

**AGREEMENT OVERVIEW**

NORTH CAROLINA  
WAKE COUNTY

**DATE:** 2/14/2025

**PARTIES TO THE AGREEMENT:**

**PROJECT NUMBERS:**

NORTH CAROLINA DEPARTMENT  
OF TRANSPORTATION

WBS ELEMENTS: 36249.4987

AND

TOWN OF APEX

The purpose of this Agreement is to identify the participation in project costs, project delivery and/or maintenance, by the other party to this Agreement, as further defined in this Agreement.

**SCOPE OF PROJECT (“Project”):** Review and inspect new signal installation at the Old US 1 and Holland Road/Friendship Road intersection in Apex, NC consisting of wood poles and wireless connectivity to the Old US 1 and Humie Olive Road intersection.

**ESTIMATED COST TO OTHER PARTY:** \$7,000

**PAYMENT TERMS:** The Town of Apex will submit payment upon execution of this Agreement.

**MAINTENANCE:** Department

**EFFECTIVE DATES OF AGREEMENT:**

**START:** Upon Full Execution of this Agreement

**END:** When work is complete and all terms are met.

This Agreement is made and entered into on the last date executed below, by and between the North Carolina Department of Transportation, an agency of the State of North Carolina, hereinafter referred to as the **Department** and the Town of Apex, hereinafter referred to as the **Developer**; and collectively referred to as the **Parties**.

The **Parties** to this Agreement, listed above, intend that this Agreement, together with all attachments, schedules, exhibits, and other documents that both are referenced in this Agreement and refer to this Agreement, represents the entire understanding between the **Parties** with respect to its subject matter and supersedes any previous communication or agreements that may exist.

## I. WHEREAS STATEMENTS

**WHEREAS**, this Agreement is made under the authority granted to the **Department** by the North Carolina General Assembly under General Statutes of North Carolina (NCGS), particularly Chapter 136-66.1 and 136-66.3; and,

**WHEREAS**, the **Department** and the **Developer** have agreed that the jurisdictional limits of the **Parties**, as of the date of entering the agreement for the above-mentioned project, are to be used in determining the duties, responsibilities, rights, and legal obligations of the **Parties** hereto for the purposes of this Agreement; and,

**WHEREAS**, the **Developer** has requested that the **Department** to perform work as stated in the scope; and,

**WHEREAS**, the **Parties** hereto wish to enter into an agreement for scoped work to be performed or provided by the **Department** (including reviews, goods, or services) with reimbursement for the costs thereof by the **Developer** as hereinafter set out.

**NOW, THEREFORE**, this Agreement states the promises and undertakings of each party as herein provided, and the **Parties** do hereby covenant and agree, each with the other, as follows:

## II. RESPONSIBILITIES

### A. DEPARTMENT

The **Department** and/or the **Developer** shall be responsible for all phases of project delivery to include planning, design, right of way acquisition, utility relocation, construction and/or maintenance as shown in the **PROJECT DELIVERY** Provision.

### B. DEVELOPER

The **Developer** shall be responsible for payment as shown in the **COSTS AND FUNDING** Provision.

## III. PROJECT DELIVERY REQUIREMENTS

### A. DEVELOPMENT OF PLANS

Project plans and traffic signal designs shall be prepared by the **Developer**, including electrical and programming details, (if applicable) metal poles with mast arm shop drawings, foundation designs, utility make-ready plans, communications cable routing plans, traffic signal coordination timing plans and Project Special Provisions (including, but not limited to: providing Synchro/TruTraffic files and programming data sheets; coordination timing plans, graphics package, downloading coordination timing plans onto system cabinets and/or onto central computer). All work shall be performed in accordance with Departmental standards

and specifications. Said plans and design shall be submitted to the **Department** for review and approval prior to any work being performed by the **Developer**.

**B. PURCHASE OF EQUIPMENT:**

The **Developer** shall purchase or furnish from stock all traffic signal equipment necessary for the traffic signal revision. Said equipment shall be in reasonably close conformity with the standards and specifications of equipment and materials used by the **Department**. The **Department** reserves the right to reject the use of any equipment and materials it deems functionally inferior.

**C. RELOCATION OF UTILITIES:**

The **Developer** shall accomplish the relocation or adjustment of any and all utilities in conflict with the construction of the project. Said work shall be accomplished in a manner satisfactory to the **Department**.

**D. RIGHT OF WAY**

It is understood by the **Parties** hereto that all work shall be contained within existing right of way. However, should it become necessary, the **Developer** shall provide any required right of way and/or construction easements at no liability whatsoever to the **Department**. Acquisition of right of way shall be accomplished in accordance with State procedures. The **Developer** shall indemnify and save the **Department** harmless from any and all claims for damages that might arise on account of damage to public or private property and right of way acquisition, drainage, and construction easements for the construction of the project.

**E. CONSTRUCTION / INSTALLATION**

The **Developer** shall enter into and administer the contract for the installation of all equipment and perform such other work as required on the project in accordance with the approved project plans, the applicable NCDOT "Standard Specifications for Roads and Structures", "Roadway Standard Drawings", and any addendum, all local codes and ordinances, and the procedures set out herein below shall be followed:

- i. All Preliminary and construction engineering, supervision, and labor pertaining to the signal installation will be furnished by the **Developer**.
- ii. No work shall be performed by the **Developer** prior to approval of the traffic signal design by the **Department**.
- iii. Installation shall be done by a licensed electrical contractor familiar with traffic signal construction.

- iv. The **Department's** Division Engineer shall have the right to inspect, sample or test, and approve or reject any materials or construction methods used during the construction of the project.
- v. During installation of the signal equipment, the **Department** shall inspect the work being performed by the **Developer** to ensure compliance with the project plans, the current NCDOT traffic signal specifications, and the terms of this Agreement.
- vi. Upon completion of the project, and prior to final acceptance by the **Department**, the **Developer** will furnish to the **Department's** Division Engineer one (1) signal inventory control sheet and one (1) set of "Plan of Record" plans.
- vii. Prior to final acceptance by the **Department**, the Division Engineer shall have the right to make a final inspection of the completed work.
- viii. Failure on the part of the **Developer** to comply with any of these provisions will be grounds for the **Department** to terminate the project.
- ix. The **Developer** agrees to pursue the completion of the work covered by this Agreement as expeditiously as feasible and to complete all work within 90 Days of notice to proceed.
- x. The **Developer** shall install thermoplastic pavement markings where pavement markings are required on the project.

#### **F. MAINTENANCE**

- i. Upon completion of the project, the **Department** shall own the traffic signal. Control and maintenance of the traffic signal will be accomplished in the same manner as maintenance of other state system signalized intersections.
- ii. In the event of damage to the metal poles, the **Department** shall install "in-kind" metal poles if funding is available from the damage claim or the **Developer**. However, if said funding is not available, the **Department** reserves the right to install wooden poles in lieu of metal poles (if applicable).

### **IV. COSTS AND FUNDING**

#### **A. PROJECT COSTS AND FUNDING**

- i. The estimated cost of the Project is \$7,000. Both **Parties** understand that this is an estimated cost and is subject to change.
- ii. The **Developer** shall reimburse the **Department** 100% of the actual cost of all work performed by the Department, including administrative costs.

- iii. The **Department** may consult with the **Developer** on changes to cost estimates prior to construction, or changes to costs during construction. Consultation between the **Department** and the **Developer** is offered as a courtesy to apprise the **Developer** of potential cost increases and to allow appropriate budgeting. Failure of the **Department** to notify the **Developer** of cost increases does not affect the payment terms of the agreement.

#### **B. PAYMENT BY THE DEVELOPER**

- i. The **Developer** shall submit payment for \$7,000 to the **Department's** Fiscal Section upon execution of this Agreement, in accordance with the attached "Remittance Guidance".
- ii. If costs for the current phase of work exceed the available funding, then the **Department** will notify the **Developer** of any additional down payment needed.

#### **C. ADJUSTMENT OF COSTS**

Upon completion of the project, if actual costs exceed the amount of payment, the **Developer** shall reimburse the **Department** any under payment within sixty (60) days of invoicing by the **Department**. The **Department** will charge a late payment penalty and interest on any unpaid balance due in accordance with G. S. 147-86.23. If the actual cost of the work is less than \$7,000, the **Department** will reimburse the **Developer** any overpayment.

### **V. STANDARD PROVISIONS**

#### **A. AGREEMENT MODIFICATIONS**

Any modification to scope, funding, responsibilities, or time frame will be agreed upon by all **Parties** by means of a written Supplemental Agreement.

#### **B. ASSIGNMENT OF RESPONSIBILITIES**

The **Department** must approve any assignment or transfer of the responsibilities of the **Developer** set forth in this Agreement to other parties or entities.

#### **C. AGREEMENT FOR IDENTIFIED PARTIES ONLY**

This Agreement is solely for the benefit of the identified **Parties** to the Agreement and is not intended to give any rights, claims, or benefits to third parties or to the public at large.

#### **D. OTHER AGREEMENTS**

The **Developer** is solely responsible for all agreements, contracts, and work orders entered into or issued by the **Developer** to meet the terms of this Agreement. The **Department** is not responsible for any expenses or obligations incurred for the terms of this Agreement except

those specifically eligible for the funds and obligations as approved by the **Department** under the terms of this Agreement.

**E. TITLE VI**

The other party to this Agreement shall comply with Title VI of the Civil Rights Act of 1964 (Title 49 CFR, Subtitle A, Part 21) and related nondiscrimination authorities. Title VI and related authorities prohibit discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

**F. FACSIMILE**

A copy or facsimile copy of the signature of any party shall be deemed an original with each fully executed copy of the Agreement as binding as an original, and the **Parties** agree that this Agreement can be executed in counterparts, as duplicate originals, with facsimile signatures sufficient to evidence an agreement to be bound by the terms of the Agreement.

**G. AUTHORIZATION TO EXECUTE**

The **Parties** hereby acknowledge that the individual executing this Agreement has read this Agreement, conferred with legal counsel, fully understands its contents, and is authorized to execute this Agreement and to bind the respective **Parties** to the terms contained herein.

**H. DEBARMENT POLICY**

It is the policy of the **Department** not to enter into any agreement with parties that have been debarred by any government agency (Federal or State). By execution of this agreement, the **Developer** certifies that neither it nor its agents or contractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal or State Agency or Department and that it will not enter into agreements with any entity that is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction.

**I. INDEMNIFICATION**

To the extent authorized by state and federal claims statutes, the **Developer** shall be responsible for its actions under the terms of this agreement and save harmless the FHWA (if applicable), the **Department**, and the State of North Carolina, their respective officers, directors, principals, employees, agents, successors, and assigns from and against any and all claim for payment, damages and/or liabilities of any nature, asserted against the **Department** in connection with this Agreement. The **Department** shall not be liable and shall be held harmless from any and all third-party claims that might arise on account of the **Developer's** negligence and/or responsibilities under the terms of this agreement.

**J. AVAILABILITY OF FUNDS**

All terms and conditions of this Agreement are dependent upon, and, subject to the allocation of funds for the purpose set forth in the Agreement and the Agreement shall automatically terminate if funds cease to be available.

#### K. DOCUSIGN

The **Department** and the **Developer** acknowledge and agree that the electronic signature application DocuSign may be used, at the sole election of the **Department** or the **Developer**, to execute this Agreement. By selecting "I Agree", "I Accept", or other similar item, button, or icon via use of a keypad, mouse, or other device, as part of the DocuSign application, the **Department** and the **Developer** consent to be legally bound by the terms and conditions of Agreement and that such act constitutes the **Department's** signature as if actually signed by the **Department** in writing or the **Developer's** signature as if actually signed by the **Developer** in writing. The **Department** and the **Developer** also agree that no certification authority or other third-party verification is necessary to validate its electronic signature and that the lack of such certification or third-party verification will not in any way affect the enforceability of its electronic signature. The **Department** and the **Developer** acknowledge and agree that delivery of a copy of this Agreement or any other document contemplated hereby through the DocuSign application, will have the same effect as physical delivery of the paper document bearing an original written signature.

#### L. GIFT BAN

By Executive Order 24, issued by Governor Perdue, and NCGS 133-32, it is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e. Administration, Adult Corrections, Commerce, Environmental Quality, Health and Human Services, Information Technology, Military and Veterans Affairs, Natural and Cultural Resources, Public Safety, Revenue, Transportation, and the Office of the Governor).

**SIGNATURE PAGE**

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Developer** by authority duly given.

**(DOCUSIGN ONLY)**

Authorized Signer: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF APEX

FED TAX ID NO: \_\_\_\_\_

REMITTANCE ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_

Finance Officer: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (DATE)



**SIGNATURE PAGE**

IN WITNESS WHEREOF, this Agreement has been executed the day and year heretofore set out, on the part of the **Department** and the **Developer** by authority duly given.

**(INK SIGNATURES ONLY)**

ATTEST: \_\_\_\_\_ Authorized Signer: \_\_\_\_\_

BY: \_\_\_\_\_ Print Name: \_\_\_\_\_

TITLE: \_\_\_\_\_ Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

If applicable, this Agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act:

TOWN OF APEX

FED TAX ID NO: \_\_\_\_\_ Finance Officer: \_\_\_\_\_

REMITTANCE ADDRESS: \_\_\_\_\_ Print Name: \_\_\_\_\_

\_\_\_\_\_ Date Signed: \_\_\_\_\_

\_\_\_\_\_

**DEPARTMENT OF TRANSPORTATION (DocuSign)**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED BY BOARD OF TRANSPORTATION ITEM O: \_\_\_\_\_ (DATE)