

FORSYTH COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: SEPTEMBER 8, 2014 AGENDA ITEM NUMBER: 12

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT BETWEEN FORSYTH COUNTY AND KELLY SERVICES, INC. TO PROVIDE TEMPORARY SERVICES FOR GROUNDS AND FACILITY MAINTENANCE AND PARK CONSTRUCTION (PARKS AND RECREATION DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS: YES NO

SIGNATURE: *J. Dudley Watts, Jr.* DATE: September 3, 2014
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT BETWEEN
FORSYTH COUNTY AND KELLY SERVICES, INC.
TO PROVIDE TEMPORARY SERVICES FOR GROUNDS AND FACILITY
MAINTENANCE AND PARK CONSTRUCTION
(PARKS AND RECREATION DEPARTMENT)**

BE IT RESOLVED by the Forsyth County Board of Commissioners that the Chairman or County Manager and Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the attached contract between Forsyth County and Kelly Services, Inc. in the amount of \$58,000 to provide temporary services for grounds and facility maintenance and park construction in the form of twelve Park Attendants at \$12.53 per hour and six Maintenance Technicians Is at \$13.92 per hour, subject to a pre-audit certificate thereon by the Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney. The original contract is incorporated herein by reference.

BE IT FURTHER RESOLVED that the County Manager is hereby authorized to execute on behalf of Forsyth County contract amendments with this provider for these services within budgeted appropriations in current and future fiscal years if these services are necessary.

Adopted this the 8th day of September 2014.

NORTH CAROLINA)

AGREEMENT

FORSYTH COUNTY)

THIS AGREEMENT, made and entered into this 1st day of September, 2014 by and between Forsyth County, North Carolina (the "County"), and Kelly Services Inc. (the "Provider");

For the purposes of, and subject to the terms and conditions hereinafter set forth, the County hereby contracts for the services of the Provider, and the Provider agrees to provide services to the County in accordance with the terms of the agreement.

I.

A. The services to be provided by the Provider shall be as follows:

1. Provide up to twelve (12) Park Attendants and six (6) Maintenance Technician Is to start on October 1, 2014. Based on position requirements provided by County, Park Attendants shall have such qualifications as set forth in Attachment A, attached hereto and incorporated herein by reference. Based on position requirements provided by County, Maintenance Technician Is shall have such qualifications as set forth in Attachment B, attached hereto and incorporated herein by reference.
2. Provide the County with temporary staffing as needed to cover unexpected vacancies and unanticipated extended periods of medical related leave. Provider's assigned employees shall perform under the supervision of County.
3. Furnish to the County results obtained for each employee a current criminal background check, drug screen, require employees to execute confidentiality agreements with the County and other related documents as requested by the County before they begin their assignments with the County.
4. Providers' employees shall not be requested or required by County to operate County Vehicles.
5. Submit to the County, by the following week when services were provided, an invoice and back up documentation of services provided the previous week to the following address:

Forsyth County Parks and Recreation
201 N. Chestnut Street
Winston-Salem, NC 27101

County shall pay Provider's invoices upon receipt.

B. Forsyth County shall:

1. Provide in writing the number of positions and hours needed at least fourteen (14) days in advance unless it is for the replacement of an unsatisfactory employee provided by the Provider, in which case the Provider will be notified in writing that a replacement for that particular position is needed within 24 hours.

2. Provider's employees with adequate equipment, supplies, facilities, and other necessities essential to the work of Park Maintenance Staff and the notice of the required performance, and information on hours of work as well as information on hours of work as well as information on the County's policies.

C. Both Parties hereto understand and agree:

1. That the decision to contract with a particular individual by the Provider rests solely with Provider, and the County will consult with Provider on whether an assigned individual is providing the services as required, however, the authority to allow an individual referred by the Provider to remain on County premises to provide services rests solely with the County.
2. That any assigned individual that the County identifies within the first eight (8) hours of their first day in the County's sole discretion, as not suitable for this temporary assignment will result in no billing to the County by the Provider.
3. Each party hereto agrees that the County may solicit the employee of the Provider to permanent employment with the County after a period of ninety (90) days full-time employment (or 720 hours) through the Provider without any additional costs to the County.

II.

The services of the Provider shall begin on September 1st, 2014, and shall terminate on June 30, 2015, unless sooner terminated by mutual consent or as hereinafter provided that either party shall have the right to terminate this Agreement for services upon thirty (30) days notice in writing to the other party.

III.

The County agrees to pay the Provider a rate not to exceed \$12.53 per hour for Park Attendants and \$13.92 per hour for Maintenance Technician I provided by the Provider. Total payments under this contract are not to exceed \$58,000 during any fiscal year ending June 30, 2015. The County agrees that any hours worked by an employee of the Provider under this agreement over forty (40) hours per week shall be considered overtime to be billed and paid at time-and-a half, provided, however, that the County shall not pay time-and-a half for any person unless the Provider has received prior written permission of the Forsyth County Parks and Recreation Director for work greater than 40 hours per week in that particular week.

IV.

The Provider shall bill the County for services rendered during the preceding seven (7) days. The County shall pay all such bills within the following fifteen (15) days provided all elements of the Agreement are satisfactorily met.

The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider's acts or omissions. The Provider agrees to hold the County harmless from and against any and all claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider.

To the fullest extent permitted by law, the Provider shall defend, indemnify, and hold harmless Forsyth County, its Officials and Employees from and against all claims, damages, loss and expenses, including but not limited to attorney's fees, arising out of or arising wholly or in part due to any act or omission of the Provider or its employees, in the performance, or failure to adequately perform its obligations under this contract with Forsyth County.

Furthermore, the Provider agrees to protect, defend, indemnify, and hold Forsyth County, its officers, employees, and agents free and harmless from and against any and all losses, penalties, damages, settlement cost charges, professional fees or other expenses or liabilities of every kind and arising out of or relating to any and all claims, liens, demands, obligations, action, proceedings, or causes of action of every kind in connection with or arising out of this or any future agreement and/or the performance growing out of injury to the Provider or Provider's agents, servants, employees, subcontractors, or suppliers. The Provider furthermore agrees to investigate, handle, respond to, provide defense for all claims, liens, demands, obligations, action, proceedings, or causes of action of every kind and defend them at his sole expense and agrees to bear all other costs and expenses related thereof. These terms apply to this and any future agreement the Provider may have with Forsyth County.

The Provider shall not be treated as an employee with respect to the services performed hereunder for federal or state tax, unemployment or workers' compensation purposes. The Provider understands that neither federal, nor state, nor shall payroll tax of any kind be withheld or paid by the County on behalf of the Provider or the employees of the Provider. The Provider further understands and agrees that the Provider is fully responsible for the payment of any and all taxes arising from the payment of monies under this Agreement.

The Provider shall not be treated as an employee with respect to the services performed hereunder for purposes of eligibility for, or participation in, any employee pension, health, or other fringe benefit plan of the County.

The County shall not be liable to the Provider for any expenses paid or incurred by the Provider unless otherwise agreed in writing.

V.

The Provider shall maintain, at his/her sole expense, the following minimum insurance coverage:

A. Commercial General Liability Insurance. The Provider shall maintain occurrence version commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two times the occurrence limit. Such insurance coverage shall:

1. Include the County, its officials, officers, and employees as additional insured with respect to performance of the Services. The coverage shall contain no special limitations on the scope of protection afforded to the above listed insureds.

2. Be primary with respect to any insurance or self-insured retention programs covering the County, its officials, officers, and employees.
- B. Business Automobile Liability Insurance. The Provider shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired, and non-owned automobiles.
- C. Workers' Compensation and Employers' Liability Insurance. The Provider shall maintain workers' compensation insurance with North Carolina statutory limits and employers' liability insurance with limits of not less than \$500,000 each accident.
- D. Other Insurance Requirements. The Provider shall:
1. Prior to commencement of services, furnish the County with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the County. Certificates of Insurance shall specifically include the following statement: "Forsyth County, its officials, officers and employees are shown as additional insureds with respect to the performance of services by Kelly Services Inc".
 2. Provide certified copies of endorsements and policies, if requested by the County, in lieu of or in addition to certificates of insurance.
 3. Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of the services.
 4. Maintain such insurance from the time services commence until services are completed.
 5. Place such insurance with insurers authorized to do business in North Carolina and having A. M. Best Company ratings of not less than A:VII. Any alternatives to this requirement shall require written approval of the County's Risk Manager.
- E. The Provider understands and acknowledges that these insurance coverage requirements are minimums and that they do not restrict or limit the hold harmless provisions of this agreement.

VI.

1. All notices permitted or required to be given by one Party to this Agreement to the other Party to this Agreement and all questions about the Agreement from one Party to the other shall be addressed and delivered to the other Party's contract administrator as set out below. Either Party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other party.

For the County:

Sandra Cheeks, Office Administrator
Forsyth County Parks and Recreation
201 N. Chestnut Street
Winston-Salem, NC 27101

For the Provider:

Kelly Services, Inc.
999 W. Big Beaver Road
Troy, MI 48084
Attn: General Counsel

2. The Provider has no authority to enter into contracts or agreements on behalf of the County. The Provider shall operate as an independent contractor, and the County shall not be responsible for any of the Provider or Provider's employees' acts or omissions. The Provider agrees to hold the County harmless from and against any claims, expenses (including attorney fees), costs or liability for acts or omissions of the Provider or Provider's employees to the extent of Provider's negligence, violation of applicable law or failure to fulfill its obligations as a staffing service.

3. The Provider shall not subcontract any of the work contemplated under this Agreement without prior written approval from FCPR. The County shall not be obligated to pay for any work performed by any unapproved subcontractor.

4. The County shall not be liable to the Provider for any expenses paid or incurred by either the Provider or its employees.

This contract shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to choice of law principles.

This Agreement is the entire agreement between the parties as to the subject matter referenced herein, and no amendment may be made to this Agreement except with the prior written authorization of both parties.

The Provider declares that he/she has complied with all federal, state and local laws regarding business permits, certificates, and licenses that may be required to carry out the services to be performed under this Agreement.

As applicable, both parties agree to comply with all state and federal occupational safety and health laws, regulations and standards relating to services covered by this Agreement. As the provider of staffing services, Provider shall not be responsible for the environment in which assigned employees perform their work, the details of their work or their work product.

Provider and its subcontractors shall comply with article 2 of Chapter 64 and the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Provider to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law. It is the expectation of Forsyth County that the Provider will comply, and the Provider agrees to comply, with all applicable federal immigration laws in its hiring and contracting practices relating to services covered by this contract involving County funds, as outlined in the Resolution adopted by the Forsyth County Board of Commissioners at its regular meeting on October 23, 2006.

Provider agrees to comply with the applicable employer mandate provisions of the Affordable Care Act ("ACA") and agrees to treat its employees provided to the County under this Agreement as employees of the Provider. In the event that the ACA, or any law or regulation, requires the County to provide insurance coverage for Provider's employees, Provider agrees to provide such coverage on behalf of the County. The parties agree that there shall be no amendment to this Agreement unless such amendment is in writing executed by both parties.

IN WITNESS WHEREOF, the County and the Provider have set their hands and seals as of the day and year first above written.

FORSYTH COUNTY, NORTH CAROLINA

By: _____

ATTEST:

Clerk to the Board

(SEAL)

Provider

By: *[Handwritten Signature]* for Lisa Martin 8/12/14

Tax ID number: 38-1510762