SAMPLE

\*Contract will need to be modified for Architect or Engineer.

**ALLEGHANY COUNTY/ALLEGHANY COUNTY SCHOOL BOARD**

**TERM SERVICES CONTRACT FOR**

**ARCHITECTURAL/ENGINEERING SERVICES**

 **THIS TERM SERVICES CONTRACT ("Contract")**, is made this day of , 2018, by and between Alleghany County, Virginia or Alleghany County School Board (the "Owner" or “County/School Board”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Architect/Engineer") with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 **WITNESSETH**:

 **WHEREAS,** the Owner desires to retain the Architect/Engineer to provide professional services necessary for multiple potential projects as set forth in County/School Board’s RFP dated \_\_\_\_\_\_\_\_; and

 **WHEREAS**, the Architect/Engineer agrees to enter into this Contract to be considered to furnish the necessary professional services for County/School Board projects.

 **NOW THEREFORE**, in consideration of the benefits which will accrue to the parties hereto by virtue of this Contract and the respective covenants herein contained, **IT IS MUTUALLY COVENANTED AND AGREED AS FOLLOWS:**

**ARTICLE 1- GENERAL PROVISIONS**

1.1 **Definitions**. Definitions applicable to this Contract are attached hereto as Exhibit "A" and incorporated by reference herein.

1.2 **Project Contracts.** Separate project contracts will be created for each project awarded and accepted by Architect/Engineer under this Term Services Contract that will incorporate the terms and conditions set forth herein. Architect/Engineer understands and agrees that there is no guarantee that any project will be awarded to Architect/Engineer and that the County/School Board may enter into term services contracts with other firms for similar work. Projects will be awarded using the County/School Board’s policy for awarding multiple projects. Compensation for each project will be negotiated between the parties.

1.3 **Effective Date**. This Contract shall be effective when it has been fully executed by the parties and all required insurance certifications have been provided to County/School Board. All insurance must remain in effect until all projects awarded have been completed and accepted by the County/School Board.

1.4 **Services; Standard of Care**. The Architect/Engineer shall exercise a high degree of care and diligence in providing the professional services under this Contract. The services shall be performed as expeditiously as is consistent with such high standards, and shall be provided in accordance with all applicable professional guidelines and codes. Notwithstanding any approval of or concurrence by Owner regarding documents or services provided by Architect/Engineer hereunder, the Architect/Engineer shall be solely responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications and other services furnished pursuant to this Contract. The Architect/Engineer shall be liable to the Owner for damages caused by Architect/Engineer's failure to provide professional services to the degree required.

1.5 **Attendance at Conferences**. Architect/Engineer shall attend all necessary conferences and meetings with the Owner or its representatives to include, but not limited to, contractors, regulatory agencies, and funding agencies during all phases of the services, and the Designated Representative shall be notified in advance by Architect/Engineer if a conference is called by a party other than said Designated Representative.

1.6 **Responsibility for Claims and Liabilities**

1.6.1 Acceptances, approval, or concurrence by any official, employee, or agent of the Owner in the use of any plans, specifications, or other documents provided by Architect/Engineer for any project awarded hereunder shall not constitute nor be deemed a release of the Architect/Engineer or Architect/Engineer's employees or consultants for the accuracy and competency of plans, specifications, or other documents or work; nor shall such acceptance, approval or concurrence relieve or excuse the Architect/Engineer from responsibility for any errors, omissions, or conflicts in the plans, specifications, or other documents prepared by Architect/Engineer or Architect/Engineer's consultants.

1.6.2 If changes are required to be made because of errors, omissions, discrepancies or conflicts in the work provided by Architect/Engineer pursuant to this Contract, Architect/Engineer shall perform such services as are necessary to correct the work and Owner shall not be liable to Architect/Engineer for any fee or compensation for the cost of such services. In addition, Architect/Engineer shall provide, at no additional cost or expense to Owner, all architectural/engineering services made necessary as a result of Architect/Engineer's failure to discover and report major deficiencies in the work of the Architect/Engineer which should have been discovered by Architect/Engineer in the performance of services hereunder.

1.6.3 Notwithstanding any other provision of this Contract, if, due to Architect/Engineer's error or omission, any required item or component of any project is omitted from Architect/Engineer's construction Contract Documents, Architect/Engineer shall not be responsible for paying the original construction cost to add such item or component but only to the extent that such item or component would have been otherwise necessary to the project and otherwise adds value or betterment to the project. Architect/Engineer shall be responsible for all other additional or extra costs resulting from such required item or project component not being included in the original construction contract documents.

1.7 **Owner to Provide.** Upon request by the Architect/Engineer, Owner will make available to the Architect/Engineer all technical data that is in the Owner's possession, including maps, surveys, property descriptions, borings, and other information held by the Owner and required by the Architect/Engineer and relating to its work. Architect/Engineer's use of and reliance upon such information in providing services hereunder shall be the responsibility of Architect/Engineer.

1.8 **Owner to Pay or Acquire.** Unless otherwise provided in a project contract, Owner shall pay for costs for advertisements of notices, public hearings, requests for bids, and other similar items; and shall secure the necessary land, easements, right-of-way required for the project.

1.9 **Conformity with Applicable Laws and Regulations**.

1.9.1 The Architect/Engineer, its consultants, agents, subcontractors, officers, employees and any other persons over whom the Architect/Engineer has control shall comply with all laws, regulations, rules, ordinances, and codes of federal, state, and other local governmental bodies, and all directives of the Owner or Designated Representative, applicable to the design and construction of the project, or affecting directly or indirectly the Architect/Engineer's operation and activities on or in connection with the project and Owner's facility. The Architect/Engineer shall defend and pay all costs, expenses, claims, fines, penalties and damages that may in any manner arise out of, or be imposed because of, the Architect/Engineer's failure to comply with this paragraph, whether assessed by any governmental body against the Owner as either property owner or as a facility operator. Owner and Architect/Engineer each agree to attempt to give one another prompt notice of any notice of violation received.

1.9.2 The Architect/Engineer shall ensure that its employees shall observe and exercise all necessary caution and discretion so as to avoid injury to person or damage to property of any and all kinds. The Architect/Engineer shall cooperate with County officials in performing the contract work so that interference with normal programs will be held to a minimum. The Architect/Engineer shall be an independent Contractor and shall not be an employee of the County.

1.9.3 The Architect/Engineer shall pay all County, City, State and Federal taxes required by law enacted at the time proposals are received and resulting from the work or traceable thereto, under whatever name levied. Said taxes shall not be in addition to the contract price between the County and the Architect/Engineer, as the taxes shall be an obligation of the Architect/Engineer and not of the County, and the County shall be held harmless for same by the Architect/Engineer.

1.10 **Compliance with Laws and Regulations Governing Hazardous Wastes**. While on Owner's property and in its performance of this Contract, Architect/Engineer, its consultants, agents, subcontractors, officers, employees and any other persons over whom the Architect/Engineer has control shall not transport, dispose of, or release any hazardous substance, material or waste, except as necessary in the performance of its Work under this Contract and the Architect/Engineer shall comply with all federal, state, and local laws, rules, codes, regulations and ordinances controlling air, water, noise, solid wastes and other pollution, and relating to the storage, transport, release, or disposal of hazardous materials, substances or waste.

1.11 **Notices**. All notices which may be proper or necessary to be served, and payments to be made hereunder shall be sent by regular mail, postage prepaid, to the following addresses and to such other address as either party may hereafter designate for such purpose in writing.

 To Owner: Alleghany County

 c\o Mr. Mike Hendrickson

 Superintendent of Public Works

 9212 Winterberry Avenue

 Suite A

 Covington, Virginia 24426

 To Architect/Engineer:

1.12 **Cooperation with Other Consultants**. In the event Owner shall employ other architects, engineers, or consultants, Architect/Engineer shall cooperate, coordinate with and assist such engineers or consultants in a manner that will best further serve and protect the Owner's interests.

 **ARTICLE 2- ARCHITECTURAL/ENGINEERING SERVICES**

2.1 **Description of Services.** The scope of work that Architect/Engineer has agreed to perform pursuant to the RFP is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. As provided in section 1.2 herein, the scope of work for each project awarded pursuant to this Contract will be set forth in a project contract.

2.2 **Time of Performance**. This Contract shall commence on \_\_\_\_\_\_\_\_\_\_\_\_ and terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for an initial contract period of one (1) year. Upon expiration of the initial term, this Contract may be renewed for two (2) additional one (1) year terms. In the event that all work required to complete a project awarded pursuant to this contract has not been completed, this Contract shall continue in full force and effect until such project is completed and accepted by the Owner.

 **ARTICLE 3 - SPECIAL SERVICES**

3.1  **Litigation Support**. The Architect/Engineer shall provide assistance to the Owner, if needed, in prosecuting or defending against any litigation that may arise as a result of construction of the Project. The Architect/Engineer shall be compensated for such litigation support services at hourly rates established by the parties and based on the rates for services under this Contract.

3.2 **Subcontracted Services with no Additional Compensation**. Subject to the terms and conditions of this Contract, including prior written approval by Owner, such approval not to be withheld unreasonably, Architect/Engineer may, when in Architect/Engineer's professional opinion it is appropriate to do so: (i) substitute persons or entities for those persons or entities providing services on a subcontractor or subconsultant basis as identified in Architect/Engineer's Proposal to Owner; or, (ii) utilize the services of other subcontractors or subconsultants, including, but not limited to, surveyors, specialized consultants, and testing laboratories, when in Architect/Engineer's professional opinion, it is appropriate to do so.

 **ARTICLE 4-** **SCHEDULE OF WORK**

4.1  **Timetable for Completion of Services**. Time is of the essence in the performance of Achitect/Engineer's duties under this Contract. Failure by Architect/Engineer to perform any phase or portion of work awarded under a project contract may be treated by Owner as a default by Architect/Engineer hereunder. The Architect/Engineer shall accomplish the work with due diligence and complete the work as set forth in the project contract.

4.2 **Time Extensions**. In the event that the work will exceed the time frame set forth in the project contract, the Architect/Engineer shall notify Owner in writing of the reasons for the deviation from the work schedule, furnish an estimate as to the time required for completion, and request the Designated Representative's agreement to an extension of time.

4.2.1 Owner and Architect/Engineer shall not be responsible for delays caused by factors beyond each party's reasonable control, including, but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act within a required time frame, or delays caused solely by Contractor.

 **ARTICLE 5-** **PAYMENT FOR ENGINEERING SERVICES**

5.1 **Compensation**. The total amount to be paid to Architect/Engineer shall be based upon the services authorized and performed in accordance with each project contract awarded to Architect/Engineer. The project contract shall describe the specific scope of work to be performed. The amount of Architect/Engineer’s fee shall be negotiated for each project or based upon the fee scheduled provided herein, if any. Invoices shall be submitted by the 10th of the month and payments shall be made net thirty (30) days. Payments shall be made provided that the submitted invoice is accompanied by adequate supporting documentation and is approved by the Owner.

5.2 **Property of Owner**. All work compensated for under a project contract, including partial payments, shall become the property of Owner without limitations or restrictions. Work under a project contract shall include, but not be limited to, sketches, tracings, drawings, computations, details, design calculations, plans, electronic files, and other related documents. Architect/Engineer shall not be held liable for any reuse of the work and shall not be liable for any modifications made to the work by others.

5.3 **Additional Services**. If a major change or addition to the scope of work is required for any phase of services as set forth herein, and such changes or extensions were not caused by errors or omissions by the Architect/Engineer, an amendment to this Contract may be negotiated by the parties. Any fees and reimbursable expenses for additional services will be due and payable upon satisfactory completion and acceptance as determined solely by the Owner.

5.5  **Timing of Payments**. Upon completion of each phase of services, the Architect/Engineer shall submit an itemized invoice identifying the services provided under the Contract. Provided the Architect/Engineer is not in default of this Contract as defined in Article 11 and upon satisfactory completion by Architect/Engineer of such services, as determined by Owner in its sole and exclusive discretion, Owner shall pay the invoice within thirty days of approval of such invoice.

5.6 **Payment Conditions for Subcontractors**. The Architect/Engineer shall take one of the two following actions within seven days after receipt of amounts paid to the Architect/Engineer by the Owner for work performed by any subcontractor under this Contract:

5.6.1 Pay the subcontractor for the proportionate share of the total payment received from the Owner attributable to work performed by the subcontractor under the Contract; or notify the Owner and the subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

5.6.2 The Architect/Engineer shall pay interest to any subcontractor on all amounts owed by the Architect/Engineer that remain unpaid after seven days following receipt by the Architect/Engineer of payment from the Owner for work performed by the subcontractor under the Contract, except for amount withheld as allowed under paragraph 5.6.1 above. The Architect/Engineer’s obligation to pay on interest charge to a subcontractor(s) pursuant to the payment clause in this section may not be construed to be an obligation of the County. A contract modification may not be made for the purpose of providing reimbursement for such interest charge and a cost reimbursement claim may not include any amount for reimbursement for such interest charge.

5.6.3 The Architect/Engineer shall include in its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

5.6.4 Prior to receiving any payments under this Contract, if the Architect/Engineer is an individual, the Architect/Engineer shall provide its social security number to the Owner and if the Architect/Engineer is a proprietorship, or corporation, the Architect/Engineer shall provide its federal employer identification number to the Owner. Interest shall accrue at the rate of one percent per month.

5.6.5 Contractual claims by the Architect/Engineer, whether for money or other relief, shall be submitted in writing together with all supporting documentation to the Owner no later than thirty calendar days after the occurrence of the event giving rise to the claim; however, written notice of the Architect/Engineer's intention to file such claim shall have been given to Owner no later than within five calendar days after the initial occurrence of the event upon which the claim is based. In reviewing the claim, Owner may request any additional information or documentation from the Architect/Engineer or other parties and may utilize appropriate assistance from other sources. Any final decision in writing by Owner shall be issued to the Architect/Engineer within thirty calendar days from the later of: (i) receipt of the written claim; or (ii) receipt of any additional information requested from the Engineer.

 **ARTICLE 6-** **SPECIAL WORKING CONDITIONS**

6.1  **Safety Precautions**. The Architect/Engineer shall exercise precaution at all times for the protection of all persons and property. The safety provisions of all applicable laws, and building and construction codes shall be observed.

 **ARTICLE 7-** **DOCUMENTS AND RECORDS**

7.1  **Ownership of Contract Documents**. One reproducible copy each of the drawings, tracings, construction plans, specifications, maps, computer files, disks, and documents on electronic media ("Documents") prepared or obtained under the terms of a project contract shall be delivered to and become the property of the Owner. Basic survey notes and sketches, charts, computations and other data shall be made available upon request to the Owner without restriction or limitation on their use. Upon completion of all work, Architect/Engineer shall provide one reproducible set of record drawings to Owner. To the extent Owner is authorized by law to do so, Owner agrees to waive all claims that Owner may have against Architect/Engineer arising out of unauthorized changes to Architect/Engineer's Documents. Owner expressly agrees and recognizes that electronic media is subject to deterioration with the passage of time.

7.2  **Right to Inspect Contract Documents**. Any authorized representative of the Owner shall, at all reasonable times, have a right to inspect and examine the drawings, specifications and other Contract Documents at Architect/Engineer's office during the period of their preparation.

7.3  **Right to Inspect Engineer's Records**. The Architect/Engineer agrees that the Owner, and any approving federal or state agency, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Architect/Engineer which are directly pertinent to any project for the purpose of making audits, examinations, excerpts and transcriptions. All such records shall be maintained by Architect/Engineer for at least five years after Owner has made final payment to Architect/Engineer and all other pending matters concerning a project are closed.

7.4 **Release of Documents**. Architect/Engineer shall not release or make available any documents, reports, information, or data supplied to or prepared or assembled by Architect/Engineer under this Contract without the prior approval of Owner.

 **ARTICLE 8-** **ASSIGNMENT AND SUBCONTRACTING OF CONTRACT**

8.1  **Assignment**. Each party binds itself, its principals, successors, executors, administrators and assigns to perform all covenants of this Contract and any project contract entered into by the parties. Neither the Owner nor the Architect/Engineer shall assign, or transfer its interest in this Contract without the prior written consent of the other Party hereto.

8.2  **Delegation of Duties**. Architect/Engineer shall not subcontract, nor shall any subcontractor commence performance of any work or services without the previous written consent of the Owner. Subcontracting, if permitted, shall not relieve the Architect/Engineer of any of its obligations under this Contract or any project contract. The Architect/Engineer shall be solely responsible to the Owner for the acts or faults of any such subcontractor and of such subcontractor's officers, agents and employees, each of whom shall for this purpose, be deemed to be an agent or employee of the Architect/Engineer to the extent of its subcontract. As a prior condition to approval of a subcontractor, the Architect/Engineer shall provide a conformed copy of the applicable subcontract to the Owner. The Architect/Engineer and any subcontractor shall jointly and severally agree that the Owner is not obligated to pay or to be liable for the payment of any sums due any subcontractor.

 **ARTICLE 9-** **INSURANCE**

9.1  **Insurance Requirements**. The Architect/Engineer shall carry Public Liability Insurance and Automobile insurance in the amounts specified below, including the contractual liability assumed by the Architect/Engineer and shall deliver Certificate of Insurance, from carriers acceptable to the County, specifying such limits with the County, its officers, agents, and employees named as additional insureds. In addition, the insurer shall agree to give the County a thirty day notice of its decision to modify or cancel coverage.

 9.1.1 Workman's Compensation and Employer's Liability

 Coverage A - Statutory Requirements

Coverage B - $100,000 Per Occurrence

Coverage C - $100,000/$100,000 Accident and/or Disease

 9.1.2 Automobile Liability, including Owned, Non-Owned, and Hired Care Coverage.

Limits of Liability:

 Bodily Injury $1,000,000 each occurrence

 Property Damage $1,000,000 each occurrence

OR
 Single Limit: $2,000,000 each occurrence

Bodily Injury Property Damage

9.1.3 Comprehensive General Liability

Limits of Liability:

 Bodily Injury $1,000,000 each occurrence

 Property Damage $1,000,000 each occurrence

OR
Single Limit: $2,000,000 each occurrence

Bodily Injury Property Damage

1. Completed Operation/Products
2. Contractual Liability for Specified Agreement
3. Personal Injury

9.1.4. Excess Liability Umbrella Form

 Bodily Injury and (See Note 1)

 Property Damage Combined Including:

**Note** 1 - The intent of this insurance requirement is to provide the coverages required and the limits expected for each type of coverage. With regard to the Automobile Liability and Comprehensive General Liability, the total amount of coverage can be accomplished through any combination of primary and excess umbrella insurance. However, the total insurance protection provided for Comprehensive General Liability protection or for Automobile Liability protection, either individually or in combination with Excess Liability Umbrella must total $2,000,000 per occurrence.

In addition to the above, Architect/Engineer shall submit a certificate indicating insurability at this level. The Architect/Engineer will be required to provide a Certificate of Insurance for all applicable policies that states that the Owner is endorsed on the insurance policy as an additional insured.

9.2 **Errors and Omissions Insurance Requirements**. The Architect/Engineer shall take out and maintain during the life of this Contract, Professional Liability errors and omissions insurance in an amount of at least Two Million Dollars ($2,000,000.00), or the full amount of the Architect/Engineer's standard professional errors and omissions insurance policy, whichever is greater. The Architect/Engineer shall require similar coverage by all subcontractors.

9.3  **Insurance on Drawings**. Engineer shall carry full insurance coverage on drawings, specifications, and other valuable information against loss by fire, damage, destruction and theft, until the improvement contemplated has been constructed and the corrected original drawings required by the Owner have been furnished to the Owner. The cost of such full coverage, as well as the cost of all other insurance required herein, shall be included in the basic fee hereinafter set forth.

9.4 **Notice of Cancellation**. The policy or policies required hereunder shall contain the following special provision: "The Company agrees that thirty (30) days prior to cancellation or reduction of the insurance afforded by this policy, with respect to the contract involved, written notice will be sent by certified mail to:

 Alleghany County

 c\o Mr. Jonathan Lanford

 County Administrator

 9212 Winterberry Avenue

 Covington, Virginia 24426

9.5  **Other Insureds**. Prior to execution of this Contract by Owner, the Architect/Engineer shall provide the Owner with an exact copy of the insured endorsement naming the entities listed in paragraph 9.1 above as insureds, and a copy of the declaration sheet for every insurance policy required hereunder. Such documents shall as to form, coverage, carrier and limits be satisfactory and approved by the Owner. If at any time the coverage, carrier or limits on any policy shall become unsatisfactory to Owner, or the Owner's legal counsel, the Architect/Engineer shall forthwith provide a new policy meeting the requirements of said persons. The insured coverage provided under the Architect/Engineer's insurance policy shall be primary with respect to the Architect/Engineer's general liability, notwithstanding other insurance covering the Owner.

9.6  **Insurance Not to be a Limit on Liability.** Architect/Engineer covenants and agrees that the insurance coverages required under this agreement shall in no way be considered or used in any manner as a limit or cap of any kind on any liability or obligation that Architect/Engineer may otherwise have, including, without limitation, liability under the indemnification provisions contained herein.

 **ARTICLE 10 - INDEMNIFICATION**

10.1  **Indemnification.** The Architect/Engineer shall be responsible for the professional quality and technical competency of all services furnished by the Architect/Engineer, Architect/Engineer's employees, subcontractors, agents’ and\or consultants under this Contract. The Architect/Engineer shall defend, indemnify, and hold harmless the Owner, and Owner's officers, agents, and employees from any and all liability, losses, damages, claims, causes of action, suits of any nature, judgments, fines, penalties, violations of federal, state or local laws, or regulations or directives promulgated thereunder, personal injury, wrongful death or property damage, costs, and expenses, including reasonable attorney's fees, arising out of, incidental to, or in connection with the performance of the work under this Contract, including, without limitation, acts or omissions, negligent or otherwise, by Architect/Engineer and Architect/Engineer's employees, subcontractors, agents, and\or consultants.

10.1.1 Architect/Engineer shall not be obligated under section 10.1 above to indemnify Owner for liability arising solely out of Owner's own negligence.

10.2  **No Limitations on Indemnification Right**. The Architect/Engineer agrees to waives any and all statutes of limitations or repose applicable to any controversy or dispute giving rise to the indemnification right set forth in the prior paragraph, which shall survive completion and\or termination of this Contract.

**ARTICLE 11-** **DEFAULT AND TERMINATION**

11.1  **Events of Default**. The Architect/Engineer shall be in default of this Contract in the event that Owner determines that any of the following occur:

11.1.1 The Architect/Engineer abandons or discontinues its services or operations for the Owner except when such abandonment or discontinuance is caused by fire, earthquake, war, strike or other calamity beyond its control;

11.1.2 The Architect/Engineer fails to prepare adequate drawings, plans, specifications, other Contract Documents or data, fails to provide proper administration of the construction contract, refuses or fails to follow instructions of Owner, provides services which do not meet the level and quality of services generally provided in the industry or otherwise fails to perform satisfactorily any of the terms, conditions and provisions of this Contract and such failure continues for a period of five (5) calendar days after written notice thereof is given it by Owner.

11.2  **Owner's Rights in the Event of Default**. Upon the occurrence of any one or more of the events set forth in Paragraph 11.1, the Owner may, at its option, exercise concurrently or successively any one or more of the following rights and remedies:

11.2.1 Withhold payments that would otherwise be due pursuant to this Contract or project contract until the default has been cured.

 11.2.2 Offset payments that would otherwise be due to Architect/Engineer pursuant to a project contract against amounts due and owing by Architect/Engineer to Owner.

11.2.3 Enjoin any breach or threatened breach by Architect/Engineer of any covenants, agreements, terms, provisions or conditions.

11.2.4 Sue for the performance of any obligation, promise or agreement devolving upon Architect/Engineer for performance, or for damages for the nonperformance thereof, all without terminating this Contract.

11.2.5 Terminate this Contract or project contract upon written notice of an intention to so and have the services then uncompleted performed by another engineer. In such case, the Architect/Engineer shall be liable to the Owner for any damages allowed by law, and upon demand Architect/Engineer shall promptly pay same to Owner.

11.2.6 Receive from the Architect/Engineer all data, drawings, specifications, reports, estimates, summaries and any other information and materials as may have accumulated by the Architect/Engineer in performing work under this Contract or project contract whether completed or in process.

11.2.7 In the event that Architect/Engineer defaults in the performance of any of the terms, conditions or agreements contained in this Contract or project contract, Architect/Engineer agrees to pay all of Owner’s reasonable attorney’s fees and costs related to any enforcement proceeding. All costs and charges incurred by the Owner, together with the cost of completing the Work under Contract, will be deducted from any monies due or which may become due the Architect/Engineer. If such expense exceeds the sum which would have been payable under the Contract, then the Architect/Engineer shall be liable and shall pay to the Owner the amount of such excess.

11.3  **All Remedies Cumulative**. All rights and remedies granted to the Owner herein, and other rights and remedies which the Owner may have at law and in equity, are hereby declared to be cumulative and not exclusive and the fact the Owner may have exercised any remedy without terminating this Contract shall not impair the Owner's rights thereafter to terminate or to exercise any other remedy herein granted or to which is may be otherwise entitled. In the event of termination due to non-performance, or other fault of the Architect/Engineer, Architect/Engineer shall not be entitled to any termination expenses or other fees or expenses of any kind.

11.4  **Termination of Contract Without Cause**. The Owner, upon seven calendar days written notice, may terminate this Contract without cause, in whole or in part, at any time; however, in the event that any of the individuals identified in Architect/Engineer's Proposal to Owner are no longer available to perform services under this Contract, Owner may terminate this Contract in whole or part immediately by providing written notice to Architect/Engineer. Upon receipt of any such notice, the Architect/Engineer shall:

11.4.1 Immediately discontinue all services affected (unless the notice directs otherwise); and

11.4.2 Deliver to the Owner all data, drawings, specifications, reports, estimates, working papers, summaries and such other information and materials as may have been prepared as part of the work or accumulated by the Architect/Engineer in performing a project contract whether completed or in process.

11.5  **Engineer's Right to Fee Upon Termination Without Cause**. Should the Contract be terminated for reasons other than default, the Architect/Engineer shall be entitled to and shall receive compensation for satisfactorily completed services, as certified by Architect/Engineer and verified by Owner. The percentage shall represent the amount of work satisfactorily completed to date as determined by Owner compared to the estimated amount of work to complete the phase of the work in question. Reimbursable expenses approved by Owner shall also be paid.

**ARTICLE 12 - SUBSTITUTION OF PERSONNEL**

12.1 Architect/Engineer acknowledges and agrees that the services to be provided under this Contract shall be performed by the individuals identified in Architect/Engineer's proposal and other individuals shall not be substituted to perform services under this Contract without the express prior written consent of Owner.

12.2 In the event the performance of services by Architect/Engineer's employees or subconsultants is or becomes unsatisfactory as determined by Owner, Owner shall have the right to request that such person or persons be replaced. Such request shall be granted within a reasonable time.

 **ARTICLE 13 - NON-DISCRIMINATION**

13.1 During the performance of this Contract or any project contract awarded hereunder, the Architect/Engineer agrees as follows:

13.1.1 The Architect/Engineer will not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Architect/Engineer. The Architect/Engineer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

13.1.2 The Architect/Engineer, in all solicitations or advertisements for employees placed by or on behalf of the Architect/Engineer, will state that such Architect/Engineer is an equal employment opportunity employer.

13.1.3 Notices, advertisements and solicitations placed in accordance with federal law, rules or regulations, shall be deemed sufficient for the purpose of meeting the requirements of this section.

13.1.4 The Architect/Engineer will include the provisions of the foregoing paragraphs 13.1.1, 13.1.2, and 13.1.3 in every subcontract or purchase order of over $10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

 13.1.5 Owner does not discriminate against faith based organizations.

 **ARTICLE 14 – FEDERAL GRANT PROVISIONS INCORPORATED**

If applicable, this Contract shall be subject to the “General Terms and Conditions for Federally Funded Grant Contracts” which shall be attached hereto as an Exhibit.

 **ARTICLE 15 - DRUG FREE WORKPLACE**

During the performance of this Contract or project contract, the Architect/Engineer agrees to: (i) provide a drug-free workplace for the Architect/Engineer's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Architect/Engineer that the Architect/Engineer maintains a drug-free workplace; and, (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000.00 so that the provisions will be binding upon each such subcontractor or vendor.

 **ARTICLE 16 - COMPLETENESS OF CONTRACT**

This Contract including any awarded project contracts shall constitute the entire agreement between the Owner and the Architect/Engineer, and shall supersede any and all other prior negotiations, representations or agreements, either oral or written. This Contract may be amended only by written instrument signed by both parties.

 **ARTICLE 17 - SURVIVAL**

All representations, covenants, and indemnifications made in or given by Architect/Engineer in this Contract shall survive the completion of all services of Architect/Engineer under this Contract and/or the termination of this Contract for any reason.

**ARTICLE 18 - SEVERABILITY**

Any provision or part of this Contract held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the parties hereto, who agree that the Contract shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**ARTICLE 19 - EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED**

The Architect/Engineer covenants that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.

**ARTICLE 20- EVIDENCE OF AUTHORITY TO TRANSACT BUSINESS IN VIRGINIA**

Pursuant to 2.2.-4311.2 (A) of the Code of Virginia (1950), as amended, if the Architect/Engineer is organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership, the Architect/Engineer shall provide documentation acceptable to County establishing that the Architect/Engineer is authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia (1950), as amended, or as otherwise required by law. The Architect/Engineer shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. The County may void this contract if the Architect/Engineer fails to remain in compliance with the provisions of this section.

**ARTICLE 21 - GOVERNING LAW AND VENUE**

This Contract and all claims, disputes, and other matters relating to this Contract shall be

governed by the laws of the Commonwealth of Virginia, both as to interpretation and

performance, without giving effect to Virginia’s choice of law provisions. Every action under

or related to this Contract shall be brought in a Virginia court of competent jurisdiction in the

Alleghany County, Virginia, or in the United States District Court for the Western District of

Virginia, and not elsewhere and Architect/Engineer submits itself to such jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have affixed their hand and seals.

 Architectural/Engineering Firm Name

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

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

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

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary

 Alleghany County

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

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

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

APPROVED AS TO FORM:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title:

County Attorney

Appropriation and Funds Required for this Contract Certified

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title:

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

 Account #:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibits: A. Definitions

 B. Request for Proposals

 C. Architect/Engineer’s Proposal

 **Exhibit "A"**

 **Definitions**

1.1 **APPROVAL BY OWNER**. The formal acceptance of an item, without taking on responsibility for design or intent, which has been certified to be correct by the Engineer.

1.2. **CERTIFY, CERTIFICATION**. Engineer's opinion and professional judgment, based upon his observation of conditions, knowledge, information, and beliefs.

1.3 **CONSTRUCTION CONTRACT**. The contract for construction with the successful bidder, including, without limitation, the plans, specifications, bid documents, general and supplemental conditions.

1.4 **CONTRACT DOCUMENTS**. This contract, request for proposal documents, architect/engineer’s proposal.

1.5 **DESIGNATED REPRESENTATIVE**. The person or persons identified by Owner as being authorized to act on behalf of Owner under this Contract. In the absence of any such designation, Owner's Designated Representative shall be the project manager for Owner.

1.6 **ESTIMATE**. An opinion of probable construction cost made by Engineer.

1.7 **GUARANTEE PERIOD**. One year from the date of project acceptance by the Owner.

1.8 **INSPECT, INSPECTION.** The visual observation of construction to permit the Engineer to render his professional opinion as to whether the Contractor is performing the Work in a manner in accordance with the Contract Documents.

1.9 **PROJECT CONTRACT.** A contract entered into by the parties subject to the terms of this Contract and setting for the scope of work for a project, time for performance, amount of compensation, and any specific terms related to the project.

1.10 **RESIDENT ENGINEER**. The person responsible for the on-site supervision of the project and subject to the authority of the Engineer.

1.11 **TESTING LABORATORY**. The Professional Testing organization responsible for conducting the specified testing for the Project and subject to the approval by the Owner.