

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER # 20
STANDARD SERVICES CONTRACT**

THIS AGREEMENT is entered into this ____ day of _____, 2024 by and between, Developmental Associates, LLC, a North Carolina limited liability company with its principal business offices located at 510 Meadowmont Village Circle, #299 Chapel Hill, NC 27517 (the “Contractor”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Contractor may collectively be referred to as “Parties” hereinafter.

WITNESSETH:

The Town and the Contractor, for the consideration stated herein, agree as follows:

1. SCOPE OF SERVICES.

The Contractor agrees to perform for the Town the following services: Facilitated performance evaluation for Town Manager, Randy Vosburg to include short-term feedback steps and one-year evaluation. Specifically, Contractor shall provide services in accordance with the August 29, 2024 “Proposal” provided by Contractor which is attached hereto and is hereby incorporated into this Agreement.

In the event of a conflict between the terms of the attached Proposal and this Agreement, this Agreement shall control.

2. SPECIFICATIONS.

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 acknowledges that it is fully licensed to perform the work contemplated by this Agreement. In the event of a conflict between any provided plans and specifications and this Agreement, this Agreement shall control.

3. TIME OF COMMENCEMENT AND COMPLETION.

Contractor shall commence the work required in this Agreement no later than 14 days after the date of execution of this Agreement, and the Contractor shall complete entire work no later than November 30, 2024. Further, Contractor shall meet the timelines in the “Menu of Offerings” provided in the Proposal. 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 Agreement must be agreed to in writing by the Town and the Contractor.

4. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay the Contractor the total sum of \$25,000.00 as a basic fee for services.

In no event shall the maximum total fee for this Agreement exceed \$25,000.00.

Invoices from the Contractor shall be paid by the Town within thirty (30) days of receipt. 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

vide dispute exists between Town and Contractor concerning the accuracy of said invoice or the services covered thereby.

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 Agreement and any attached specifications. This Agreement shall be governed by the laws of the State of North Carolina.

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. 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.

9. CONFIDENTIALITY

All data, materials, documents, notes, memoranda, intellectual property, and other information provided or disclosed by Contractor to Town, or otherwise used by Contractor to provide or perform any Scope of Services or Proposal, in connection with this Agreement shall be owned solely and exclusively by Town and shall constitute confidential employee personnel records pursuant to North Carolina General Statute Section 160A-168 ("Confidential Personnel Information") Confidential Personnel Information shall not include any documents that are public record under North Carolina law. Except as required by law, the Contractor (i) shall neither copy, nor disclose nor distribute to any third party, any of Confidential Personnel Information without the Town and Town Manager's prior written consent and (ii) shall not use any such Confidential Personnel Information, except to the extent permitted hereunder. Prior to disclosing any such material, the Contractor shall notify Town and afford Town an opportunity to interpose any objection or initiate any legal action the Contractors deem appropriate to prevent such disclosure. The Contractor's obligations under this Section 9 shall survive any termination or expiration of this Agreement, and promptly after any such termination or expiration, or upon any request by Town, the Contractor shall return to Town all such Confidential Personnel Information and all copies thereof. In no event shall the Contractor acquire any ownership or other rights in any Confidential Personnel Information, whether by implication or otherwise, except to the extent expressly set forth herein. Subject to the foregoing in this Section 9, Contractors shall make available to the Town all data, notes and

memoranda completed during this Agreement and upon completion of the services will forward to the Town the results of the services for its use. The obligations in this Section will not apply to information that is: (i) publicly known; (ii) already known to the recipient; (iii) independently developed; (iv) lawfully disclosed by a third party; or (v) disclosed pursuant to a legal requirement or order. Notwithstanding anything to the contrary in this Section, Section 160A-168 of the North Carolina General Statutes governs the release of any personnel information determined to be a public record and shall control in this Agreement without penalty or liability to either Party. Contractor shall provide Town with prompt notice of the request for any Confidential Personnel Information. Release, retention or copying of any document or information consistent with North Carolina law shall not be a breach of this Agreement.

10. INSURANCE.

The Contractor shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, and provide certificates of such insurance naming the Town of Apex as an additional insured by endorsement to the policies. If the policy has a blanket additional insured provision, the contractor's insurance shall be primary and non-contributory to other insurance. Additionally, the contractor shall maintain and show proof of workers' compensation 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.

11. INTENTIONALLY DELETED.

12. DEFAULT.

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

13. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Agreement 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. In the event of termination for convenience, the Town shall pay Contractor for all services satisfactorily performed.

14. NOTICE.

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

TO CONTRACTOR:
Developmental Associates
Attn: Heather Lee
510 Meadowmont Village Circle, #299
Chapel Hill, NC 27517
hlee@developmentalassociates.com

TO TOWN:
Town of Apex
Attn: Mayor
PO Box 250
Apex, NC 27502
jacques.gilbert@apexnc.org

15. DELAY BEYOND THE CONTROL OF THE PARTIES.

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

16. NONWAIVER FOR BREACH.

No breach or non-performance of any term of this Agreement shall be deemed to be waived by either party unless said breach or non-performance is waived in writing and signed by the parties. No waiver of any breach or non-performance under this Agreement shall be deemed to constitute a waiver of any subsequent breach or non-performance and for any such breach or non-performance each party shall be relegated to such remedies as provided by law.

17. CONSTRUCTION.

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

18. NO REPRESENTATIONS.

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

19. SEVERABILITY.

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

20. COUNTERPARTS.

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

21. MODIFICATION.

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

22. BINDING EFFECT.

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

23. 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 Agreement 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.

24. INDEPENDENT CONTRACTOR.

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

25. NON-APPROPRIATION.

Notwithstanding any other provisions of this Agreement, the parties agree that payments due hereunder from the Town are from appropriations and monies from the Town Council and any other governmental entities. In the event sufficient appropriations or monies are not made available to the Town to pay the terms of this Agreement for any fiscal year, this Agreement shall terminate immediately without further obligation of the Town.

26. 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 Agreement 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.

27. 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 _____, 2024.

Contractor

Town of Apex

Name: _____
Name of Contractor (type or print)

Jacques K. Gilbert, Mayor

By: _____
(Signature)

Attest:

Town Clerk

Title: _____

Attest:

(Secretary, if a corporation)

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

Finance Director