

ADDEDNDUM F - MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of this ___ day of April ___, 2022 (the "Effective Date"), between VC3, Inc., a Delaware corporation having its principal place of business at 1301 Gervais Street, Suite 1800, Columbia, SC 29201 ("Company"), and Town of Pineville, a municipality having its principal place of business at 200 Dover Street, Pineville NC 28134 ("Client").

WHEREAS, Client desires to receive certain professional services from Company;

Client and Company hereby agree as follows:

1. Services To Be Performed.

1.1 **Services.** Company will provide computer system and network maintenance, software, consulting and professional services (including any deliverables, the "Services") as mutually agreed to in a written executed attachment to this Agreement by Company and Client (a "Work Order"); provided however that the parties recognize that Company may from time to time provide Services to Client at Client's written request without a Work Order, and in such cases, these Services shall be subject to and governed by the terms and conditions of this Agreement and performed by Company on a time and materials basis and invoiced at the hourly billing rates specified in Exhibit A.

1.2 **Form of Work Order.** Each Work Order will conform to substantially the following format:

(a) The Work Order shall be entitled "Work Order No. [___] under the Master Services Agreement, dated [____].

(b) The contents of the Work Order may be included in the body of the Work Order, or in separately signed Attachments, as the parties consider most practical. The Work Order shall include a provision for the dated signatures of authorized representatives of both parties and shall not be binding unless and until executed by such persons.

1.3 **Change Orders.** Client may request a change in the scope or nature of the Services in a Work Order at any time. However, changes to the scope of the Services in a Work Order can be made only in writing executed by both parties.

2. Charges for Services.

2.1 **Charges.** Company shall be entitled to compensation for the performance of the Services as stated in each Work Order which are accepted by Client. Unless otherwise expressly stated in a Work

Order, Company's compensation will be based on direct labor hours charged at fixed labor rates. The Work Order may call for a budget of expected charges as a way for both parties to monitor performance. Except as otherwise expressly set forth in a Work Order, all Services that are identified to be rendered on a time and materials basis will be invoiced at the hourly billing rates specified in Exhibit A.

2.2 **Invoices.** Unless otherwise stated in a Work Order, payment for the Services is due monthly when and as performance is rendered. Company shall issue invoices to Client for charges when, and as they come due. Client shall make payment to Company of all undisputed charges under such invoices within thirty (30) days from Client's receipt of such invoice. In the event Client disputes any charge, it shall promptly notify Company of such dispute, and the parties shall in good faith work to resolve any such dispute.

2.3 **Expenses.** Client shall pay Company for all actual, reasonable and documented expenses incurred by Company in the performance of the Services and pre-approved in writing by Client, including travel, living, and out-of-pocket expenses incurred pursuant to this Agreement. Client shall have no obligation to reimburse Company for any such expenses unless specified and agreed to in writing by the parties.

2.4 **Effect of Late Payment.** All late payments of undisputed amounts due and payable hereunder by Client shall bear interest at a rate of one and one-half percent (1.5%) per month or partial month during which any sums were owed and unpaid, or the highest rate allowed by law, whichever is lower.

2.5 **Collection Costs.** Client shall reimburse Company for any reasonable expenses and reasonable costs it incurs to collect any undisputed amounts due to Company under this Agreement, including reasonable attorneys' fees.

2.6 **Taxes.** Client shall pay directly, or reimburse Company for, all taxes and tariffs assessed or levied

by any governmental entity that are now or may become applicable to the Services or measured by payments made by Client to Company hereunder, or are required to be collected by Company or paid by Company to tax authorities including interest assessment thereon if such assessments are due to Client's actions or inactions. This includes, but is not limited to, sales, use, excise, gross receipt and personal property taxes, or any other form of tax based on services performed, equipment used by Company to perform services solely for Client, and the communication or storage of data, but does not include taxes based upon Company's net income and/or assets. Company agrees that it shall collect all required taxes.

3. Term; Termination. The term of this Agreement shall continue from the Effective Date until the earlier of (a) expiration of the term of all Work Orders referencing this Agreement or (b) termination of this Agreement as provided in this Agreement. Either party may terminate a Work Order or this Agreement, as applicable, for material breach by the other party of the Work Order or this Agreement, as applicable, which is not cured within 30 days from the receipt by the party in breach of a written notice from the other party specifying the breach in detail. Client may terminate a Work Order or this Agreement for any or no reason upon thirty (30) days' notice to Client, including without limitation, in the event Client is unable to appropriate funds in support of Company's performance in a subsequent fiscal period of Client, it being understood and acknowledged by Company that Client's payment obligations hereunder are contingent upon the availability of appropriated funds from which payment can be made. In addition, Client may terminate this Agreement and any Work Order hereunder immediately upon notice to Company in the event that Company files or has filed against it a petition for bankruptcy, becomes insolvent or otherwise unable to pay its debts as they become due, or Company makes an assignment for the benefit of its creditors (each, a "Company Insolvency Event"). Client shall be liable for payment to Company for all Services rendered prior to the effective date of any such termination. In the event that this Agreement is terminated due to Company's breach or a Company Insolvency Event, without limiting any other remedies available to Client and subject to the limitation of liability set forth in section 6.2, Client may procure the Services from other sources and Company shall be responsible for actual damages suffered by Client as a result of Company's breach. The expiration or earlier termination of any Work Order or this Agreement for any reason will not release either party from any liabilities or obligations set forth in any Work Order or this Agreement which (a) the parties have expressly agreed will survive any such expiration or termination or (b)

remain to be performed or by their nature would be intended to be applicable following any such expiration or termination. Upon the expiration or earlier termination of this Agreement, Company shall promptly deliver to Client all Specific Client Owned Deliverables then in Company's possession.

4. Proprietary Protections.

4.1 Ownership Rights

(a) **General.** Each party will retain all rights to any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the Effective Date, or acquired or developed after the Effective Date without reference to or use of the intellectual property of the other party. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks or copyrights, except as otherwise expressly provided in this Agreement. Nothing in this Agreement will require Company or Client to violate the proprietary rights of any third party in any software or otherwise.

Notwithstanding anything to the contrary in this Agreement, Company (i) will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in performing the Services which are based on trade secrets or proprietary information of Company or are otherwise owned or licensed by Company (collectively, "tools") and (ii) will be free to use the ideas, concepts, methodologies, processes and know-how which are developed or created in the course of performing the Services and may be retained by Company's employees in intangible form, all of which constitute substantial rights on the part of Company in the technology developed as a result of the Services performed under this Agreement.

(b) **Materials Developed for or Delivered to Client.** Client agrees that all software and other materials (including, but not limited to customizations, modifications, specifications, documentation and training materials) developed for or delivered to Client pursuant to this Agreement or any Work Order, including all related copyrights, patent rights, trade secrets, ideas, designs, concepts, techniques, inventions, discoveries or other intellectual property rights (collectively, the "Materials"), shall be the exclusive property of Company and the Company shall own all right, title and interest therein. In this connection, Client acknowledges that all Materials which are or may be developed pursuant to this

Agreement or any Work Order are and shall be the intellectual property and confidential proprietary information and products of Company, and Client hereby transfers and assigns any and all rights in and to the Materials to Company, its successors and assigns, including all intellectual property rights relating thereto. From time to time upon Company's request, Client shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Company may reasonably request. Company agrees that Client shall have a limited nonexclusive license to use the Materials internally to the extent necessary to carry out and fulfill the terms and conditions of the Work Order for which the Materials were developed and shall have the right to grant a limited nonexclusive license to the third parties specifically identified in a Work Order to use the Materials solely for the purposes contemplated by such Work Order, provided that such third parties shall first agree in a signed writing to be bound by terms sufficient to protect the Company's rights therein or such terms as may be acceptable to Company.

(c) Specific Deliverables Owned by Client.

Notwithstanding the foregoing provisions of Section 4.1(b) but subject to any third party rights or restrictions and the provisions of Section 4.1(a) and the other provisions of this Section 4.1(c), Client will own all right, title, and interest in and to, including the copyright in and to, Materials that (i) are developed for and delivered by Company to Client, (ii) are paid for by Client, and (iii) are clearly and specifically identified in a Work Order as Specific Client Owned (the "Specific Client Owned Deliverables"). Notwithstanding the foregoing, Company will retain ownership of any Company-owned software or development tools that are used in producing the Specific Client Owned Deliverables and become embedded in the Specific Client Owned Deliverables. Company hereby grants to Client a perpetual (subject to compliance with this sentence), royalty-free, nontransferable (except to any assignee or other successor-in-interest), nonexclusive license to use such embedded software and tools (if any) solely in connection with Client's internal use and exploitation of the Specific Client Owned Deliverables and only so long as such software and tools (if any) remain embedded in the Specific Client Owned Deliverables and are not separated therefrom. Client will own all property rights in or related to the Specific Client Owned Deliverables other than the rights reserved to or retained by Company pursuant to this Section 4.1(c).

4.2 **Client Information.** Company recognizes and

agrees that, except as specified in Section 4.1, it has no claim of ownership to any data, materials or information submitted by or on behalf of Client to Company or the Services ("Client Information"), which Client Information is being provided to Company solely for the purposes of enabling Company to render the Services, and that title and all ownership rights in and to such Client Information shall at all times solely and exclusively remain with Client. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Client Information.

4.3 **Confidentiality.**

(a) **Confidential Information.** This Section 4.3 shall apply to all confidential and proprietary' information disclosed by either party ("Disclosing Party") to the other party ("Receiving Party"), including all Client Information, Materials of Company, and information related to the Disclosing Party's technology, software, know-how, products, potential products, services, potential services, financial information, employees, customers, markets and/or business information (collectively, "Confidential Information"). The terms and conditions of this Agreement and all Work Orders shall be treated by Client as the Confidential Information of Company, and all Specific Client Owned Deliverables and Client Information shall be deemed Client's Confidential Information. Confidential Information shall also include information which the Receiving Party should reasonably know to be confidential based on its content and/or the circumstances surrounding its disclosure. Confidential Information shall not include any information which (i) was known to the Receiving Party prior to being disclosed by the

Disclosing Party, as evidenced in the Receiving Party's written records, (ii) becomes publicly known through no wrongful act of the Receiving Party, including without limitation, a breach of this Agreement, (iii) is received from a third party not in breach of any separate confidentiality obligation known (after due inquiry) to the Receiving Party, or (iv) is independently developed without reference to or use of the Disclosing Party's Confidential Information.

(b) **Scope of Obligation.** The Receiving Party agrees to use the Confidential Information of the Disclosing Party only as provided for in this Agreement each party agrees to hold the other party's Confidential Information in strict confidence and not to disclose such Confidential Information to any third parties. Notwithstanding the foregoing, each party may disclose the other party's Confidential Information only to those employees, agents, representatives and/or consultants who require such information only in connection with this Agreement and who are in compliance with the obligations of the immediately succeeding sentence. Each party agrees to instruct all such employees, agents, representatives and consultants regarding the foregoing obligations and ensure that such employees, agents,

representative, and consultants are bound by obligations of confidentiality to the Receiving Party that are at least as restrictive as those contained herein. Receiving Party shall be responsible and liable for any breach of this Section 4.3 by its employees, agents, representatives, and consultants. Each party agrees that it will take all reasonable measures to protect the confidentiality of, and avoid the unauthorized disclosure or use of, the other party's Confidential Information, in order to prevent it from being made public or in the possession of persons other than those persons authorized hereunder to have any such Confidential information, which measures, shall include at least the same degree of care that the Receiving Party utilizes to protect its own confidential information of a similar nature but in any event shall include commercially reasonable precautions designed to protect the Disclosing Party's Confidential Information from unauthorized disclosure and/or use. Without limiting the generality of the foregoing, Receiving Party shall maintain appropriate administrative, physical, and technical safeguards to protect the Confidential Information. Receiving Party shall immediately notify Disclosing Party in writing upon any loss, unauthorized use, or unauthorized disclosure of the Confidential Information, or any security breach affecting the Confidential Information, and upon the occurrence of any of the foregoing, Receiving Party shall take all appropriate actions to mitigate such loss, use, disclosure, and breach.

(c) **Limited Disclosure Right.** Confidential Information may be disclosed to the extent required by court order or as otherwise required by law, provided that the Receiving Party, to the extent legally permissible, notifies the Disclosing Party promptly upon learning of the possibility of any such requirement and, to the extent legally permissible, has given the Disclosing Party a reasonable opportunity to contest or limit the scope of such required disclosure

(d) **Return of Confidential Information.** Promptly upon termination of this Agreement, or at any other time upon the request by the Disclosing Party, the Receiving Party shall (i) return to the Disclosing Party or, at the Disclosing Party's request, destroy all Confidential

Information of such Disclosing Party, whether in paper or electronic form, provided, however that the foregoing shall not apply to Confidential Information that is stored in the Receiving Party's electronic archives, which Confidential Information will be destroyed in the ordinary course of the Receiving Party's business in accordance with its document destruction policies; provided, further, that the Receiving Party's obligations hereunder with regard to such retained Confidential Information shall continue for as long as such Confidential Information is retained and (ii) certify to the Disclosing Party in writing that it has complied with the provisions of this Section 4.3.

5. **Limited Warranties and Disclaimers.**

5.1 **Limited Warranties.** Company represents and warrants that: (i) it shall perform all Services hereunder and pursuant to any Work Order in a timely, professional, and workmanlike manner and by using personnel of industry-standard skills, training, and qualifications; (ii) the Company shall comply with applicable law in its performance of its obligations hereunder; (iii) it or its applicable third party licensors are the owners of Services, Materials, tools, and components thereof, and it has the right to grant all licenses granted to Client hereunder and pursuant to any Work Order and engage in the transactions contemplated hereby and thereby; and (iv) neither the Services nor the intended use thereof shall infringe upon, misappropriate, or otherwise violate the intellectual property rights or other rights of any third party. Further, Company warrants to Client that the Services, as and when delivered or rendered hereunder will conform to the description of services or specifications set forth in the applicable Work Order (the "Conformance Warranty"). Company's sole liability under the Conformance Warranty shall be to provide the services described in Section 5.3 hereof

5.2 **DISCLAIMER OF WARRANTIES. THE WARRANTY SET FORTH IN SECTION 5.1 STATES COMPANY'S SOLE AND EXCLUSIVE WARRANTIES TO CLIENT CONCERNING THE SERVICES HEREUNDER. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 5.1, THE SERVICES ARE PROVIDED STRICTLY 'AS IS' AND COMPANY MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SERVICES OR ANY MATTER WHATSOEVER. IN PARTICULAR, EXCEPT AS SET FORTH IN SECTION 5.1, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT ARE EXPRESSLY EXCLUDED. COMPANY DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS THAT THE SERVICES BEING PROVIDED WILL RESULT IN COST SAVINGS, PROFIT IMPROVEMENT, OR THE SERVICES WILL BE ERROR-FREE. THESE LIMITED WARRANTIES ARE THE ONLY WARRANTIES MADE BY COMPANY.**

5.3 **Notice Obligation; Remedy.** Client shall notify Company in writing within thirty (30) days after completion of the Services in question when any of the Services fail to conform to the description of services or specifications set forth in the applicable Work Order (the "Inspection Period"). Such notification shall include the detailed information reasonably necessary for Company to verify such nonconformity. Upon actual receipt of such notification and verification of the nonconformity, Company shall promptly (but in any event, within 30 days of receipt of such notice) correct the non-conform so that

the Services shall conform with the agreed description of services or specifications in the applicable Work Order. The Inspection Period shall also apply to any re-performed Services. Client agrees to pay Company for all reasonable personnel time and reasonable expenses incurred in investigating reported nonconformities when the alleged non-conformities are not, after a good faith attempt, discovered. The passage of the thirty (30) day period after completion of the Services in question without the notification described herein shall constitute final acceptance of the Services. Notwithstanding the foregoing, in no event shall Client's mere payment to Company for Services rendered hereunder be deemed an acceptance of the related Services.

6. Limitation of Liability.

6.1 EXCEPT WITH REGARD TO COMPANY'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREUNDER, COMPANY'S LIABILITY ON ANY CLAIM, LOSS OR LIABILITY, ARISING OUT OF, OR CONNECTED WITH THIS AGREEMENT, SERVICES OR USE OF THE PRODUCT OF ANY SERVICES FURNISHED HEREUNDER, SHALL IN ALL CASES, BE LIMITED SOLELY TO CORRECTION OF NONCONFORMITIES WHICH DO NOT CONFORM WITH THE AGREED DESCRIPTION OF SERVICES IN A WORK ORDER, OR SPECIFICATIONS IDENTIFIED IN A WORK ORDER.

6.2 IF FOR ANY REASON COMPANY IS UNABLE OR FAILS TO CORRECT NONCONFORMITIES AS PROVIDED, COMPANY'S LIABILITY FOR DAMAGES ARISING OUT OF ANY WORK ORDER FOR SUCH FAILURE, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT TO COMPANY IN THE TWELVE (12) MONTH PERIOD PRECEDING SUCH BREACH OR FAILURE BY COMPANY TO PERFORM. EXCEPT WITH REGARD TO THE COMPANY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT OR ANY WORK ORDER FOR ANY AMOUNTS IN EXCESS OF THE AMOUNTS PAID BY CLIENT TO COMPANY IN THE TWELVE (12)-MONTH PERIOD PRECEDING ANY FAILURE OR BREACH BY COMPANY OR CLAIM BY CLIENT.

6.3 EXCEPT WITH REGARD TO THE COMPANY'S INDEMNIFICATION OBLIGATIONS, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY LOSS OF

USE, INTERRUPTION OF BUSINESS; LOSS OR CORRUPTION OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, EVEN IF COMPANY II AS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM OR DAMAGES ASSERTED BY ANY THIRD PARTY.

6.4 CLIENT ACKNOWLEDGES THAT COMPANY HAS SET ITS FEES, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES, THE FOREGOING LIMITATION OF LIABILITY IS INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY SET FORTH IN THIS AGREEMENT.

6.5 THE PROVISIONS OF SECTIONS 5, 6 AND 7 ARE CLIENT'S EXCLUSIVE REMEDIES RELATED TO THE SERVICES, ANY FAILURE BY COMPANY TO CORRECT NONCONFORMITIES IN THE SERVICES, OR FOR DAMAGES CAUSED BY BREACH BY COMPANY OF THIS AGREEMENT OR A WORK ORDER AND SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF SUCH REMEDIES.

6.6 Client is responsible for complying with all local, state, and federal laws pertaining to the use and disclosure of any Client Information.

7. Indemnity.

7.1 Infringement Claims.

(a) General. Subject to Section 6 of this Agreement, the limitations set forth below in this Section 7.1 and the procedures set forth below in Section 7.3, each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") against any action to the extent that such action is based upon a claim that the Confidential Information (other than third party software and, in the event that Client is indemnitor, Specific Client Owned Deliverables) provided by the indemnitor, or any part thereof, (i) infringes upon, misappropriates, or otherwise violates the intellectual property rights or other rights of any third party, or (ii) constitutes an unlawful disclosure, use or misappropriation of another party's trade secret. In addition, Company, as indemnitor, agrees to indemnify, defend,

and hold harmless Client, as indemnitee, against any third party claim arising out of or related to a breach of Company's representations and warranties set forth in Section 5.1(ii) through 5.1(iv). The indemnitor will bear the expense of such defense and pay any liabilities, costs and expenses, including reasonable attorneys' fees and expenses (collectively "Losses") that are attributable to such claim. References to "Confidential Information" in this Section 7 shall include all Services and deliverables performed or provided by Company.

(b) **Exclusions.** The indemnitor will have no liability to the indemnitee hereunder to the extent that: (i) the claim of infringement is based upon the use of Confidential Information provided by the indemnitor hereunder in connection or in combination with equipment, devices or software with which the Confidential Information was not reasonably intended to be used, (ii) the indemnitee modifies any Confidential Information provided by the indemnitor hereunder without the express written approval of indemnitor and such infringement would not have occurred but for such modification, or (iii) the claim of infringement arises out of the indemnitor's compliance with specifications or requirements provided by the indemnitee and such infringement would not have occurred but for such compliance.

(c) **Additional Remedy.** If Confidential Information become the subject of an infringement claim under this Section 7.1, or in the indemnitor's opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys' fees as required above in this Section 7.1, the indemnitor may, at its option and in its sole discretion, (A) replace or modify the Confidential Information to make it non-infringing or cure any claimed misuse of another's trade secret or (B) procure for the indemnitee the right to continue using the Confidential Information pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by the indemnitor. If neither alternative is pursued by, or (if pursued) available to, the indemnitor, (x) the indemnitee will return such Confidential Information to the indemnitor and (y) if requested by the indemnitee in good faith, the parties will negotiate to reach a written agreement on what, if any, monetary damages (in addition to the indemnitor's obligation to defend the claim and pay any damages and attorneys' fees as required above in this Section 7.1) are reasonably owed by the indemnitor to the indemnitee as a result of the indemnitee no longer having use of such Confidential Information. The payment of any such monetary damages will be the indemnitee's sole and exclusive remedy for the inability of the indemnitor to implement either of the above alternatives.

7.2 **Intentionally Deleted.**

7.3 **Procedures.** The indemnification obligations set forth in this Section 7 will not apply unless the party claiming indemnification: (a) notifies the other promptly in

writing of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge, in order to allow the indemnitor the opportunity to investigate and defend the matter; provided, however, that the failure to so notify will only relieve the indemnitor of its obligations under this Section 7 if and to the extent that the indemnitor is materially prejudiced thereby; and (b) gives the other party full opportunity to control the response thereto and the defense thereof, including any agreement relating to the settlement thereof; provided, however, that the indemnitee will have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and, to be represented by legal counsel of its choosing, all at the indemnitee's cost and expense. However, if the indemnitor fails to promptly assume the defense of the claim, the party entitled to indemnification may assume the defense at the indemnitor's cost and expense. The indemnitor will not be responsible for any settlement or compromise made without its consent, unless the indemnitee has tendered notice and the indemnitor has then refused to assume and defend the claim and it is later determined that the indemnitor was liable to assume and defend the claim. The indemnitee agrees to cooperate in good faith with the indemnitor at the request and expense of the indemnitor.

8. **General Provisions.**

8.1 **Non-Hire Provision.** Each party to this Agreement agrees that it will not hire, employ, or contract with, or solicit to hire, employee or contract with, any person who is, or within the immediately preceding one year was, an employee or subcontractor of the other party to this Agreement for any purposes during the term of this Agreement, or for a period of one year after this Agreement terminates or expires. However, the foregoing obligations shall not apply to: (i) general solicitations for employment or contracting not specifically targeted at the other party's employees or subcontractors; (ii) persons or entities who have not been employees or contractors of the non-soliciting party for a period of nine (9) months; and (iii) contractors with whom a party desires to contract to provide or obtain goods or services outside the scope of this Agreement and any Work Order hereunder.

8.2 **Recording.** (a) Some Services provided may involve recording and/or monitoring. For such Services, information uploaded to or in any way passing through computer systems used to provide the Services, including written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes. By accessing or using the Services, Client consents to such recording and monitoring. Client is also solely responsible for informing anyone with whom Client interacts or otherwise communicates via the Services that information uploaded to or in any way passing through the Services including written, visual or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes.

(b) If phone conferences/conference bridges are applicable to the Services being provided to Client, Client acknowledges that the laws of certain jurisdictions may require that if a conference is recorded, all participants in the conference must be informed in advance of any such recording, so they may consent to being recorded (if required by applicable laws). Client acknowledges and agrees that Client shall be solely responsible for complying with all Applicable Laws and Third-Party Rights when using recording features (this includes Client's obligation to obtain the consent, if required by applicable laws, of all participants before the commencement of the recording). Company shall have no liability to Client or any participant in Client's recorded conference with respect to Client's obligations under this Section 8.2.

8.3 **Conflict.** Any purchase order or other document issued by Client is for administrative convenience only. In the event of any conflict between this Agreement and any purchase order, this Agreement shall prevail.

8.4 **Survival.** In the event of any expiration or termination of this Agreement, Sections 2, 3, 4, 5, 6, 7, and 8 of this Agreement shall survive and shall continue to bind the parties.

8.5 **Governing Law.** This Agreement shall be governed in all respects by the laws of the United States of America and the State of North Carolina without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement

8.6 **Forum.** All disputes arising under this Agreement shall be brought in the state or federal courts located in North Carolina, as permitted by law. The state and federal courts located in North Carolina shall each have sole and exclusive jurisdiction over disputes under this Agreement. Each party consents to the personal jurisdiction and venue of the above courts and hereby irrevocably waives all defenses thereto.

8.7 **Injunctive Relief.** It is understood and agreed that, notwithstanding any other provisions of this Agreement, breach of Section 4 or Section 8.1 by a party may cause the non-breaching party irreparable damage for which recovery of money damages may be inadequate, and that the non-breaching party shall therefore be entitled to seek timely injunctive relief to protect its rights under this Agreement in addition to any and all remedies available at law.

8.8 **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or five (5) days after

deposit in the mail. Notices shall be sent to the parties at the addresses described on the first page of this Agreement or such other address as either party may designate for itself in writing.

8.9 **No Agency.** Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties. The parties acknowledge that they are independent contractors. Company shall solely and exclusively be responsible and liable for all matters related to its employees, including without limitation, the payment of compensation and benefits, withholding tax, Social Security, Medicare, unemployment tax, and other taxes, the maintenance of workers' compensation insurance as required by applicable law, and the making of other payments and deductions which are required by law.

8.10 **Force Majeure.** Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money for Services rendered) on account of riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, earthquakes, material shortages of supplies or any other cause which is beyond the reasonable control of such party (each a "Force Majeure Event"). The party affected by a Force Majeure Event shall promptly notify the other in writing upon the occurrence of such Force Majeure Event. In the event such Force Majeure Event lasts longer than thirty (30) days, the party not affected by such Force Majeure Event may immediately terminate this Agreement upon notice thereof to the affected party and without further liability to the non-affected party.

8.11 **Waiver.** The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

8.12 **Severability.** In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

8.13 **Nondisclosure.** Each party promises to keep the terms of this Agreement confidential in accordance with the applicable terms of Section 4.

8.14 **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any

way affect this Agreement.

8.15 This section intentionally left blank.

8.16 **Right to Engage in Other Activities.** Client acknowledges and agrees that Company may provide information technology services for third parties at any Company facility that Company may utilize from time to time for performing the Services. Nothing in this Agreement will impair Company's right to acquire, license, market, distribute, develop for itself or others or have others develop for Company similar technology performing the same or similar functions as the technology and Services contemplated by this Agreement. Likewise, Company acknowledges that Client may freely obtain other services (including services that are the same as or substantially similar to the Services) from any third party or develop such services for itself.

8.17 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

8.18 **Entire Agreement.** This Agreement together with any Work Orders attached hereto completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of the Company and Client by their respective duly authorized representatives.

[Signatures appear on following page(s).]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date first above written.

COMPANY:

VC3, Inc.

By: Sandy Reeser

Name: Sandy Reeser

Title: CEO

CLIENT:

TOWN OF PINEVILLE

By: _____

Name: _____

Title: _____

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Sheila Rollerson
Finance Director, Town of Pineville, NC

**Exhibit A
Hourly Rates**

Service Area	Hourly Bill Rate	Description of Service Area
Consulting & Project Management	\$ 171.00	Consulting (Design, Architecture, Planning); Technology Assessments; Security Audits. Project Management. CIO Consulting Services including product evaluations and application/infrastructure planning services.
Application Development	\$ 165.00	Application Software development, design, testing and code revisions. Systems Programming (System Level Scripting/Automation). All SharePoint services.
Web Design Services	\$ 154.00	Web site design and implementation services which are NOT built on a Microsoft Sharepoint platform.
Infrastructure Deployment Services	\$ 154.00	Installation and Setup of the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Citrix, Network Domains and Desktop Deployments.
Infrastructure Maintenance Services	\$ 147.00	Maintenance Services for the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Domains, Microsoft Server and Desktop support.
Travel Time	\$ 103.00	Travel time to and from the Customer. This rate includes the mileage expense at the current IRS approved mileage rate.
After Hours Support Services	\$ 188.00	All reactive support services provided to Customer outside of the hours of 8am to 5pm Monday through Friday and all services provided on National Holidays

Note: Rates will automatically increase on an annual basis equivalent to the CPI change for All Urban Consumers. Annual rate increases will become effective on the first of the month following the release of data for the prior calendar year.