

ATTACHMENT 4
(Proposed)

COUNTY-CONTRACTOR AGREEMENT

THIS AGREEMENT for construction of Tall Cedars Parkway , between Gum Spring Rd. and Pinebrook Rd, herein after referred to as the "Project", executed in three (3) originals, effective this _____ day of _____, 2016, is by and between **COUNTY OF LOUDOUN, VIRGINIA** (herein referred to as the "Owner"), and _____ (herein referred to as the "Contractor").

In consideration of the promises made herein and other good and valuable considerations, the following terms and conditions are hereby agreed to between the Owner and Contractor.

This Agreement consists of and incorporates by reference the following attachments:

- | | |
|--------------|---|
| Attachment 1 | The Owner's Invitation for Bid No. RFQ-360 dated xx, 2016, including all attachments and any addenda. |
| Attachment 2 | The Contract Plans, Specifications and Loudoun County Revisions to VDOT Division I, General Provisions. |
| Attachment 3 | The Contractor's bid dated _____. |

In the event that Attachment 3 contradicts or limits this Agreement or Attachments 1 and 2, this Agreement and Attachments 1 and 2 shall prevail.

Article 1

ARCHITECT/ENGINEER

- 1.1 The Architect/Engineer as defined in the General Provisions shall be J2 Engineering Inc. whose address is 4080 Lafayette Center Drive, Chantilly, Virginia 20151. Provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its A/E and so advising the Contractor in writing, at which time the person or organization so designated shall be the A/E for purposes of this Contract.

Article 2

TIME OF COMMENCEMENT AND COMPLETION

- 2.1 The Contractor shall commence the Work upon the date established in the Notice to Proceed.
- 2.2 The Contractor shall achieve Final Completion, as defined in Section 105.01, Contract Time, Notice of Contract Execution and Notice to Proceed of the Loudoun County Revisions to the 2007 VDOT Road & Bridge Specifications, Division I - General Provisions, within Five hundred and Forty Eight (548) calendar days from the date specified in the Notice to Proceed. This time period shall be designated the Contract Time. The Notice to proceed will be issued approximately thirty (30) days after the execution of this agreement. The Contractor agrees that the time for completion of the Work as described in the Contract Documents shall govern unless specifically amended in writing by the County, and that no claims for early completion are allowed to be presented by the Contractor to the County.
- 2.3 The County specifies that time is of the essence under this Contract. Time being of the essence, it is essential to the County that Contract work will be completed within the Contract Time. The County and the Contractor agree that damages for failure to complete the work within the Contract Time are not susceptible to exact determination but that \$1,500 per day is in proportion to the actual loss that the County would suffer from such delay. Therefore, the Contractor will pay the County on demand \$1,500 per day for each and every day beyond the Five hundred and Forty Eight (548) calendar days, or modified date of completion, that the County determines that work is not complete, as damages caused by such delay and not as a penalty. The County shall be entitled to offset liquidated damages against any sum owed by the County to the Contractor under this Contract.
- 2.4 The amount of liquidated damages set forth in Articles 2.3 above shall be assessed cumulatively. This provision for liquidated damages does not bar Owner's right to enforce other rights and remedies against Contractor, which are otherwise legally enforceable, including but not limited to, specific performance or injunctive relief.
- 2.5 The Contractor hereby waives any defense as to the validity of any liquidated damages stated in this Agreement as they may appear on grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

Article 3

CONTRACT SUM

- 3.1 Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Modification or as otherwise provided in the Contract Documents, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of _____ Dollars (\$_____) (herein referred to as the "Contract Sum").

Article 4

PROGRESS PAYMENTS

- 4.1 The Contractor shall provide a Payment Schedule as referred to in Section 109 of the Loudoun County Revisions to the VDOT Division I - General Provisions.
- 4.2 The Contractor hereby agrees that on or about the first day of the month for every month during the performance of the Work he will deliver to the A/E a Payment Request Application in accordance with the provisions of 109.08 – Partial Payments of the Loudoun County Revisions to the VDOT Division I - General Provisions. This date may be changed upon mutual agreement, stated in writing, between the Owner and Contractor. Payment under this Contract shall be made as provided in the General Conditions. An updated progress schedule shall be submitted with each Payment Request Application.

Article 5

OTHER REQUIREMENTS

- 5.1 The Contractor shall submit the Performance Bond and Labor and Material Payment Bond as described in section 14.0 of the IFB and a Warranty Bond as described in the Loudoun County Revisions to VDOT Division I - General Provisions Section 109.08 and a Certification of Insurance as required by the Contract Documents.
- 5.2 To the extent required by the Commonwealth of Virginia (see e.g. 54.1-1100 *et seq.* of the Code of Virginia) or the County of Loudoun, the Contractor shall be duly licensed to perform the services required to be delivered pursuant to this Contract.
- 5.3 A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the County pursuant to the Virginia Public Procurement Act 2.2-4300 *et seq.* shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or

cancelled at any time during the term of the Contract. The County may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 5.4 The Contractor shall complete and acquire a VDOT Land Use Permit. This permit will require the contractor to post a bond with VDOT for the estimated value of the work that is to be constructed in the VDOT right-of-way. The successful bidder will be required to post any post-construction latent defect bond required by VDOT.
- 5.5 Contractor warrants to County that the construction, including all materials and equipment furnished as part of this Project, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents, and free of defects in materials and workmanship.
- 5.6 It shall be the responsibility of the Contractor to comply with County Ordinances by securing the necessary permits to include a grading permit. All required permits, including State of Virginia permits and trade permits, will be the responsibility of the Contractor. The County shall waive any fees involved in securing County permits.

Article 6

IMMIGRATION REFORM AND CONTROL ACT OF 1986

- 6.1 By entering this Contract, the Contractor certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

Article 7

ENTIRE AGREEMENT AND SEVERABILITY

- 7.1 This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or changed only by an Amendment or Modification. Nothing contained in the Contract Documents shall create any Contractual relationship between the Owner, or any agent, consultant, or independent Contractor employed by the Owner and any subcontractor, sub-subcontractor, supplier or vendor of the Contractor, but the Owner shall be entitled to performance of all obligations intended for his benefit, and to enforcement thereof.
- 7.2 In the event that any provision of this Contract shall be adjudged or decreed to be invalid by a court of competent jurisdiction, such ruling shall not invalidate the entire agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding, and in full force and effect.

Article 8

GOVERNING LAW/FORUM

- 8.1 This Agreement shall be governed and construed in all respects by its terms and by the laws of the Commonwealth of Virginia, without giving effect to its conflicts of laws provisions. Any judicial action shall be filed in the Commonwealth of Virginia, County of Loudoun. Contractor expressly waives any objection to venue or jurisdiction of the Loudoun County Circuit Court, Loudoun County, Virginia. Contractor expressly consents to waiver of service of process in an action pending in the Loudoun County Circuit Court pursuant to Virginia Code Section 8.01-286.1.

Article 9

COUNTERPARTS

- 9.1 This Contract and any amendments or renewals hereto may be executed in a number of counterparts, and each counterpart signature, when taken with the other counterpart signatures, is treated as if executed upon one original of this Contract or any amendment or renewal. A signature by any party to this Contract provided by facsimile or electronic mail is binding upon that party as if it were the original.

Witness the following signatures:

COUNTY OF LOUDOUN, VIRGINIA

Division of Procurement
One Harrison Street, S.E.
Leesburg, VA 20175
Phone: (703) 771-5956
Fax: (703) 771-5097

CONTRACTOR

Phone:
Fax:

By: _____

Name: Mike Angel

Title: Contracting Officer

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

By: _____
Kenneth M. Golski
Assistant County Attorney