

## ATTACHMENT 1

(Proposed)

### COUNTY-CONTRACTOR AGREEMENT

THIS COUNTY-CONTRACTOR AGREEMENT ("Agreement") for Construction of the Moorefield Boulevard/Old Ryan Road Emergency Vehicle Traffic Signal and Vinegar Hill Drive Barrier Gates herein after referred to as the "Project", executed in three (3) originals, is effective on the date it is fully executed by and between **COUNTY OF LOUDOUN, VIRGINIA, a political subdivision of the Commonwealth of Virginia** (herein referred to as the "County"), and \_\_\_\_\_ (herein referred to as the "Contractor").

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

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

- |              |  |
|--------------|--|
| Attachment 1 | The County's Invitation for Bid No. 646810 dated March 21, 2024, including any addenda;                                      |
| Attachment 2 | Loudoun County Revisions to the 2020 VDOT Road & Bridge Specifications Division I General Provisions ("General Provisions"). |
| Attachment 3 | The Contract Plans and Specifications including any addenda;   |
| Attachment 4 | The Contractor's bid dated _____   |

In the event that Attachment 4 contradicts or limits this Agreement or Attachments 1 through 3, this Agreement and Attachments 1 through 3 shall prevail.

The capitalized terms herein shall have the same meanings as set forth in section 101.02 of the General Provisions.

### Article 1

#### ARCHITECT/ENGINEER

- 1.1 The Architect/Engineer (hereinafter referred to as the "A/E" and as defined in the General Conditions) shall be Dewberry Engineers, Inc., whose address is 401 Arlington Boulevard, Fairfax, Virginia 22031. Provided, however, that the County may, at its sole discretion, amend this Article from time to time by designating a

different person or organization to act as its A/E and advise 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 Substantial Completion, as defined in Section 105.01, Contract Time, Notice of Contract Execution and Notice to Proceed of the General Provisions, within 365 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 \$600 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 \$600 per day for each and every day beyond the 365 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 County'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 County 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 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 General Provisions. This date may be changed upon mutual agreement, stated in writing, between the County 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.
- 4.3 The Construction Progress Schedule shall be utilized by County, A/E and Contractor for submission, review and approval of monthly Payment Request. The schedule must be updated by Contractor monthly with each progress payment application and submitted to the County and A/E for review with the progress payment application. County shall not be required to process and review Contractor's Application for Payment if Contractor has failed or refused to provide the progress scheduling update information required herein.

### **Article 5**

#### **OTHER REQUIREMENTS**

- 5.1 The Contractor shall submit the Performance Bond and Labor and Material Payment Bond as described in Section 15.0 of the IFB and a Warranty Bond as described in the 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 During the performance of this Contract, the Contractor agrees as follows:
- a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, status as a service-disabled veteran, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, shall state that such Contractor is an equal opportunity employer.
  - c. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient to meet this requirement.
- 5.5 During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

- 5.6 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.
- 5.7 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.
- 5.8 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.
- 5.9 All notices and other communications made pursuant to the Contract Documents and not required to be made through e-Builder shall be deemed to have been given when made in writing and either (a) delivered in person, (b) delivered to an agent, such as an overnight or similar delivery service, or (c) deposited in the United States mail, postage prepaid, certified or registered, addressed as follows:

**TO CONTRACTOR:**

**TO COUNTY:**

Division of Procurement  
P.O. Box 7000  
1 Harrison Street, S.E.  
Leesburg, VA 20177

**If sent via (a) or (b)**

County of Loudoun Virginia  
Division of Procurement  
**ATTN: Purchasing Agent**  
1 Harrison Street, S. E., **1<sup>st</sup> Floor,**  
**Procurement Bids and Proposals**  
**Drop Box**  
Leesburg, VA 20175

**If sent via (c)**

County of Loudoun, Virginia  
Division of Procurement  
PO Box 7000  
**ATTN: Procurement Bids and**  
**Proposals**  
Leesburg, VA 20177

Notices shall be deemed received (i) if hand delivered, when received, (ii) if given by overnight delivery service, the first business day after being sent prepaid by such overnight delivery service, or (iii) if given by certified mail, return receipt requested, postage prepaid, two (2) days after posting with the United States Postal Service. Either party may change its address by notifying the other party in a manner described above.

Due to security restrictions, public access to County facilities is extremely limited. The mailing or delivery by an agent of notices is preferred. However, if a notice is hand delivered, it will be received in the lobby of 1 Harrison Street, SE, Leesburg, Virginia 20175 ONLY in the Drop Box labeled: Procurement Bids and Proposals between the hours of 8:30 a.m. and 5:00 p.m.

## **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 County, or any agent, consultant, or independent Contractor employed by the County and any subcontractor, sub-subcontractor, supplier or vendor of the Contractor, but the County 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 Contract 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 law

provisions. Any judicial action shall be filed in the Commonwealth of Virginia, County of Loudoun or if jurisdiction exists, the United States District Court for the Eastern District of Virginia in Alexandria. 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.

- 8.2 Each of the parties irrevocably waive trial by jury in any action, proceeding, or counterclaim, whether at law or in equity, brought by either party for any claim, demand, action, or cause of action, arising out of this Agreement. Each of the parties hereby agrees and consents that any such claim, demand, action, or cause of action shall be decided by court trial without a jury.

## **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.

**[SIGNATURES ON THE FOLLOWING PAGE]**

Witness the following signatures:

**COUNTY OF LOUDOUN, VIRGINIA**

Division of Procurement

1 Harrison Street, S.E.

Leesburg, VA 20175

Phone: (571) 258-3144

Fax: (703) 771-5097

By: \_\_\_\_\_

Name Kristy Varda, NIGP-CPP, CPPO, CPPB

Title: Contracting Officer

Date: \_\_\_\_\_

**CONTRACTOR**

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Tina P. Estevao  
Senior Assistant County Attorney