

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER #
HVAC CONSTRUCTION AND REPAIR
CONTRACT**

THIS CONTRACT is entered into this the ____ day of _____, 2025, by and between, _____, a North Carolina Corporation with its principal business offices located at _____ (the "Contractor"), and the Town of Apex, a municipal corporation of the State of North Carolina, (the "Town" or the "Owner"). Town and Contractor may collectively be referred to as "Parties" hereinafter.

WITNESSETH:

WHEREAS, Town is engaged in the planning, operation, and utilization of town facilities and infrastructure which from time to time require construction, building, design, reconfiguration, renovation, installation, evaluation, site work, landscaping, testing, and other related projects; and

WHEREAS, the professional services of contractors from time to time are needed by the Town for the services as described above; and

WHEREAS, Contractor provides 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

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. SCOPE OF SERVICES.

The Contractor agrees to provide all materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary to provide renovation of the HVAC system at the Town of Apex Public Safety Station #4, located at 1615 E. Williams Street, Apex, NC 27502 (the "Work"). Specifically, Contractor will perform the following services:

- a. Replace existing (6) gas furnaces and condensing units with new air handler and VAV terminals. Connect to existing air distribution system as required.
- b. Provide VAV terminals with electric heat.
- c. Provide duct heater for preheat.
- d. Connect all new equipment to existing Desigo build automation system by Siemens.
- e. Existing 100 KW generator to remain. Connect existing controls to existing generator. Controls to shut down electric heat of VAV terminals when generator is operational.
- f. Provide 15 tons of temporary conditioning and heat during construction.
- g. Provide temporary 150 KW generator during construction.
- h. Duct detector added to fire alarm.

All Work shall be performed consistent with the "Contract Documents." "Contract Documents" as used in this Contract include the following which are hereby incorporated into this Contract:

- A. This Contract

- B. Plan sheets titled "Apex Public Safety Station #4 HVAC Renovation"
- C. Apex Public Safety Station #4 HVAC Renovation General Conditions
- D. Electrical and Mechanical Technical Specifications
- E. Bid Advertisement
- F. Instructions to Bidders
- G. Execution of Bid
- H. Bid Form
- I. Bid Form Submission
- J. Bid Bond
- K. Notice of Award
- L. Performance & Payment Bonds
- M. Notice to Proceed
- N. Addenda
- O. Certificate(s) of Insurance

Contractor shall perform Work during normal business hours, Monday through Friday, unless a different schedule is agreed to by the Town representative identified in Section 22 of this Agreement.

2. TIME OF COMMENCEMENT AND COMPLETION.

Contractor shall commence the Work required in this Contract upon the issuance of a Notice to Proceed, and the Contractor shall complete entire Work within forty-five (45) calendar days of receipt of the equipment to be installed and in any case, no later than _____. Contractor shall order the necessary equipment upon receipt of the Notice to Proceed. Both Parties recognize that delivery of equipment to Contractor could take multiple months. If Contractor 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 Contract must be agreed to in writing by the Town and the Contractor.

If the Contractor is delayed at any time in the progress of his Work by any act or negligence of the Town, his employees or his separate contractor, by changes ordered in the Work; by abnormal weather conditions; by any causes beyond the Contractor's control or by other causes deemed justifiable by Town, then the contract time may be reasonably extended in a written order from the Town upon written request from the contractor within ten days following the cause for delay. Time extensions for weather delays, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Town do not entitle the Contractor to compensable damages for delays. Any Contractor claim for compensable damages for delays is limited to delays caused solely by the Town or its agents.

3. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay the Contractor the total sum of \$_____. Contractor shall submit invoices or applications for payment reflecting Work completed through the date of invoice or application. Town will process all pay applications as the Work progresses. The Parties agree that upon receipt of the equipment, Contractor may bill the Town for the cost of the equipment. Notwithstanding Town's payment for equipment, Contractor shall remain responsible for the safety of the equipment through the completion of installation. Risk of loss for the equipment shall remain with Contractor until installation is complete. All materials and equipment paid for by the Town, until installed, shall be stored in an insured and bonded facility with limits in coverage that exceed the cost of the materials and equipment stored. Said bonding and insurance documentation shall be provided to the Town. If this

Contract is terminated prior to completion of the Work, Contractor shall deliver any equipment paid for by the Town to the Town at the location designated by the Town's representative.

Except for final payment (addressed below), payments shall be made within 30 days after certification of the Work included in an invoice. Town has the right to require the Contractor to produce for inspection all of Contractor's records and charges to verify the accuracy of all invoices. Town shall pay Contractor's invoices at times set forth above unless a bona fide dispute exists between Town and Contractor concerning the accuracy of said invoice or the services covered thereby.

Retainage:

In accordance with N.C.G.S 143-134.1, Town may withhold a percentage of payment until the project has been satisfactorily completed for projects costing more than \$100,000.00. For projects costing \$100,000.00 or more:

- a. Retainage withheld shall not exceed 5% at any time.
- b. The same terms shall apply to the general contractor and subcontractors alike.
- c. Following 50% completion of the project no further retainage will be withheld if the Contractor/subcontractor has performed satisfactorily.
- d. Town may reinstate retainage if the Contractor/subcontractor does not continue to perform satisfactorily. Following 50% completion of the project, Town is authorized to withhold additional retainage from a subsequent payment application if the amount of retainage withheld falls below 2.5%.

Final payment will be made within forty-five (45) days after acceptance of the Work and after the Town has received, if applicable, all required warranty information, "as-built" drawings as required, and receipt of the final pay request which shall include the Contractor's affidavit in the following form:

"This is to certify that all costs of materials, equipment, labor, subcontracted work, and all else entering into the accomplishment of this contract, including payrolls, have been paid in full."

The Town, may withhold payment for any of the following reasons:

- a. Faulty or defective Work not corrected.
- b. The unpaid balance remaining on the Contract is not sufficient to complete the Work in the sole judgement and discretion of the Town.
- c. To provide a sufficient contract balance to cover liquidated damages (if applicable) that will be assessed.
- d. Evidence that subcontractors have not been paid.

Payment will be released once the grounds for withholding payments have been removed.

4. CHANGE ORDERS.

- A. In the event Town has changes in the Work not covered by the Contract, these changes will not invalidate or relieve Contractor from any guarantee it has given in this Contract. If a bond was required these changes will not relieve the surety or sureties of said bond. Changes in Work shall not proceed without a Change Order approved by the Town. Contractor shall provide a complete breakdown of all labor and material costs with the Change Order request. The breakdown shall include the Contractor's allowance for overhead and profit not to exceed 10% of the net cost of the change with Work provided directly by the Contractor. For purposes of this Contract, "net cost" shall mean the difference between all proper cost additions and deductions. No claim for

adjustments of the contract price shall be valid unless the procedure outlined in this section is followed. Any Work performed pursuant to an approved change order shall be governed by the terms of this Contract.

B. The Parties agree that there are two methods that may be utilized to determine the cost of changes:

1. If unit prices are quoted in the proposal or bid and the additional Work is covered by those unit prices, or can be subsequently agreed to by the Parties, the cost of the change shall be computed by application of the unit prices based on quantities. If this method is used no additional allowances shall be made for overhead and profit.
2. If the additional Work is not covered by unit prices, unit prices were not provided in the proposal or bid, or by the Parties mutual election, Town and Contractor may negotiate and agree upon the value of the change prior to the issuance of the change order and the change order shall identify the corresponding lump sum adjustment to the contract price.

C. In the event concealed conditions are discovered in the performance of the Work below grade, or in the event concealed or unknown conditions in an existing structure vary from the conditions indicated in the Contract Documents, the contract sum and time for completion may be adjusted by Change Order upon claim by either party made within thirty (30) days after the condition has been identified. The cost shall be determined by one of the methods outlined in this Contract.

D. Change Orders shall be submitted by the Contractor for the Town's review and approval. Contractor shall provide all applicable supporting data and information. Delay in approval of a Change Order due to Contractor's failure to submit proper documentation shall not be grounds for a time extension or basis of a claim. The Town shall respond to the Contractor's proposal within fourteen (14) days of receipt of the proposal. If accepted, the Town shall prepare the Change Order for the Contractor's signature. The Town shall execute the approved Change Order within seven (7) days of receipt from the Contractor. If the project requires bonding, the Contractor shall notify its bonding company that the contract has been changed by the amount of the Change Order and provide a copy of the approved Change Order to the surety. In the event a Change Order cannot be agreed upon by the Parties, nothing in this Contract shall preclude the Town from performing, or having performed, the Work requested in a Change Order.

5. INDEMNIFICATION.

To the extent permitted by law, the Contractor agrees to defend, pay on behalf of, 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, resulting from the negligence of the Contractor.

6. APPLICABILITY OF LAWS AND REGULATIONS.

The Contractor 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. This Contract shall be governed by the laws of the State of North Carolina.

Contractor shall obtain all required permits and inspections and shall give all notices required by law in performance of the Work. In the event Contractor observes that any drawings or specifications are not in compliance with any such rules, laws, or regulations, Contractor shall promptly notify the Town in writing. Contractor shall not perform any Work knowing it to be contrary to any laws, ordinances, codes, rules or regulations.

All Work under this Contract shall be performed in accordance with the North Carolina Building Code and all other applicable state or national codes.

7. E-VERIFY COMPLIANCE.

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

8. ANTI-HUMAN TRAFFICKING.

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor's subcontractors in the performance of this Agreement shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

9. QUALITY AND WORKMANSHIP.

Contractor shall provide services in accordance with all governing agency regulations and shall be held to the same standard and shall exercise the same degree of care, skill and judgment in the performance of services for Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina. Contractor hereby certifies that Contractor is properly licensed to perform the Work as required by North Carolina law.

10. PROTECTION AND RESTORATION OF SITE.

Unless otherwise noted in the Contract Documents, Contractor shall supply all labor, transportation, tools, and apparatus necessary for the completion of this Work and shall maintain and remove all equipment of the construction, and be responsible for the safe, proper and lawful construction, maintenance and use of the same. Contractor shall provide all necessary protections for the site and shall be responsible for and pay for or repair, any damage to Town property caused by Contractor's or subcontractor's actions on the site. Protections provided by Contractor shall include cover of any Work that is not in progress but is accessible to the public. Any Work damaged that was not properly protected shall be repaired or replaced by the Contractor. Contractor shall provide all barricades necessary to keep the public away from construction.

If at any point during the construction or completion of the Work contemplated by this Contract, the conduct or behavior of any worker on the site be determined to be a nuisance to the Town, or detrimental to the Town's operations, Contractor shall immediately remove such party from the site.

Contractor shall keep the Work site and surrounding area reasonably free from obstruction and debris and shall remove all such debris when requested by the Town. Before final acceptance of the Work Contractor shall thoroughly clean the site and surrounding area and prepare the project site for use by the Town.

11. CODES AND STANDARDS.

Wherever reference is made to codes, standard specifications, or other data published by regulating agencies it shall be understood that said reference is to the latest edition published prior to the date of the Contract

Documents. These regulating agencies include, but are not limited to, North Carolina state building codes, federal specifications, national electric codes, ASTM specifications and various institute specifications.

12. INSURANCE.

Work under this Contract shall not proceed until the Contractor has obtained all required insurance. The Contractor shall maintain valid general liability insurance in the minimum amount of \$2,000,000, 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 Contractor's insurance shall be primary and non-contributory to other insurance. Policy limits noted above may be met through an umbrella liability policy. Additionally, the Contractor shall maintain and show proof of workers' compensation in accordance with the statutory limits and employer's liability insurance in the minimum amount of \$1,000,000. The Contractor 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 Contractor 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. PRE-PROJECT SAFETY REVIEW MEETING.

When requested by the Town, the Contractor shall attend a pre-project safety review meeting with the contracting Department Head and Supervisors and Safety and Risk Manager prior to the start of Work.

14. SUBCONTRACTORS.

Contractor shall be fully responsible for Contractor's own acts or omissions as well as those of any subcontractor retained to perform services pursuant to this Contract. Contractor acknowledges that no contractual relationship exists between the subcontractor and the Town regarding this Contract and that the subcontractor is acting as an agent or employee of the Contractor. Contractor acknowledges that the terms of this Contract apply to each subcontractor as it does to the Contractor and Contractor will take whatever steps necessary to bind all subcontractors working on this project to these terms.

15. DEFAULT.

In the event the Contractor fails to begin the Work pursuant to the Contract Documents within the time specified, or the progress of the Work is not maintained on schedule, or the Work is not completed within the time specified, or fails to perform the Work with sufficient staff and equipment or with sufficient materials to ensure the prompt completion of said Work, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work, or if the Contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against him unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner, the Town may give notice in writing, sent by certified mail, return receipt requested, to the Contractor and its surety (if applicable) of such delay, neglect or default, specifying the same, and if the Contractor within a period of seven (7) days after such notice shall not proceed in accordance therewith, then the Town shall, declare this Contract in default. Upon a declaration of default, the following shall apply:

1. If the project was required to be bonded the surety shall promptly take over the Work and complete the performance of this Contract in the manner and within the time frame specified. In the event the surety (if applicable) shall fail to take over the Work to be done under this

Contract within seven (7) days after being so notified and notify the Town in writing, sent by certified mail, return receipt requested, that he is taking the same over and stating that he will diligently pursue and complete the same, the Town shall have full power and authority, without violating the Contract, to take the prosecution of the Work out of the hands of said Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said Contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said Contract in an acceptable manner. All costs and charges incurred by the Town, together with the costs of completing the Work under Contract, shall be deducted from any monies due or which may become due said Contractor and surety. In case the expense so incurred by the Contractor shall be less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then the said Contractor and surety shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the Contract, then the Contractor and the surety shall be liable and shall pay to the Town the amount of said excess.

2. If a bond was not required and there is not surety, then the Contractor shall promptly cure the default and complete the performance of this Contract in the manner and within the time frame specified in the written notice. In the event the Contractor shall fail to cure the default within the time specified, the Town shall have full power and authority, without violating the Contract, to take the prosecution of the Work out of the hands of said Contractor, to appropriate or use any or all contract materials and equipment on the grounds as may be suitable and acceptable and may enter into an agreement, either by public letting or negotiation, for the completion of said Contract according to the terms and provisions thereof or use such other methods as in his opinion shall be required for the completion of said Contract in an acceptable manner. All costs and charges incurred by the Town, together with the costs of completing the Work under Contract, shall be deducted from any monies due or which may become due said Contractor. If the expense so incurred by the Town shall be less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then the said Contractor shall be entitled to receive the difference, but in case such expense shall exceed the sum which would have been payable under the Contract, then the Contractor shall be liable and shall pay to the Town the amount of said excess.

16. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Contract for the Town's convenience upon thirty (30) days written notice to Contractor. Contractor shall terminate performance of services on a schedule acceptable to the Town. Unless otherwise notified, upon termination Contractor shall discontinue all Work and the placement of orders for materials and supplies in connection with this Contract. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed in accordance with this Contract and such other costs actually incurred by the Contractor as approved by the Town.

17. TOWN'S RIGHT TO PERFORM WORK

If at any point during the performance or progress of the Work, or during the period of guarantee, Contractor fails perform the Work in satisfactory manner or to perform in accordance with the terms of this Contract, the Town, after seven (7) days' written notice to the Contractor from either the Town may perform or have performed that portion of the Work. The cost of the associated Work may be deducted from any amounts due or that become due to the Contractor. In the event the cost of such performance exceeds the amount

due the Contractor, then the Contractor or the surety (if applicable), or both, shall be liable for and shall pay to the Town the amount of the excess.

18. UNCORRECTED FAULTY WORK

Should the correction of faulty or damaged Work be considered inadvisable by the Town, the Work will not be corrected and the Town shall be reimbursed by the Contractor for the devaluation of the Work as a result of the faulty Work. A change order will be issued to reflect the reduction in Contract sum.

19. FINAL INSPECTION AND FINAL ACCEPTANCE

- A. Upon notification from the Contractor that the Work is complete and ready for inspection, the Town shall complete a final inspection to verify that the Work is complete. The Contractor shall schedule the final inspection at a time and date acceptable to the Town.
- B. Upon final inspection, the Town shall, if job conditions warrant, record a list of items that are found to be incomplete or not in accordance with the Contract Documents. At the conclusion of the Town's final inspection, the Town shall make one of the following determinations:
 - 1. That the Work is completed and accepted.
 - 2. That the Work will be accepted subject to the correction of any identified discrepancies or faulty construction.
 - 3. That the Work is not complete and a date for another final inspection will be established.

20. CORRECTION OF WORK PRIOR TO FINAL PAYMENT

- A. Any Work, materials, fabricated items or other parts of the Work which are not in accordance with the Contract shall be promptly removed from the Work site by the Contractor and shall be immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Town. Work or property of other contractors or the Town, damaged or destroyed by virtue of such faulty Work, shall be made good at the expense of the Contractor.
- B. Correction of faulty Work described above shall commence within twenty-four (24) hours after receipt of notice from the Town, and shall make satisfactory progress, as determined by the Town, until completed.
- C. Should Contractor fail to proceed with the corrections in a timely fashion Town may complete the Work in accordance with this Contract.

21. CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final payment or use of the premises by the Town, nor any provision of the Contract, nor any other act or instrument of the Town, shall relieve the Contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. Contractor shall correct or make good any defects due thereto and repair any damage resulting there from, which may appear during the guarantee period following final acceptance of the Work. The Town will report any defects as they may

appear to the Contractor and establish a time limit for completion of corrections by the Contractor. The Town will be the judge as to the responsibility for correction of defects.

22. NOTICE.

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

TO CONTRACTOR: _____ Attn: _____ _____	TO TOWN: Town of Apex Attn: Matt Wetherell PO Box 250 Apex, NC 27502 Matt.wetherell@apexnc.org
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23. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Contractor nor Town shall be in default of the provisions of this Contract 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, flood, earthquakes, storms, lightning, epidemic, war, riot, and/or civil disobedience.

24. NONWAIVER FOR BREACH.

No breach or non-performance of any term of this Contract 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 Contract 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.

25. CONSTRUCTION.

Should any portion of this Contract 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.

26. 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 Contract, and they rely on no such representations; that they have fully read and understood this Contract before signing their names; and that they act voluntarily and with full advice of counsel.

27. SEVERABILITY.

In the event for any reason that any provision or portion of this Contract 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 Contract, 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.

28. COUNTERPARTS.

This Contract 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.

29. MODIFICATION.

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

30. BINDING EFFECT.

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

31. ASSIGNMENT.

Contractor 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 Contract without the written consent of the Town. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Contractor in the performance of services rendered.

32. INDEPENDENT CONTRACTOR.

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

33. NON-APPROPRIATION.

Notwithstanding any other provisions of this Contract, 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 Contract for any fiscal year, this Contract shall terminate immediately without further obligation of the Town.

34. IRAN DIVESTMENT ACT CERTIFICATION.

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

35. CONTRACTOR'S WARRANTIES.

The Contractor, in executing this Contract, unconditionally guarantees materials and workmanship against defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the final acceptance of the Work by the Town and shall replace all such defective materials or workmanship without cost to the Town. In the cases where materials or equipment carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for

that specific equipment or material. During the manufacturer's warranty period the Contractor shall be responsible for the replacement of such defective equipment or materials.

Nothing in this section shall preclude the Town from bringing an action for latent defects caused by the negligence of the Contractor which is concealed, hidden, or not readily apparent to the Town at the time of final acceptance, in accordance with applicable law. Guarantees that are stipulated in the specifications or drawings shall govern those particular materials or equipment.

36. BOND REQUIREMENTS.

Within ten (10) days of the award of the Contract, Contractor shall provide the Town of Apex with a contract payment bond and a contract performance bond executed by a surety company authorized to do business in North Carolina, each in an amount equal to 100 percent of the amount of the Contract. All bonds shall be in conformity with N.C.G.S. 44A-33 and countersigned by an authorizing agent of the bonding company.

Failure on the part of the Contractor to file acceptable bonds within the required timeframe shall be just cause for the forfeiture of the bid bond or bid deposit and rescinding award of the Contract. Award may then be made to the next lowest responsible bidder or the Work may be re-advertised.

37. SURETY.

If at any time after the execution of this Contract and the surety bonds included in the Contract Documents for the faithful performance of the Contract, the Town shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the Work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the Town so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Town. In such event no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Town.

38. MINORITY BUSINESS PARTICIPATION.

Contractor is required to identify participation of Minority and Women-Owned Business Enterprises (MWBE) in its proposal and document how that participation is achieved. There is a verifiable goal of ten percent (10%) for participation by minority businesses in the total value of work for the Work. Contractor shall comply with the document titled "Guidelines For Recruitment and Selection of Minority Businesses For Participation In Town of Apex Construction Contracts", including associated Affidavits and Appendices which are hereby incorporated herein.

39. NONDISCRIMINATION.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Contractor hereby warrants and agrees that Contractor will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

40. ELECTRONIC SIGNATURE.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Agreement and all documents related hereto containing an electronic or digitized signature are legally binding in the same manner as are hard copy documents executed by hand signature.

The Parties hereby consent to use electronic or digitized signatures in accordance with the Town’s Electronic Signature Policy and intend to be bound by the Agreement and any related documents. If electronic signatures are used the Agreement shall be delivered in an electronic record capable of retention by the recipient at the time of receipt.

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

Contractor: _____ **Town of Apex**

Name (type or print) Randal E. Vosburg, Town Manager

Signature

Title

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

Secretary (if a corporation) Finance Director