

Professional Services Contract

This Agreement is made effective as of 6/1/2021, by Carroll County, 605 Pine Street, Hillsville, VA 24343 and Design Nine, Inc., of 2000 Kraft Drive, Suite 2200, Blacksburg, Virginia 24060, a Virginia corporation.

In this Agreement, the party who is contracting to receive services shall be referred to as "Client", and the party who will be providing the services shall be referred to as "Design Nine".

Design Nine, Inc. has expertise in the planning and development of broadband infrastructure and is willing to provide services to client based on this background.

Client desires to have services provided by Design Nine.

Therefore, the parties agree as follows:

1. **SCOPE OF SERVICES.** Beginning on 6/24/2021 and ending on or about 11/15/2021, Design Nine will provide the following services (collectively, the "Services") as described in the attached Scope of Work.
2. **PERFORMANCE OF SERVICES.** Client will rely on Design Nine (Contractor) to work as many hours as may be reasonably necessary to fulfill Design Nine's obligations under this Agreement. Changes or additions to the Scope of Work must be made in writing and negotiated as a separate contract.
3. **PAYMENT** Carroll County (Client) will pay fees to Design Nine for the Services performed based on the attached Fee Schedule. Payments shall be made after Design Nine submits invoices to the Client, with any hourly rates billed according to the attached Fee Schedule. These fees shall be due and payable net 30 days.
4. **EXPENSE REIMBURSEMENT.** All reasonable and ordinary travel expenses will be included in the base fee. Any extraordinary expenses incurred in the completion of the work will be billed based on actual expenditures and must be approved in advance. Design Nine shall submit appropriate receipts for all extraordinary expenses incurred.
5. **TERM/TERMINATION.** This Agreement shall terminate automatically upon completion by Design Nine of the Services required by this Agreement.
6. **RELATIONSHIP OF PARTIES.** It is understood by the parties that Design Nine is an independent contractor with respect to Client, and not an employee of Client. Client will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Design Nine.
7. **INJURIES.** Design Nine acknowledges Design Nine's obligation to obtain appropriate insurance coverage for the benefit of Design Nine (and Design Nine's employees, if any). Design Nine waives any rights to recovery from Client for any injuries that Design Nine (and/or Design Nine's employees) may sustain while performing services under this Agreement and that are a result of the negligence of Design Nine or Design Nine's employees.
8. **LIMITATION OF LIABILITY.** In no event shall Design Nine or its officers, directors, shareholders, employees, agents, or subcontractors be liable for any special, indirect or consequential damages incurred

by client or others, including without limitation, loss of goodwill or client relation or lost profits, whether based on contract, tort or other legal theory, even if Design Nine has been advised of the possibility of such damages, or be liable for any claim against Client by any third party. Design Nine's monetary liability shall not exceed the sums paid by client for the goods or services giving rise to such claim. No action, regardless of form or theory, arising out of the services rendered by Design Nine, may be brought by Client or Design Nine more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought within two (2) years of the date of last payment.

9. **DISCLAIMER OF IMPLIED WARRANTIES.** Design Nine agrees to exert its best efforts in providing the services contemplated herein in a competent and workmanlike manner. Client agrees that Design Nine does not make any express or implied warranties, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose in connection with the work product provided pursuant to this agreement. Design Nine's services are provided "AS IS," without any other warranty of any type.

10. **PROPRIETARY INFORMATION.** Client shall own analyses performed on behalf of and reports prepared for Client by Design Nine ("Work Product"). Client understands and acknowledges, however, that such Work Product may be generated using Design Nine's proprietary analytical tools, including forms, spreadsheets, worksheets, checklists, computer programs, templates, or other know-how or tools of the trade that constitute confidential or proprietary information of Design Nine ("Proprietary Information"). Should Design Nine provide Client with any underlying Proprietary Information, Client acknowledges that it is granted only a limited non-exclusive right to use the Proprietary Information only for purposes of its business relationship with Design Nine, such right revocable at will by Design Nine. Client shall not distribute Proprietary Information to any third party without written permission from Design Nine, nor reverse engineer or exploit Proprietary Information for the benefit of Client or any third party. Nothing in this Agreement nor the disclosure of Proprietary Information to Client shall be construed as granting any right or license, express or implied, under any copyright, patent, trade secret, or other intellectual property right now or hereafter owned or controlled by Design Nine.

11. **ASSIGNMENT.** Design Nine's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of Client.

12. **NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

IF for Client:

Name: _____ Title: _____

Address: _____ City, State, Zip _____

Date _____

IF for Design Nine:

Andrew Cohill, President
Design Nine, Inc.
2000 Kraft Drive, Suite 2200
Blacksburg, Virginia 24060

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

13. ENTIRE AGREEMENT. This Agreement 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. No changes, or waiver of, any provision of this Agreement will be binding on Design Nine, unless made in writing and signed by an authorized representative of Design Nine.

14. AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

15. 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 finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

16. 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.

17. APPLICABLE LAW. This Agreement shall be governed by the laws of the Commonwealth of Virginia.

18. SURVIVAL OF PROVISIONS. Provisions 6 through 18, and payment requirements of Client for work performed (including payment described in Section 5.B in the case of termination by Client), shall survive termination or expiration of this Agreement.

Party receiving services:

By: _____ Title: _____

Date: _____

Party providing services:

Design Nine, Inc.

By: _____ Title: President

Date: _____

Scope of Work

Work tasks will include:

Assessment of current county-wide broadband coverage gaps (what areas presently have broadband services versus those that are not presently covered). We will use the definition of broadband coverage as a minimum of 25mbps download and 3mbps upload capacity. Broadband coverage will be evaluated as follows:

- Identify those areas that are unserved and underserved (less than 25 Mbps download and 3 Mbps upload).
- Identify those areas that have access to services offering a minimum of 100 Mbps download and 100 Mbps upload.
- Identify those areas that have access to services offering a minimum of 100 Mbps download and at least 20 Mbps upload (scalable to 100 Mbps download and 100 Mbps upload).

Development of a business and residential online Web-based survey to collect satisfaction and speed test data from Carroll County residents and businesses. The survey responses will be geo-coded to provide coverage maps based on data from the survey. These maps can be used in grant proposals to show up to date service and coverage information. We can also provide an optional direct mail survey for the actual cost of printing and mailing.

Analysis of the infrastructure needed to establish broadband service to the county, including:

- An assessment of available existing resources, including existing publicly and privately owned assets, including but not limited to vertical assets.
- Development of a county-wide broadband plan that considers the most optimal and cost-effective means to deliver minimum bandwidth requirements. Multiple delivery options will be evaluated, including but not limited to fiber to the home and/or fixed wireless solutions. The plan will be based on a recommended network model and will take into account the assets already available and opportunities available. The network plan and recommendations will be scalable for future growth. **Network designs will evaluate the feasibility of delivering minimum speeds of 100 Mbps download and 100 Mbps upload (100/100 Meg service) and/or 100/20 Meg service.**
- Development of a cost analysis of build-out of the necessary infrastructure to cover the above established minimum, and rising costs to reach 100% coverage. This may include using existing assets or construction of new assets.
- Identification and analysis of cooperative projects that may support deployment solutions with adjoining local governments.

Creation of a sample RFP for a public private partnership with internet service providers

Upon completion of the plan development phase, will be available to assist the County with the assessment of proposals for the creation of a public-private partnership. This assessment will include, at a minimum, the following:

- Assessment of the design and technology utilized by the proposal to ensure the likelihood of success within the County defined parameters.
- Assessment of the project implementation plan to ensure its viability.

- Assessment of the capability of the proposed system to be scaled for increased data capacity over time.
- Assessment of the financial proposal to ensure fairness to all involved and local government resources are used effectively, if required.
- Assessment of the private firm's ability to perform the work in a timely manner

Fee Structure

Total fees for Professional Services in Scope of Work \$34,625.00. Fees will be invoiced in five equal payments of \$6,925.00, with the first payment due at contract signing and the last payment due only after all final documents and reports have been delivered.

The total fee includes all normal and ordinary travel expenses for up to five on site visits. Any additional travel expenses for trips requested beyond the included five would be billed at the actual cost of all normal and ordinary travel expenses (e.g. mileage, lodging, meals, etc.) and will provide receipts for all expenses incurred.

If the County chooses to do a residential mailing using the USPS EDDM service (Every Door Direct Mail), we only charge the actual cost of printing and mailing. Most respondents receiving the mailed paper version will use the Web version to complete the survey. Design Nine will do all data entry for received paper surveys at a rate of \$75/100 paper surveys. Mailing costs can be reduced by excluding areas that are fully served by cable Internet.

Hourly Rates

For work tasks, advisory support, and related activities requested by the County over the period of the contract, we can work on an hourly basis, and will provide detailed billing reports showing dates worked, number of hours, and staff who completed the work.

<u>Rate Schedule for Staff</u>	<u>Hourly Rate</u>
Principal	\$125.00
Project Manager	\$125.00
Technical Specialist	\$110.00
Field Inspector	\$115.00
Technician	\$115.00
Administrative	\$65.00

Financial And Contractual

Invoices are payable within 30 days. Interest is, therefore, charged in the event of non-payment within 60 days. An interest rate of 1% per month will be charged to the unpaid balance.