



**RESOLUTION SELECTING AN ARCHITECTURAL AND ENGINEERING  
FIRM AND AUTHORIZING EXECUTION OF A CONTRACT TO PROVIDE  
PROFESSIONAL LAND PLANNING AND CIVIL ENGINEERING  
SERVICES TO FACILITATE DEVELOPMENT OF THE  
IDOLS ROAD BUSINESS PARK PROJECT  
(HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT)**

**WHEREAS**, Forsyth County staff announced the County's requirements for professional land planning and civil engineering services to facilitate the development of the Idols Road Business Park Project consistent with the provisions of N.C.G.S. 143-64.31; and

**WHEREAS**, Forsyth County staff submitted a Request for Qualifications in order to identify qualified firms to provide land planning and civil engineering services on the basis of demonstrated competence and qualification to provide these professional services without regard to a fee pursuant to N.C.G.S. 143-64.31; and

**WHEREAS**, Forsyth County staff's efforts to identify qualified architectural and engineering firms included the use of good faith efforts to notify minority firms of the opportunity to submit qualifications for consideration; and

**WHEREAS**, Forsyth County received three responses to the Request for Qualifications from architectural and engineering firms; and

**WHEREAS**, County staff identified and recommends Stimmel Associates, P.A. and its proposed team of consultants as the best qualified firm/team to provide professional land planning and civil engineering services to facilitate development of the Idols Road Business Park Project Project; and

**WHEREAS**, subject to approval by the Forsyth County Board of Commissioners, Forsyth County staff thereafter negotiated a contract with Stimmel Associates, P.A. for land planning and civil engineering services at a fair and reasonable fee for Phase I of the Project including Meeting and Coordination, Construction Documents, Civil Engineering (Onsite), Landscape Architecture, Hardscape Layout and Signage, Landscape Plans, Submittals and Permitting, Bidding, Contract Administration, and Construction Phase Services as authorized by N.C.G.S. 143-64.31;

**NOW, THEREFORE, BE IT RESOLVED** that the Forsyth County Board of Commissioners hereby selects Stimmel Associates, P.A. to provide land planning and civil engineering services as outlined herein to facilitate the development of the Idols Road Business Park Project.

**BE IT FURTHER RESOLVED** that the Forsyth County Board of Commissioners hereby authorizes the County Manager and the Clerk to the Board to execute a contract, on behalf of Forsyth County, with Stimmel Associates, P.A. for land planning and civil engineering services, at a negotiated amount not to exceed a lump sum

and hourly fee of \$110,000 for professional services Phase I, including Meeting and Coordination, Construction Documents, Civil Engineering (Onsite), Landscape Architecture, Hardscape Layout and Signage, Landscape Plans, Submittals and Permitting, Bidding, Contract Administration, and Construction Phase Services as authorized by N.C.G.S. 143-64.31, subject to a pre-audit certificate thereon by the County Chief Financial Officer, and approval as to form and legality by the County Attorney.

**BE IT FURTHER RESOLVED** that the County Manager is hereby authorized to execute, on behalf of Forsyth County, subsequent contracts and contract amendments for Phase I and future Phases with Stimmel Associates, P.A. to provide land planning and civil engineering services on the Idols Road Business Park Project within budgeted appropriations in the current and future fiscal years if these services are deemed necessary, subject to a pre-audit certificate thereon by the County Chief Financial Officer, where applicable, and approval as to form and legality by the County Attorney.

Adopted this the 8<sup>th</sup> day of May, 2017.

March 28, 2017  
April 11, 2017 (Revised)

Mr. Dan Kornelis, Director  
Forsyth County Housing & Community Development  
201 North Chestnutt Street, Suite 400  
Winston-Salem, NC 27101

RE: Proposal for Professional Services  
Idols Road Business Park  
Forsyth County, NC  
Stimmel Project Number: 17-061

Dear Mr. Kornelis:

We are pleased to submit this proposal for Professional Services in connection with the project referenced above.

This agreement is by and between **STIMMEL ASSOCIATES, P.A. (SAPA)**, a North Carolina Corporation, and **FORSYTH COUNTY (Client)**, located in Winston-Salem, NC. SAPA shall provide professional services on the project referenced above, further described as the Idols Road Business Park, a 169 +/- Acre business park located on Idols Road near Dillon Industrial Drive, in Forsyth County, NC. See the attached exhibit.

#### **I. BASIC SCOPE OF SERVICES:**

Our understanding of the basic project scope is as follows:

1. Meetings and coordination with Client, other consultants and various permitting agencies.
2. Engineering design, construction drawings and specifications for the extension of Topsider Drive through the park including grading, erosion controls, water, sanitary sewer, storm drainage, utility stub-outs to each lot, stormwater management, and improvements to existing Topsider Drive
3. Permitting
4. Bidding
5. Contract Administration
6. Limited Construction Observation is included as required.
7. We understand that boundary and topographic surveys, environmental investigations and permitting and geotechnical engineering will be provided by others.
8. Services are to be provided in two (2) phases.

#### **PHASE I**

##### **A. MEETINGS AND COORDINATION (HOURLY):**

SAPA will conduct or attend meetings and provide coordination services as needed for the following:

1. Meet with the Client during the course of the project to review design direction and progress, bidding and contractor selection coordination, construction administration coordination.
2. The City of Winston-Salem on water and sewer utility issues.
3. NCDOT on driveway permitting issues.
4. NCDENR on erosion control, and stormwater management.
5. Coordinate with the Client's other consultants – surveyor, geotechnical, environmental, etc.

**B. CONSTRUCTION DOCUMENTS (LUMP SUM):**

Based upon receipt of a topographic survey, and a notice to proceed from the client; SAPA shall prepare engineering designs and construction documents consisting of drawings and specifications setting forth in detail the requirements for bidding and construction by others. Construction documents referred to shall include:

**Onsite Construction Documents:**

1. Topsider Drive Extension - Design to include approximately 1,800 lf of new roadway with curb & gutter, storm drainage, sanitary sewer, and waterline, extending from the existing end of Topsider Drive to a point approximately 150 lf beyond the stream crossing west of Lot 1. Roadway drawings include plan & profiles and grading plans. Design of other utilities such as lighting, electrical, gas, phone, and cable TV are excluded.
2. Widening of Topsider Drive from the intersection with Dillon Industrial Drive to the beginning of the new road.
3. Plans for a stormwater wet detention pond to be located on Lot 2. The pond will be designed to meet NCDENR-DWR quality treatment standards.
4. Construction details.
5. Landscape Architecture - Hardscape Amenity & Landscape Plans
  - a. Prepare up to 2 Schematic Entry Signage Design Concepts for review by Client
  - b. Meet to review Entry Signage SD's and discuss materials, costs and options.
  - c. Final Hardscape Amenity Construction Documents including Sign Elevations and Layout for new Main Entrance Signage for a budget to not exceed \$ 35,000.  
NOTE: Structural or Electrical Engineering of any Amenities or Signage is excluded.
  - d. Landscape Plans for Street Trees showing groupings along Topsider Drive for a budget not to exceed \$ 62,500. Determine extents of Irrigation with Client.  
NOTE: Irrigation design is excluded, however we will provide a performance specification for irrigation for the design to be provided by the Landscape Contractor.

**C. SUBMITTALS & PERMITTING (LUMP SUM):**

SAPA will submit drawings and other information as necessary to the appropriate agencies for the following permits or approvals:

1. Sedimentation and erosion control permit approval by NCDENR-DEMLR.
2. Water and Sewer permit approval by the City of Winston-Salem.
3. Stormwater management permit approval by NCDENR-DWR.
4. Driveway / road widening permit approval by the Village of Clemmons and/or NCDOT
5. Roadway approval by the Village of Clemmons and/or NCDOT.
6. All other permits are by others.

**D. BIDDING (HOURLY)**

SAPA will assist the Client in the bidding and negotiation phase of the project by providing the following services:

1. Preparation of the "Project Manual" that includes specifications and instructions to bidders including all forms necessary for bidding.
2. Preparation of an Invitation to Bid and advertisement of the invitation in local newspapers.
3. Distribution of bid documents to bidders.
4. Answer bidder's questions during the bid period.
5. Issue addenda as needed.
6. Conduct a pre-bid meeting.
7. Receive bids and conduct bid opening.
8. Tabulate and evaluate bids and make recommendation to the Client for award of contract.

**E. CONTRACT ADMINISTRATION (HOURLY)**

SAPA will assist in the contract administration phase of the project by providing the following services:

1. Prepare Contracts and exhibits, Notice of Award and Notice to Proceed for signatures by the Client and the Contractor.
2. Conduct Pre-Construction meeting with Client, Contractor and permitting agencies.
3. Review change order requests, prepare and process change orders only with prior approval of the Client.
4. Review Contractor's pay requests for payment by the Client.

**F. CONSTRUCTION PHASE SERVICES (HOURLY):**

To the extent that Limited Construction Observations are included as set forth below, SAPA shall visit the site periodically and as requested by the Client or the Contractor (contingent upon availability). The purpose of such visits and observations will be to generally observe the progress of the work of the Contractor. Such visits or observations are not intended to be exhaustive checks or a detailed inspections of the Contractor's work. Based on its general observations, SAPA shall periodically provide information to the Client about the progress of the work, and shall inform the Client of any known deviations from the Contract Documents and any defects observed in the Contractor's work.

SAPA shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

SAPA shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. SAPA does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

Construction Observation Site Visits: We have estimated 50 hours for site visits for the following:  
Site visits during grading and utility work  
Site visits during curb & gutter and paving work.  
Site visits during installation of the stormwater pond

Requests for Information (RFI's): We have estimated 8 hours for reviewing and responding to RFI's.

Submittal Review: We have estimated 8 hours to review site work submittals. We recommend the Client's Contractor review the product submittals before they are sent to SAPA for review to ensure they are complete, accurate and comply with the project specifications to avoid additional hourly review fees.

Site Punch: We have included one visit for site punch and report.

Water and sewer Record Drawings stormwater management BMP certification: Upon completion of project and receipt of as-built survey information from the Client's surveyor, SAPA will make necessary as-built revisions to the water, sewer, and storm drainage plans and submit the record drawings to the City of Winston Salem as required. Certification of the completed stormwater BMP will be prepared and submitted to the NCDENR-DWR.

**PHASE II**

**G. MEETINGS AND COORDINATION (HOURLY):**

SAPA will conduct or attend meetings and provide coordination services as needed for the following:

1. Meet with the Client during the course of the project to review design direction and progress, bidding and contractor selection coordination, construction administration coordination.
2. The City of Winston-Salem on water and sewer utility issues.
3. NCDOT on driveway permitting issues.
4. NCDENR on erosion control, and stormwater management.
5. Coordinate with the Client's other consultants – surveyor, geotechnical, environmental, etc.

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##### Onsite Construction Documents:

1. Topsider Drive Extension - Design to include approximately 2,000 lf of new roadway with curb & gutter, storm drainage, sanitary sewer, and waterline, extending from the existing end of the Phase 1 road to Idols Road. Roadway drawings include plan & profiles and grading plans. Design of a railroad crossing is also included. Design of other utilities such as lighting, electrical, gas, phone, and cable TV are excluded.
2. Plans for a stormwater wet detention pond to be located in an undetermined location. The pond will be designed to meet NCDENR-DWR quality treatment standards. Stormwater design is limited to a single wet detention pond. If additional stormwater control devices are required to manage stormwater from the Phase II area, the additional devices will be designed as supplemental services.
3. Plan and profile drawings for approximately 2,400 lf of sewer outfall from the end of Topsider Drive to a new pump station located near the southern end of Lot 4. The pump station will be designed by others.
4. Construction details.
5. Landscape Architecture - Hardscape Amenity & Landscape Plans
  - a. Prepare up to 2 Schematic Entry Signage Design Concepts for review by Client
  - b. Meet to review Entry Signage SD's and discuss materials, costs and options.
  - c. Final Hardscape Amenity Construction Documents including Sign Elevations and Layout for new Main Entrance Signage for a budget to not exceed \$ 35,000.  
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To the extent that Limited Construction Observations are included as set forth below, SAPA shall visit the site periodically and as requested by the Client or the Contractor (contingent upon availability). The purpose of such visits and observations will be to generally observe the progress of the work of the Contractor. Such visits or observations are not intended to be exhaustive checks or a detailed inspections of the Contractor's work. Based on its general observations, SAPA shall periodically provide information to the Client about the progress of the work, and shall inform the Client of any known deviations from the Contract Documents and any defects observed in the Contractor's work.

SAPA shall not supervise, direct or have control over the Contractor's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Contractor nor for the Contractor's safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the Contractor in accordance with the Contract Documents.

SAPA shall not be responsible for any acts or omissions of the Contractor, subcontractor, any entity performing any portions of the Work, or any agents or employees of any of them. SAPA does not guarantee the performance of the Contractor and shall not be responsible for the Contractor's failure to perform its Work in accordance with the Contract Documents or any applicable laws, codes, rules or regulations.

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**III. SERVICES SPECIFICALLY EXCLUDED:**

The following items are not anticipated for the project and have not been included in this fee proposal. These items may be added if needed at a later date on an hourly basis according to the attached rate schedule.

1. Topographic and boundary surveys, construction stakeout surveys, and as-built surveys.
2. Soils borings and subsurface investigation, geotechnical engineering, construction materials testing.
3. Environmental investigation and studies, wetlands and jurisdictional stream delineation and impact permitting and engineering.
4. Rezoning, Variances, Staff Change Plans, Board of Adjustment and other public meetings.
5. Offsite utility improvements or extensions to the site other than included in the scope of services.
6. Pump station design.
7. Design of utilities other than water and sanitary sewer. Design of electric, gas, telephone, TV, phone and other "dry" utilities are excluded.
8. Mass grading or individual lot grading.
9. Structural engineering of site elements including but not limited to site retaining walls, headwalls, cast-in-place utility structures, signage, light pole bases, etc.
10. Traffic studies, traffic signal design.
11. Construction traffic control plans.
12. Engineering and Permitting other than that provided within the Scope of Services.
13. Color Renderings, Marketing, Sales and Lease Exhibits.
14. Permit application fees.
15. Street lighting layout, photometric drawings and electrical design.
16. Special amenity designs such as signs, water features, sculptures, etc.
17. Redesign due to unforeseen conditions, Value Engineering or Cost Reduction requests.
18. Cost opinions.

**IV. DESIGN APPROVAL:**

The Client shall designate a person responsible for design direction to our office for this project. In the event that the design, as approved by this responsible person is rejected by others, and re-design is required, such re-design services shall be compensated as Additional Services.

**V. FEES AND TERMS:**

Services described above shall be provided on Lump Sum or Hourly Basis as noted below plus expenses in accordance with the terms and conditions in Appendix A attached hereto and which is incorporated and made part of this agreement by reference. The breakdown of fees is as follows:

**PHASE I**

<b>LUMP SUM FEE ITEMS</b>	<b>TOTAL</b>
B. Construction Documents	
Civil Engineering (Onsite)	\$ 58,500
Landscape Architecture	
Hardscape Layout and Signage	\$ 3,500
Landscape Plans	\$ 2,500
C. Submittals and Permitting	\$ 7,500
<b>Phase I Lump Sum Services: \$ 72,000</b>	

<b>HOURLY FEE ITEMS</b>	<b>ESTIMATED FEES</b>
A. Meetings and Coordination	\$ 5,000
D. Bidding	\$ 10,000
E. Contract Administration	\$ 8,000
F. Construction Phase Services	\$ 15,000
<b>Phase 1 Hourly Services: \$ 38,000</b>	

**Estimated Total Phase I Services: \$ 110,000**

**PHASE II**

<b><u>LUMP SUM FEE ITEMS</u></b>	<b><u>TOTAL</u></b>
H. Construction Documents	
Civil Engineering (Onsite)	\$ 48,500
Landscape Architecture	
Hardscape Layout and Signage	\$ 3,500
Landscape Plans	\$ 2,500
I. <u>Submittals and Permitting</u>	\$ 7,500
<b>Phase II Lump Sum Services: \$ 62,000</b>	
<b><u>HOURLY FEE ITEMS</u></b>	<b><u>ESTIMATED FEES</u></b>
G. Meetings and Coordination	\$ 5,000
J. Bidding	\$ 10,000
K. Contract Administration	\$ 8,000
L. <u>Construction Phase Services</u>	\$ 15,000
<b>Phase 2 Hourly Services: \$ 38,000</b>	
<b>Estimated Total Phase II Services: \$ 100,000</b>	

We would be pleased to answer questions you may have or to clarify the various points above. If this proposal meets with your approval, please sign below and return one copy for our files.

Sincerely yours:



Stimmel Associates, P.A.  
J. Neal Tucker, P.E.  
Director of Civil Engineering

ACCEPTED: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

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# Concept 1



**LOT 1**  
 Lot Size: 14.45 Acres +/-  
 Building Size: 150,000 sf +/-  
 Phase 1: 100,000 sf +/-  
 Expansion: 50,000 sf +/-  
 Building Elevation: 769'

**LOT 6**  
 Lot Size: 8.75 Acres +/-  
 Building Size: 75,000 sf +/-  
 Building Elevation: 752'

**LOT 5**  
 Lot Size: 7.62 Acres +/-  
 Building Size: 75,000 sf +/-  
 Building Elevation: 756'

**Common Area**  
 Lot Size: 2.43 Ac. +/-

**Common Area**  
 Lot Size: 1.09 Ac. +/-

**LOT 2**  
 Lot Size: 83.24 Acres +/-  
 Building Size: 500,000 sf +/-  
 Phase 1: 300,000 sf +/-  
 Expansion: 200,000 sf +/-  
 Building Elevation: 750'

**LOT 3**  
 Lot Size: 17.80 Acres +/-  
 Building Size: 100,000 sf +/-  
 Building Elevation: 756'

**LOT 4**  
 Lot Size: 28.03 Acres +/-  
 Building Size: 112,500 sf +/-  
 Building Elevation: 746'



Concept 1	
Total Lots:	6 Lots
Total Building Area:	1,012,500 sf +/-
Total Lot Acreage:	159.89 Ac. +/-
Total Common Area:	3.52 Ac. +/-
Total Road Right-of-Way:	6.08 Ac. +/-
Site Total:	169.49 Ac. +/-
Total Road Length:	4,907 Lf. +/-
Total Stream Crossings	2 Crossings

**SITE DATA**  
**Jurisdiction:** Forsyth County/ Clemons FD  
**Zoning:**  
 Existing: GI, RS-40  
 Proposed: GI  
**Watershed:**  
 Site Lies within The Yadkin River Class IV Protected Watershed  
**Site Acreage:**  
 Total: 169.49 AC +/-  
 (Per digital Forsyth County GIS data)  
 169.74 AC +/-  
 (Per digital Forsyth County Tax data)

**Idols Road Site**  
 Forsyth County, NC 07/20/2016  
**Concept 1**  
 Prepared for: Forsyth County, NC Department of Housing and Community Development

Project #: 15-159  
 Prepared by: **stimmel** LANDSCAPE ARCHITECTURE CIVIL ENGINEERING LAND PLANNING  
 601 N. TRADE STREET, SUITE 200 WINSTON-SALEM, NC 27101  
 www.stimmel.com 336.723.1067

This is a preliminary site plan based on limited information and therefore may not reflect final site features. Minimal site research has been conducted. Site conditions may change significantly.

## APPENDIX A

Upon signature by Client of the proposal letter of **STIMMEL ASSOCIATES, P.A. (SAPA)** and **FORSYTH COUNTY (Client)** dated **March 28, 2017**, and revised **April 11, 2017** (the "Proposal Letter") the provisions and terms of the Proposal Letter and this Appendix A shall constitute the contract between SAPA and the Client (the "Agreement").

### I. FEES AND EXPENSES

Fees for services provided by SAPA as identified in the Scope of Services in the Proposal Letter (the "Fees") shall be computed on an hourly basis or a lump sum basis, as set forth in the Proposal Letter. The Proposal Letter may provide that some of the Fees shall be computed on an hourly basis and that some of the Fees shall be on a stipulated sum basis.

### A. HOURLY RATE SCHEDULE

Services provided on an hourly basis shall be computed at the rates for SAPA personnel in effect at the time of the service, the current rates of which are set forth below. Any estimate of fees, written or oral, for services that are provided on an hourly basis, are for initial budgetary information, based on information known with certainty to SAPA as of the date of the Proposal Letter, and no estimate of the Fees for hourly based services shall be a limitation on the amount of the actual Fees required to be paid by Client.

#### PERSONNEL

#### HOURLY RATES

<b>Principal:</b>	Landscape Architect	
	Doug Stimmel, ASLA	\$230.00
<b>Staff:</b>	Senior Project Manager II	\$190.00
	Senior Project Manager I	\$170.00
	Government Affairs	\$150.00
	Project Manager	\$140.00
	Project Engineer	\$130.00
	Land Planning Designer II	\$110.00
	Land Planning Designer I	\$100.00
	Senior Planner	\$110.00
	Plans Facilitator	\$105.00
	Civil Designer III	\$110.00
	Civil Designer II	\$100.00
	Civil Designer I	\$ 95.00
	Engineer/LA Technician III	\$ 95.00
	Engineer/LA Technician II	\$ 90.00
	Engineering/LA Technician I	\$ 80.00
	Administrative Staff	\$ 65.00

#### POLITICS/PUBLIC HEARINGS & MEETINGS

<b>Principal:</b>	Landscape Architect	
	Doug Stimmel, ASLA	\$460.00
<b>Staff:</b>	Senior Project Manager II	\$380.00
	Senior Project Manager I	\$340.00
	Government Affairs	\$300.00

*NOTE: THESE HOURLY RATES ARE VALID FOR A PERIOD OF SIX (6) MONTHS, AND WILL THEREAFTER BE INCREASED CONSISTENT WITH ANY INCREASES IN SAPA STANDARD RATES*

### B. STIPULATED SUM

Fees based on a stipulated sum shall be for the services expressly identified in the Proposal Letter as being provided on a stipulated sum basis. All other services shall be provided on an hourly basis.

**C. EXPENSES**

In addition to payment of the Fees, Client shall pay SAPA expenses and either at the cost to SAPA or at cost plus a percentage. The expenses for which Client is responsible include expenses incurred by SAPA and SAPA's employees and consultants in the interest of the project, including but not limited to the following:

The following expenses shall be reimbursed to SAPA at cost (plus\_0\_ %):

1. Expenses of transportation in connection with the project; expenses in connection with authorized out-of-town travel; long-distance communications; and amounts paid for securing approval of authorities having jurisdiction over the project.
2. Expenses of reproductions, postage and handling of drawings, specifications and other documents.
3. If authorized in advance by the Client, expenses of overtime work requiring higher than regular rates.
4. Expenses of renderings, models and mock-ups requested by the Client.
5. Expenses of additional insurance coverage or limits, including professional liability insurance, requested by the Client in excess of that normally carried by the SAPA and SAPA's consultants.
6. Expenses for in house (SAPA) provided copies, duplicate, etc. will be billed as follows:
 

a. Large Format Copies	24" x 36" - \$ 2.00/sheet	30" x 42" - \$ 3.00 sheet
b. Final Plots	24" x 36" - \$ 2.00/sheet	30" x 42" - \$ 3.00 sheet
c. Color Plots	24" x 36" - \$25.00/sheet	30" x 42" - \$40.00/sheet
d. Black & White Copies	8.5" x 11" - \$0.10/sheet	11" x 17" - \$0.25/sheet
e. Color Copies	8.5" x 11" - \$1.00/sheet	11" x 17" - \$2.00/sheet
f. Scans	24" x 36" - \$ 2.00/sheet	30" x 42" - \$ 3.00/sheet
g. Sticky back paper	\$2.00/sheet	
h. Compact Disk	\$5.00/disk	
7. Mileage greater of 54 cents/mile or current IRS mileage rate
8. Other travel and lodging at cost

The following expenses shall be reimbursed to SAPA at cost plus an additional amount computed on a percentage basis, as provided below:

9. All expenses incurred to out-of house (outside of SAPA) vendors for blueprints, renderings, reproductions, testing, and any other project related expenses will be billed at a multiple of 1.1 times the amount (cost plus 10%).

**II. INVOICES, PAYMENT, ETC.**

SAPA shall submit monthly invoices for services for Fees, based upon hourly or stipulated sum as appropriate, plus expenses for the time period covered by the invoice. Invoices shall be due upon within 15 days of the date of SAPA's invoice. Amounts unpaid 30 days after the invoice date shall bear interest at the rate of 1.5% per month. Reasonable attorney's fees and other costs incurred in collecting past due amounts shall be paid by the Client.

SAPA shall have the right to suspend services if any invoice has not been paid in full within 30 days after the invoice date and the right to terminate future services if any invoice plus accrued interest has not been paid within 45 days after the invoice date. The Fees and expenses due to SAPA shall be increased by all costs and expenses caused by any suspension, delay or interruption in the project as a result of Client's failure to make timely payment of any SAPA invoices.

**III. OWNERSHIP OF DOCUMENTS**

Drawings, plans, specifications and other documents, including those in electronic form, provided by SAPA or its consultants are Instruments of Service, and the creator, designer and author of Instruments of Service shall retain all common law, statutory and other rights, including copyright, in the Instruments of Service. No Instruments of Service are to be used on other projects except by written agreement of SAPA. One reproducible set of final documents will be furnished to Client upon request. Upon acceptance of SAPA's proposal, SAPA grants Client a nonexclusive license to reproduce and use Instruments of Service in connection with the project, including the project's further development by Client, provided that Client is not in payment default of the Agreement. Client shall not assign or transfer said license without written consent of SAPA. Any use or reproduction of Instruments of Service contrary to the terms herein shall be at Client's risk and expense, without liability to SAPA or its consultants.

**IV. FAST TRACK**

If this project is identified in the Proposal Letter as being accelerated or fast track, Client acknowledges that accelerated or fast-track scheduling provides benefits to Client, but also carries with it associated risks. Such risks include without limitation the Client incurring costs for SAPA to coordinate and redesign portions of the project affected by procuring or installing elements of the project prior to the completion of all relevant construction documents, and costs for the Client's contractor to remove and replace previously installed work. If the Client selects accelerated or fast track scheduling, the Client agrees to include in the budget for the project sufficient contingencies to cover all costs and increases in SAPA Fees and expenses that may result from the project or parts thereof being on an accelerated or fast track.

## **VI. CREDITS/ACKNOWLEDGEMENTS**

SAPA shall be given appropriate credit and acknowledgments for all services rendered including, but not limited to, planning, design and implementation. Appropriate credit shall be defined as being named by Client (or their representative) in project identification boards, published articles, promotional brochures, and similar communications, if any. SAPA shall be authorized to identify the project in its marketing, promotion, and other business related materials and communications.

## **VII. DELAY, FORCE MAJEURE, CONCEALED CONDITIONS**

SAPA shall not be responsible for any delay in the performance or progress of the work or project, or liable for any costs or damages sustained by Client resulting from such delay, caused by any act or neglect of the Client or Client's representatives, by any third person acting as the agent, servant, employee or independent contractor of Client, by changes in the SAPA scope of services or the work of the project, as a result of compliance with any order or request of any federal, state or municipal government authority or any person purporting to act therefore, by acts of declared or undeclared war or by public disorder, riot or civil commotion, or by any other cause beyond the reasonable control of SAPA. Further, SAPA shall not be liable for any consequence resulting in whole or in part from any act of God, weather or other event or circumstance beyond SAPA's reasonable control, or any concealed condition, and any additional work or services resulting from any such event, circumstance or concealed condition shall be paid to SAPA on an hourly fee basis, plus expenses.

## **VIII. HAZARDOUS WASTE, ENVIRONMENTAL, OSHA**

Client shall indemnify and hold harmless SAPA and its consultants, agents, and employees from and against all claims, damages, losses and expenses, direct and indirect, or consequential damages, including but not limited to fees and charges of attorneys and court and arbitration costs, arising out of or due to the performance of services by SAPA, or claims against SAPA arising from the work of others, related to Hazardous Substances, or Environmental Law, or OSHA. For purposes of this section the following definitions apply:

1. "Environmental Law" means any federal, state or local statute, rule, regulation, ordinance, order, judgment, decree, injunction or common law pertaining to the protection of human health or the environment, including the Comprehensive Environmental Response, Compensation or Liability Act of 1980 (42 U.S.C. 9601-9675), the Toxic Substance Control Act (15 U.S.C. 2601-2671), the Hazardous Materials Transportation Act (49 U.S.C. 1801-1813), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), the Clean Air Act (42 U.S.C. 7401-7671g), the Safe Drinking Water Act (42 U.S.C. 300 F-300 J-26), the Solid Waste Disposal Act (42 U.S.C. 6901-6992k), the Coastal Zone Management Act (16 U.S.C. 1451-1464), the Occupational Safety and Health Act (29 U.S.C. 651, et. seq.), and any similar federal, state or local law, as supplemented or amended.
2. "Hazardous Substance(s)" means any hazardous, toxic, radioactive or infectious substance, material, waste, pollutant, or contaminant as defined, listed or regulated under any Environmental Law, including asbestos and petroleum oil and its fractions.
3. "OSHA" means the Occupational Safety and Health Act (29 U.S.C. 651, et. seq.), and any similar federal, state or local law, as supplemented or amended.

## **IX. LIMITATION OF LIABILITY**

In recognition of the relative risks and benefits of the project to both the Client and SAPA, the risks have been allocated such that the Client agrees to limit the liability of SAPA and SAPA's consultants, officers, directors, partners, employees, licensed professionals, shareholders, and owners for any and all claims, losses, costs, damages of any nature whatsoever arising out of or relating to the project, including attorneys' fees and costs and expert-witness fees and costs, so that the total aggregate liability of SAPA and SAPA's consultants, officers, directors, partners, employees, licensed professionals, shareholders, and owners shall not exceed SAPA's total Fees for services on the project. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising.

## **X. INDEMNIFICATION**

Notwithstanding any other provisions of this Agreement, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless SAPA, its officers, directors, employees, owners, and consultants against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, arising out of or in any way connected with this project, except for damages liabilities or costs resulting from the sole negligence of SAPA, its agents, employees or consultants.

## **XI. SHOP DRAWING REVIEW, SITE VISITS**

SAPA shall review and approve or take other appropriate action on the submittals of any contractor of Client, such as shop drawings, product data, samples and other data, but only for the limited purpose of checking for conformance with the design concept and the information shown in SAPA construction documents, if any. This review shall not include review of the accuracy or completeness of details, such as quantities, dimensions, weights or gauges, fabrication processes, construction means or methods, coordination of the work with other trades or construction safety precautions, all of which are the sole responsibility of the Client or its contractor. SAPA's review shall be conducted with reasonable promptness while allowing sufficient time in SAPA's judgment to permit adequate review. Review of a specific item shall not indicate that SAPA has reviewed the entire assembly of which the item is a component. SAPA shall not be responsible for any deviations from the construction documents not brought to the attention of the SAPA in writing by the Client or its contractor. SAPA shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

If the scope of SAPA's services includes site visits or inspections, such shall be done to view generally the project work as of the time of the visit. SAPA shall not be obligated to make exhaustive or comprehensive site inspections to check the quality or quantity of project

work. SAPA will inform Client or its contractor of any known deviations in the work at the project from SAPA design that are recognized by SAPA at a site visit.

## **XII. JOBSITE SAFETY**

Neither the professional activities of SAPA, nor the presence of SAPA or its employees and consultants at a construction/project site, shall relieve the Client or its contractor of its obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agencies. SAPA and its personnel have no authority to exercise any control over any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client acknowledges that it or its contractor shall be solely responsible for jobsite safety.

## **XIII. DEFECTS IN SERVICE, CONTINGENCY, BETTERMENT**

The Client shall promptly report to SAPA any defects or suspected defects in SAPA's services of which the Client or its contractor becomes aware, so that SAPA may take measures to minimize the consequences of such defect. SAPA shall not be liable for any damages to the extent they would have been eliminated or reduced had SAPA been promptly notified of a defect or suspected defect in SAPA's services.

The Client and SAPA agree that increased costs and changes in development, design, or construction may be required because of possible omissions, ambiguities or inconsistencies in the drawings and specifications prepared by SAPA or its consultants, and, therefore, that the final development, design, and construction costs of the project may be greater than anticipated by Client. The Client agrees to set aside a reserve in the amount of 10% of the total project costs as a contingency to be used, as needed, to pay for any such increased costs and changes, including without limitation an increase in the costs of SAPA services. The Client further agrees to make no claim by way of direct or third-party action against SAPA or its consultants with respect to any such increased costs within the contingency because of such changes or because of any claims made by others (such as Client's contractor) relating to such costs or changes.

If due to negligence of SAPA or any of its consultants a required item or component of the project is omitted from Instruments of Service, SAPA shall not be responsible for paying the cost required to add such item or component to the extent that such cost would have been incurred to include the item or component in the first instance. In no event will SAPA be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the project beyond the original requirements.

## **XIV. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

SAPA and the Client waive all claims for incidental, special, indirect or consequential damages arising out of or relating to the project, this Agreement, or any services or work of SAPA. This mutual waiver includes, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of productivity, loss of reputation and any other consequential damages that either party may incur from any cause of action including negligence, strict liability, breach of contract and breach of express or implied warranty.

## **XV. CLIENT REPRESENTATIONS**

Client shall provide SAPA access and right of entry to the subject property throughout the time of performance under the Agreement. Client will timely provide information and decisions as requested by SAPA so as not to delay performance of services by SAPA, and if requested by SAPA, shall designate a representative to whom all communications of SAPA to Client may be made, and SAPA may rely upon all communications from such representative as being duly authorized by Client. Upon request of SAPA, Client shall provide reasonable evidence that it has readily available funds to timely pay Fees and expenses of this Agreement. Unless included within the SAPA scope of services identified in the Proposal Letter, Client will furnish surveys, services, documentation, and information concerning the project and subject property as are necessary for performance by SAPA under the Agreement.

## **XVI. ENTIRE AGREEMENT; MODIFICATION; GOVERNING LAW; NO ASSIGNMENT**

This Agreement (the accepted Proposal Letter, Appendix A, and any other Appendices or documents incorporated into the Proposal Letter) constitute the entire agreement and understanding between the parties and there are no other agreements, representations, warranties or understandings, oral or written, between the parties with respect to the subject matter of this Agreement. The Agreement may not be modified except by a writing signed by SAPA and Client. North Carolina law shall govern this Agreement. Neither SAPA nor Client shall assign this Agreement or any interest herein without the written consent of the other.

## **XVII. WAIVER**

The terms, covenants, representations, warranties and conditions of the Agreement can be waived only by written document executed by the party waiving compliance. Waiver of any party at any time or times of strict performance of any provision hereof shall not affect the right at a later time to strict enforcement. No waiver by any party of any condition or other breach of any terms, condition or representations in this Agreement in any one or more instances shall be deemed to be or construed a waiver of any other term, condition or representation of this Agreement.

## **XVIII. SEVERABILITY**

If any provision of this Agreement shall be determined to be contrary to law and unenforceable by a court of competent jurisdiction, the remaining provisions shall be severable and enforceable in accordance with their terms.