

STATE OF NORTH CAROLINA

**MASTER AGREEMENT FOR
ARCHITECTURAL, ENGINEERING,
AND SURVEYING SERVICES**

COUNTY OF WAKE

THIS MASTER AGREEMENT FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES (hereinafter “Master Agreement”) is entered into this the ____ day of June, 2025, by and between, _____, a North Carolina _____ with its principal business offices located at _____ (the “Professional”), and the Town of Apex, a municipal corporation of the State of North Carolina (the “Town”). Town and Professional may be referred to individually as “Party” or collectively as “Parties” hereinafter.

WITNESSETH:

WHEREAS, Town is engaged in the development, planning, operation, design, construction, evaluation, and utilization of infrastructure in the Town, including water and sewer utilities, water distribution and sanitary sewer collection, wastewater treatment, stormwater control, dam and reservoir systems, streets, traffic management, sidewalks, transportation planning and design, and greenway facilities which from time to time require design, revision, engineering, evaluation, surveying, permitting, delineation, analysis, environmental, geotechnical, and construction materials testing, plat preparation, site assessment, construction inspection, construction administration, bid administration, and other related projects; and

WHEREAS, the professional services of engineers, architects, surveyors and others will from time to time in the future be needed by the Town for the services as described above; 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, 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, 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 Master Agreement through a “Request for Qualifications On-Call Engineering, Architectural, and Surveying Services” dated _____, 2025 (“RFQ”), and the Professional provided a proposal, titled “_____” and dated _____, 2025 (“Proposal”), and is

willing to serve as one of the Town's professionals for select services identified in the Proposal on an on-call basis for projects selected by the Town.

WHEREAS, the Professional was selected by the Town to perform the services in the following categories/program areas as identified and described in the RFQ:

_____. The RFQ is incorporated herein by reference.

WHEREAS, the Parties contemplate that the services of the Professional will be performed at various times and 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 rather than in the separate authorizations issued by 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. REQUEST FOR TASK ORDER.

Professional is qualified and able, and hereby agrees to provide services for the Town as described in this Master Agreement and in the Proposal. As the need for professional services contemplated by this Master Agreement arise, and if the Professional is selected to provide those services, the Town will provide the Professional with a description of the work the Town is seeking, the final product and deliverables expected, and a description of the construction (if applicable) that will ultimately occur (the "Project"). 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 scope of work describing the necessary architectural, engineering, surveying, geotechnical and/or other services, guidance, opinions and advice to be provided, including a description of the basic and additional services, specifications, estimated schedule, costs, and deliverables proposed ("Task Order"). 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.

For some Projects, the Town may utilize a version of the 2013 Engineers Joint Contract Documents Committee (EJCDC) construction documents (or future versions of said documents) in contracting with a construction contractor. Professional recognizes and agrees that execution of these EJCDC documents between the Town and a contractor places certain responsibilities on the Professional if selected for a Project in which these documents are utilized, including but not limited to, acting as the Town's representative, assuming all duties and responsibilities, and

having the rights and authority assigned to the engineer in the contract documents, as defined in the EJCDC documents. By executing this Master Agreement Professional is acknowledging that Professional is familiar with said EJCDC documents and the responsibilities of Professional associated with the use of EJCDC Documents, and if selected as the Professional on a Project utilizing said documents Professional hereby agrees to those obligations and responsibilities.

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 Parties shall agree to the final version in writing. Professional will not proceed with any work pursuant to the Task Order until the Task Order has been fully executed by both Parties.

3. CONTENTS OF TASK ORDERS.

Task Orders shall include, at a minimum, the following information related to the subject Project:

1. Scope of Work and Basic Services to be completed by the Professional and associated costs.
2. Additional Services of the Professional (if applicable) and associated cost.
3. Services Not Included.
4. Expectations/Responsibilities of the Town.
5. Professional's staff members to be assigned to the Project.
6. Professional consultants to be engaged to work on the Project (if any).
7. Schedule(s).
8. Deliverables.

In the event that during the several stages of development of Professional's plans the Professional's opinion of construction cost together with design fees exceeds the funds available for the design and construction of a Project, then the Town shall have the right to require the Professional, without any additional cost to the Town, to modify its plans and specifications or redesign the Project as may be necessary to bring the construction cost plus design fees within the funds available for the Project. The Town may reduce the scope of the Project if such reduction is deemed necessary in order to not exceed the available funds for the Project.

4. TIME OF COMMENCEMENT AND COMPLETION.

This Master Agreement shall terminate on June 30, 2028, unless terminated sooner in accordance with the terms of this Master Agreement. Professional shall commence and complete the work detailed in an individual Task Order entered into pursuant to this Master Agreement in

accordance with the dates provided in the Task Order as agreed upon by the Parties. In the event a Task Order is fully executed prior to the end of the term of this Master Agreement, but said term expires while the Project is ongoing, the terms of this Master Agreement shall continue to apply until the completion of the Project despite the termination date of the Master Agreement. 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 pursuant to a Task Order or this Master Agreement so that remedial action may be taken. Professional shall not begin any work pursuant to this Master 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 in a Task Order, 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. If a change in schedule does not include a change in cost, electronic email between the Party representatives identified in Section 15 of this Master Agreement shall be sufficient to constitute "in writing."

5. PAYMENT OF SERVICES.

Unless a Task Order provides differently, Professional shall submit to the Town monthly invoices for the services performed during that month, calculated based on the tasks identified in the Task Order. Town has the right to require the Professional to produce for inspection all of Professional's records, salaries 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.

6. PROFESSIONAL STANDARDS AND DUTIES OF PROFESSIONAL.

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.

7. CONSULTANT AS CONSTRUCTION AND/OR BID ADMINISTRATOR.

In the event a Task Order includes construction and/or bid administration the Professional shall comply with the following, unless a Task Order specifically states otherwise:

A. Bidding Administrator

Unless specifically agreed to otherwise in a Task Order, Professional will assist Town in preparing the Bid Advertisement, Bid form, Instructions to Bidders, specifications, and prepare a bid set of drawings or plan sheets. Electronic copies of the drawings

and specifications will be provided in a format acceptable to Town. Town will post Bid Documents on-line and through any other method it deems appropriate. All bid administration activity shall be conducted in accordance with Chapter 143 of the NC General Statutes. Professional will conduct a pre-bid meeting, respond to bidder questions or requests for information, issue any addenda, and conduct a public bid opening. At the conclusion of bidding, Professional will receive and tabulate all bids received and submit bid tabulation and a contractor selection recommendation letter to the Town.

B. Construction Administration

Professional will conduct a pre-construction meeting with the selected contractor and Town. Professional will attend progress meetings on site on a schedule identified in the Task Order. Professional will also attend a substantial completion and final completion walkthrough and provide a recommendation to Town as to whether the construction is substantially or finally complete. Professional will prepare all construction related paperwork and will review and respond to all submittals and Requests for Information (RFIs). Professional will review pay applications from the contractor and make recommendations to Town as to their accuracy and whether payment is warranted. Professional will also review change order proposals and make recommendations to Town as to whether they are appropriate and accurate. Professional will prepare agendas and meeting minutes for all meetings. Professional shall be responsible for determining that each construction contractor provides work to the quality level specified and in accordance with plans and specifications.

8. 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. Professional's estimates shall represent Professional's best judgment as an experienced and qualified professional familiar with the particular type of construction being proposed. 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 similar construction projects.

9. NON-EXCLUSIVE.

The Parties agree that this Master 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 professionals to perform the same or similar work. The selection of a Professional for any particular Project is in the sole discretion of the Town and execution of this Master Agreement does not obligate the Town to request a proposal or Task

Order from Professional for any Project and does not guarantee any such work will become available during the term of this Master Agreement.

10. OWNERSHIP OF DOCUMENTS.

All designs, drawings, specifications, design calculations, notes and other works developed in the performance of this Master Agreement shall become the property of the Town and may be used on any other design or construction without additional compensation to the Professional. The use of the design, including tracings and specifications, by any person or entity, for the purpose other than the Project as set forth in this Master Agreement or a Task Order, shall be at the full risk of such person or entity and the Professional shall be relieved of any liability whatsoever, including claims for personal injury, property damage, or death as a result of such other use. The Parties acknowledge and agree that nothing in this section shall limit the ownership rights, access, or use of the above referenced works by the Professional.

11. 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 resulting from the negligence or omissions of the Professional.

12. 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.

13. 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 or subconsultants to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

14. QUALITY AND WORKMANSHIP.

All work shall be performed to the 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 federal, state and local law and 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 the Town as is ordinarily provided by a similar professional under the same or similar circumstances at the time in North Carolina.

15. INSURANCE.

The Professional shall maintain valid general liability insurance in the minimum amount of \$1,000,000 each occurrence, 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 as required by North Carolina statute 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.

16. DEFAULT.

In the event of substantial failure by Professional to perform in accordance with the terms of this Master 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 Master Agreement.

17. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Master 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.

18. NOTICE.

Any formal notice, demand, or request required by or made in connection with this Master 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: Attn: _____

TO TOWN: Town of Apex
Attention: _____
PO Box 250
Apex, NC 27502

19. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Professional nor Town shall be in default of the provisions of this Master 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, flood, earthquakes, storms, lightning, natural disasters, epidemic, pandemic, war, riot, civil disobedience or events outside the control of the Parties.

20. NONWAIVER FOR BREACH.

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

21. CONSTRUCTION.

Should any portion of this Master 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.

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

23. SEVERABILITY.

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

24. COUNTERPARTS.

This Master 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.

25. MODIFICATION.

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

26. BINDING EFFECT.

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

27. 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 Master 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.

28. INDEPENDENT CONTRACTOR.

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

29. NON-APPROPRIATION.

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

30. 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 Master 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 or subconsultants found on the Final Divestment List.

31. NO THIRD PARTY BENEFICIARIES

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

32. ANTI-HUMAN TRAFFICKING.

The Professional warrants and agrees that no labor supplied by the Professional or the Professional's subcontractors or subconsultants in the performance of this Master 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.

33. NONDISCRIMINATION.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Professional hereby warrants and agrees that Professional 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 Master Agreement. For the purposes of this Master 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.

34. ELECTRONIC SIGNATURE.

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Master Agreement and all documents related hereto, including

Task Orders, 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 Master Agreement and any related documents. If electronic signatures are used the Master 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.

Professional: _____

Town of Apex

By: _____
Name (type or print)

Randal E. Vosburg, Town Manager

(Signature)

Title: _____

Attest:

(Secretary, if a corporation)

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

Jessica Murphy-Rhem, Interim
Finance Director