 9 - INDEMNIFICATION**

The Consultant shall indemnify and hold the County, its officers, and its employees harmless from liabilities, damages, losses, or costs, including reasonable attorney's fees, which may arise from any act or omission of the Consultant, its officers, or its agents, including any subconsultant performing services under this contract, in connection with its performance of services under this contract. This provision shall survive the termination or expiration of this agreement.

#### **ARTICLE 10 - SUCCESSORS AND ASSIGNS**

The County and the Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, with respect to all provisions of this contract. Except as provided above, neither the County, nor the Consultant may assign, transfer, or sell any of the rights noted in this contract, or associated with this contract, without the express written approval of the other party. Should either party assign, transfer, or sell any of the rights of this contract, without prior written approval of the other party, then such action on the part of either party shall result in the automatic termination of this contract, without further notice or action required on the part of the other party.

#### **ARTICLE 11 – NO THIRD PARTY BENEFICIARIES**

Both the County and the Consultant explicitly agree that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

#### **ARTICLE 12 - REMEDIES**

This contract shall be governed by the laws of the state of Florida. Any legal or administrative action necessary to enforce the contract will be held in St. Johns County. No remedy conferred upon any party under this contract is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other available remedy at law or in equity. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

In any action brought by either party for the enforcement of the obligations of the other party, the

prevailing party shall be entitled to recover reasonable attorney's fees.

#### **ARTICLE 13 - CONFLICT OF INTEREST**

The Consultant represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict with the performance of services required under this contract. The Consultant further represents that it shall not engage any employee, subconsultant, or any other person who has an interest, either direct or indirect, which would conflict with the performance of services under this contract.

The Consultant shall promptly notify the County in writing by certified mail of all potential conflicts of interest for any prospective business association, interest, or other circumstance that may influence or appear to influence the Consultant's judgment or the quality of services being provided under this contract. Such written notification shall identify the potential conflict and request an opinion of the County as to whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Consultant. The County shall notify the Consultant of its opinion by certified mail within 30 days of receipt of the Consultant's notification.

#### **ARTICLE 14 - NO PLEDGE OF CREDIT**

The Consultant shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The Consultant further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this contract.

#### **ARTICLE 15 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

Before becoming eligible for payment of its final invoice, the Consultant shall deliver all documents and materials specifically prepared under this contract to the County for approval and acceptance.

All written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the County or at its expense will be kept confidential by the Consultant and will not be disclosed to any other party, directly or indirectly, without the County's prior written consent unless required under Florida law or by order of a court of competent jurisdiction.

All drawings, maps, sketches, CAD discs, and any other data developed or purchased under this contract or at the County's expense shall be the County's property and may be reproduced and reused at the discretion of the County.

This provision shall survive the termination or expiration of this contract.

#### **ARTICLE 16 - PUBLIC RECORDS**

A. The County shall comply with the provisions of Florida's Public Records Act (Chapter 119,

Florida Statutes). The Consultant acknowledges that all documents prepared in connection with this contract are public records and may be disclosed pursuant to a public records requires unless they fall within a statutory exemption to disclosure.

B. To the extent that the Consultant's performance under this contract constitutes an act on behalf of the County, the Consultant shall provide access to all public records made or received by the Consultant in conjunction with this contract. Specifically, if the Consultant is expressly authorized, and acts on behalf of the County under this contract, the Consultant shall:

- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform services under this contract;
- (2) Provide the public with access to public records related to this contract on the same terms and conditions that the County would provide the records, and at a cost that does not exceed the costs provided in Chapter 119, Florida Statutes, or as otherwise provided by applicable law;
- (3) Ensure that public records related to this contract that are exempt or confidential and exempt from public disclosure are not disclosed except as authorized by applicable law; and
- (4) Meet all requirements for retaining public records, and transfer to the County all public records in its possession upon termination or expiration of this contract.

The Consultant shall destroy any duplicate records that are exempt or confidential and exempt from public disclosure requirement in accordance with the applicable provisions of state and federal law. Any public records stored electronically must be provided to the County in a format that is compatible with information technology systems maintained by the County.

C. Failure by the Consultant to grant access to public records where such access is required by law shall be grounds for termination of this agreement by the County. The Consultant shall promptly provide the County notice of any request to inspect or copy public records related to this agreement in the Consultant's possession and shall promptly provide the County a copy of the Consultant's response to each such request.

#### **ARTICLE 17 - INDEPENDENT CONSULTANT RELATIONSHIP**

With respect to the services performed under this contract, the Consultant is an independent CONSULTANT. Nothing in this agreement shall be construed to create an agency relationship between the Consultant and the County. All persons who perform work pursuant to this contract shall be subject to the Consultant's sole direction, supervision, and control. The Consultant shall exercise control over the means and manner in which it and its employees perform the work. The

Consultant shall have no authority to bind the County to any obligation other than as specifically provided in this contract.

#### **ARTICLE 18 - CONTINGENT FEES**

- A. Pursuant to the provisions of Section 287.055(6), Florida Statutes, the Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant to solicit or secure this agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Consultant any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement.
- B. Violation of this section shall be grounds for termination of this agreement. If this agreement is terminated for violation of this section, the County may deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.

#### **ARTICLE 19 - ACCESS AND AUDITS**

The Consultant shall maintain adequate records to justify all charges, expenses, and costs incurred in the work performed under this contract for at least 3 years after termination or expiration of this agreement. The Consultant shall allow the County access to such records for the purpose of inspection or audit during normal business hours upon 5 days written notice

#### **ARTICLE 20 - NONDISCRIMINATION**

The Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age or national origin.

#### **ARTICLE 21 - ENTIRETY OF CONTRACTUAL AGREEMENT**

- A. The contract documents that make up this agreement are:
- B. Both the County and the Consultant acknowledge that this contract constitutes the complete agreement and understanding of the parties and supersedes all prior negotiations and representations, whether written or oral, regarding the terms of this contract.

#### **ARTICLE 22 - ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all reasonable expenses even if not taxable as court costs (including, without limitation, all such reasonable fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

**ARTICLE 23 – COMPLIANCE WITH APPLICABLE LAWS**

Both the County and the Consultant shall comply with all applicable laws, rules, regulations, orders, and policies of the county, state, and federal governments. The Consultant represents that it has and will continue to maintain all licenses and approvals required to conduct its business and that it will at all times conduct its business activities in a reputable manner.

**ARTICLE 24 - SEVERABILITY**

If any part of this contract, or the application thereof, is declared void, unconstitutional, or invalid for any reason, such part or application shall be severable, and the remainder of the contract that has not been declared void, unconstitutional, or invalid shall remain in effect.

**ARTICLE 25 - AMENDMENTS AND MODIFICATIONS**

- A. Any amendment to this contract shall be in writing and shall be executed by a duly authorized representative of both parties.
- B. If the County wishes to make changes to the scope of work, it shall notify the Consultant in writing. Upon receipt of such notice, the Consultant shall:
  - (1) Provide an estimate of the increase or decrease in cost due to the contemplated change;
  - (2) Advise the County in writing whether the contemplated change will affect the Consultant's ability to perform its work according to the Contract Schedule as set forth in Exhibit B; and
  - (3) Notify the County in writing of any estimated change in the completion date.

Upon receiving this information from the Consultant, the County may instruct the Consultant to suspend any portion of the work that would be affected by the change until the County decides whether to proceed with the change. Such instruction shall be in writing. If the County elects to make the change, it shall issue a contract amendment or change order. The Consultant shall not commence work on any change until the amendment or change order is issued and executed by both parties.

**ARTICLE 26 - ARBITRATION**

The County shall not be obligated to arbitrate or permit any arbitration binding on the County under this contract or in connection with the project in any manner whatsoever. However, nothing in this Article shall prevent the parties from submitting a dispute to arbitration if both parties desire to do so. If the parties agree to submit a dispute to arbitration, the prevailing party shall be entitled to remove reasonable attorney's fees and all other reasonable expenses incurred in connection with the arbitration for the other party.

**ARTICLE 27 - NOTICE**

All notices required in this contract shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

St. Johns County

Attn: Kevin R. Wiseman, Director Facilities Management

500 San Sebastian View

St. Augustine, Florida 32084

and if sent to the Consultant shall be mailed to:

Ellis & Associates, Inc.

Attn: Greg A. Edmonds, P.E., F.FES President/CEO

7064 Davis Creek Rd.

Jacksonville, FL 32256

#### **ARTICLE 28 – TIME**

Time is of the essence with respect to this contract.

#### **ARTICLE 29 - HEADINGS**

The heading preceding the articles and sections of this contract are solely for convenience of reference and shall not constitute a part of this contract or affect its meaning, construction, or effect.

#### **ARTICLE 30 – DURATION AND RENEWAL**

The duration of this contract shall be \_\_\_\_\_. This contract may be renewed for a maximum of 2 one-year renewal periods with 30 days' written notice to the Consultant. While this contract may be renewed as stated in this Article, it is expressly noted that the County is under no obligation to extend this contract. It is further expressly understood that the option of renewal is exercisable only by the County, and only upon the County's determination that the CONSULTANT has satisfactory performed the services noted in this contract.

#### **ARTICLE 31 – DESIGN CONSTRUCTION COST WARRANTY**

The Consultant warrants that construction cost will not exceed approved cost estimate by more than 2%. If bids returned exceed the approved cost estimate by more than 2% (excluding County-

approved changes or cost increases), the Consultant shall be required to redesign and re-bid the project at no additional cost to the County.

**ARTICLE 32 – AUTHORITY TO EXECUTE**

Each party represents that is has the lawful authority to enter into this agreement and has authorized the execution of this agreement by the party's authorized representative

**IN WITNESS WHEREOF**, the parties have executed this agreement through their duly authorized representatives as of the dates set forth below.

**CONSULTANT**

**ST. JOHNS COUNTY**

**By:** \_\_\_\_\_  
Signature

**By:** \_\_\_\_\_  
Signature

**Greg A. Edmonds, P.E., F.FES**  
Printed Name & Title

**Darrell Locklear, Assistant County Administrator**  
Printed Name & Title

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Date of Execution

**CHERYL STRICKLAND  
CLERK OF COURT**

**By:** \_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Date of Execution

**Legally Sufficient**

---

**Assistant County Attorney**

---

**Date:**

EXHIBIT A  
**SCOPE OF WORK**

**EXHIBIT B**  
**CONTRACT SCHEDULE**

**EXHIBIT C**  
**SCHEDULE FOR PAYMENT**

**EXHIBIT D**  
**KEY PERSONNEL**