

SPOTSYLVANIA COUNTY
CONTRACT AGREEMENT
FOR PROFESSIONAL SERVICES
Contract #18-17-TV-02

THIS AGREEMENT is made this ____ day of ____, 2019, by and between the BOARD OF SUPERVISORS OF SPOTSYLVANIA COUNTY, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the "COUNTY"; and, HILLIS-CARNES ENGINEERING ASSOCIATES, INC., a Maryland Corporation, in good standing and duly licensed to do business in the Commonwealth of Virginia, hereinafter referred to as the "CONTRACTOR" or "SECONDARY CONTRACTOR".

WITNESS:

WHEREAS, the COUNTY desires to obtain professional geotechnical engineering services for Spotsylvania County; and

WHEREAS, CONTRACTOR desires to provide professional geotechnical engineering services for Spotsylvania County.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises stated in this Agreement, the COUNTY and CONTRACTOR agree as follows:

ARTICLE 1

CONTRACT DOCUMENTS:

1.1. The documents listed in Section 1.2 of this Article shall constitute the Contract Documents. These Contract Documents shall represent the entire agreement and understanding between the parties. Any oral or written understanding not incorporated in these Contract Documents is not binding on any of the parties. These Contract Documents shall be amended only by written instrument signed by the parties as approved. The Contract Documents are presented in descending order of priority with the first document listed being of the highest priority and governing over subsequently listed documents, in case of ambiguity. In the event of a conflict between the provisions of the Contract Documents, the provisions requiring the most exacting standard of performance shall prevail.

1.2. The Contract Documents consist of:

1. Spotsylvania County Contract Agreement for Professional Services, Contract #18-17-TV-02 between COUNTY and CONTRACTOR/SECONDARY CONTRACTOR; and
2. County of Spotsylvania Request for Proposal (RFP) #18-17-TV, Geotechnical Engineering Services, dated March 22, 2018; including Attachment A; and
3. Addendum #1 to Spotsylvania County RFP #18-17-TV for Geotechnical Engineering Services, dated April 11, 2018; and
4. Hillis-Carnes Engineering Associates, Inc. Proposal for Geotechnical Engineering Services, dated April 24, 2018, submitted in response to RFP #18-17-TV.
5. Hillis-Carnes Engineering Associates, Inc., 2019-2020 Unit Fee Schedule for Spotsylvania County, VA.

1.3. It is the intent of the Contract Documents to describe a functionally complete service to be performed in strict accordance with the Contract Documents. Any labor, services, documentation, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided by the CONTRACTOR without increase in the contract price or contract timelines whether or not specifically called for.

ARTICLE 2

THE WORK AND AGREEMENT TERM LIMITS:

2.1. CONTRACTOR shall provide Geotechnical Engineering Services, as the ***Secondary Contractor***, and perform these tasks as delineated in the Contract Documents. All management, necessary tools, equipment, materials, fuel, insurance, personnel, and supervision to provide the services as described herein is to be provided for Spotsylvania County. Work shall be as contained in individual Task Orders which will provide detailed CONTRACTOR responsibilities for any project. The work authorized by this Agreement shall be for geotechnical engineering services and may be used by all Spotsylvania County Departments.

If more than one Contractor was selected for a category, the Primary Contractor will have

the first chance to work on project(s) that come up. If the Primary Contractor is not able to do the work, or if there is a conflict of interest, then the Secondary Contractor will be asked to do the work. There is no guarantee the Secondary Contractor will receive any work under this Agreement unless the Primary Contractor is unable or refuses to do the work.

2.2. This Agreement shall have an initial term from date of award through April 30, 2020 and may be renewable for four (4) additional one (1) year terms at the option of Spotsylvania County. Prices shall remain fixed during the first initial year of the contract. Any adjustment to pricing for future years will be equal to or less than the unadjusted percent change of the previous twelve (12) months from December of the prior year to December of the current year as indicated in Table 1 of the Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, commodity and service group, services category, as published by the Bureau of Labor Statistics, U.S. Department of Labor. Should this index be superseded, the County reserves the right to select another appropriate index.

ARTICLE 3

DATES OF COMMENCEMENT:

3.1. The date of commencement shall be concurrent with the execution of this Agreement.

3.2. The CONTRACTOR's services shall be performed as expeditiously as possible and consistent with professional skill and care and the orderly progress of the project.

3.3. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, industry wide material shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, pandemic flu, acts of God, war, governmental action, and labor conditions. In the case of an industry wide material shortage the CONTRACTOR shall provide to the County within 24 hours of determination that there exists an industry wide material shortage, the following: 1) a written description of the specific material alleged to be in short supply; 2) a written list of all manufacturers, wholesalers, CONTRACTOR and/or retailers from which CONTRACTOR has attempted to obtain, and/or contracted to obtain, said material; 3) a written description detailing all actions taken by CONTRACTOR to obtain said materials; 4) a written statement, signed by an authorized representative of CONTRACTOR, that CONTRACTOR has used due diligence to secure said materials in the most expeditious manner; 5) a written time frame in which

CONTRACTOR anticipates that it will obtain said materials and; 6) the County, or its authorized representative, concurs that there is an industry wide shortage of the specific material so identified by CONTRACTOR.

ARTICLE 4

CONTRACT PRICE AND TERMS OF PAYMENT:

- 4.1. The COUNTY shall pay for services out of appropriated funds and the COUNTY's performance under these Contract Documents is expressly subject to appropriation of funds by the Board of Supervisors.
- 4.2. The COUNTY agrees to pay fees as delineated in the Hillis-Carnes Engineering Associates, Inc. 2019-2020 Unit Fee Schedule for Spotsylvania County, VA.
- 4.3. Payments shall occur as follows:
 1. No deposit nor advance sums shall be paid;
 2. Payments are due net thirty (30) days after receipt by COUNTY of an accurate and properly submitted invoice to the COUNTY for materials and services as described in Article 2; if a corrected invoice is requested, then the thirty (30) days starts over at receipt of corrected invoice;
 3. All payments will be delivered through the US Postal Service. No request for special handling of checks will be honored.
- 4.4. Pursuant to Section 2.2-4354 of the Code of Virginia (1950, as amended), the CONTRACTOR covenants and agrees to:
 1. Within seven (7) days after receipt of any amounts paid to the CONTRACTOR under this Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the COUNTY attributable to the work under the Contract performed by such subcontractor, or (ii) notify the COUNTY and the subcontractor, in writing, of its intention to withhold all or part of the subcontractor's payment and the reason therefore;
 2. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the CONTRACTOR under the Agreement;
 3. Pay interest at the legal rate or such other rate as may be agreed to in writing by

the subcontractor and the CONTRACTOR on all amounts owed by the CONTRACTOR that remain unpaid after seven (7) days following receipt by the CONTRACTOR of payment from the COUNTY for work performed by the subcontractor under this Agreement; and

4. Include in its contracts with any and all subcontractors the requirements of 1, 2, and 3 above.

4.5. The parties hereby agree that any finance charge lawfully assessable against the COUNTY for failure to pay any payment(s) pursuant to the terms of this Agreement shall not exceed 2% per annum, and shall only accrue from the latest date such payment was due under the applicable provisions of this Agreement.

ARTICLE 5

RIGHTS AND RESPONSIBILITIES OF CONTRACTOR:

5.1. CONTRACTOR shall indemnify, defend and hold harmless the COUNTY and its representatives from any and all claims, suits and actions for injury or damage sustained by any person or property from any act or omission by CONTRACTOR and/or its subcontractors or employees, or anyone else for whom CONTRACTOR is or may be responsible. This section shall survive the termination of this Agreement.

5.2. CONTRACTOR agrees to obtain a business license from the Spotsylvania County Commissioner of Revenue if required by the Code of Virginia (1950, as amended) and/or Spotsylvania County Code and to present such license for inspection by the COUNTY if requested. CONTRACTOR also agrees to maintain as current all required business licenses and permits required by the Commonwealth of Virginia and to present such licenses and permits as may be requested or required by the COUNTY.

5.3. CONTRACTOR shall maintain the following insurance coverage, naming COUNTY as additional insured, during the course of this Agreement, and provide the COUNTY with certificates of insurance for said coverage upon execution of this Agreement:

1. General Liability – in an amount not less than \$1,000,000 for any occurrence involving bodily injury, and not less than \$1,000,000 for any occurrence involving property damage. Coverage should be provided on a per project/per location basis.

2. Automobile Liability Policy – in an amount not less than \$500,000 combined single limit bodily injury and property damage. This coverage shall include liability for use of hired and non-owned vehicles; and
3. Workers' Compensation – in compliance with all states in which CONTRACTOR does business, including Coverage B Employer's Liability in not less than the following amounts:
 - i. Bodily Injury by accident \$100,000 for each accident;
 - ii. Bodily Injury by disease, \$500,000 policy limit; and
 - iii. Bodily Injury by disease, \$100,000 for each employee.
4. Professional Liability Insurance in an amount not less than \$2,000,000 per claim and \$6,000,000 in the aggregate. The amount of coverage may increase according to the project value.

5.4. During the performance of this Agreement, CONTRACTOR agrees that:

1. It will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, 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; that it will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and that it will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor that such contractor is an equal opportunity employer. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement; and
2. It will include the provisions of the foregoing paragraph in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

5.5. During the performance of this Agreement, the CONTRACTOR agrees to:

1. Provide a drug-free workplace for the CONTRACTOR's employees; and comply with the Federal Drug Free Workplace Act;

2. 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;
3. State in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR that the CONTRACTOR maintains a drug-free workplace; and
4. 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 any site at which the performance of work is done in connection with this contract awarded to the CONTRACTOR, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

5.6. CONTRACTOR acknowledges that the Spotsylvania County Procurement Policy is applicable to this Agreement.

5.7. Except as noted in the Contract Documents, neither this Agreement, nor any part hereof, may be assigned or subcontracted by CONTRACTOR to any other party without the express written permission of the COUNTY.

5.8. The CONTRACTOR providing goods or services to the COUNTY under this Agreement represents and warrants to the COUNTY that it is:

1. Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable.
2. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986; and Virginia Code §2.2-4311.1.
3. Not requiring, and shall not require, any employee or subcontractor to sign an internal confidentiality agreement or statement prohibiting or otherwise

restricting, or purporting to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a department or agency authorized to receive such information, or otherwise violate any federal and state laws and regulations protecting employees for reprisal against whistleblowing;

4. Complying with federal, state and local laws and regulations applicable to the performance of the services procured; and
5. Complying fully with the Virginia Conflict of Interest Act.
6. The CONTRACTOR is authorized to transact business in the Commonwealth pursuant to Section 2.2-4311.2 of the Code of Virginia.

5.9. In the event of a termination under section 6.1 of this Agreement, CONTRACTOR acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the work performed plus its settlement and close-out costs. Under no circumstances shall CONTRACTOR, or any subcontractor, be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination under this section. Payment to CONTRACTOR of any and all sums already earned by CONTRACTOR under the terms of Article 4 constitutes CONTRACTOR's exclusive remedy for a termination hereunder.

5.10. CONTRACTOR agrees that it shall keep confidential all photographs, digital imagery, reports, information, or data given to CONTRACTOR by the COUNTY as well as any photographs, digital imagery, reports, studies, analysis, data tables, or calculations prepared by the CONTRACTOR under this Agreement. No release of any such data by the CONTRACTOR shall be made to any individual or organization without the prior written approval of the COUNTY, which approval the COUNTY shall be under no obligation to grant. CONTRACTOR further agrees that it shall fully obtain all rights and releases to photographs, digital imagery, reports, information, or data utilized in CONTRACTOR's final report and/or digital photo library before submission of the report and library to the COUNTY.

5.11. CONTRACTOR agrees to obtain a business license from the Spotsylvania County Commissioner of Revenue if required by the Code of Virginia (1950, as amended) and/or Spotsylvania County Code.

5.12. The CONTRACTOR shall not employ any employee who is a registered sex offender

and shall enforce the same restriction upon all subcontractors and agents of CONTRACTOR. Prior to starting work and quarterly during performance of the work, the CONTRACTOR shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of CONTRACTOR and sub-contractors who are employed by the CONTRACTOR or subcontractor. The CONTRACTOR shall furnish the COUNTY with evidence verifying compliance with the services. Notwithstanding any other provision of this Agreement, materially false statements by the CONTRACTOR about the sex offender status of its employees or agents shall be grounds for immediate termination of this Agreement.

ARTICLE 6

RIGHTS AND RESPONSIBILITIES OF COUNTY:

6.1. The COUNTY may cancel this Agreement and project for any reason upon ten (10) days' written notice in compliance with the notice procedure set forth in Article 7, Section 7.1 to the parties named therein. Anything contained in the Agreement to the contrary notwithstanding, a termination under this section shall not waive any right or claim to damages which COUNTY may have with respect to work performed or failed to be performed when it should have been by the CONTRACTOR. In either case, the COUNTY may pursue any cause of action which it may have by law or under this Agreement on account of such damages claimed by the COUNTY.

6.2. In case of default by the CONTRACTOR for failure to deliver or perform in accordance with the Contract specifications or terms and conditions, the COUNTY may procure the articles or services from other sources and hold the defaulting CONTRACTOR responsible for any resulting additional purchase and administrative costs including, but not limited to fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs. If the completion of the contract work results in increased costs to the COUNTY, a letter will be sent to the defaulted CONTRACTOR requiring payment for additional costs. When repayment is requested, the CONTRACTOR will be removed from future bidding until the repayment has occurred. Provided further, that the COUNTY reserves the right to debar CONTRACTOR from doing further business with the COUNTY. Failure of a CONTRACTOR's source to deliver is not considered to be an unavoidable cause. The burden of proof rests with the CONTRACTOR.

6.3. Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, in all invitations to

bid, requests for proposals, contracts, and purchase orders, the COUNTY does not discriminate against faith-based organizations.

“Faith-based Organization” means a religious organization that is or applies to be a CONTRACTOR to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If CONTRACTOR is a faith-based organization, then CONTRACTOR shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this Agreement the following notice:

NOTICE

Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the COUNTY and a faith-based organization, you are hereby notified as follows:

Neither the COUNTY's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the COUNTY Administrator.

ARTICLE 7

MISCELLANEOUS:

7.1. The following persons shall be contact persons for the parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this Agreement:

1. For COUNTY:

Edward Petrovitch
Interim Spotsylvania County Administrator
P.O. Box 99
Spotsylvania, VA 22553

With a copy to:

Spotsylvania County Attorney
P.O. Box 308
Spotsylvania, VA 22553

2. For CONTRACTOR/SECONDARY CONTRACTOR:
Robert Skepton, Chief Financial Officer
Hillis-Carnes Engineering Associates, Inc.
10971 Richardson Road
Ashland, VA 23005

The parties may amend such addresses by written notice to the opposite party at the given address.

7.2. The parties agree that this Agreement is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Virginia, and that proper venue, in the event of litigation concerning this matter, shall be in the Circuit Court of Spotsylvania County, Virginia. The parties agree that any litigation involving this Agreement shall be brought only in such court.

7.3. In the event that any provision of this Agreement is unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect and shall not be affected thereby.

7.4. The CONTRACTOR certifies that:

1. The bid or offer (1) was made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) was in all respects fair and without collusion or fraud, and (3) was or was intended to be competitive and free from any collusion with any person, firm or corporation;
2. The CONTRACTOR did not offer or receive any kickback from any other bidder or CONTRACTOR, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any

payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

3. The CONTRACTOR is not a party to nor has he participated in nor is obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of his bid proposal is to be performed;
4. The CONTRACTOR understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal Law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of these provisions; and
5. The CONTRACTOR or subcontractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

7.5. CONTRACTOR warrants to COUNTY that:

1. The work performed pursuant to the Agreement shall conform to all professional principles generally accepted as standards of the industry in the Commonwealth;
2. Any new materials and equipment furnished under this Agreement shall be of good quality and in working condition; and
3. The CONTRACTOR's work performed shall meet all of the requirements set forth in this Agreement.

7.6. Any reports, studies, photographs, negatives, or other documents prepared by CONTRACTOR in the performance of its obligations under this Agreement shall be remitted to the COUNTY by the CONTRACTOR upon completion, termination or cancellation of this Agreement. CONTRACTOR shall not use, willingly allow or cause to have such materials used for any purpose other than performance of CONTRACTOR's obligations under this Agreement without the prior written consent of the COUNTY. The COUNTY shall own the intellectual

property rights to all materials produced under this Agreement.

7.7. Any failure of the COUNTY to demand rigid adherence to one or more of the terms and provisions as set forth in this Agreement, on one or more occasions, shall not be construed as a waiver nor deprive the COUNTY of the right to insist upon strict compliance with the terms of this Agreement. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

7.8. The bankruptcy, takeover or merger, outright purchase of a majority of the voting capital stock by another organization, or other change in ownership or status of CONTRACTOR, or any assignment for the benefit of creditors shall fully obligate the newly formed organization, corporation or legal entity to fulfill all terms and conditions of this Agreement, and to perform or supply items in accordance with the specifications or descriptions contained herein. Should such newly formed organization, corporation or legal entity fail to fulfill all the terms and conditions of this Agreement or fail to perform or supply items in accordance with the specifications or descriptions contained herein to the satisfaction of the COUNTY, the COUNTY shall have the right unilaterally to terminate this Agreement and/or to pursue any remedy for damages and otherwise which is available at law and in equity. The COUNTY reserves the right to enforce any subcontract directly against the subcontractor, CONTRACTOR or any newly formed organization, corporation or legal entity. Failure of any subcontractor to perform shall not relieve CONTRACTOR of its obligation to fulfill the terms and conditions of this Agreement as set forth herein.

7.9. CONTRACTOR and COUNTY agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

7.10. Contractual claims and disputes shall be conducted pursuant to Section 4-7 of the current Spotsylvania County Procurement Policy.

7.11. Article and Paragraph headings are inserted for convenience only and are not a part of this Agreement.

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WITNESS the following signatures and seals in agreement with the above terms for Contract #18-17-TV-02, Geotechnical Engineering Services:

SPOTSYLVANIA COUNTY, VIRGINIA

By: _____
EDWARD PETROVITCH Dated
INTERIM COUNTY ADMINISTRATOR

HILLIS-CARNES ENGINEERING ASSOCIATES, INC.

By: _____ 4/12/19
ROBERT SKEPTON Dated
CHIEF FINANCIAL OFFICER

Approved as to form:

 4/12/19
Asst. COUNTY ATTORNEY Dated