



October 20, 2022

Ms. Renata Owens
Parks Superintendent
City of Winston Salem
Recreation and Parks
2480 Reynolds Park Road
Winston-Salem, NC 27107

RE: FEE & SCOPE PROPOSAL
City of Winston Salem – Long Creek Park (Phase 2) Trails & Bridges
Landscape Architectural, Civil Engineering, Architectural, Structural Engineering & Consultant Services
Winston-Salem, NC
Stimmel Project # 19-179C

Dear Renata:

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 **The City of Winston Salem (Client)**, located in, Winston-Salem, NC. SAPA shall provide professional services on the project referenced above, further described as Phase 2 of the 164 +/- acre Long Creek Park Site off Bethania – Tobaccoville Road in Winston-Salem, NC. Scope includes Visioning Process, Meetings, Construction Documents, Bidding & Negotiations and Limited Construction Observation for Phase 2 consisting of trail and bridge improvements.

PROJECT ASSUMPTIONS

1. Current City & Stimmel Master Plans, Ordinances, Design Guidelines & digital information available from City & Stimmel CAD Files shall be provided and used for the preparation of Design Development Plans.
2. Field Topographic Survey including any easements, stream buffers, utilities, significant trees and vegetation shall be performed by SAPA's sub-consultant.
NOTE: Should additional field data or soil borings be needed for Phase 1, SAPA will notify the Client

SCOPE OF SERVICES

This scope is based on Stimmel and our Design Team consisting of Select Engineering (Structural), providing the following services for Meetings, Construction Documents, Bidding, Limited Construction Observation and Record Drawings. Survey Work, Environmental Buffer & Wetland Locations, Soil Borings will be by other outside Consultants.

TASK 1: VISIONING PROCESS:

TASK 1.1: PREPARE & GATHER INFORMATION

1. Site Visit with Client to review Phase 2 Trail & Bridge areas of the site, existing features, issues and maintenance concerns not limited to ex. bridge conditions, Muddy Creek stream buffers, drainage, vegetation, ex. trail conditions, utilities, ex. golf cart asphalt trails, streams, etc.
2. Review Preliminary Cost Estimates and Budgets with the latest Project Scope and Phase 1 parameters.

TASK 1.2: VISIONING REVIEW WITH CLIENT

1. Before we begin design, confirm priorities and goals per MPT D.D. Adams and COWS Recreation and Parks.
2. Review costs for survey, geo-tech and environmental consultants with Client to confirm budget allowances.

TASK 2: CONSTRUCTION PLANS:

NOTE: Extent of Construction Documents to be determined with Client based on approved budget, scope and design features as determined thru Design Development phase.

TASK 2.1: PREPARE PARK CONSTRUCTION PLANS:

Prepare Construction Documents including

- **Details, Specs and Structural** for existing Bridge updates and new Bridge construction.
- **Demolition Plans** as needed for ex. features.
- **Site/Staking Plans** for Trails, Bridges, Hardscape Amenities
- **Site Grading/Erosion Control Plans**, as required
- **Fine Grading, Spot Grades** at Amenity Areas, Bridges, Pathways, Trails, etc.

- **Special Amenity Details** for Trails, Educational Signage, etc.
- **Hardscape Enlargements for Amenity areas** showing materials, access, etc.
- **Landscape Plans & Details** including Native Shade Trees, Over-Seeding & Meadow Mix Seeding for less mowing and lower maintenance

TASK 3: BIDDING & NEGTIATIONS

NOTE: City of Winston-Salem Purchasing Department will advertise for bids, Conduct Pre-Bid Meeting and Bid Opening. City to prepare and handle all Notifications of Award, Contracts with selected Contractor and Payments. We assume there will be separate bid packages and processes for the Demolition and Site Clean-Up and Site Construction.

- **Project Manual** for bidding including:
 - a. Technical specifications in Masterspec format
 - b. Special Conditions
 - c. Bid Form

NOTE: City of WS to prepare all bid notifications and set schedule for public bidding process.

 - d. Contract Form (by COWS)
 - e. General Conditions (by COWS)

TASK 3.1: ANSWERING BIDDER QUESTIONS

TASK 3.2: PREPARE ADDENDA AS NEEDED FOR ISSUE BY CITY

TASK 3.3: ATTEND PRE-BID MEETING

TASK 3.4: ATTEND BID OPENING and ASSIST IN BID EVALUATION AS NEEDED

TASK 4: LIMITED CONSTRUCTION OBSERVATION

TASK 4.1: SITE VISITS AND OBSERVATION SCOPE

SAPA shall visit the site in order to observe the progress and quality of the Work completed by the Contractor. Such visits and observation are not intended to be an exhaustive check or a detailed inspection of the Contractor's work but rather are to allow SAPA, as an experienced professional, to become generally familiar with the Work in progress and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. Based on this general observation, SAPA shall keep the Client informed about the progress of the Work and shall endeavor to guard the Client against deficiencies in the 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.

TASK 3.5: SITE VISIT MEETINGS AND PUNCH LISTS

Construction site visits are estimated based upon a construction schedule of 8-10 months. Anticipated are one (1) initial site visit for Pre-Construction Design Team and selected General Contractor coordination; generally conduct bi-weekly visits during construction as well as monthly OAC meetings and one (1) final punch for each Project Team Member.

TASK 5: RECORD DRAWINGS

TASK 5.1: PREPARE RECORD DRAWINGS for Buildings and Public Utilities as needed.

TASK 5.2: PROVIDE ELECTRONIC COPIES OF ALL DRAWINGS & SPECS TO CLIENT

EXCLUSIONS

The following items are not anticipated for Phase 1 of the project and are excluded from the scope of services. These items can be added as Additional Services if required:

- Change in Scope of Services or budget.
- LEED Services, Analysis or Submittals to USGBC (apply principals where feasible)
- Signage Design (City of Winston Salem to provide Approved Standards for Park Projects)
- Site Lighting Design (Duke Energy to provide any additional site lighting in Phase 2 beyond the parking lot.)
- Plan changes, additions, or revisions due to program changes by the client or due to value engineering changes by the client, after client has approved Design Development drawings and authorized site construction documents to proceed.
- Meetings or Presentations to City of Winston-Salem Boards, Councils, etc. other than those spelled out in the contract.
- Geotechnical investigation
- Environmental assessment
- Field Survey
- Means, methods and techniques for removal and eradication of invasive plant species.

FEES & TERMS

The established budget for Phase 2 of Long Creek Park is \$ 1,000,000 million dollars per the approved Funding in 2022.

<u>The Estimated Schedule is as follows:</u>	<u>Timeframe:</u>
• Visioning Process & Meetings	October – November 2022
• Survey, Geo-tech & Environmental	November – December 2022
• Construction Documents	December 2022 - February 2023
• Permitting, Bidding & Negotiations	March – May2023
• Award Bid	June 2022
• Construction Phase	July 2023 – December 2023

Services described in the Scope as Tasks 1- Task 5 shall be provided on a Lump Sum Fee for the following:

<u>Professional Services:</u>	<u>Lump Sum Fees:</u>
TASK 1: Visioning Process	\$ 3,000.00
TASK 2: Construction Documents	\$ 65,000.00
TASK 3: Permitting Bidding & Negotiations	\$ 5,000.00
TASK 4: Limited Construction Observation	\$ 12,000.00
TASK 5: Record Drawings	\$ 1,500.00
SUB-TOTAL	\$ 86,500.00

<u>Survey & Geo-Technical Services:</u>	<u>Lump Sum Fees:</u>
1. Surveying	
a. Topographic Survey Phase 2 Trails	\$ 12,500.00 +/- TBD pick up enviro flags
b. Environmental Buffer & Wetlands Delineation	\$ 3,500.00 +/- TBD
c. Geo-Technical	\$ 3,500.00 +/- TBD
Sub-Total	\$ 19,500.00 +/- TBD

Long Creek Park (Phase 2) – Fee & Scope Proposal
October 20, 2022

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,

A handwritten signature in blue ink, appearing to read "Kimberly Barb", is written over a light blue rectangular background.

Kimberly M. Barb, PLA, LEED-AP BD+C
Partner / Senior Project Manager
STIMMEL ASSOCIATES, PA

APPENDIX A

Upon signature by Client of the proposal letter of **STIMMEL ASSOCIATES, PA (SAPA)** and **CITY OF WINSTON SALEM (Client)** dated **October 20, 2022**, (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

Senior Landscape Architect	\$250.00
Senior Project Manager II	\$200.00
Senior Project Manager I	\$185.00
Government Affairs	\$165.00
Project Manager	\$155.00
Project Engineer	\$145.00
Senior Project Engineer	\$155.00
Construction Administrator	\$150.00
Land Planning Designer III	\$135.00
Land Planning Designer II	\$125.00
Land Planning Designer I	\$115.00
Civil Designer III	\$135.00
Civil Designer II	\$125.00
Civil Designer I	\$115.00
Engineer/LA Technician III	\$110.00
Engineer/LA Technician II	\$105.00
Engineering/LA Technician I	\$ 90.00
Administrative Staff	\$ 70.00

POLITICS/PUBLIC HEARINGS & MEETINGS

Senior Landscape Architect	\$500.00
Senior Project Manager II	\$400.00
Senior Project Manager I	\$370.00
Government Affairs	\$330.00

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; 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 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. Compact Disk \$5.00/disk
 - h. Mileage greater of 58 cents/mile or current IRS mileage rate
7. Other travel and lodging at cost
8. Attorney's fees incurred by SAPA after Client's signed acceptance of the Proposal Letter, which relate to Client's Project financing, including without limitation consent to assignment, subordination of lien, or lien waivers.

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.

V. 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.

VI. 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.

VII. 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.

VIII. 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.

IX. INDEMNIFICATION

To the fullest extent permitted by law, Client shall indemnify and hold harmless SAPA, its officers, directors, employees, and consultants, from and against claims, damages, losses, and expenses (including without limitation reasonable attorney's fees and dispute resolution costs) (collectively "Loss") to the extent that fault of Client or its derivative parties is a proximate cause of the Loss. In matters involving bodily injury or property damage, indemnification by Client shall not be required if the bodily injury or property damages arises from the negligence, in whole or in part, of SAPA or one of its derivative parties. The terms "fault" and "derivative parties" as used in this section shall have the meanings given in N.C. Gen. Stat. § 22B-1.

X. 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 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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.

XVI. XVI. 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.

XVII. 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.