

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is made and entered into this _____ day of _____, 201____, by and between **STV Engineers, Inc.**, a New York corporation, with a business address at 900 West Trade Street, Suite 715, Charlotte, NC 28202, (“STV”); and Town of Huntersville with a business address at 105 Gilead Road, Town Center – 3rd Floor, Huntersville, NC 28078, (“Client”). STV and Client are sometimes referred to individually as a “Party” and together as the “Parties.”

WITNESSETH

WHEREAS, Client, desires to retain STV to render and perform certain professional services relating to Client’s US 21/Gilead Road Intersection Project – Design Phase (the “Project”); and

WHEREAS, STV is willing to render such services in accordance with the terms and conditions in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the receipt and adequacy of which is hereby acknowledged by the Parties, the Parties do hereby agree as follows:

ARTICLE 1 – STV’S RESPONSIBILITIES

- A. STV agrees to perform the professional services (the “Services”) described in detail in Exhibit “A” attached hereto and incorporated herein (the “Scope of Services”). The schedule for performance of the Services shall be as set forth in the Scope of Services.
- B. If required for the Services, STV shall secure and maintain the licenses, professional registrations, permits and other authorizations necessary for STV to perform the Services identified herein. It is expressly understood that Client is responsible for any and all other permits, licenses, authorizations, and bonds, including related fees and any administrative fees or any taxes required by any federal, state, or local government law.
- C. STV reserves the right to assign this Agreement to its affiliates, subsidiaries, or successors as necessary in order to effectively carry out and complete the Services specified by this Agreement.
- D. STV will perform its obligations in a manner consistent with that level of skill and care exercised by members of the same field currently practicing under similar conditions and circumstances at the time such Services are rendered (the “Standard of Care”). Estimates of cost, approvals, recommendations, opinions and decisions by STV are made on the basis of STV’s experience, qualifications and professional judgment and are not to be construed as warranties or guarantees.

- E. Consistent with the Standard of Care, the Services shall conform to applicable laws, ordinances, codes, rules, regulations and other legal requirements at the time Services are rendered.
- F. STV shall not be required to sign any documents, no matter by whom requested, that would result in STV having to certify, guaranty, or warrant the existence of conditions whose existence STV cannot ascertain. Any certification provided by STV shall be so provided based on STV's knowledge, information and belief subject to the standard of care set forth above, and shall be given in STV's professional opinion consistent with the same. STV shall be compensated for any work necessary to verify project compliance with regulatory standards for purposes of such certification.
- G. STV's opinions of probable construction cost provided pursuant to this Agreement are to be made on the basis of STV's experience and qualifications and, consistent with the Standard of Care, represent STV's judgment as a professional generally familiar with the industry. However, since STV has no control over the cost of labor, materials, equipment, or services furnished by others, or over the methods of determining prices, or over competitive bidding or market conditions, STV cannot and does not guarantee, and shall therefore have no liability in the event that proposals, bids, or actual construction cost will not vary from opinions of probable construction cost prepared by STV.
- H. During the construction phase of the Project, STV shall not supervise, direct, or have control over a contractor's work, nor shall STV have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by contractor, for safety precautions and programs incident to the contractor's work in progress, nor for any failure of contractor to comply with laws and regulations applicable to contractor's furnishing and performing the work.
- I. STV neither guarantees the performance of any construction contractor nor assumes responsibility for any contractor's failure to furnish and perform the work in accordance with the contract documents.
- J. STV shall not be responsible for the acts or omissions of any contractor(s), subcontractor or supplier, or of any of the contractor's agents or employees or any other persons (except STV's own subcontractors and employees) at the Project site or otherwise furnishing or performing any of the contractor's work; or for any decision made on interpretations or clarifications of the contract documents given by Client.

ARTICLE 2 – CLIENT'S RESPONSIBILITIES

- A. Immediately upon execution of this Agreement, Client shall provide available information to STV regarding the requirements for the Project. STV shall be entitled to rely upon the accuracy and completeness of all requirements, programs, instructions, reports, data and other information furnished by Client pursuant to this Agreement. When requested by STV, Client will arrange access to and make provisions for STV to enter upon public and private property as required for STV to perform Services under this Agreement

- B. Upon the request of STV, Client shall designate a representative authorized to act on its behalf with respect to the Project. Client, or such authorized representative, shall render decisions in a timely manner pertaining to documents submitted by STV in order to avoid unreasonable delay in the orderly and sequential progress of STV's Services.
- C. Client is alone responsible for payment to STV under this Agreement and such duty to pay STV shall not be subject to any third party agreement.

ARTICLE 3 – CHANGES AND ADDITIONAL SERVICES

Client may make changes within the Scope of Services to be performed by STV. All changes to this Agreement must be in writing and signed by both Parties. If such changes result in an increase in the STV's costs and/or increase the time required for the nature of performance of the Agreement ("Additional Services"), STV shall so notify Client and an equitable adjustment shall be made and the Agreement shall be changed in writing through a change order signed by the Client and STV. Client expressly agrees STV shall have no obligation to proceed with any Additional Services unless and until both Parties have signed the required change order document. STV shall not be in default hereunder for any refusal to proceed with any Additional Services.

ARTICLE 4 – FORCE MAJEURE

Neither Party will be responsible for delays attributable to acts of God, acts of third parties, intervention of public authorities, weather, work stoppages, changes in applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the reasonable control of a Party. Costs and schedule commitments shall be subject to renegotiations for unreasonable delays caused by Client's or third party's failure to provide specified facilities or information. The time for performance of this Agreement shall be extended proportionately in the event STV is delayed in the performance of this Agreement by such causes and additional compensation may be due STV in accordance with the provisions of hereof.

ARTICLE 5 – COMPENSATION

- A. STV shall be compensated and paid for all Services described herein as a lump sum fee in the amount not to exceed seven hundred ninety-nine thousand nine hundred twenty-one dollars and sixty-one cent, (\$799,921.61), to be computed in accordance with the Schedule in Exhibit B.
- B. Upon submission, not more frequently than once per month, by STV of an invoice for STV's Services, Client will, within thirty (30) calendar days, pay STV for Services performed. Time is of the essence in payment of STV's invoices, and timely payment is a material part of the consideration of this agreement between STV and Client. Invoice amounts in dispute shall not affect Client's obligation to pay remaining invoice charges.

- C. Unpaid balances shall be subject to an additional charge of one and three quarters (1.75) percent per month from the date of the invoice. In addition, STV may, after giving seven (7) days written notice to Client, suspend Services without liability until Client has paid in full all amounts due STV. Sealed plans, final documents, reports and attendance at meetings/hearings will not be provided unless payment for Services is current. If STV is performing services for the Client under multiple projects, invoice payments must be kept current on all projects for Services hereunder to continue. Client acknowledges STV's right to suspend Services and withhold plans and documents, as provided above, if payments are not current on all projects. If Services are suspended for thirty (30) days or longer, upon resuming Services STV shall be entitled to expenses incurred in the interruption and resumption of its Services. If Services are suspended for ninety (90) days or longer, STV shall be entitled to compensation for all expenses incurred during the interruption and resumption of its Services and fees for remaining Services shall be equitably adjusted. Should it become necessary to utilize legal or other resources to collect any or all monies rightfully due for Services rendered, STV shall be entitled to full reimbursement of all such costs, including reasonable attorneys' fees and costs, as part of this Agreement.

ARTICLE 6- INSURANCE/INDEMNITY

- A. STV agrees to carry the following insurance during the term of this Agreement:

1. Worker's Compensation and Employer's Liability Insurance in compliance with statutory limits.
2. Professional Errors and Omissions Insurance with limits of not less than ONE MILLION DOLLARS (1,000,000.00) combined.
3. Automobile Liability Insurance with limits of not less than ONE MILLION DOLLARS (1,000,000.00) combined single limit for all motor vehicles owned, rented or used by the STV.
4. Comprehensive General Liability, Bodily Injury and Property Damage Insurance with combined single limits of ONE MILLION DOLLARS (1,000,000.00) per occurrence and in the aggregate.
5. Certificates of insurance will be furnished upon request. If Client requires additional insurance coverage, and it is commercially available, Client agrees to reimburse STV for the expense of carrying such additional insurance.

- B. The Client and STV shall at all times indemnify and save harmless each other and their officers and employees on account of any claims, damages, losses, litigation, expenses and/or counsel fees arising out of any claims, damages, personal injuries and/or property losses sustained by or alleged to have been sustained by and person or entity, to the extent such claims, damages, losses, litigation, expenses and/or counsel fees are caused

by the negligent acts, errors or omissions of the indemnifying Party, its employees, or subcontractors.

ARTICLE 7 – LIMITATION ON LIABILITIES

- A. Notwithstanding any other provisions of this Agreement, and to the fullest extent permitted by law, neither Party shall be liable to the other for any incidental, special, indirect or other consequential damages incurred due to the fault of the other Party, regardless of the nature of the fault or whether it was committed by the Client or STV, or their employees, subconsultants, or subcontractors. Consequential damages include, without limitation, liability for loss of use of the Project or existing property, loss of profits, loss of use, loss of production, or business interruption, however the same may be caused.
- B. Client hereby agrees that, to the fullest extent permitted by law, STV's total liability to Client and any persons or entities claiming by, through, or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Project, the Services, or this Agreement from any cause or causes including, without limitation, STV's negligence, errors, omissions, strict liability, statutory liability, indemnity obligation, breach of contract or breach of warranty shall not exceed Fifty Thousand & 00/100 Dollars (\$50,000.00) or STV's fee hereunder, whichever shall be greater.

ARTICLE 8 – OWNERSHIP OF DOCUMENTS

- A. Any reuse of documents including all drawings and specifications (whether in hard or electronic format) by Client or a third person or entity authorized by Client without written verification or adaptation by STV for the specific purpose intended will be at the Client's sole risk and without liability or legal exposure to STV; and the Client shall release, defend, indemnify, and hold harmless STV from all claims, damages, losses and expenses, including reasonable attorneys' fees, arising out of or resulting therefrom.
- B. If any information hereunder is provided in electronic format, Client recognizes that such information record on or transmitted as electronic media, including CADD or BIM documents ("Electronic Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alternation. Accordingly, the Electronic Documents are provided to Client for informational purpose only and not as record documents.

ARTICLE 9 - NOTICES

- A. For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the Party to whom the notice or request is given, and shall be either: (i) delivered personally; (ii) sent by United States certified mail, postage prepaid, return receipt requested; (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight; or, (iv) sent via confirmed facsimile transmission. Notice shall be deemed

given: when received if delivered personally or sent via telecopy or facsimile transmission with written confirmation of receipt; forty-eight (48) hours after deposit if sent by mail; and twenty-four (24) hours after deposit if sent by Federal Express or other nationally recognized carrier. From time to time, either Party may designate another address for all purposes of this Agreement by giving the other Party not less than ten (10) days advance notice of such change of address in accordance with the provisions hereof.

- B. The address of Client for all purposes under this Agreement and for all notices hereunder shall be:

Town of Huntersville
PO Box 664
Huntersville, NC 28078
Phone No. 704-766-2225
Fax No. 704-992-5528
Email Address: mbuchanan@huntersville.org
Attention: Max Buchanan, PE

The address of STV for all purposes under this Agreement and for all notices hereunder shall be:

STV Engineers, Inc.
900 West Trade Street, Suite 715
Charlotte, NC 28202
Phone No. 704-372-1885
Fax No. 704-372-3393
Email Address: nikki.honeycutt@stvinc.com
Attention: Nikki Honeycutt, PE

ARTICLE 10 - CONFIDENTIAL INFORMATION

In connection with the performance of this Agreement, STV may disclose to Client, through its representative, secret or confidential information consisting of heretofore unpublished technical or other data in which STV or other parties have proprietary rights, patentable as well as unpatentable. All of this information shall be considered confidential information. Client shall not, except as specifically authorized in writing by STV, disclose to any party any technical, confidential or secret information of whatever kind or nature, so long as, and to the extent that, such information remains unpublished. This obligation shall not apply to information which the Client can demonstrate was in the possession or known to it prior to the date of such disclosure as demonstrated by its records. Nor should this obligation apply to information, which Client can establish, has been properly and lawfully made available to Client from third parties who are under no obligation to maintain the confidential nature of this information. Client shall make no copies of any prints or other documents supplied by the STV, unless expressly authorized or directed to do so.

ARTICLE 11 – NO WAIVER

No failure of either Party hereto at any time to give notice of any breach by the other Party of, or to require compliance with, any condition or provision of this Agreement shall be deemed a waiver of any provisions or conditions hereof.

ARTICLE 12 – TERM & TERMINATION

The term of this Agreement shall commence as of the date and year first above written and shall continue until completion of the Services, as may be modified from time to time.

Either Party may terminate this Agreement for convenience upon thirty (30) days written notice. Notwithstanding the foregoing, either Client or STV may terminate this Agreement upon the other Party's material breach of this Agreement, provided that: (a) the nonbreaching Party sends written notice to the breaching Party describing the breach in reasonable detail; and (b) the breaching Party does not cure the breach within twenty (20) days following its receipt of such written notice. STV will be compensated for its Services rendered to the date of termination. Termination of this Agreement for any reason whatsoever shall not affect any right or obligation of any Party which is accrued or vested prior to such termination, and any provisions of this Agreement relating to any such right or obligation shall be deemed to survive the expiration or earlier termination of this Agreement.

ARTICLE 13 - SEVERABILITY

If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there shall be added automatically as a part of this Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

ARTICLE 14– SURVIVAL OF PROVISIONS

Termination of this Agreement for any reason whatsoever shall not affect any right or obligation of any Party which is accrued or vested prior to such termination, and any provision of this Agreement relating to any such right or obligation shall be deemed to survive the termination of this Agreement. The indemnities, audit rights, representations, warranties, covenants, guarantees, confidentiality obligations, insurance requirements, and intellectual property rights provisions set forth herein shall survive termination or expiration of this Agreement, in addition to any other provisions which by their nature should, or by their express terms do, survive or extend beyond termination or expiration of this Agreement.

ARTICLE 15 - MODIFICATIONS

Except as otherwise provided herein, this Agreement may be altered, modified or amended only in writing and signed by both Parties.

ARTICLE 16 – GOVERNING LAW

This Agreement shall be governed in compliance with the laws of the State of North Carolina and applicable governmental rules and regulations in effect at the effective date of this Agreement.

ARTICLE 17– INTEGRATION/MERGER CLAUSE

This Agreement contains the entire and complete agreement between the Parties respecting the Project, and any agreement or representation respecting the Project of the duties of either Party in relation thereto in prior negotiations, proposals, orders, representations letter agreements, memorandum or understandings, oral or written, shall be superseded as of the date hereof.

ARTICLE 18 – BINDING EFFECT

The Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their successors and assigns.

ARTICLE 19 – THIRD PARTIES

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either STV or Client. STV's Services under this Agreement are being performed on behalf of and solely for the benefit and exclusive use of the Client for the limited purposes of this Agreement and no person or other entity shall have any claim against STV because of this Agreement. In addition, nothing herein shall be construed as creating a contractual relationship between the Client and any STV employee, representative, or consultant. The Client agrees that in the event of a dispute regarding this Agreement or the Services rendered by STV hereunder, the Client shall only seek recourse against STV and hereby expressly waives any and all right to pursue a claim against STV's individual officers, directors, or employees.

ARTICLE 20 – ASSIGNMENT

Client may not assign or transfer any of its duties, obligations, or interests in this Agreement without the prior written consent of STV.

ARTICLE 21 – HEADINGS

All section and article headings herein are for convenience of reference only and are not part of this Agreement, and no construction or inference shall be derived therefrom. Wherever required by the context, any gender or neuter shall include the other gender or neuter, the singular shall include the plural, and the plural shall include the singular. Each defined term herein shall be used in its singular or plural form whether or not so defined.

ARTICLE 22 – CONSTRUCTION

The Parties acknowledge that each Party and, if it so chooses, its counsel, have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto or to any Task Order entered into hereunder.

ARTICLE 23 – DISPUTES

STV and Client agree to negotiate in good faith to resolve any disputes or differences arising under this Agreement. Any dispute that cannot be resolved by negotiation will be submitted to mediation conducted in accordance with the current Construction Industry Mediation Rules of the American Arbitration Association or such other form of non-binding Alternative Dispute Resolution (ADR) as they may mutually agree.

STV and Client agree that, in the event their dispute resolution procedures as described above do not resolve any disagreement among them and any Party elects thereafter to institute legal proceedings, the forum for any such action relating to this Agreement shall be in the Courts located in Mecklenburg County, North Carolina, either State or Federal. STV and Client hereby irrevocably consent to the jurisdiction of such Courts and waive any defense, whether asserted by motion or pleading, that such Courts are an inconvenient or inappropriate venue.

Except to the extent that this Agreement expressly permits a Party to suspend performance, pending final resolution of a dispute, the Parties shall each proceed diligently and faithfully with performance of their respective obligations under this Agreement pending a final resolution of a dispute and failure to so proceed shall be considered a default under the terms of this Agreement.

[SIGNATURES TO THIS AGREEMENT ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement the day and year first written above.

Town of Huntersville

By: _____

Name: _____

Title: _____

STV Engineers, Inc.

By: _____

Name: _____

Title: _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B
COMPENSATION