

## MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2023, (the “Effective Date”), by and between Town of Apex, a municipal corporation of the State of North Carolina (hereinafter the “Client”), and RPI Consultants, LLC, a Maryland Limited Liability Company (hereinafter “RPI”).

### RECITALS

WHEREAS, RPI is a contractor that engages in the provision of professional, management, and software services to government agencies, healthcare facilities, and other facilities in the areas of human resources, supply chain management, and accounts payable and receivable;

WHEREAS, Client requests that RPI provide business process and Infor Lawson software consulting services to Client; and

WHEREAS, RPI and Client desire to enter into a master services agreement for RPI to provide certain services as a contractor of Client as more specifically described in one or more statements of work (“SOW”).

NOW THEREFORE, in consideration of the foregoing recitals and mutual covenants described herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and RPI hereby agree as follows:

1. Engagement. Client hereby engages RPI on a non-exclusive basis to provide services, and RPI hereby agrees to provide such services, upon the terms and conditions set forth herein and in accordance with each SOW.

2. Scope of Services. During the term of this Agreement RPI will be available to perform the services described in each SOW (the “Services”). The exact description of the Services to be rendered by RPI from time to time shall be as specified on the applicable SOW. Any SOW may be modified from time to time upon the signed, written agreement of RPI and Client.

3. Provider of Services. RPI will provide the Services. RPI may use its employees and RPI may subcontract the Services to independent contractors.

4. Statement of Services.

4.1 RPI or the Client will generate a SOW for each period of service. The SOW shall state the scope and nature of the Services to be supplied by RPI. Each SOW shall be in the form of a mutually agreed upon letter agreement. The SOW shall be effective upon approval of the SOW by RPI and the Client. Client and RPI may agree to more than one SOW at any time.

4.2 Each SOW will contain an explanation of the project, the Services to be provided by RPI, the anticipated start date, the deliverable specifications, personnel requirements

and other relevant information. Provided Client has made timely payment as set forth in Section 5 hereunder, the working papers and other deliverables prepared by RPI in connection with the performance of Services will be the property of the Client. The Services provided in each SOW shall be completed upon the Client's acceptance of the Services using the specifications and criteria set forth in the applicable SOW and in accordance with this Agreement.

5. Compensation.

5.1 Client will pay RPI according to the rates set forth in the applicable SOW and in accordance with the terms and conditions of this Agreement.

5.2 Client will reimburse RPI for its reasonable expenses as set forth in the applicable SOW and in accordance with the terms and conditions of this Agreement.

5.3 RPI will invoice Client at the end of each month. Client agrees to pay RPI's invoices within fifteen (15) calendar days of the date of RPI's invoice. Invoices not paid within thirty (30) calendar days may be subject to a late payment fee of five percent (5%) and may be subject to accrued interest at the rate of 1.5% per month.

6. Duties and Obligations of RPI.

6.1 RPI agrees to provide the Services:

6.1.1 in accordance with the applicable SOW;

6.1.2 in a timely, professional, high quality and workmanlike manner that is consistent with industry best practices; and

6.1.3 in the event that the Client has established standards of conduct, RPI shall abide by the standards of conduct established by the Client provided that the Client has provided such standards to RPI in a reasonable fashion before the commencement of work.

6.1.4 For its employees, RPI agrees: (i) to maintain all necessary personnel and payroll records; (ii) to account for wages and withhold applicable taxes, Social Security, and other government-mandated charges and remit such taxes, Social Security and other government-mandated charges to the appropriate governmental entity as required by law; and (iii) to complete and maintain I-9 forms in compliance with the Immigration Reform and Control Act of 1986. RPI will require its agents and contractors to provide the above on behalf of RPI in the case RPI uses independent contractors for the Services.

7. Insurance.

7.1 RPI's obligations with respect to insurance shall be as follows:

7.1.1 RPI shall provide and continuously maintain general, professional, fraud, automobile and employer's liability insurance in such amounts as is applicable according to the SOW, as required by law, and in accordance with general commercial reasonableness;

7.1.2 RPI shall maintain workers' compensation insurance in accordance with the statutory limit as required by law for the applicable SOW;

7.1.3 RPI shall give to Client a Certificate of Insurance regarding the insurance in this Section 7.1 within a reasonable period of time upon the Client's reasonable request of and upon the execution of a SOW.

7.2 Client's obligations with respect to insurance shall be as follows:

7.2.1 Client shall provide and continuously maintain general, professional, fraud, automobile and employer's liability insurance in such amounts as required by law, and in accordance with general commercial reasonableness;

7.2.2 Client shall give RPI a Certificate of Insurance regarding the insurance in this Section 7.2 within a reasonable period of time upon RPI's reasonable request.

## 8. Confidential Information.

8.1 RPI and Client recognize and acknowledge that its relationship with each other shall, of necessity, provide each party with specialized knowledge concerning the other party, which, if used for the benefit of others or disclosed to others could cause serious harm to the other party. Accordingly, RPI and Client each covenant that it and its employees, contracted parties, assigns and parties under agreement with, shall not at any time, directly or indirectly, use, disclose to others, or permit the use by or disclosure to others of, any Confidential Information (as hereinafter defined) except as expressly provided herein.

8.2 While engaged during the term of this Agreement, RPI and Client may use and disclose Confidential Information only for purposes that are necessary for the carrying out the duties as set forth herein or assigned to it by a SOW.

8.3 For purposes of this Agreement, the term "Confidential Information" means all confidential and/or proprietary information and trade secrets, whether oral, written, computerized, digitized or otherwise, of either party regarding that party and its business, including, without limiting the generality of the foregoing, information regarding such party's intellectual property and technology (whether owned or licensed), patents and patent applications, research and development, inventions, systems, system configurations, equipment, software, engineering data and specifications, technical knowledge, know-how, techniques, manuals, products, sales and marketing, earnings, business plans, financial information and forecasts, prospects, business arrangements, operating policies and procedures, methods of operation and business strategies, regardless of whether or not such information is deemed "trade secrets" under applicable law. Confidential Information does not include information that (i) becomes generally available to the public other than as a result of disclosure by any person in violation of any duty of confidentiality, (ii) was available to the public on a non-confidential basis from a source other than the Client, or (iii) is required to be disclosed by legal process or applicable law, including Chapter 132 of the North Carolina General Statutes.

## 9. RPI's Representations and Warranties. RPI represents and warrants continuously

through the term of this Agreement the following:

9.1 RPI has the full power to enter into and perform this Agreement and to make the grant or rights contained herein and that no consent of any other person or entity is required by RPI to grant such rights other than consents that have been obtained and are in effect.

9.2 RPI is not a party to or otherwise subject to or bound by the terms of any contract, agreement or understanding which in any manner would limit or otherwise affect its ability to perform its obligations hereunder, including without limitation any contract, agreement or understanding containing terms and provisions similar in any manner to those contained in Section 8 hereof.

9.3 RPI will comply with all applicable federal, state, and local laws, rules, regulations, codes, ordinances and orders.

9.4 RPI has the permits, licenses, and other authorizations necessary for the performance of the Services.

9.5 RPI is not, and at no time has been, suspended, debarred or excluded from participating in any federal contract, administrative agency program, or any federally-funded health care program, including Medicare and Medicaid.

9.6 If and to the extent required by Section 1395x(v)(1)(I) of Title 42 of the United States code, until the expiration of four (4) years after the termination of this Agreement, RPI shall make available, upon written request by the Secretary of the Department of Health and Human Services, or upon request by the Comptroller General of the United States General Accounting Office, or any of their duly authorized representatives, a copy of this Agreement and such books, documents and records as are necessary to certify the nature and extent of the costs of the Services provided by RPI under this Agreement.

10. Client's Representations and Warranties.

10.1 Client has the full power to enter into and perform this Agreement and to make the grant or rights contained herein and that no consent of any other person or entity is required by RPI to grant such rights other than consents that have been obtained and are in effect.

10.2 Client is not a party to or otherwise subject to or bound by the terms of any contract, agreement or understanding which in any manner would limit or otherwise affect its ability to perform its obligations hereunder, including without limitation any contract, agreement or understanding containing terms and provisions similar in any manner to those contained in Section 8 hereof.

10.3 Client is not, and at no time has been, suspended, debarred or excluded from participating in any federal contract, administrative agency program, or any federally-funded health care program, including Medicare and Medicaid.

11. Remedy for Breach.

11.1 As the breach by RPI of the provisions of Section 8 would cause irreparable injury to the Client, and there is no adequate remedy at law for such violation, Client shall have the right to seek to enjoin RPI in a court of equity from violating such provisions.

11.2 Nothing in this Section 11 will be construed as prohibiting either party from pursuing any other remedies available to it for a breach of Section 8 of this Agreement.

12. Independent Contractor. RPI acknowledges that it is at all times acting as an independent contractor under this Agreement and, except as specifically provided herein, not acting as an agent or employee of Client. RPI agrees to be solely responsible for all matters relating to compensation of RPI's employees, including, but not limited to, compliance with laws governing workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

13. Conflict Between SOW and Agreement. In the event there is a conflict between a SOW and this Agreement, specific terms of the SOW shall supersede the terms of this Agreement; specific terms of this Agreement shall supersede general terms of the SOW; and general terms of the SOW shall supersede general terms of this Agreement.

14. Term & Termination.

14.1 The term of this Agreement is for one (1) year, beginning on the Effective Date of this Agreement.

14.2 An applicable SOW will terminate automatically upon the complete performance of both RPI and the Client, including the delivery of the deliverables and working papers and the payment of the compensation and reimbursable expenses. All SOWs shall terminate upon the non-renewal of this Agreement pursuant to Section 14.1 or the termination of this Agreement for any reason

14.3 Either party may terminate one (1) or more SOWs and/or terminate this Agreement upon written notice to the other party by reason of the other party's breach of any material provision of this Agreement or any SOW, provided that, if such breach is curable, the breach is not cured within ten (10) calendar days of written notice to cure such breach; provided, however, such ten (10) day cure period does not apply where the same or a materially similar breach has occurred ("Prior Breach") in the previous twelve (12) months and written notice to cure was provided with respect to the Prior Breach

14.4 Either party may terminate one (1) or more SOWs and/or this Agreement, without cause, upon the giving of written notice to the other party at least ninety (90) days prior to the termination date.

14.5 In the event that either party is debarred, suspended or excluded from

participating in any federal administrative agency program or federally-funded health care program during the term of this Agreement, the other party may terminate this agreement upon giving the first party written notice of termination.

- 14.6 Upon notice of termination and the request of the other party, RPI and Client will promptly return each other's property, including but not limited to, personal property, and intangible property. RPI and Client may choose to return or destroy Confidential Information within ninety (90) days of such notice and retain no copies of Confidential Information. Upon such return or destruction of all copies of Confidential Information and giving notice to the other party in accordance with this Agreement's notice provisions, such party will terminate all of that party's rights and obligations regarding the Confidential Information.
- 14.7 Termination of this Agreement or any SOW shall not relieve any party from liability arising out of an antecedent breach of this Agreement or the applicable SOW, or relieve any party of any obligation created in this Agreement or the applicable SOW, including but not limited to paying compensation for services provided before the termination date, which obligation is intended to survive such termination pursuant to its terms.

15. Indemnification.

15.1 RPI shall indemnify, protect, and hold harmless Client for any and all liabilities, damages, costs, claims, losses, judgments, and expenses (including reasonable attorney fees, expert witnesses' fees, and reasonable costs of handling such claims) up to the limit of any insurance policy required by Section 7.1 above and arising out of: (i) RPI's breach of any of its representations and warranties set forth in this Agreement; or (ii) willful misconduct or gross negligent acts or omissions of RPI, its employees and agents. Client shall notify RPI in writing of any claims or suits for which Client may assert indemnification from RPI, and Client shall permit RPI, or its insurer, at RPI's expense, to assume control of or participate in the defense and settlement of any such claims or suits and Client shall fully cooperate with RPI or its insurer in such defense when reasonably requested to do so, with reasonable out-of-pocket costs to be reimbursed. No party shall settle or compromise any claim or suit without the prior written consent of the other party, which consent shall not be unreasonably withheld.

15.2 The indemnification provisions of this Section 15 shall survive any termination of this Agreement.

16. Limitation on Liability.

16.1 Neither party will be liable for any damages for lost profits, lost revenues, loss of good will, loss of anticipated savings, loss of data, the cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages in any way related to this Agreement or any SOW. Except as otherwise expressly provided in this Agreement, an aggrieved party may not recover compensation for that part of a loss that could have been avoided by taking measures reasonable under the circumstances to avoid or reduce loss, including reasonable steps to cure or prevent breach of contract relating to the systems for

backup or retrieval of information. The parties must in all circumstances take all reasonable steps for mitigation of any loss.

16.2 Each party's total liability to the other, whether in contract or in tort (excluding negligence and strict liability) shall be limited to an amount not to exceed, in the aggregate for all claims, the total dollar amounts paid or payable for Services hereunder that gave rise to such liability; further, any damage claim arising out of a specific SOW shall be limited to the total dollar amounts paid or payable for said SOW. These limitations shall not apply with respect to: (i) damages to person and/or tangible property occasioned by the willful misconduct or gross negligence of a party; (ii) claims that are the subject of indemnification pursuant to Section 15 above; and (iii) either party's breach or alleged breach of its confidentiality obligations under this Agreement.

17. Force Majeure. If either party's performance of this Agreement or any SOW is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, pandemic, epidemic, governmental shutdown, fire, explosion, vandalism, storm or other similar occurrence, a law, order, regulation, direction, action or request of the United States government or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or of any civil or military authority, or by national emergencies, insurrections, riots, wars, terrorist attacks and responses to such attacks, strikes, lock-outs or work stoppages, or other labor difficulties, supplier failures, shortages, breaches or delays, then such party shall be excused from such performance on a day to day basis to the extent of such prevention, restriction or interference. The party whose performance is affected shall use best commercial efforts under the circumstances to avoid and remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes cease.

18. Trademarks. Neither party shall use the other party's trademarks for any purpose nor activity except as expressly authorized or contemplated herein. Upon termination of this Agreement for any reason, each party will immediately cease using the trademarks, goodwill, service marks, copyrights and other intellectual property of the other.

19. HIPAA.

19.1 In the course of providing items or services contemplated by this Agreement, RPI may receive, maintain, and/or have access to information about patients of Client that constitutes individually identifiable protected health information under the privacy rule promulgated pursuant to the privacy regulations of the Health Insurance and Portability and Accountability Act of 1996 ("HIPAA") as set forth at 45 C.F.R. Part 45 C.F.R. Parts 160 and 164, as well as any other federal or state privacy laws and regulations. All such information is Confidential Information of Client. If Client reasonably believes that RPI will have access to such information, RPI and Client hereby agree to sign a reasonable and mutually agreeable Business Associate Agreement.

19.2 In the event that RPI receives protected health information (PHI) from Client, RPI will store all PHI in compliance with all applicable laws under HIPAA, HITECH, states laws, and applicable regulatory, and professional standards, use reasonable security measures to protect PHI from unauthorized disclosure or use. Such measures shall be no less rigorous than

those measures maintained by RPI for its own data of a similar nature. In the event RPI stores or transmits PHI in or through an offsite database for any amount of time no matter how limited, including any cloud-based storage, RPI shall use offsite storage methods reasonably acceptable to Client that shall, without limiting the foregoing, be in full compliance with all confidentiality provisions of this Agreement and all applicable laws.

20. Miscellaneous.

20.1 Entire Agreement. This Agreement, which includes all schedules and exhibits hereto sets forth the entire agreement of the parties with respect to the subject matter hereof and no modification or amendment of this Agreement, nor waiver of any of its provisions, shall be valid or enforceable unless in writing and signed by all parties.

20.2 Benefit. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement may not be assigned in whole or in part, by any party without the signed written agreement of the parties.

20.3 Separability. The invalidity or unenforceability of any provision of this Agreement shall not affect any other provision hereof, and the Agreement shall be construed in all respects as though such invalid or unenforceable provisions were omitted.

20.4 Notices. Any notice required to be given pursuant to this Agreement shall be in writing may be given in person, or sent by certified mail, return receipt requested, or confirmed email or facsimile. Such notice will be deemed given if delivered in person on the day of delivery and, if given by certified mail or facsimile, upon the date of posting or confirmed send date of such email or facsimile. Notice shall be given to the address of the party as follows:

In case of Client: Information Technology Director

PO Box 250

Apex, NC 27502

In case of RPI: Greg Pollard  
Partner  
RPI Consultants, LLC  
1 N Haven Street Suite 201  
Baltimore, MD 21224

20.5 Governing Law and Venue. This Agreement has been made in and shall be governed by and construed in accordance with the laws of the State of North Carolina, exclusive of any conflicts of law principle which would apply the law of another jurisdiction. Any cause of action hereunder shall be brought in an appropriate court of jurisdiction in the State of North Carolina.

20.6 Waiver. The failure of any party to fully enforce any provision hereof shall not be deemed to be a waiver of such provision or any part thereof, and the waiver by any party of any provision hereof shall not be deemed to be a waiver of any other provision hereof or a waiver



with respect to any other incidence of non-compliance therewith. No waiver shall be effective unless in writing and signed by the party so waiving.

20.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute but one instrument.

20.8 Third Parties. No rights are intended to be created under this Agreement for the benefit of any third party donee, creditor, individual or incidental beneficiary.

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

20.10 Anti-Human Trafficking. RPI warrants and agrees that no labor supplied by RPI or RPI’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.

20.11 Nondiscrimination. Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, RPI hereby warrants and agrees that RPI 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.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

RPI CONSULTANTS, LLC

TOWN OF APEX

DocuSigned by:  
*Greg Pollard*  
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\_\_\_\_\_

By: Greg Pollard

By: \_\_\_\_\_

Title: Partner

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