

AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20____, by and between the County of Nelson, (“Owner”) and _____, whose office location and mailing address is _____ (“Architect/Engineer”) provides:

Owner intends to design and construct
_____ (the “Project”).

Owner and Architect/Engineer in consideration of their mutual covenants herein agree in respect of the performance of professional Architect/Engineer services by Architect/Engineer and the payment for those services by Owner as set forth below.

The scope of work for Architect/Engineer will include those items listed in Exhibit A regarding all phases of the Project. Owner and Architect/Engineer also agree that additional services can be provided by the Architect/Engineer to the Owner for the Project as mutually agreed upon by addendum to this Agreement.

Architect/Engineer shall provide professional architectural/engineering services for Owner, serve as Owner’s professional architectural/engineering representative for the Project as set forth below and shall give professional architectural/engineering consultation and advice to Owner during the performance of services hereunder.

SECTION 1 – BASIC SERVICES OF ARCHITECT/ENGINEER

1.1. General.

Architect/Engineer shall perform professional services as hereinafter stated which shall include customary civil, structural, mechanical and electrical architectural/engineering services and customary architectural services incidental thereto. Architect/Engineer shall perform all services hereunder: (i) expeditiously and consistent with the orderly progress of the project; (ii) in accordance with the standard of care and skill of the architectural/engineering professions existing as of the date such services are provided; (iii) in accordance with all applicable laws, codes and regulations in effect at the time the Final Design Phase is complete; and (iv) in accordance with current standard technology for complete similar project systems accepted within the industry as of the time the Final Design Phase is complete.

1.2. Schematic Design Phase. Scope of Services.

After written authorization to proceed, Architect/Engineer shall:

- 1.2.1 Consult with Owner to clarify and define Owner’s requirements for the Project and review available data.

- 1.2.2 Advise Owner as to the necessity of Owner's providing or obtaining from others data or services of the types described in Paragraph 3.2, and act as Owner's representative in connection with any such services.
- 1.2.3 Provide analyses of Owner's needs, planning surveys, site evaluations and comparative studies of prospective sites and solutions.
- 1.2.4 If requested, provide a general economic analysis of Owner's requirement applicable to various alternatives.
- 1.2.5 Prepare a Schematic Architectural/Engineering Report containing schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate clearly the considerations involved and the alternative solutions available to Owner and setting forth Architect/Engineer's findings and recommendations with opinions of probable costs for the Project, contingencies, allowances for charges of all professionals and consultants, compensation for or damages to properties and interest and financing charges (all of which are hereinafter called "Project Costs"). The cost estimate in this Report shall consist of the Architect/Engineer's in-house cost estimation, which shall be reviewed by the Owner's Clerk of the Works, or such other representative as the Owner might designate (the "Owner's Representative").
- 1.2.6 Furnish ten (10) copies of the Report and present and review it in person with the Owner's Representative.
- 1.2.7 Upon completion of Schematic Design Phase, the Owner shall have the option of authorizing the Architect/Engineer to continue with the Preliminary Design Phase, the Final Design Phase, the Bidding Phase, and the Construction Phase as provided herein.

1.3. Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, Architect/Engineer shall:

- 1.3.1 In consultation with Owner and on the basis of the accepted Schematic Architectural/Engineering Report, determine the extent of the Project.
- 1.3.2 Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.
- 1.3.3 Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.
- 1.3.4 Furnish copies of the above preliminary design documents and present and review them in person with Owner. Architect/Engineer shall participate in separate reviews with Owner's staff and with Owner's Representative. Provide to Owner

seven (7) full copies and one (1) half-sized copy for review with Owner's staff and Representative.

- 1.3.5 Provide to Owner for review and approval the preliminary design documents at 100% of completion.

1.4 Final Design Phase.

After written authorization to proceed with the Final Design Phase, Architect/Engineer shall:

- 1.4.1 On the basis of accepted preliminary design documents and the revised opinion of probable Project Costs, prepare Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications. Contract Documents shall include Drawings and Specifications, along with general and supplementary conditions and other documents identified as such in the Bidding Documents described in Paragraph 1.5.1. Architect/Engineer shall furnish Owner with six (6) sets of the Drawings and Specifications.
- 1.4.2 Prepare in consultation with Owner such documents and design data including, but not limited to, environmental impact statements, as may be required for Architect/Engineer, on behalf of Owner, to apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and obtain such approvals by submitting appropriate materials to and negotiating with appropriate authorities. Payment to Architect/Engineer by Owner for environmental impact statement, if needed, shall be negotiated before services are rendered.
- 1.4.3 Advise Owner of any adjustments to the latest opinion of probable Project Costs caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Costs based on the Drawings and Specifications.
- 1.4.4 Prepare for review and approval by and consult with Owner, his legal counsel and other advisors to conform Owner's standard construction contract agreement forms ("Construction Contract General Conditions"), and supplementary conditions for use on the Project. Prepare for review and approval by Owner, bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.
- 1.4.5 Furnish copies of the above preliminary design documents and present and review them in person with Owner. Architect/Engineer shall participate in separate reviews with Owner's staff and Representative. Provide to Owner seven (7) full copies and one (1) half-sized copy for review with Owner's staff and Representative and such additional copies as Owner may designate for review with other representatives designated by the Owner.

1.4.6 Provide to Owner for review and approval the final design documents at 100% of completion.

1.5. Bidding or Negotiating Phase.

After written authorization to proceed with Bidding or Negotiating Phase, Architect/Engineer shall:

1.5.1 Prepare Bidding Documents to consist of bidding requirements, contract documents conforming to Owner's Construction Contract General Conditions and other standard forms, Specifications and Drawings.

1.5.2 Assist Owner in establishing a list of prospective contractors and, upon Owner's request, assist in pre-qualifying prospective bidders in accordance with the requirements of Section 2.2-4317 of the Virginia Public Procurement Act.

1.5.3 Upon Owner's request: procure copying and assembly of Bidding Documents for distribution to prospective bidders; distribute Bidding Documents to prospective bidders; prepare and maintain a record of distribution of Bidding Documents, receipt and returns of deposits, if applicable, and return bids. Bidder to pay Architect/Engineer for Contract Documents at Architect/Engineer's cost plus 10% plus the cost for shipping and handling.

1.5.4 Prepare and distribute written responses to questions from prospective bidders and prepare and distribute addenda when appropriate to clarify or correct the Bidding Documents.

1.5.5 Organize and conduct pre-bid conferences and bid openings for each separate prime contract for construction, materials, equipment and services.

1.5.6 Consult with and advise Owner as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor's") for those portions of the work as to which such acceptability is required by the bidding documents.

1.5.7 Consult with and advise Owner as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

1.5.8 Assist Owner in evaluating bids or proposals and in assembling and awarding contracts.

1.5.9 Consult with Owner to discuss ways to reduce project cost if the lowest bona fide bid received exceeds the Probable Cost.

1.6. Construction Phase.

During the Construction Phase Architect/Engineer shall:

- 1.6.1 Consult with and advise Owner and act as his representative as provided in the Construction Contract General Conditions. Architect/Engineer shall coordinate the performance of its duties and responsibilities with the Owner's Authorized Representative, an individual or entity to be identified in the Construction Contract. Architect/Engineer recognizes that Architect/Engineer's authority during the Construction Phase is strictly limited as set forth herein and in the Construction Contract General Conditions. The extent and limitations of the duties, responsibilities and authority of Architect/Engineer are as assigned in said Construction Contract except as Architect/Engineer may otherwise agree in writing. All of Owner's instructions to Contractor(s) will be issued through the Owner's Representative.
- 1.6.2 Make visits to the site at intervals appropriate to the various stages of construction to perform all duties and responsibilities set forth herein and observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor and to determine in general if such work is proceeding in accordance with the Contract Documents. Architect/Engineer shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work. Architect/Engineer shall be responsible for its negligent acts and omissions, but shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). Architect/Engineer's efforts will be directed toward providing a greater degree of confidence for Owner that the completed work of Contractor(s) will conform to the Contract Documents, but Architect/Engineer shall not be responsible for the failure of Contractor(s) to perform the work in accordance with Contract Documents. During such visits and on the basis of on-site observations Architect/Engineer shall keep Owner informed of the progress of the work, shall endeavor to guard Owner against defects and deficiencies in such work and may disapprove or reject work failing to conform to the Contract Documents.
- 1.6.3 Review and approve (or take appropriate action in respect to) Shop Drawings (as that term is defined in the Construction Contract General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not accede to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instruction, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents; maintain and make available for review and/or copying by Owner project files including but not limited to Shop Drawings and other submittals, minutes of meetings

attended by Architect/Engineer, correspondence, change orders, field orders and Construction Contract modifications, and other documents related to the Project.

- 1.6.4 Issue all instructions of Owner to Contractor(s) when instructed to do so by Owner's Representative; issue necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare change orders for consideration by the Owner and/or Owner's Representative as required; prepare other change order documents within the general scope of the Construction Contract as may be required; make recommendations to Owner on any change orders suggested by the Contractor; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make recommendations on all claims of Owner and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but Architect/Engineer shall not be liable for the results of any such interpretations or decisions rendered by him in good faith and in accordance with the standard of care as set forth in Paragraph 1.1.1.
- 1.6.5 Based on Architect/Engineer's on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amount owing to Contractor(s) and recommend in writing payments of Contractor(s) in such amounts; such recommendations of payment will constitute a representation to Owner, based on such observations and review, that the work has progressed to the point indicated, that, to the best of Architect/Engineer's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment Architect/Engineer will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by Architect/Engineer to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or program incident thereto or that Architect/Engineer has made an examination to ascertain how or for what purposes Contractor has used the monies paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to Owner free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.
- 1.6.6 Conduct an inspection to determine if the Project is substantially complete, prepare a Punch List of items to be completed, corrected, or repaired, monitor and advise Owner on Contractor's completion of Punch List items, and conduct a final inspection to determine if the work has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations

thereunder so that Architect/Engineer may recommend, in writing, final payment to each Contractor and may give written notice to Owner and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in Paragraph 1.6.5. Architect/Engineer will rely upon the observations of the Owner's Representative of work not visible at the time of the final inspection and his witnessing of any tests and equipment startups when conducting the final inspection.

- 1.6.7 After the Contractor has furnished his marked "as-built" plans and based on the information contained therein, as well as on the Architect/Engineer's observations, prepare Architect/Engineer's certified "as-built" plans in both paper form and electronic form as designated by the Owner.
- 1.6.8 Be responsible for its own acts and omissions, but not be responsible for the acts or omissions of any Contractor, or subcontractor, or any of the Contractor(s) or subcontractors' agents or employees of any other persons (except Architect/Engineer's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work; however, nothing contained in Paragraphs 1.6.1. through 1.6.7, inclusive, shall be construed to release Architect/Engineer from liability for failure to properly perform duties undertaken by him in the Contract Documents.
- 1.6.9 Bear all reasonable costs incident to compliance with the requirements of this Section 1.

SECTION 2 – ADDITIONAL SERVICES FROM ARCHITECT/ENGINEER

2.1. General.

If authorized in writing by Owner, Architect/Engineer shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services except to the extent provided otherwise in Exhibit A; these will be paid for by Owner as indicated in Section 5.

- 2.1.1 Unless reasonably necessary to perform Basic Services hereunder, services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner.
- 2.1.2 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, Owner's schedule, or character of construction or method of financing; and revising previously accepted duties, reports, design documents or Contract Documents when such revisions are due to causes beyond Architect/Engineer's control.

- 2.1.3 Preparing documents for alternate bids requested by Owner for Contractor(s) work which is not executed or documents for out-of-sequence work not caused by Architect/Engineer.
- 2.1.4 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value architectural/engineering during the course of design except as required by Paragraph 1.5.9; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by Owner.
- 2.1.5 Furnishing the services of special consultants for other than the normal civil, structural, mechanical and electrical Architect/Engineering and normal architectural design incidental thereto, such as consultants for asbestos, lead or hazardous materials surveys and services relating to the mitigation or removal of asbestos, lead or other hazardous materials, interior design, furniture, furnishings, communications, acoustics, kitchens and landscaping; and providing data or services of the types described in Paragraph 3.2 when Owner authorizes Architect/Engineer to provide such data or services in lieu of furnishing the same in accordance with Paragraph 3.3.
- 2.1.6 Services resulting from the award of more separate prime contracts for construction, material, equipment or services for the Project than are contemplated by Exhibit A and services resulting from the arranging for performance by persons other than the principal prime contractors of services for the Owner and administering Owner's contracts for such services.
- 2.1.7 Providing boundary surveys or staking to enable Contractor(s) to proceed with their work; and providing other special field surveys.
- 2.1.8 Services in connection with change orders to reflect changes requested by Owner if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, services after the award of each contract in evaluating substitutions proposed by Contractor(s), and in making revisions to Drawings and Specifications occasioned thereby, and services resulting from significant delays, changes or price increases occurring as a direct result of material, equipment or energy shortages unless Architect/Engineer knew of, should have known of, or should have prevented such substitutions, revisions, delays, changes or price increases.
- 2.1.9 Services during out-of-town travel required of Architect/Engineer other than visits to the site as required by Section 1.

- 2.1.10 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction; (2) a significant amount of defective or neglected work by Contractor(s); (3) prolongation of the contract time of any prime contract by more than the time set forth in the bid documents when Architect/Engineer has not caused or contributed to such prolongation; (4) acceleration of the progress schedule involving services beyond normal working hours when Architect/Engineer has not caused or contributed to such acceleration; and (5) default by Contractor(s).
- 2.1.11 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.
- 2.1.12 Preparing to serve or serving as a consultant or witness for Owner in any litigation, public hearing or other legal or administrative proceeding involving the Project (except as agreed to under Basic Services or in response to a subpoena issued on behalf of a court of competent jurisdiction).
- 2.1.13 Additional services in connection with the Project, including services normally furnished by Owner and services not otherwise provided for in this Agreement.
- 2.1.14 Additional services required in connection with changes in the applicable regulations to include but not limited to Local, State, and Federal oversight agencies made after completion of extra work and cost after contract is signed and the Final Design Phase.

2.2. Resident Services during Construction.

- 2.2.1 Owner may designate a Clerk of the Works, or other representative, who shall function as Owner's Representative. Owner's Representative shall report both to the Architect/Engineer and to the Clerk of the Board of Supervisors with daily observations and recommendations as to progress of the Contractor during construction. The Architect/Engineer and the Owner's Representative shall coordinate their activities through the Clerk of the Board of Supervisors.

SECTION 3 – OWNER'S RESPONSIBILITIES

Owner shall:

- 3.1 Provide all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications.

- 3.2.** Furnish Architect/Engineer all available information pertinent to the Project as required by law or this Agreement including previous reports and any other data relative to design or construction of the Project.
- 3.3.** Provide boundary surveys and easement plats to enable Architect/Engineer to proceed with the topographic survey of the site and location of needed improvements and to allow the Owner to acquire easements and property.
- 3.4.** Arrange for access to and make all provisions for Architect/Engineer to enter upon public and private property as required for Architect/Engineer to perform his services.
- 3.5.** Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by Architect/Engineer, obtain advice of an attorney, insurance counselor and other consultants as Owner deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Architect/Engineer.
- 3.6.** Furnish associated fees as well as approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.7.** Provide such accounting, independent cost estimating, insurance and value architectural/engineering, counseling services as may be required for the Project, such legal services as Owner may require or Architect/Engineer may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Owner may require to ascertain how or for what purpose any Contractor has used the monies paid to him under the construction contract, and such inspection services as Owner may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.
- 3.8.** Designate in writing a person to act as Owner's Representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies and decisions with respect to materials, equipment, elements and systems pertinent to Architect/Engineer's services.
- 3.9.** Give prompt written notice to Architect/Engineer whenever Owner observes or otherwise becomes aware of any development that affects the scope or timing of Architect/Engineer's services, or any defect in the work of Contractor(s).
- 3.10.** Furnish, or direct Architect/Engineer to provide, necessary Additional Services as stipulated in Section 2 of this Agreement or other services required.

3.11. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 – PERIOD OF SERVICE

- 4.1.** The provisions of this Section 4 and the various rates of compensation for Architect/Engineer's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project. Except as otherwise provided in an Exhibit or addendum, the Architect/Engineer's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts and construction of the Project including extra work and required extensions thereto.
- 4.2.** After acceptance by Owner of the Schematic Architectural/Engineering Report Phase documents indicating any specified modifications or changes in the extent of the Project desired by Owner and upon written authorization from Owner, Architect/Engineer shall proceed with the performance of the services called for in the Schematic Design Phase and shall submit preliminary design documents and a revised opinion of probable Project Cost.
- 4.3.** After acceptance by Owner of the Preliminary Design Phase documents and revised opinion of probable Project Cost, indicating any specific modifications or changes in the extent of the Project desired by Owner, and upon written authorization from Owner, Architect/Engineer shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Project Cost for all work of Contractor(s) on the Project.
- 4.4.** Architect/Engineer's services under the Schematic Design Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by the Owner, or (2) thirty (30) days after the date when such submissions are delivered to Owner for final acceptance, plus such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction over design criteria applicable to the Project.
- 4.5.** After acceptance by Owner of the Architect/Engineer's Drawings, specifications and other Final Design Phase documentation including the most recent opinion of probable Project Cost and upon written authorization to proceed, Architect/Engineer shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of the negotiations with prospective Contractor(s).
- 4.6.** The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will

terminate upon written approval by Architect/Engineer of final payment on the last prime contract to be completed. Construction Phase services may be rendered at different times in respect of separate prime contracts if the Project involves more than one prime contract.

- 4.7.** If Owner has requested significant modification or changes in the extent of the Project, the time or performance of Architect/Engineer's services and his various rates of compensation may be renegotiated.
- 4.8.** If Owner fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within sixty (60) calendar days after completion of the Final Design Phase, Architect/Engineer may, after giving seven (7) days written Notice to Owner and if Owner does not respond, suspend services under this Agreement.
- 4.9.** If Architect/Engineer's services for design or during construction of the Project are delayed or suspended in whole or in part by Owner for more than three (3) months for reasons beyond Architect/Engineer's control, Architect/Engineer shall on written demand to Owner (but without termination of this Agreement) be paid as provided in Paragraph 5.2.1. If such delay or suspension extends for more than one (1) year for reasons beyond Architect/Engineer's control, or if Architect/Engineer for any reason is required to render services for more than one (1) year after Substantial Completion, the various rates of compensation provided for elsewhere in this Agreement may be renegotiated.
- 4.10.** In the event that the work designed or specified by Architect/Engineer is to be performed under more than one prime contract, Owner and Architect/Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for the performance of Architect/Engineer's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as applicable to the work under separate contracts. This schedule is to be prepared whether or not the work under such contract is to proceed concurrently and the provisions of Paragraph 4.4 through 4.10, inclusive, will be modified accordingly.
- 4.11** Owner's Representative is Owner's Agent, will act as directed by and under the supervision of Owner, and will confer with Owner regarding his actions. Owner's Representative's dealings in matters pertaining to the on-site work shall in general be only with Architect/Engineer and Contractor(s), and dealings with subcontractors shall only be through or with the full knowledge of Contractor(s). Written communication with Owner will generally be through the Architect/Engineer. The Owner may require copies of reports or communications be sent directly to the Owner.

SECTION 5 – PAYMENTS TO ARCHITECT/ENGINEER

5.1. Methods of Payment for Services and Expenses of Architect/Engineer.

- 5.1.1. For Basic Services. Owner shall pay Architect/Engineer according to the provisions of Exhibit A for Basic Services rendered pursuant to Section 1. Further services and payment therefor pursuant to Section I, if any, will be in accordance with addendum to this Agreement.
- 5.1.2. For Additional Services. Owner shall pay Architect/Engineer for Additional Services rendered under Section 2 in accordance with addendum to this Agreement.

5.2. Times of Payment.

- 5.2.1. Architect/Engineer shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon Architect/Engineer's estimate of the proportion of the total services actually completed at the time of billing.

5.3. Other Provisions Concerning Payments.

- 5.3.1. If Owner fails to make any payment due Architect/Engineer for services and expenses within forty-five (45) days from the receipt of Architect/Engineer's bill therefore, the amounts due Architect/Engineer shall include a charge at the rate of 0.75% per month from said forty-fifth (45th) day, and in addition, Architect/Engineer may, after giving seven (7) days written notice to Owner, suspend services under this Agreement until he has been paid in full all amounts due him for services and expenses.
- 5.3.2. In the event that the Architect/Engineer and the Owner's Representative do not agree on the amount owing to the Contractor based upon the percentage of work done, the Architect/Engineer and the Representative will meet with the Owner's Clerk of the Board of Supervisors who, after consulting with both the Architect/Engineer and the Representative, shall determine the appropriate payment to be made.
- 5.3.3. In the event of termination by Owner under Paragraph 7.1. for convenience and not for cause, upon the completion of any phase of the Basic Services, progress payments due Architect/Engineer for services rendered through such phase shall constitute total payment for such services. In the event of such termination by Owner during any phase of the Basic Services, Architect/Engineer will be paid for services rendered during that phase on the basis of the percent of the work completed. In the event of any such termination, Architect/Engineer will be paid for all unpaid Additional Services actually performed on a percent complete basis and unpaid Reimbursable Expenses, plus all termination expenses. Termination

expenses include expenses directly attributable to termination and for which Architect/Engineer is not otherwise compensated.

- 5.3.4. In the event of termination by Owner for cause, Architect/Engineer shall be paid such amount as the parties may mutually agree or as otherwise may be determined.

5.4. Definitions.

- 5.4.1. The Payroll Costs used as a basis for payment mean salaries and wages (basic and incentive) paid to all personnel engaged directly on the Project, including, but not limited to architects/engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical personnel, stenographers, typists and clerks; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.
- 5.4.2. Reimbursable Expenses mean the actual expenses incurred directly in connection with the Project for: obtaining bids or proposals from Contractor(s); furnishing and maintaining field office facilities; subsistence and transportation (not to exceed the federal automobile reimbursement rate) of Resident Project Representatives and their assistants; toll telephone calls; reproduction of reports, drawings, specifications, and similar Project-related items in addition to those required under Section 8; and, if authorized in advance by Owner, overtime work requiring higher than regular rates.

SECTION 6 – CONSTRUCTION COST AND OPINIONS OF COST

6.1. Construction Cost.

The construction cost of the entire Project (herein referred to as “Construction Cost”) means the total cost of the entire Project to Owner, but it will not include Architect/Engineer’s compensation and expenses, the cost of land, rights-of- way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include Owner’s legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project. (Construction Cost is one of the items comprising Project Costs which is defined in Paragraph 1.2.5.).

6.2. Opinions of Cost.

- 6.2.1. Since Architect/Engineer has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)’ methods of determining prices, or over competitive bidding or market conditions, his opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of his experience and qualifications and represent his best

judgment as an experienced and qualified professional Architect/Engineer, familiar with the construction industry; but Architect/Engineer cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by him.

SECTION 7 – GENERAL TERMS AND CONDITIONS

7.1. Termination.

- 7.1.1. Termination for Cause. The obligation to provide further services under this Agreement may be terminated by either party upon fifteen (15) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 7.1.2. Termination for Convenience. The obligation to provide further services under this Agreement may be terminated by Owner for its convenience, and not for cause, upon fifteen (15) days written notice. Architect/Engineer shall be compensated for work performed through the date of termination, and for termination expenses, in accordance with Paragraph 5.3.2., but Owner shall not be liable to Architect/Engineer for lost profit on services not performed as a result of such Termination for Convenience.

7.2. Reuse of Documents.

Architect/Engineer shall retain all right, title and interest in all copyrights, patents, service marks, trade secret, and other intellectual property rights in and to all technical or internal designs, methods, ideas, concepts, techniques and templates previously developed by Architect/Engineer or developed during the course of the provision of services hereunder. Drawings, Specifications and other documents, including electronic data, prepared by Architect/Engineer pursuant to this Agreement are Instruments of Service in respect of the Project and will be the sole property of Owner. Instruments of Service are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Any reuse by or on behalf of Owner without written verification or adaptation by Architect/Engineer for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Architect/Engineer. Any such verification or adaptation by Architect/Engineer will entitle Architect/Engineer to further compensation at rates to be agreed upon by Owner and Architect/Engineer. If termination should occur, Architect/Engineer will not be required to seal incomplete work.

7.3 Force Majeure.

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to an event outside the reasonable control and not the fault of the affected party (a "Force Majeure Event"). Examples of a Force Majeure Event include, but are not limited to, natural disasters, acts of God, terrorism, war, civil disorder, fire, flood, explosion,

riot, labor disputes or strikes (labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract), any act or order of any governmental authority, lockouts or work stoppages of any kind, theft, windstorm, water, vandalism, failure of power or utilities, or other similar causes, beyond the control of the parties which delays or prevents the performance of the agreement. It is understood that both parties shall exercise due care and prudence to avoid a Force Majeure Event. A Force Majeure Event shall not constitute a breach of contract. If either party is prevented, wholly or in part, from performing its obligations under this contract as a result of a Force Majeure Event, then that party shall immediately give notice to the other party of the Force Majeure Event and take reasonable steps to mitigate the impact of Force Majeure Event on contract performance. Upon such notice, all obligations of the affected party under the contract which are reasonably related to the Force Majeure Event shall be suspended as long as the affected party takes reasonable steps to mitigate the impact of Force Majeure Event on contract performance until the Force Majeure Event no longer exists.

7.4 Relationship of Parties.

The Architect/Engineer's relationship with the County shall at all times be that of an independent contractor. This Agreement shall not be construed to designate the Architect/Engineer, or any of its officers, employees, as either employees or agents of the County.

7.5. Successors and Assigns.

7.5.1. Owner and Architect/Engineer each binds himself and his partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

7.5.2. Neither Owner nor Architect/Engineer shall assign, sublet or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Architect/Engineer from employing such independent consultants, associates and subcontractors as he may deem appropriate, and to which Owner has no reasonable objection, to assist him in the performance of services hereunder.

7.6. Insurance.

The Architect/Engineer shall, during the performance of this Agreement, at its sole expense, obtain and maintain during the life of this contract insurance policies of the type, in the amount and subject to the terms required by County, including without limitation: (i) commercial general liability insurance with minimum limits of liability of \$2,000,000 combined single limit for any one occurrence; (ii) broad form contractual liability insurance, which shall include the indemnification obligation set forth in this Agreement; (iii) workers' compensation and employer's liability insurance covering the statutory obligation under the laws of the Commonwealth of Virginia; (iv) automobile liability insurance with at least a \$500,000 combined single limit applicable to owned or non-owned vehicles used in the performance of any work under this contract; and (v) professional liability and errors and omissions insurance with minimum limits of \$2,000,000 per claim and \$4,000,000 policy aggregate (professional liability insurance coverage shall be maintained for five years after completion of the project). Any required insurance policies shall be effective prior to the beginning of any work under this contract. All insurance except professional liability shall be written on an occurrence basis. In addition, (i) the Architect/Engineer shall furnish County a certificate or certificates of insurance showing the type, amount, effective dates, and date of expiration of the policies; (ii) the required certificate or certificates of insurance, excluding those for workers' compensation and professional liability, shall name County and its officers, trustees, directors, volunteers, employees, and agents as additional insureds; (iii) the required certificate or certificates of insurance shall require 30 days advance, written notice to County before being cancelled; and (iv) any insurance company providing coverage under the contract shall be authorized to do business in the Commonwealth of Virginia.

7.7 Indemnification.

The Architect/Engineer shall indemnify and hold harmless the County, its officers, agents and all employees and volunteers, from any and all claims of bodily injury, personal injury or property damage, including the cost of investigation, all expenses of litigation, including reasonable attorney fees, and the cost of appeals arising out of any claims or suits which result from error, omissions, or negligent acts of the Architect/Engineer or its sub-contractors and their agents and employees. Architect/Engineer shall indemnify and hold harmless the County against and from all liability, claims, damages and costs, including attorney's fees of every kind and nature attributable to bodily injury, sickness, disease, or death or to damage or destruction of property resulting from or in any manner arising out of or in connection with the performance of the work under this Agreement. The provisions of this section shall survive the termination or other conclusion of this Agreement.

7.8 Nondiscrimination.

During the performance of this Agreement, Architect/Engineer agrees as follows (Code of Virginia, Section 2.2-4311):

- a. Architect/Engineer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or 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 Architect/Engineer. Architect/Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b. Architect/Engineer in all solicitations or advertisements for employees placed by or on behalf of Architect/Engineer, shall state that such Architect/Engineer is an equal opportunity employer.
- c. Notices, advertisements and solicitations placed in accordance with Federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Architect/Engineer shall include the provisions of the foregoing paragraphs of this section in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

7.9 Drug-Free Workplace to be Maintained by the Architect/Engineer.

During the performance of this Agreement, Architect/Engineer agrees as follows (Code of Virginia, Section 2.2-4312):

- a. Architect/Engineer shall provide a drug-free workplace for all of its employees. Architect/Engineer agrees to 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 workplace and specify the actions that will be taken against employees for violations of this prohibition.
- b. Architect/Engineer, in all solicitations or advertisements for employees placed by or on behalf of Architect/Engineer shall state that such Architect/Engineer maintains a drug-free workplace.
- c. Notices, advertisements and solicitations placed in accordance with federal law, rule of regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

Architect/Engineer shall include the provisions of the foregoing paragraphs of this section in every subcontract or purchase order of over \$10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

- 7.10 Faith Based Organizations.** The County does not discriminate against faith based organizations.
- 7.11 Immigration Law.** Architect/Engineer covenants that it does not, and shall not during the performance of this Agreement for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.
- 7.12. Acceptance.** Neither payment, final or otherwise, nor partial or entire use, occupancy or acceptance of the Project by the County shall operate as an acceptance of any products or services not in accordance with this Agreement, nor shall same relieve Architect/Engineer of any responsibility for negligence, errors, or omissions in connection with the Project or operate to release the Architect/Engineer from any obligation under the Agreement.
- 7.13 Contractual Claims.** The procedure for reviewing and resolving contractual claims and resolving contractual disputes shall be the procedure set forth in Virginia Code § 2.2-4363.C.
- 7.14 Severability.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court should find that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it becomes valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 7.15 Waiver of Contractual Right.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.
- 7.16 Applicable Law, Venue.** The laws of the Commonwealth of Virginia shall apply in the construction and enforcement of this Agreement. The sole venue for any proceeding between the parties regarding this Agreement shall lie in the Circuit Court of Nelson County, Virginia.
- 7.17 Entire Agreement.** This Agreement, together with the Exhibits and Schedules, contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties and may not be modified or amended unless the amendment is made in writing and is signed by both parties. In the event of any conflict between the provisions contained

herein and those appearing in an exhibit or schedule the provisions of the document deemed by the County to be most favorable to the County shall prevail.

SECTION 8 – SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1. This Agreement is subject to the following special provisions: _____.
- 8.2. The following Exhibits are attached to and made a part of this Agreement:
 - 8.2.1. Exhibit A “Scope of Work” dated _____.
 - 8.2.2. Exhibit B “Request for Proposal” dated _____.
 - 8.2.3. Exhibit C “Proposal” dated _____.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first-above written.

County of Nelson, Virginia

By: _____
Stephen A. Carter
County Administrator

By: _____

Its: _____

APPROVED AS TO FORM:

County Attorney

Date: ____ / ____ / ____