

**DESIGN-BUILD CONSTRUCTION CONTRACT
TOWN OF APEX HUNTER STREET BIKE TRACK**

This Design-Build Construction Contract (the or this "Agreement"), is made the ____ day of _____, 2025 by and between Nature Trails NC, LLC, a North Carolina Limited Liability Corporation with its principal offices located at 3151 US HWY 15-501 N, Pittsboro, NC 27312 (hereinafter "Design-Builder") and the Town of Apex, a North Carolina municipal corporation (hereinafter "Owner"). Design-Builder and Owner may be collectively referred to as "Parties" herein.

PROJECT NAME: Hunter Street Bike Track

PROJECT SCOPE: Design and Construction of a Bike Track at Hunter Street Park, located at 1250 Ambergate Station, Apex, NC 27502 ("Project")

WITNESSETH:

That the Design-Builder and the Owner agree as follows:

1. Scope of Work:

- a. Time of Completion: The Design-Builder shall commence each Phase to be performed under this Agreement as outlined below. The "General Conditions of the Contract" are hereby incorporated into this Agreement as if fully set forth herein. All work shall be completed within 550 consecutive calendar days from the commencement of the Design Phase. Owner agrees to provide written responses to document submissions within 2 weeks of receipt and accepts that the proposed schedule allows for 30 days review for each planning application and permit review. Delays beyond this agreed upon review period will automatically extend the timeline for each task and the overall contract completion date by an equal duration to the delay. Any scope changes requested by Owner or recommended by the Design-Builder and accepted by the Owner will be accompanied by a mutually agreed upon schedule adjustment.
- b. Design Phase: The Design-Builder, in consultation with and direction from the Owner, shall furnish a complete set of design documents for the Project including, but not limited to, architectural and engineering specifications and drawings (collectively, the "Design Package"). The Design Package shall be in accordance with this Agreement and shall be based on the programmatic and technical requirements set forth in the Request for Qualifications document and as further determined by the Owner during the Design Phase. The Design Package shall be reviewed and approved by the Owner. The Design-Builder shall provide all required testing and exploration required to produce the Design Package. The Design-Builder shall provide a detailed cost estimate to the Owner at each phase of

design. As part of the Design Phase, Design-Builder shall perform the following tasks for the costs shown below:

Task 1 – Existing Conditions Assessment.....
\$4,500.00

Review and document existing site conditions, including but not limited to, boundary location, 1 ft contour maps processed with public data, storm drain and sewer inventory, hardwood non-invasive tree inventory, and GIS file preparation.

Task 2 – Conceptual Plan and Stakeholder Engagement.....\$24,000.00

Review opportunities and constraints to create a conceptual design that aids in stakeholder communication and receipt of community feedback. Task will include conceptual design, stakeholder collateral, in-person survey and feedback session, presentation to the Parks, Recreation & Cultural Resources Advisory Commission, creation of social media content and presentation to the Town of Apex Town Council.

Task 3 – Bike Park Construction

Documents.....\$22,000.00

Develop detailed construction documents suitable for Design-Builder's use in constructing the Project in compliance with all federal, state and Town of Apex requirements. Task includes Minor Site Plan preparation, schematic design, demolition plan, site plan, landscape plan, construction details, elevations and drainage plan.

Task 4 – Engineering, Permitting, and Contingency (not to exceed).....\$24,355.00

The following Task 4 services to be completed by Design-Builder will be invoiced at Cost plus 15%. The amounts below are estimates but will be billed based on actual fees. Design-Builder shall not incur fees exceeding the amounts listed below unless first approved by the Owner consistent with the terms of this Agreement.

a.	Minor Site Plan Application:	\$830+15%.....	\$955.00
b.	Permitting:	\$100/hr.....	\$1,000.00
c.	Utility Site Plan:	\$6,000 + 15%.....	\$6,900.00
d.	Lighting Plan:	\$6,000 + 15%.....	\$6,900.00
e.	Stormwater Management Plan	\$4,000 + 15%.....	\$4,600.00
f.	Contingency:	\$20%.....	\$4,000.00

Total Design Fee:.....\$74,855.00

The Design-Builder shall commence Design Phase work upon receipt of a fully executed copy of this Agreement. The Parties agree to maintain the following design schedule. Each phase of the design for the Project shall be considered complete upon the Owner's acceptance of the submitted design documents. Upon receipt of design documents for review, the Owner shall review promptly and provide written comments or acceptance within 2 weeks to ensure Design-Builder is not delayed in progress. The Design-Builder will be paid according to the schedule below as each phase is completed.

Deliverable	Submission Date
Task 1	Jun 30, 2025
Task 2	Aug 31, 2025
Task 3	Jan 31, 2026
Task 4	May 31, 2026

- c. Construction Phase: The Design-Builder shall furnish and deliver all materials and shall perform all the work in the manner and form as provided in the approved Design Package(s) from the Design Phase. The Design-Builder will provide construction and inspection services as outlined in the General Conditions of this Agreement. The Design-Builder shall provide all required testing and exploration required to complete the Construction Phase of the project. The work on this Project shall be governed by the Construction Documents which shall include the approved Design Package(s) from the Design Phase as well as the Request for Qualifications; Instructions to Bidders; this Agreement; accepted proposal; performance bond; payment bond; power of attorney; workmen's compensation, public liability, property damage, and builder's risk insurance certificates; all of which are made a part hereof upon completion of design as if fully contained herein.

The Design-Builder shall commence Construction Phase work to be performed pursuant to this Agreement upon acceptance of the Guaranteed Maximum Price ("GMP") by the Owner. Construction efforts shall not begin until a change order with an associated GMP has been signed by the Parties. Along with the GMP, the Design-Builder shall furnish to the Owner at GMP a construction schedule setting forth planned progress of the Project broken down by the various divisions or part of the work and by calendar days as outlined in this Agreement. The schedule shall include the construction completion date. Each day in excess thereof, liquidated damages, as defined by the General Conditions below, shall be in the amount of \$200.00 per day.

Anticipated Construction Phase Work and Associated Costs

Design-Builder shall perform the following
Construction Phase Work:

- A. **Mobilization**.....**\$5,000.00**
 Transport and setup of equipment and jobsite trailer. It is assumed no equipment of 20,000 pounds will be used.
- B. **Dirt Pump Track**.....**\$75,000.00**
 Dirt surface pump track construction with imported red clay. Up to 500 tons of imported track material to be used at a fee of \$15.00 per square foot of track footprint.
- C. **Skills Trails**.....**\$120,000.00**
 Variety skills trails to be constructed including, but not necessarily limited to, earthen berms and rollers, wood bridges, skinnies, jumps, and rock gardens utilizing existing materials provided by the Owner. This construction does not include prefabricated ramps or features, retaining walls, steel or concrete, aggregate, stabilization or imported soil.
- D. **Landscaping, Stormwater, & Erosion Controls**.....**\$25,000.00**
 Construction does not include a stormwater pond or structural controls but includes the treating of disturbed areas with contractor seed and straw.

Total Construction Fee:.....**\$225,000.00**

Construction Costs are based on the following construction/installation rates, construction labor rates, and equipment rates:

Construction / Install Rates (Common Elements)

AC = Per Acre • HR = Hourly • LS = Lump Sum • LF = Linear Foot • SF = Square Foot
 • TN =Ton • CY =Cubic Yard • EA = Each

Mobilization - - - - -	\$5,000/LS
Site Clearing - - - - -	\$10,000/AC
Dirt Pump / Jump Trail Grading & Compaction - - - - -	\$20/LF
Imported Red Clay - - - - -	\$40/TN
Imported ABC / Road Base - - - - -	\$70/TN
Rip Rap Stone - - - - -	\$80/TN
Chip Seal Paving - - - - -	\$4/SF
Asphalt Paving - - - - -	\$400/TN
Fieldstone Rock Armor (3-6" thick) - - - - -	\$400/TN

Pressure Treated Pine Wood Structures (no handrails) - - - - -	\$80/SF
Rough Sawn Cedar Wood Structures (no handrails) - - - - -	\$100/SF
Wood Structures with Handrails (add-on) - - - - -	\$20/SF
Prefabricated Steel / Cedar Kicker Ramps - - - - -	\$3,500/EA
Prefabricated Steel / Cedar Wallride (20ft) - - - - -	\$12,500/EA
Prefabricated Steel / Cedar Whale Tail - - - - -	\$17,500/EA
Prefabricated Steel / Cedar Skinny (30ft) - - - - -	\$5,500/EA
40ft HC Shipping Container - - - - -	\$8,500/EA
18" x 10ft HDPE Culvert Install - - - - -	\$500/EA
12" x 12" HDPE Catch Basin - - - - -	\$200/EA
4" DWV Drain Pipe - - - - -	\$15/LF
French Drain w/ 4" Pipe & #67 Stone - - - - -	\$100/LF
Rain Garden w/ Native Plants - - - - -	\$15/SF

2. The Owner hereby agrees to pay to the Design-Builder for the faithful performance of this Agreement, subject to additions and deductions as provided in the specifications or proposal, as follows:

Design Phase Costs:

Total Design Phase Cost (not to exceed): \$74,855.00.

The Design-Builder shall establish a construction GMP no later than ten (10) days after the approval of the Design Phase by the Owner. In the event that the GMP Proposal is greater than the Anticipated Construction Phase Costs, the Design-Builder shall, without compensation, work to redesign the Project as necessary to meet the Owner's Project Budget. The preceding sentence shall not apply if the Owner requests a redesign of the Project that differs from that contemplated in this Agreement. Upon approval of the GMP by the Owner, this Agreement will be amended by change order to include the GMP.

Anticipated Construction Phase Costs:

Total Construction Phase Costs (not to exceed): \$225,000.00

Total Project Cost Not to Exceed:.....\$299,855.00

3. The Owner shall review, and if approved, process the Design-Builder's pay request within thirty (30) days of receipt. The Owner, after reviewing and approving said pay request, shall make payments to the Design-Builder on the basis of a duly certified and approved estimate of work performed during the preceding calendar month by the Design-Builder, less five percent (5%) of the amount of such estimate which is to be retained by the Owner until all work has been performed strictly in accordance with this Agreement and until such work has been accepted by the Owner. The Owner may elect to waive retainage requirements after 50 percent (50%) of the work has been satisfactorily completed on schedule.
4. Upon submission by the Design-Builder of documentation satisfactory to the Owner that all payrolls, material bills and other costs incurred by the Design-Builder in connection with the construction of the work have been paid in full, final payment for services provided pursuant to this Agreement shall be made within forty-five (45) days after the completion by the Design-Builder of all work covered by this Agreement and the acceptance of such work by the Owner.
5. It is further mutually agreed between the parties hereto that if at any time after the execution of this Agreement and the surety bonds hereto attached for its faithful performance, the Owner shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the work, the Design-Builder shall, at its expense, within five (5) days after the receipt of notice from the Owner to do so, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Owner. In such event, no further payment to the Design-Builder shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Owner.
6. The Design-Builder attests that it shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Design-Builder shall require all of its subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).
7. Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Owner are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Owner to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Owner.
8. N.C.G.S. 147-86.60 prohibits the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina from contracting with any entity that is listed on the Final Divestment List created by the North Carolina State Treasurer pursuant to N.C.G.S. 147-86.58. N.C.G.S. 147-86.59 further requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final

Divestment List. As of the date of execution of this Agreement the Design-Builder hereby certifies that it is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Design-Builder will not utilize any subcontractors found on the Final Divestment List.

9. The Design-Builder warrants and agrees that no labor supplied by the Design-Builder or its subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.
10. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Design-Builder hereby warrants and agrees that it will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement “protected class” includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.
11. 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 an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature. The Parties hereby consent to use electronic or digitized signatures in accordance with the Town’s Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this ____ day of _____, 2025.

Contractor: Nature Trails NC, LLC

Owner: Town of Apex

(Print name)

Randal E. Vosburg, Town Manager

Signature

Attest:

Title

Allen L. Coleman, CMC, NCCCC, Town Clerk

Attest:

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

Secretary (if a corporation)

Antwan Morrison, Finance Director

Attachments

Form of Performance Bond

Form of Payment Bond

Power of Attorney

Insurance Certificate(s) and Endorsements