

ADA PARATRANSIT SERVICES AGREEMENT

This Agreement ("Agreement") is made by and between **Wake County** (hereinafter "County"), a political subdivision of the State of North Carolina, and the **Town of Apex** (hereinafter "Town"), a political subdivision of the State of North Carolina. The foregoing may be individually referred to herein as "Party" and collectively referred to as "Parties."

RECITALS

WHEREAS, the Town will be providing a transit service operation throughout the Town of Apex hereinafter referred to as "GoApex"; and

WHEREAS, federal requirements mandate that as part of providing such a transit service, paratransit services must also be made available; and

WHEREAS, the County provides a transit service called "GoWake Access" which provides said paratransit services and is willing to extend this service to the Town pursuant to the terms of this Agreement; and

WHEREAS, the Town is interested in utilizing the services of the County to provide complementary paratransit service (hereinafter the "Service") for the fixed route public bus service "GoApex."

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1. Services to be Provided.

The County agrees to serve as the general Americans with Disabilities Act ("ADA") paratransit operator for the Town and shall assume full responsibility and liability associated with ADA compliance as to such service. Paratransit services shall be provided in accordance with the GoApex Paratransit Policy (hereinafter "Policy") which is attached and incorporated herein ("Attachment A"). Paratransit services provided pursuant to this Agreement will include door-to-door demand-responsive paratransit services to ADA-eligible clients. The County will operate a van/bus on demand to obtain maximum operational efficiencies and effectiveness. The County may contract with one or more service providers to provide the services contemplated by this Agreement. The County shall have the following responsibilities pursuant to this Agreement:

- a) Operate the Service in accordance with the service area, schedule, and fleet specifications described in Attachment A.
- b) Coordinate and carry out eligibility screening and determine service provisions as described in Attachment A.
- c) Manage and take trip reservations in accordance with the procedures described in Attachment A.
- d) Manage passenger no-shows and late cancellations in accordance with the policies described in Attachment A.
- e) Monitor and report Service performance in accordance with Appendix C of Attachment A.

- f) Respond to inquiries from Town of Apex staff within 10 business days.
- g) Operate the Service in accordance with all governing agency regulations. The County shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina. The County is responsible for the maintenance, cleaning, and safe operation of all vehicles used in providing the Service as well as any claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered for personal injury, including bodily injury or death and/or property damage, including loss of use thereof, resulting from the negligence of the County or its service provider.
- h) County will provide drivers with appropriate training to provide safe, courteous, and ADA-compliant transportation.
- i) County will ensure all drivers possess a valid driver's license as required by North Carolina law for the operation of the paratransit vehicles.
- j) Maintain insurance as described in Section 21 of this agreement.
- k) Prepare and maintain records as described in Section 3 of this Agreement.
- l) Coordinate with the Town, as necessary, to update the Policy.

2. Town Responsibilities.

The Town shall have the following responsibilities pursuant to this Agreement:

- a) Update as necessary, in coordination with the County, the Policy.
- b) Provide, annually by March 1st, as applicable, an updated list of holidays during which the Service will not operate.
- c) Establish and implement an administrative appeal process for eligibility determinations as described in Appendix C of Attachment A.
- d) Determine the fare, if any, to be charged for the Service. The initial service will be implemented fare-free. If, in its sole discretion, the Town decides to charge a fare, the Town is responsible for determining and procuring technology, developing policies and procedures, conducting public involvement and marketing, and paying any associated implementation and operating costs necessary to implement the fare.
- e) Respond to all communications and requests from the County within ten (10) business days.
- f) Establish and implement a plan for marketing the Service, including designing and printing an informational brochure.
- g) Make payment in a timely manner as defined in this Agreement for all amounts due under this Agreement.

3. Record Keeping, Reporting, and Reimbursements.

- A. The County shall keep proper program records, including any required or requested by any funding or regulatory agency, and make them available for inspection. Records shall include costs and ridership revenues reports and a description of actual services and results obtained. The County will provide the Town with monthly reports accompanied by an invoice within 15 days of the end of each month of the Service. The reports will contain the following information: total number of trips, total number of no-shows, total number of late cancellations, total number of late trips, total number of trip denials, all customer service complaints and follow-up actions, and average cost

per trip. The following details would be provided for each trip: trip cost, trip origin, trip destination, scheduled pickup time, actual pickup time, scheduled drop-off time, and actual drop-time. Additional information may need to be reported to the Federal Transit Administration to meet ADA and CFR requirements. The Town retains the right to monitor and audit County records related to the Service.

B. The invoice will include the actual cost of each trip plus the portion of the annual fee prorated for each month. The cost of each paratransit trip will be adjusted to account for the number of passengers and the number of funding sources contributing to the cost of the entire trip, as this is a shared ride service. In no event shall the cost attributed to the Town exceed \$47.21 per hour per trip. The County would include trip cost details in the monthly invoice. The annual overhead fee shall include:

- \$5,000 for annual overhead to Wake County.
- \$10,400 annual overhead to GoWake Access for the processing of applications.
- \$3,660 for the cost of a part-time employee to accept trip reservations on Sunday and holidays.
- \$1,200 for the first year of service only for training.

The total annual overhead cost for the first year of Service shall be \$20,260 or \$1,688.33 per month. The total annual overhead cost for subsequent years of Service shall be \$19,060, or \$1,588.33 per month.

C. The Town shall reimburse the County within thirty (30) days of receipt of an invoice. Invoices will not be sent until services are in operation. In the event the Town finds any part of an invoice inconsistent with this Agreement, the Town shall clearly identify and provide evidence to the County of any inconsistent or erroneous expenses within 10 days of receipt of an invoice and the County will work in good faith to determine if there is an error in the invoice.

4. Compliance with ADA and Paratransit Requirements.

The County will provide the Service in a manner that complies with all applicable federal, state, and local laws, including ADA public transit requirements. The County shall follow all applicable laws, rules, policies, and regulations in the training of operators in the safe use of all ADA equipment.

5. Termination for Failure to Perform ("Breach").

The Parties agree that in the event that a Party substantially fails to perform in accordance with the terms of this Agreement, the non-performing Party will cure the failure to perform to the reasonable satisfaction of the complaining Party within thirty (30) days of receipt of written notice from the complaining Party. If the failure to perform is not timely cured, or cannot be cured, the Agreement will terminate at the election of the performing Party. The parties will cooperate on a winding down of the service, including reasonable notice to the public. Invoices to the Town of Apex will be prorated based on the date of termination and the County will only be paid for services performed in the manner set forth in this Agreement, and subject to the rates and amounts stated herein.

6. Nonwaiver for Breach.

No breach or non-performance of any term of this Agreement shall be deemed to be waived by either Party unless said breach or non-performance is waived in writing and signed by the Parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

7. Termination Without Cause.

Any Party may terminate this Agreement at any time for any reason, provided the terminating Party provides a minimum of 90 days advance written notice to the other Parties. In this event, the Parties will cooperate on a winding down of the service, including reasonable notice to the public. Apex shall pay the County for the Service provided prior to the date of termination.

8. Customer Information and Complaint Handling.

All customer service complaints will be directed to the County and managed in accordance with the Wake County Transportation Complaint Policy, attached hereto as Attachment B. The monthly report described in Section 3 of this Agreement will include documentation of all customer service complaints and any follow-up actions that were taken. The Service shall be incorporated into the GoWake Access customer satisfaction surveys with a separate report of findings which shall be shared with the Town upon request.

9. Further Agreements.

The Parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of this Agreement. The Parties agree to work together in good faith and with due diligence to provide for and carry out the purpose of this Agreement.

10. Amendment.

This Agreement and its attachments contain the full understanding of the Parties. Any extension, modification, or addendum to this Agreement must be in writing and executed with the same formality as this Agreement.

11. Notices.

Any notice given pursuant to this Agreement shall be deemed given if delivered by hand or if deposited in the United States Mail, postage paid, certified mail, return receipt requested and addressed as follows:

If to the County:

GoWake Access Transportation Manager
Wake County Government
220 Swinburne Street

Raleigh, NC 27602

With a copy to:

Transit Analyst
Wake County Government
GoWake Access
4401 Bland Road
Raleigh, NC 27609

If to Apex:

Town Manager
Town of Apex
73 Hunter Street
Apex, NC 27502

And with copy to:

Planning Director
Town of Apex
73 Hunter Street
Apex, NC 27502

12. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the Parties and their agents, grantees, successors, and assigns.

13. Dispute Resolution.

In the event a dispute arises between the Parties to this Agreement concerning a question of fact in connection with the requirements of this Agreement or compensation therefore, the Parties agree to bargain in good faith towards a mutual resolution. If the Parties, after honest good faith negotiations, cannot reach an agreement, then either Party may adjudicate their dispute as allowed by North Carolina State Laws.

14. Performance During Dispute.

Unless otherwise requested by the Town, County shall continue performance under this Agreement while matters in dispute are being resolved. County acknowledges that the Town, in executing this Agreement, is relying on the County as part of its compliance with applicable ADA standards and requirements.

15. Force Majeure.

Neither the County nor the Town shall be liable to the other for any failure, delay or interruption of service or for any failure or delay in the performance of any obligation under this contract due to strikes, walkouts, governmental restriction, enemy action, civil commotion, unavoidable casualty, unavailability of fuel or parts, epidemic, pandemic, or other similar acts beyond the reasonable control of the Parties.

16. Verification of Work Authorization.

All Parties, and any permitted subcontractors, shall comply with Article 2, Chapter 64, of the North Carolina General Statutes.

17. Compliance with Federal Laws and Regulations.

The County shall comply with all Federal Laws and Regulations regarding the use of any grants to fund its service, operations, purchase, or maintenance of service vehicles.

18. Emergencies.

Notwithstanding anything else in this Agreement, while federal, state, or local state(s) of emergency are in effect, or when a public health emergency has been declared, the County shall comply with all guidance and recommendations of the Centers for Disease Control, the State of North Carolina, and Wake County, unless mutually agreed to by all Parties. In the event of a North Carolina State of Emergency Declaration the County shall comply with all applicable Executive Orders issued by the Governor of the State of North Carolina and the conditions of any Town of Apex State of Emergency Declaration.

19. Representations and Warranties.

The individuals signing the Agreement have the right and power to do so and bind their respective parties to the obligations set forth herein, and such individuals do so personally warrant that they have such authority.

20. Term.

This Agreement shall become effective upon execution by the last of the Parties to sign (“Effective Date”) and shall terminate on June 30, 2023. The Parties may renew this Agreement for four (4) additional one-year terms, or may otherwise amend this Agreement, in a writing made in accordance with Section 10, unless terminated earlier pursuant to the provisions of Sections 5 or 7. The parties may renew this agreement at any time prior to the expiration of the current term.

21. Insurance.

The County’s transportation vendor(s) shall purchase and maintain on a primary basis and at its sole expense during the term and for three years after the termination of this Agreement insurance or self-insurance for the following: protection from claims under Worker’s or Workmen’s Compensation Acts covering claims arising out of or related to bodily injury, including bodily injury, sickness, disease or death of any of the County’s vendor(s) employees or subcontractors; Commercial General Liability Insurance, including contractual liability and covering bodily injury, property damage, products and completed operations and personal injury; Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, covering bodily injury and property damage; Cyber Liability covering infringement, information theft, release of private information, damage, destruction and alteration of electronic information, extortion, network security, breach response costs, and regulatory fines; and Professional Liability/Errors & Omissions Insurance (if applicable) covering claims arising out of or related to the County’s vendors performance under this Agreement.

Minimum limits of insurance coverage are:

General Liability:	\$2,000,000 per occurrence/\$2,000,000 aggregate
Commercial Automobile Liability:	\$2,000,000 CSL
Commercial Excess Liability/Umbrella Policy:	\$5,000,000 per occurrence
Workers Compensation	Statutory Limits
Employer's Liability:	\$500,000 each accident
Professional Liability:	\$1,000,000 per claim
Cyber Liability:	\$2,000,000 per claim and aggregate

The County vendor(s) may satisfy the insurance limits above with a combination of primary and umbrella/excess liability insurance policies or self-insurance. Umbrella/Excess liability shall follow form as to each of the underlying policies. Any available insurance proceeds in excess of or broader than the specified minimum limits of insurance and coverage shall be available to the Town, as applicable based on loss.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Insurers

The minimum insurance ratings for any company insuring the County vendor(s) shall be Best's A- or a qualified self-insurance program approved by the state of North Carolina. Should the ratings of any insurance carrier fall below the minimum rating, the Town, may, at its option, require the County's vendor(s) to purchase insurance from a company whose rating meets the minimum standard. The County's vendor's insurance carrier(s) shall be authorized to do business in the state of North Carolina. If the County's vendor(s) is unable to find an authorized carrier for any line of insurance coverage, the County's vendor(s) shall notify the Town in writing.

Additional Insured Status

All insurance policies (except Workers Compensation and Professional Liability) shall name the Town, and the Town's elected officials, officers, employees, and volunteers as additional insureds.

Notice of Cancellation

Each policy shall provide that the Town shall receive not less than thirty (30) days prior written notice, when available, of any cancellation or non-renewal of coverage of any of the policies. Upon notice of such cancellation, non-renewal or if a policy's limits are exhausted, the County's vendor(s) shall procure substitute insurance so as to assure the Town that the minimum limits of coverage are maintained continuously throughout the periods specified herein.

Primary

The County's vendor's insurance coverage shall be primary for any claims related to this Agreement.

Waiver of Subrogation

The insurer shall have no right of recovery or subrogation against the Town, or the Town's agents or agencies, it being the intention of the parties that the insurance policies shall protect the Town and be primary coverage for any and all losses covered by the policies.

Verification of Coverage

A certificate of insurance and all endorsements required shall be provided at, or prior to, execution of this Agreement. The Town's acceptance of certificates of insurance shall neither relieve the County's vendor(s) of any requirement to provide the specific insurance coverage set forth herein nor shall it constitute a waiver or acknowledgement of satisfaction of the specific insurance requirements set forth in this Agreement.

Certificate Holder addresses should read:

Town of Apex
PO Box 250
Apex, NC 27502

Special Risks or Circumstances

The County's vendor, with prior written consent from the Town which shall not be unreasonably withheld, reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Written consent from the Town may be provided by electronic communication.

22. Mutual Indemnification.

To the fullest extent permitted by law, each Party shall indemnify, defend, protect, hold harmless, and release the other, its officers, elected officials, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees) arising from or in connection with, or caused by any act, omission, or negligence of, such indemnifying Party.

23. Independent Employer.

The County is solely responsible for its services and the supervision of its employees and permitted subcontractors. All persons assigned by the County to provide the Services contemplated by this Agreement shall, for all purposes of this Agreement, be considered employees or subcontractors of the County only. The County's subcontractors shall assume the sole and exclusive responsibility for the payment of wages to individuals for services performed under this Agreement and the withholding of all applicable Federal, State, and local taxes, unemployment insurance, and maintaining workers compensation coverage in an amount and under such terms as required by law. If the Town identifies any person providing Services that appears to be incompetent, disorderly, or otherwise unsatisfactory, the Town shall notify the County in writing (including through electronic mail) for the County to address according to its policies and procedures.

24. Public Records.

All parties acknowledge that records in the custody of the County or the Town may be public records and subject to public records requests. The County or the Town may provide copies of such records, including copyrighted records, in response to public record requests.

25. Non-Exclusive Remedies/No Waiver.

The selection of one or more remedies for breach shall not limit a party's right to invoke any other remedy available under Agreement or by law. No delay, omission or forbearance to exercise any right, power or remedy accruing to a party shall impair any such right, power

or remedy or shall be construed to be a waiver of any breach hereof or default. Every right, power or remedy may be exercised from time-to-time and as often as deemed expedient.

26. Survival.

All representations, indemnifications and other terms and conditions of Agreement which by their nature should survive Agreement termination shall survive its expiration or termination.

27. No Waiver of Immunity.

Nothing in this Agreement shall be construed to waive either Party's defense of governmental immunity from any cause of action alleged or brought against any Party for any reason if otherwise available as a matter of law. No officer, agent or employee of either Party shall be subject to any personal liability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute this Agreement in their official capacities only, and not in their individual capacities. This section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

28. Nondiscrimination.

No party shall discriminate in violation of any federal, state, or local law. The County and the Town shall comply with the Americans with Disabilities Act of 1990 ("ADA") and any nondiscrimination policy that may be in effect for either Party.

29. Electronic Version of Agreement.

The County or the Town may convert a signed original of the Agreement to an electronic record pursuant to a North Carolina Department of Natural and Cultural Resources approved procedure and process for converting paper records to electronic records for record retention purposes. Such electronic record of the Agreement shall be deemed for all purposes to be an original signed Agreement.

30. No Third Party Beneficiaries.

Unless otherwise explicitly stated, there are no third-party beneficiaries to Agreement.

31. Electronic Signatures.

The Parties acknowledge and agree that pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing a digitized or scanned signature are legally binding in the same manner as are hard copy documents executed by hand signature. If digitized or scanned signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

32. Attachments.

The following attachments are attached separately and are hereby incorporated by reference:

1. GoApex Paratransit Policy (Attachment A)
2. Wake County Complaints and Appeals Policy (Attachment B)

(SIGNATURE PAGE FOLLOWS)

In witness whereof the Parties hereto have caused this Agreement to be executed by their duly authorized officials, this _____ day of _____, 20__.

Town of Apex

Catherine Crosby, Town Manager

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

Vance Holloman, Finance Director

Wake County

Wake County, County Manager or Designee

Annemarie Maiorano
Deputy Director, Wake County Health and Human Services

Nannette M. Bowler, JD
Director, Wake County Health and Human Services

The person responsible for monitoring the contract performance requirements is

Anita Davis _____ . _____ Department Head Initials

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

Chief Financial Officer