

Client Name	Town of Pittsboro	Project Number	13-
Address	P.O. BOX 759 Pittsboro, NC 27312	Project Location	Survey & CAD Assistance US 64 East Pittsboro, NC 27312
Contact	Mr. Fred Royal, PE, CFM	Email	froyal@pittsboronc.gov
Phone	919-542-2063	Fax	919-542-2310
AP Contact	Same	Email	<u>Same</u>
Phone	Same	Fax	Same

Description of Work

Provide Due Diligence, Surveying Services, CAD Design and Drafting Assistance, Plan Review at the above referenced Project Location in accordance with the attached Proposal Dated August 16, 2013, and hereby incorporated into this agreement by reference.

Should at anytime, the Client decide not to move forward, the Client shall promptly notify SUMMIT in writing. All charges incurred to date of said notice will be billed accordingly. All remaining portions of the scope and fees agreed upon herein will **not** be billed and the contract put on hold or closed out should inactivity occur for a period of more than 60 days. Should the contract resume after having been closed out, a new contract, scope and fee shall be implemented for the remainder of the work.

Fee Schedule

- Lump Sum: **\$23,553.25 (Surveying, CAD Design and Permitting Assistance provided through CMAQ planning/design funds**
- Hourly, NTE: **\$6,384 (\$135/hr Project Manager and \$88/hr Project Engineer - Engineering Design & Oversight AS NEEDED) (provided as reimbursable CMAQ construction funds)**

Expenses and/or outside services have been incorporated into the Contract Amounts above.

Conditions of Payment

- Retainer WAIVED
- Payment in full before drawing is released.
- To be billed upon completion with payment due upon receipt.
- To be billed monthly with payment due upon receipt.

All past due invoices are subject to a service charge of 1.5% per month.

This proposal is valid for 30 days from the date it is signed by SUMMIT.

TERMS AND CONDITIONS

ARTICLE I: CLIENT'S RESPONSIBILITIES

A) Client's Representative: The Client shall appoint a representative authorized to act on the Client's behalf with respect to the Project. The Client or its representative shall make decisions in a timely manner regarding all aspects of the Project, shall examine documents submitted by Summit Design and Engineering Services, PLLC (hereinafter referred to as SUMMIT) and render decisions in a timely manner to avoid unreasonable delay in the orderly and sequential progress of SUMMIT's services and the Project schedule accepted by Client.

B) Client's Program and Budget Requirements: Client shall provide SUMMIT full information in a timely manner regarding all its requirements for the Project including its objectives, schedule, criteria, constraints and budget including reasonable contingencies.

C) Right of Entry: Client shall provide right of entry for SUMMIT, its staff, subconsultants, and all necessary equipment to complete the Work. SUMMIT will take reasonable precautions to minimize damage to property. Client understands that in the normal course of work some damage may occur, the correction of which is not part of this Agreement.

D) Required Information: Client will furnish SUMMIT all information, requirements, data, reports, surveys and instructions required to complete the Scope of Services, including identifying the type and location of underground improvements and utilities, and all existing conditions. SUMMIT shall have the right to rely upon the completeness and accuracy of such information. Client acknowledges that certain assumptions will be made regarding existing conditions that cannot be verified without destruction or damage to existing facilities. To the fullest extent permitted by law, Client agrees to waive all claims against, and to hold harmless and indemnify, SUMMIT and its subconsultants, for damages to underground improvements and utilities and for any costs associated with undisclosed existing conditions.

E) Invoices: SUMMIT will render invoices every thirty days. Payment is due upon presentation of invoice and is past due thirty (30) days from invoice date. Client agrees to pay a service charge of one and one half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. Payment of invoices shall not be subject to any discounts, set-offs, or backcharges by Client unless agreed to in writing by SUMMIT. Client shall pay all costs, expenses, and distributions, including collection agency fees and expenses, court costs and reasonable attorneys' fees incurred by SUMMIT, in the event collection or legal processes are employed to collect outstanding bills.

F) Sales Tax: Client will pay any applicable sales tax whenever deemed to be due. Payment terms are exclusive of sales tax.

G) Non-Solicitation: Throughout the course of the working contract, and subsequently on year thereafter as described herein the Client shall not solicit for employment, nor employ, hire or promote the voluntary termination of any SUMMIT Employee.

Article II: SUMMIT's Responsibilities

A) Standard of Care: SUMMIT shall perform the services called for by this Agreement with the level of care and skill ordinarily exercised by members of the same professions currently practicing under similar conditions. No other warranty, expressed or implied, is made. Client acknowledges that increased costs and changes may be required due to omission, ambiguities and inconsistencies in the drawings and specifications. Client agrees to set aside a contingency of at least 3% of the Project construction cost to pay for these costs and changes. Client further agrees it will make no claims against SUMMIT for any such costs and changes covered by such contingency fund.

B) Compliance with Laws, Codes and Standards: Consistent with the professional standard of care, SUMMIT will comply with laws, codes, and standards applicable to the Project design as of the effective date of this Agreement or the issuance of the construction plans and specifications, whichever is later.

C) Certifications: SUMMIT shall sign, if requested by Client, a statement that to the best of its knowledge, information and belief, based in whole or in part on information provided by others, the accuracy of which has not been verified, that the Project has been completed in general conformance with the plans and specifications. SUMMIT shall not be required to sign any documents, no matter by whom requested, in which SUMMIT is required to certify, guarantee or warrant the existence of conditions the existence of which SUMMIT has not or cannot ascertain.

D) Construction Phase Services: If construction phase services are required in the Scope of Services, the following terms shall apply:

1) Site Observation: If site observation visits are to be provided by SUMMIT, SUMMIT shall visit the site at intervals appropriate to the stage of the construction, or as otherwise expressly agreed to in the Scope of Services, in order to observe the progress and quality of the work completed by the contractor. Such observation is not meant to be an exhaustive check

or a detailed inspection of the contractor's work but rather to allow SUMMIT to become generally familiar with the progress of the Work and to determine in general if the work is being performed in a manner indicating that, when fully completed, the work will be in accordance with the Contract Documents. SUMMIT shall not be required to make continuous or exhaustive inspections to check the quantity and quality of the Work nor shall SUMMIT be responsible for the Contractor's failure to perform the Work in accordance with the Contract Documents.

2) Work Site Safety: Client agrees that SUMMIT shall not supervise or direct, or have any responsibility for, control over or charge of, the Contractors' work or the construction means, methods, techniques, sequences or procedures, or for the work site safety precautions or programs in connection with the Work. These rights and responsibilities are solely those of the party or parties performing the actual construction of the Project. Neither the professional activities of SUMMIT, nor the presence of SUMMIT personnel and subconsultants at the construction site, shall relieve the Contractors and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the Work safely and in accordance with any health or safety requirements of any regulatory agency. The Client agrees that the Client, SUMMIT and its subconsultants shall be indemnified by the Contractors and shall be made additional insureds under the Contractors' general, umbrella and excess liability insurance policies.

3) Submittals and Shop Drawings: If the Scope of Services includes the review of Contractor submittals and shop drawings, then SUMMIT will review such submittals and shop drawings for the limited purpose of checking for conformance with the design concept expressed and the information provided in the Construction Documents. 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 responsibility of the Contractors. The review shall be conducted with reasonable promptness while allowing sufficient time in SUMMIT's judgment to permit adequate review. Review of a specific item shall not indicate that SUMMIT has reviewed the entire assembly of which the item is a component. SUMMIT shall not be responsible for any deviations from the Contract Documents not brought to its attention in writing by the Contractor. SUMMIT shall not be required to review partial submissions or those for which submissions of correlated items have not been received.

4) Requests for Clarification or Interpretation: SUMMIT shall provide, with reasonable promptness, written responses to requests from Contractors for clarification and interpretation of the requirements of the Contract Documents. If such requests for information, clarification or interpretation are, in SUMMIT's professional opinion, for information readily apparent from reasonable observation of field conditions or a review of the Contract Documents, or reasonably inferable therefrom, SUMMIT shall be entitled to additional compensation at its regular billing rates for its time spent responding to such requests.

5) Record Documents: If required by the Scope of Services, upon completion of the Work, SUMMIT shall compile for and deliver to the Client a reproducible set of Record Documents conforming to the marked-up prints, drawings and other data furnished to SUMMIT by the Contractor. This set of Record Documents will show significant changes made during construction. Because these Record Documents are based on unverified information provided by other parties that SUMMIT will assume to be reliable, SUMMIT cannot and does not warrant their accuracy.

E) Insurance: SUMMIT shall maintain worker's compensation insurance required by law. SUMMIT represents and warrants that it maintains general liability and property damage insurance. Certificates for such policies shall be provided to Client upon written request. Client shall maintain at its own cost and expense, its own general liability and property damage insurance. Client and SUMMIT waive all rights against each other and SUMMIT's subconsultants, agents and employees for damages caused by any peril to the extent covered by the property insurance maintained by Client, except to the extent such proceeds are held by Client as trustee. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

Article III: General Legal Provisions

A) Ownership of Documents: Drawings, specifications, and all other documents prepared by SUMMIT or its subconsultants, including those in electronic form (collectively "Design Documents") are instruments of service. SUMMIT shall retain all common law, statutory and other reserved rights, including copyright thereto. The Design Documents, including those in electronic form are furnished for use solely with respect to this Agreement. Client is permitted to retain copies of the Design Documents, including those in electronic form, for information and reference in connection with the Project. Client shall not use the Design Documents, including those in electronic form furnished by SUMMIT or its subconsultants on other projects, for additions to this Project, or for the completion of this Project by others, without the express written

consent of SUMMIT. Any reuse without written consent shall be at Client's risk and full legal responsibility.

B) Client agrees to hold harmless and indemnify SUMMIT and its subconsultants from any and all claims, suits, demands, damages, liabilities, and costs, including reasonable attorney fees, arising from such reuse.

C) Retention of Documents: SUMMIT will retain, pursuant to its usual document retention policy, records relating to the Work for a period of three (3) years following completion of the Work. During this period, records will be made available to the Client at SUMMIT's offices during normal business hours upon seven (7) day's notice.

D) Asbestos and Hazardous Materials: Unless otherwise specifically provided in the Scope of Services, SUMMIT and its subconsultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of asbestos or hazardous or toxic materials.

E) Termination and Suspension: This Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof. Such termination shall not be effective if the substantial failure is remedied before expiration of the seven (7) days. Client's failure to pay invoices within thirty (30) days shall be deemed a substantial failure to perform. In such event, SUMMIT may terminate this Agreement or immediately suspend the performance of services until such failure has been cured. The Client may terminate this Agreement for its convenience upon fourteen (14) days written notice. In the event of a termination for convenience, Client will pay SUMMIT for services performed to the termination effective date plus reasonable termination expenses within ten (10) calendar days of receipt of a final invoice.

In the event the project, or any phase of it is delayed for reasons beyond SUMMIT's control, unbilled work will be invoiced at the standard hourly rates for the actual number of hours expended. Completed phases will be billed at fees quoted herein.

E) Disputes: In an effort to resolve any conflicts that arise during the design or construction of the Project or after completion of the Project, all claims, disputes, or other matters in question between the parties to this Agreement that arise out of or relate to this Agreement or the breach thereof shall be submitted to nonbinding mediation before a neutral third-party mediator acceptable to both parties. Such mediation shall be a condition precedent to the commencement of any legal action arising out of this Agreement except those legal proceedings related to Client's failure to pay.

The mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect unless the parties agree otherwise. The cost of the mediator shall be borne equally by the parties. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter has arisen. In no event shall such demand be made after the date applicable statutes of limitation or repose would bar a legal or equitable action based on such claim, dispute or other matter.

In the event of litigation relating to the sufficiency or adequacy of performance of services called for by this Agreement, should SUMMIT obtain a judgment dismissing Client's action or claim or other resolution wherein SUMMIT is not required to make compensation to Client in excess of its final

offer made to Client in the mediation, SUMMIT shall be entitled to recover all costs incurred in the defense of the claim including staff time, court costs, expert witness fees, and reasonable attorneys' fees, and other claim related expenses.

F) Choice of Law/Venue: DELETED

G) Statute of Limitations/Repose: Causes of action pertaining to this Agreement shall be deemed to have accrued and the applicable statutes of limitation and repose shall commence to run at the earlier of either the date of Substantial Completion of the Project or the date SUMMIT's services are substantially complete.

H) Assigns: **Neither the client nor SUMMIT may delegate, assign, or transfer his duties or interest in this Agreement without consent of the other party, except SUMMIT may in its discretion utilize qualified subconsultants in the performance of the Scope of Services.**

I) Force Majeure: Neither party to this Agreement shall be liable to the other for delays in performing the obligations called for by this Agreement, or the direct and indirect costs resulting from such delays, that are caused by labor strikes, riots, war, acts of government authorities, extraordinary weather conditions or other natural catastrophe, or any other cause beyond the reasonable control or contemplation of either party.

J) No Third-Party Beneficiaries: Nothing in this Agreement shall create a contractual relationship with or give any right or benefit to any third party.

K) Severability, Reformation and Survival: If any provision in this Agreement is held invalid, illegal, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which, being valid, legal and enforceable, comes closest to the parties' intention underlying the invalid, illegal or unenforceable provision. Limitations of liability, indemnities, and other express representations shall survive termination of this Agreement for any cause.

L) Risk Allocation/Limitation of Liability: DELETED

M) Indemnification: To the fullest extent permitted by law, Client agrees to indemnify and hold harmless SUMMIT, its officers, directors, employees, agents, and subconsultants from all claims, damages, injuries, liabilities, costs and expenses, including reasonable attorneys fees arising from or claimed to arise from the acts, omissions, negligence, fault, breach of contract, breach of warranty, or strict liability of Client or its employees, agents, contractors and subcontractors.

N) Consequential Damages: Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, neither Client nor SUMMIT shall be liable for any consequential damages incurred due to the fault of the other party regardless of the nature of the fault or whether it was committed by Client, SUMMIT, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.

O) Complete Agreement: This Agreement constitutes the entire agreement between the parties hereto and supersedes all previous understandings and agreements with respect to the Project or any of the provisions hereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

By signing this Agreement, you are consenting to the Terms and Conditions set forth herein. Please retain a copy for yourself and return the signed Original to Summit Design and Engineering Services, PLLC.

Client _____

By _____ [SEAL]

(Print Name)

Date _____

Summit Design and Engineering Services, PLLC

Address 504 Meadowland Drive _____

City State Hillsborough NC 27278 _____

By _____

CHAD E. ABBOTT, PE _____

(Print Name)

Date _____



October 15, 2013

Fred Royal, PE, CFM
Town Engineer
Town of Pittsboro
PO Box 759
Pittsboro, NC 27312

**SUBJECT: Surveying & Civil/Site Design & Drafting Services: +/-2,500 LF Public Sidewalk
Pittsboro, NC (Chatham County)**

Summit Design and Engineering Services, PLLC (SUMMIT) would like to thank **The Town of Pittsboro (CLIENT)** for extending us the opportunity to provide Engineering and Survey services for the **Town of Pittsboro Sidewalk Extension along Hwy 64 East Right of Way (Project)**. A scope of services and associated fees corresponding to this project are as follows:

Scope Survey of Services:

1. **Coordinate Reference System:** Establish 2 NAD 83/11 horizontal and NAVD 88 vertical control points (#5 rebar with cap or other marker as needed) outside limits of project by static GPS submitted for OPUS solution and/or by VRS/Network RTK.
2. **Project Control Baseline:** Establish Control Baseline for project by conventional traverse. Traverse stations to be set as #5 rebar with cap or other marker as needed.
3. **Deed/Plat Research:** Perform deed or plat research for the adjoining property owners along both sides. Search and tie sufficient adjoining property corners to establish property line intersections with right of way.
4. **Right of way/Easement Research:** Perform research for right of way and recorded easements for mapping per record within project limits. Determine right of way ownership and width and establish south right of way line of US Hwy. 64.
5. **Topographic and Location Survey:** Perform topographic & location survey to include the following:
 - a. Topography for 1' contour interval.
 - b. Level "C" utility location
 - c. Locate existing above ground features-pavement, buildings, traffic lanes, drives, landscape areas including trees greater than 6 inches dbh, specimen trees greater than 40" dbh, gravity utilities with invert, size and material, mail boxes, bus stops, signs, fences, above ground utility appurtenances, overhead utilities/easements, visible traffic signal systems, delineated streams/wetlands.
 - d. Contact One Call to get a determination of all underground utility locations.
6. **Deliverables:** Provide AutoCad base file to Summit Land Development Department (Chad Abbott, PE) and Town of Pittsboro.

Survey Limits:

US Hwy. 64 (East Street): Survey south side of US Hwy. 64 (East Street), from south edge of pavement/back of curb to approximately 10' south of the southern right of way line of US Hwy. 64 (or to existing treeline between Credit Union and White's Mobile Home Park Road). Survey to tie to the existing sidewalk on the west side of Chatham Business Drive and proceed east to White's Mobile Home Park Road (Approximately 2500 linear feet).

Survey Fee: \$9,300

Scope of Land Development Services:

1. **Base Mapping and AutoCAD Drafting:** After receiving the file from SUMMIT SURVEY, the Land Development Dept. will conduct layer and line type management to ensure existing conditions are representable and clearly identified. SUMMIT will then deliver the file as a PDF and hard copy to the CLIENT for review of existing conditions and to markup a proposed alignment. SUMMIT will take the markups to generate a CIVIL 3D model and corridor with cross slopes, sideslope tie outs, vertical slopes and curvatures based upon the design input from the CLIENT. Once the corridor and alignment is set, plan a profile sheets will be generated for review and markup by the CLIENT. SUMMIT will again provide the CLIENT with PDF and hard copies of the deliverables. While under review by the CLIENT, anticipated applicable detail sheets will also be prepared and sent to the CLIENT. Once final markups have been received, SUMMIT will generate FINAL drawings for signatures by the CLIENT. Thereafter, SUMMIT will assist as need to address Plan related comments by NCDOT and other review agencies. SUMMIT has also included up to 4 Meetings with the CLIENT in person for review, comment, and discussion of plans/design.
2. **Submittals and Permitting:** SUMMIT will assist in submitting and permitting by printing and mailing the required copies of plan sets needed. Charges incurred from printing, mailing will be billed at 1.15 times our direct cost. Mileage will be billed at \$0.56/mile.
3. **Engineering Design, Permitting Assistance and Plan Review:** If needed or desired by the CLIENT, Mr. Chad E. Abbott, PE can provide technical and planning assistance to the CLIENT relative to NCDOT requirements, ADA requirements and general sidewalk and pedestrian design. He can also assist in the review of plans for completeness and discrepancies prior to permit submittals and releasing drawings for bidding. Charges for these services will be hourly and only as requested/directed by the Client. It is understood and anticipated that the CLIENT will be the "Primary" designer with Mr. Abbott providing only secondary/complimentary assistance and input.

Land Development Fee: The LUMP SUM for Scope Items #1 & #2 and project management is **\$14253.25.** The estimated hourly fee for Scope Item #3 is **\$6,384.** See Standard Rate sheet attached. Expenses and/or outside services will be billed at 1.15 times our direct cost and are not included in the fee. Scope items above will start in **mid to late October** with anticipated submissions to NCDOT to be in late **November / Early December** and be completed by **Late January / Early February.**

Total Fees: **\$23,553.25 Lump Sum(Surveying,CAD Design & Permitting Assistance)**
 \$6,480.00 Hourly (Engineering and Design Assistance /Oversight)
 \$29,937.25Cap for Requested Scope

Cordially,



Chad E. Abbott, PE

Land Development Manager

Summit Design and Engineering Services, PLLC

Visit our web site at www.summitde.net for a complete listing of Professional Services