

**STATE OF NORTH CAROLINA**

**Contract Identification # \_\_\_\_\_**

**COUNTY OF WAKE**

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between, AECOM Technical Services of North Carolina, Inc., a North Carolina Corporation with its principal business offices located at 5438 Wade Park Blvd., Suite 200, Raleigh, NC 27607 (the "Professional"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Professional may collectively be referred to as "Parties" hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a "Request for Qualifications On-Call Professional Services" dated February 8, 2021, and the Professional provided a proposal, titled On-Call Professional Services, RFQ #: UE2101 and dated March 26, 2021, and is willing to serve as one of the Town's professionals for the following service(s): Roadway Planning and Design, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Roadway Planning and Design. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

## **15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: AECOM Technical Services of North Carolina, Inc.  
Attn: Mr. Jeff Mann, Vice President  
5438 Wade Park Blvd., Suite 200  
Raleigh, NC 27607

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

## **16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

## **17. 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.

## **18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

## **19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

**25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

**26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: Jeff Mann  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By: Jeff Mann  
(Signature)

Title: Vice President

Attest: maunafro  
(Secretary, if a corporation)

Attest: \_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Alta Planning + Design, Inc., a California Corporation with its principal business offices located at 711 SE Grand Avenue, Portland, OR 97214 (the "Professional"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Professional may collectively be referred to as "Parties" hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a "Request for Qualifications On-Call Professional Services" dated February 8, 2021, and the Professional provided a proposal, titled On-Call Professional Services and dated March 20, 2021, and is willing to serve as one of the Town's professionals for the following service(s): Greenway Design, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Greenway Design.

As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

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### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

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### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

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projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

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**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Alta Planning + Design, Inc.  
Attn: Mike Repsch, Project Manager  
711 SE Grand Avenue.  
Portland, OR 97214

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

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## **25. INDEPENDENT CONTRACTOR.**

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## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Alta Planning + Design, Inc.**

**Town of Apex**

Name: Katie Mangle

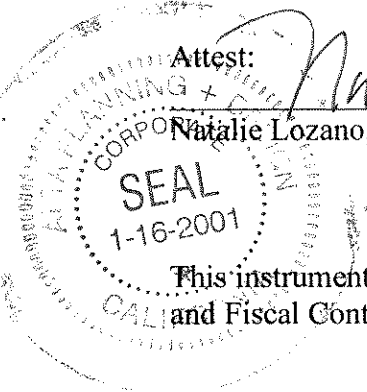
\_\_\_\_\_  
Catherine Crosby, Town Manager

By: *Katherine Mangle*  
(Signature)

Title: Vice President, as duly authorized

Attest:  
\_\_\_\_\_  
Town Clerk

Attest: *Natalie Lozano*  
Natalie Lozano, Corporate Secretary



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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Black & Veatch International Company, a North Carolina Corporation with its principal business offices located at 175 Regency Woods Place, Suite 200, Cary, NC 27518 (the "Professional"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Professional may collectively be referred to as "Parties" hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a "Request for Qualifications On-Call Professional Services" dated February 8, 2021, and the Professional provided a proposal, titled On-Call Professional Services and dated March 26, 2021, and is willing to serve as one of the Town's professionals for the following service(s): Distribution and Collection, Wastewater Treatment, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Distribution and Collection, Wastewater Treatment. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Black & Veatch International Company  
Attn: Lee Campbell, PE  
175 Regency Woods Place, Suite 200  
Cary, NC 27518

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

## **25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

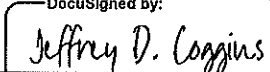
In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

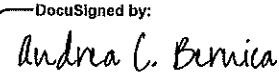
Name: Jeffrey D. Coggins

Name of Professional (type or print)

By:   
(Signature)

Catherine Crosby, Town Manager

Title: Associate Vice-President

Attest:   
(Secretary, if a corporation)

Attest:  
Town Clerk

Name: Andrea C. Bernica

Title: Secretary

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

Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, ESP Associates, Inc., a North Carolina Corporation with its principal business offices located at 3475 Lakemont Blvd, Fort Mill, SC 29708-9243 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled RFQ #UE2101 2101 On-Call Professional Services – Surveying, Environmental, Geotechnical & Construction Materials Testing and dated March 26, 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Surveying, Environmental, Geotechnical, Construction Materials Testing, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Surveying, Environmental, Geotechnical & Construction Materials Testing. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless

modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

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### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

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#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

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## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

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Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

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**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: ESP Associates, Inc.  
Attn: Edward G. Horstkamp III, Exec Vice President  
3475 Lakemont Blvd  
Fort Mill, SC 29708-9243

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

**25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

**26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional: ESP Associates, Inc.**


**Town of Apex**

Name: Edward G. Horstkamp III  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By:   
(Signature)

Title: Executive Vice President

Attest:   
(Secretary, if a corporation)  
*JEFFREY MARSHALL, CFO/ESP*

Attest: \_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Exult Engineering, PC, a North Carolina Corporation with its principal business offices located at 304-F W. Millbrook Rd., Raleigh, NC 27609 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled On-Call Professional Services Statement of Qualifications and dated March 26, 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Traffic Forecast and Analysis, Traffic Signal Design and Timing Plans, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Traffic Forecast Analysis, Traffic Signal Design and Timing Plans. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless

modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Exult Engineering, PC  
Attn: Coleman Dagerhardt  
304 – F W. Millbrook Rd.  
Raleigh, NC 27609

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. “Forces beyond the control of the parties” shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

**25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

**26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: Coleman Dagerhardt  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By:   
(Signature)

Title: President

Attest:   
(Secretary, if a corporation)

Attest:  
\_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



**STATE OF NORTH CAROLINA**

**Contract Identification # \_\_\_\_\_**

**COUNTY OF WAKE**

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the 6<sup>th</sup> day of July, 2021, by and between, Kleinfelder, a North Carolina Corporation with its principal business offices located at 3200 Gateway Centre Boulevard Suite 200, Morrisville, NC (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled Statement of Qualifications for On-Call Professional Services UE2101 Environmental, Geotechnical and CMT Scope of Services and dated March 24<sup>th</sup> 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Environmental, Geotechnical and CMT, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Environmental, Geotech and CMT. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless

modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

## **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

## **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

## **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

## **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

**12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

**13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

**14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Kleinfelder, Inc.  
Attn: Andrew Hadsell, PE  
3200 Gateway Centre Boulevard, Suite 100  
Morrisville, North Carolina 27560

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

## **25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this 15<sup>th</sup> day of July, 2021.

**Professional**

Name: Andrew Hadsell  
Name of Professional (type or print)

By: [Signature]  
(Signature)

Title: Area Manager

Attest: [Signature]  
(Secretary, if a corporation)  
*Client Account Manager*

**Town of Apex**

\_\_\_\_\_  
Catherine Crosby, Town Manager

Attest: \_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Mott Macdonald I&E, LLC, a North Carolina Corporation with its principal business offices located at 7621 Purfoy Road, Fuquay-Varina, NC 27526 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled Town of Apex 2021 On-Call RFQ and dated March 26, 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Traffic Signal Design and Timing Plans, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Traffic Signal Design and Timing Plans. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

## **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

## **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

## **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

## **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

## **15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Mott MacDonald I&E, LLC  
Attn: Rusty Thompson, PE, PTOE  
7621 Purfoy Road  
Fuquay-Varina, NC 27526

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

## **16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

## **17. 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.

## **18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

## **19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

## **25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.


In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: Glenda Gibson, PE  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By:   
(Signature)

Title: Vice President

Attest:  
\_\_\_\_\_  
(Secretary, if a corporation)

Attest:  
\_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, WithersRavenel, Inc., a North Carolina Corporation with its principal business offices located at 115 MacKenan Drive, Cary, NC 27511 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled On-Call Professional Services, Town of Apex and dated 26 March 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Stormwater, Greenway Design, Surveying, Environmental, Geotech, and CMT on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Stormwater, Greenway Design, Surveying, Environmental, Geotech, and CMT. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: WithersRavenel, Inc.  
Attn: Glynn Fleming, PE, CFM  
115 MacKenan Drive  
Cary, NC 27511

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

**25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

**26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: JAMES E. CANFIELD  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By:   
(Signature)

Title: PRESIDENT

Attest:   
(Secretary, if a corporation)

Attest: \_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Brown and Caldwell, Inc., a North Carolina Corporation with its principal business offices located at 5430 Wade Park Blvd, Ste 200, Raleigh, NC 27607 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled On-Call Professional Services and dated March 26, 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Stormwater, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional followed by separate authorizations to be issued by the Town, and the Parties desire to set forth

the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Stormwater. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

## **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

## **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

## **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

## **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Brown and Caldwell  
Attn: Stephanie Hanses  
5430 Wade Park Blvd, Suite 200  
Raleigh, NC 27607

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

## **25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.





STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, RS&H Architects-Engineers-Planners, Inc., a North Carolina Corporation with its principal business offices located at 8521 Six Forks Road, Suite 400, Raleigh, North Carolina 27615 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled Town of Apex On-Call Professional Services and dated March 26, 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Roadway Planning and Design, Traffic Forecast and Analysis, Traffic Signal Design and Timing Plans, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Roadway Planning and Design, Traffic Forecast and Analysis, Traffic Signal Design and Timing Plans. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

## **15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: RS&H Architects-Engineers-Planners, Inc.  
Attn: Kenneth J. Herring  
1520 South Boulevard, Suite 200  
Charlotte, North Carolina 28203

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

## **16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

## **17. 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.

## **18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

## **19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

**25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

**26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: Jennifer D. Farino  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By:   
(Signature)

Title: Vice President

Attest:   
(Secretary, if a corporation)

Attest: \_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between, S&ME, Inc., a North Carolina Corporation with its principal business offices located at 3201 Spring Forest Road, Raleigh, NC 27616 (the "Professional"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Professional may collectively be referred to as "Parties" hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a "Request for Qualifications On-Call Professional Services" dated February 8, 2021, and the Professional provided a proposal, titled UE2101 | On-Call Professional Services and dated March 26, 2021, and is willing to serve as one of the Town's professionals for the following service(s): Environmental, Geotechnical, and CMT, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Environmental, Geotechnical, and CMT. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

**15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: S&ME, Inc.  
Attn: Sam Watts, Senior Consultant  
3201 Spring Forest Road  
Raleigh, NC 27616

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

**17. 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.

**18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

**19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

## **25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

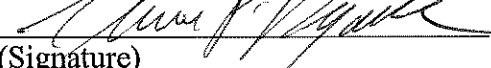
In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: Tom Raymond  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By:   
(Signature)

Title: Vice President

Attest:   
(Secretary, if a corporation)

Attest:  
\_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, SEPI Engineering & Construction, Inc., a North Carolina Corporation with its principal business offices located at 1 Glenwood Avenue, Suite 600, Raleigh NC 27603 (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Professional may collectively be referred to as “Parties” hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a “Request for Qualifications On-Call Professional Services” dated February 8, 2021, and the Professional provided a proposal, titled SEPI Town of Apex RFQ UE2101 On-Call Professional Services and dated March 26, 2021, and is willing to serve as one of the Town’s professionals for the following service(s): Greenway Design, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Greenway Design. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

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## **15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: SEPI Engineering & Construction, Inc.  
Attn: Benjamin Crawford  
1 Glenwood Avenue, Suite 600  
Raleigh, NC 27603

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

## **16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

## **17. 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.

## **18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

## **19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

**20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

**21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

**22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

**23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

**24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

**25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

**26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**Professional**

**Town of Apex**

Name: Benjamin R. Crawford  
Name of Professional (type or print)

\_\_\_\_\_  
Catherine Crosby, Town Manager

By: [Signature]  
(Signature)

Title: Vice President

Attest: [Signature]  
(Secretary, if a corporation)

Attest: \_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Finance Director



STATE OF NORTH CAROLINA

Contract Identification # \_\_\_\_\_

COUNTY OF WAKE

**MASTER AGREEMENT FOR  
ON-CALL PROFESSIONAL SERVICES**

THIS MASTER AGREEMENT FOR ON-CALL PROFESSIONAL SERVICES is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between, Terracon Consultants, Inc., a Delaware Corporation with its principal business offices located at 10841 S. Ridgeview Road, Olathe, KS 66061 (the "Professional"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town"). Town and Professional may collectively be referred to as "Parties" hereinafter.

**WITNESSETH:**

WHEREAS, Town is engaged in the development, planning, operation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, and greenway facilities, which from time to time require design, revision, engineering, evaluation, surveying, testing, and other related projects; and

WHEREAS, the professional services of engineers, surveyors and others will from time to time in the future be needed by the Town for the services as described above; and

WHEREAS, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm; and

WHEREAS, Professional provides professional services of the nature required by the Town and employs trained and experienced technical personnel possessing adequate knowledge, skills, and experience to provide such professional services to the Town; and

WHEREAS, pursuant to N.C.G.S. 143-64.31 the Town announced to various competing firms its need for on-call professional services of the nature described in this Agreement through a "Request for Qualifications On-Call Professional Services" dated February 8, 2021, and the Professional provided a proposal, titled RFQ for On-Call Professional Services: Environmental, Geotechnical, and CMT, RFQ # UE2101 and dated March 26, 2021, and is willing to serve as one of the Town's professionals for the following service(s): Environmental, Geotech, CMT, on an on-call basis for each project authorized under this Agreement.

WHEREAS, the Parties contemplate that the services of the Professional will be performed in various stages in accordance with Task Orders submitted by the Professional

followed by separate authorizations to be issued by the Town, and the Parties desire to set forth the basic terms of their agreement in this Master Agreement for On-Call Professional Services rather than in the separate authorizations issued by the Town; and

WHEREAS, the Parties agree that this Agreement is non-exclusive and does not require or commit the Professional to being available to perform services until a Task Order is submitted, and does not preclude the Town from hiring other vendors or professionals to perform the same or similar work.

NOW THEREFORE, in consideration of the foregoing recitals, and the premises and mutual covenants herein contained, the receipt and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, hereto do contract and agree as follows:

### **1. REQUEST FOR TASK ORDER.**

Professional is qualified and able and hereby agrees to provide the following specific on-call services for the Town: Environmental, Geotech, CMT. As the need for professional services contemplated by this Agreement arise, the Town will request a Task Order for said services from Professional which shall describe the scope of work, specifications, estimated schedule and the Town's requirements. If the Professional employs the qualified personnel that meet the Town's requirements to perform the requested services, Professional shall submit to the Town within the time specified a written Task Order describing the necessary engineering, surveying, geotechnical, and/or environmental services, guidance, opinions and advice to be provided. The Task Order shall set forth in general terms the Professional's recommendations to carry out the work. Professional shall list the background and experience of Professional's personnel to be assigned to the project as requested by Town. The Task Order shall contain a fee schedule setting forth the fees for the services of the various categories of personnel to be assigned to the Town's project.

In the event of a conflict between the terms of a Task Order and this Agreement, this Agreement shall control.

### **2. ACCEPTANCE OF TASK ORDER.**

The Town and the Professional contemplate certain discussions, negotiations and possible changes to the Task Order submitted by the Professional. Upon a meeting of the minds, Professional shall submit the final Task Order which shall set forth the agreement of the Parties. If said Task Order is acceptable, the Town shall accept the same in writing. The Town and the Professional agree that such written acceptance may be provided by electronic mail. Professional's fee schedule shall remain in effect during the term of this Agreement, unless modified by the Parties in writing. The Town shall provide Professional with a specific Authorization to Proceed for each Task Order accepted by the Town.

### **3. TIME OF COMMENCEMENT AND COMPLETION.**

This Agreement shall terminate on June 30, 2025, unless terminated sooner in accordance with the terms of this Agreement. Professional shall commence and complete the work required by this Agreement in accordance with the dates provided in the Task Order as agreed upon by the Parties. Professional shall immediately notify the Town of any event or circumstance that may, immediately or in the future, impede the proper and timely execution of any work so that remedial action may be taken. Professional shall not begin any work pursuant to this Agreement or a Task Order until written confirmation has been provided by the Town. If Professional has not satisfactorily commenced or completed the work within the times specified, the Town may declare such delay a material breach of contract and may pursue all available legal and equitable remedies. Any changes to the schedule(s) provided in the Task Order must be agreed to in writing by the Town and the Professional.

### **4. PAYMENT OF SERVICES.**

Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the Task Order accepted by the Town. Town has the right to require the Professional to produce for inspection all of Professional's records, billing rates of personnel, and charges for direct expenses for which cost-plus compensation is provided to verify the accuracy of all invoices. Town shall pay Professional's invoices within thirty (30) days of receipt unless a bona fide dispute exists between Town and Professional concerning the accuracy of said invoice or the services covered thereby. Adjustments to an invoice for billing errors may extend the time for payment.

### **5. STANDARD OF CARE.**

Professional shall be held to the same standard and shall exercise the same degree of care, skill, and judgment in the performance of services for the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in Wake County, North Carolina (the "Standard of Care").

### **6. CONSULTANT AS CONSTRUCTION ADMINISTRATOR.**

In the event the Town contracts with the Professional to provide construction administration services the Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

### **7. TIME AND COST ESTIMATES.**

Professional's cost estimates and time estimates for construction, if required as part of a Task Order, shall be made on the basis of current labor and material prices and the Professional's experience and qualifications. Professional's estimates shall represent its best judgment as an experienced and qualified professional familiar with water and sewer utility projects, or other

projects for which Professional is employed. Although Professional has no control over the resources provided by construction contractors to meet contract schedules, Professional's estimates or forecast of schedules shall be made on the basis of its experience and qualifications and shall represent Professional's best judgment as an experienced and qualified professional familiar with water and sewer utility projects.

#### **8. INDEMNIFICATION.**

To the extent permitted by law, the Professional agrees to indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof to the extent resulting from the negligence of the Professional.

#### **9. APPLICABILITY OF LAWS AND REGULATIONS.**

The Professional shall adhere to all laws, ordinances, and regulations of the United States, the State of North Carolina, the County of Wake, and the Town of Apex in the performance of the services outlined in this contract and any attached specifications. The Parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of North Carolina and all disputes hereunder shall be resolved in accordance with the laws of the State of North Carolina.

#### **10. E-VERIFY COMPLIANCE.**

The Professional shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Professional shall require all of the Professional's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

#### **11. QUALITY AND WORKMANSHIP.**

All work shall be performed to the reasonable and good faith satisfaction of the Town. The work shall not be considered complete nor applicable payments rendered until the Town is satisfied with the services provided. Professional shall provide services in accordance with all applicable federal, state and local law and in accordance with all governing agency regulations and shall be held to the Standard of Care.

## **12. INSURANCE.**

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an *additional insured* by endorsement to the policies. If the policy has a blanket additional insured provision, the Professional's insurance shall be primary and non-contributory to other insurance. Additionally, the Professional shall maintain and show proof of workers' compensation and employer's liability insurance in the minimum amount of \$1,000,000; and shall show proof of professional liability coverage in a minimum amount of \$2,000,000. The Professional shall provide notice of cancellation, non-renewal or material change in coverage to the Town of Apex within 10 days of their receipt of notice from the insurance company.

All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this document. Notwithstanding the foregoing, neither the requirement of Professional to have sufficient insurance nor the requirement that Town is named as an additional insured, shall constitute waiver of the Town's governmental immunity in any respect, under North Carolina law.

## **13. DEFAULT.**

In the event of substantial failure by Professional to perform in accordance with the terms of this Agreement, Town shall have the right to terminate Professional upon seven (7) days written notice in which event Professional shall have neither the obligation nor the right to perform further services under this Agreement.

## **14. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Agreement for the Town's convenience upon thirty (30) days written notice to Professional. Professional shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Professional for all services satisfactorily performed.

*-This Area Left Blank Intentionally-*

## **15. NOTICE.**

Any formal notice, demand, or request required by or made in connection with this Agreement shall be deemed properly made if delivered in writing or deposited in the United States mail, postage prepaid, to the address specified below.

TO PROFESSIONAL: Terracon Consultants, Inc.  
Attn: Michael T. Jordan  
2401 Brentwood Rd.  
Raleigh, NC 27604

TO TOWN: Town of Apex  
Attention: Marty Stone, Assistant Town Manager  
PO Box 250  
Apex, NC 27502

## **16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Professional nor Town shall be in default of the provisions of this Agreement for delays in performance due to forces beyond the control of the parties. "Forces beyond the control of the parties" shall mean, but is not limited to, delay caused by fire, acts of God, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

## **17. 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.

## **18. CONSTRUCTION.**

Should any portion of this Agreement require judicial interpretation, it is agreed that the Court or Tribunal construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against any one party by reason of the rule of construction that a document is to be more strictly construed against the party who prepared the documents.

## **19. NO REPRESENTATIONS.**

The parties hereby warrant that no representations about the nature or extent of any claims, demands, damages, or rights that they have, or may have, against one another have been made to them, or to anyone acting on their behalf, to induce them to execute this Agreement, and they rely on no such representations; that they have fully read and understood this Agreement before signing their names; and that they act voluntarily and with full advice of counsel.

## **20. SEVERABILITY.**

In the event for any reason that any provision or portion of this Agreement shall be found to be void or invalid, then such provision or portion shall be deemed to be severable from the remaining provisions or portions of this Agreement, and it shall not affect the validity of the remaining portions, which portions shall be given full effect as if the void or invalid provision or portion had not been included herein.

## **21. COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument.

## **22. MODIFICATION.**

This Agreement contains the full understanding of the parties. Any modifications or addendums to this Agreement must be in writing and executed with the same formality as this Agreement.

## **23. BINDING EFFECT.**

The terms of this Agreement shall be binding upon the parties' heirs, successors, and assigns.

## **24. ASSIGNMENT.**

Professional shall not assign, sublet, or transfer any rights under or interest in (including, but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the Town. Nothing contained in this paragraph shall prevent Professional from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Professional in the performance of services rendered.

## **25. INDEPENDENT CONTRACTOR.**

Professional is an independent contractor and shall undertake performance of the services pursuant to the terms of this Agreement as an independent contractor. Professional shall be wholly responsible for the methods, means and techniques of performance.

## **26. NON-APPROPRIATION.**

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town 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 Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

**27. IRAN DIVESTMENT ACT**

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 Professional hereby certifies that the Professional is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Professional will not utilize any subcontractors found on the Final Divestment List.

**28. NO THIRD PARTY BENEFICIARIES**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Town or Contractor.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

~~Professional~~ **Terracon Consultants, Inc.**

**Town of Apex**

Name: Donald J. Vrana  
Name of Professional (type or print)  
**Vrana,**

\_\_\_\_\_  
Catherine Crosby, Town Manager

By: **Donald J.**  
(Signature)

Digitally signed by Vrana, Donald J.  
DN: cn=Vrana, Donald J.,  
ou=Legal Hold Users,  
email=Don.Vrana@terracon.com  
Date: 2021.08.10 11:42:54 -05'00'

Title: Executive Vice President/T

Attest:  
*Michael J. G...*  
(Secretary, if a corporation)

Attest:  
\_\_\_\_\_  
Town Clerk



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

\_\_\_\_\_  
Finance Director