

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER # [Click here to PO #](#)
STANDARD SERVICES AGREEMENT**

THIS STANDARD SERVICES AGREEMENT (hereinafter “Agreement”) is entered into this 19 day of October, 2021 by and between, Baker Tilly US, LLP, a Illinois limited liability partnership with its principal business offices located at 205 N. Michigan Avenue, Suite 2800, Chicago, IL 60601 (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: Organization and Workforce Study, as described in the attached “Town of Apex Organization & Workforce Technical and Cost Proposals” dated September 8, 2021.

In the event of a conflict between the terms of the attached Scope of Services 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. Upon request by the Town, Contractor will provide plans and specifications prior to engaging in any services under this Agreement. 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 more than 30 days after the date of execution of this Agreement, and the Contractor shall complete entire work no later than 6/30/2022. If a Scope of Services is provided Contractor shall also comply with all timelines and deadlines documented in the Scope of Services. 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. In the alternate, the Town in its sole discretion may for each calendar day past this contract time receive \$0 per day as liquidated damages. 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 \$ 283,385 to be paid according to the following schedule: 30 days from receipt of 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.

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.

Notwithstanding the foregoing, the Town hereby releases Contractor, its subsidiaries and their present or former partners, principals, employees, officers and agents from, and acknowledges that such parties shall not be required to indemnify Town, its elected and appointed officials, employees, agents, and volunteers (each a "Covered Person") against, any costs, fees, expenses, damages and liabilities (including attorneys' fees and all defense costs) relating to or arising as a result of the acts or omissions of Town or any Covered Person. Furthermore, because of the importance of the information that Town provides to Contractor with respect to Contractor's ability to perform the services, Town hereby releases Contractor and its present and former partners, principals, agents and employees from any liability, damages, fees, expenses and costs, including attorney's fees, relating to the services that arise from or relate to any information, including representations by management, provided by Town, its personnel or agents, that is not complete, accurate or current.

The liability (including attorney's fees and all other costs) of Contractor and its present or former partners, principals, agents or employees related to any claim for damages relating to the Services performed under this Agreement shall not exceed the fees paid to Contractor for the portion of the work to which the claim relates, except to the extent finally determined to have resulted from the willful misconduct or fraudulent behavior of Contractor relating to such Services. This limitation of liability is intended to apply to the full extent allowed by law, regardless of the grounds or nature of any claim asserted, including the negligence of either party. Additionally, in no event shall either party be liable for any lost profits, lost business opportunity, lost data, consequential, special, incidental, exemplary or punitive damages, delays, interruptions or viruses arising out of or related to this Agreement even if the other party has been advised of the possibility of such damages.

Any legal proceedings arising from or in conjunction with the Services provided under this Agreement must be commenced within the applicable statute of limitations.

Each party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for bases of this Agreement and that they have been taken into account and reflected in determining the consideration to be given by each party under this Agreement and in the decision by each party to enter into this Agreement. The terms of this Section shall apply regardless of the nature of any claim asserted (including, but not limited to, contract, tort or any form of negligence, whether of Town, Contractor or others), but these terms shall not apply to the extent finally determined to be contrary to the applicable law or regulation. These terms shall also continue to apply after any termination of this Agreement.

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. Any and all suits or actions to enforce, interpret or seek damages with respect to any provision of, or the performance or nonperformance of, this Agreement shall be brought in the General Court of Justice of North Carolina sitting in Wake County, North Carolina, or the United States District Court sitting in Wake County, North Carolina, and it is agreed by the Parties that no other court shall have jurisdiction or venue with respect to such suits or actions.

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.

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.

10. INSURANCE.

The Contractor shall maintain valid general liability insurance in the minimum amount of \$1,000,000, and provide a certificate of such insurance naming the Town of Apex as an additional insured on the policy. 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 insurance, employer's liability insurance, and professional liability insurance, each 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. PRE-PROJECT SAFETY REVIEW MEETING.

When specified by the Safety and Risk Manager, the Contractor shall attend a pre-project safety review meeting with the contacting Department Head and Supervisors and Safety and Risk Manager prior to the start of work.

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:

[Caitlin Humrickhouse](#)
[205 N Michigan Ave](#)
[Chicago, IL 60601](#)
Caitlin.humrickhouse@bakertilly.com

TO TOWN: Town of Apex

Attention: [Click here to enter text.](#)
PO Box 250
Apex, NC 27502
[Click here to enter contact e-mail address](#)

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, pandemic, war, riot, and/or civil disobedience. Due to the ever-changing circumstances surrounding the COVID-19 pandemic, situations may arise during the performance of this Agreement that affect availability of resources and staff of Contractor or the Town. There could be changes in anticipated performance times and service costs. Contractor will exercise reasonable efforts to overcome the challenges presented by current circumstances. In the event of changes in performance times or service costs caused by the COVID-19 pandemic the Town reserves the right to terminate this Agreement in accordance with its terms. The Parties agree that they shall not be liable to each other for any delays, expenses, losses, or damages of any kind arising out of the impact of the COVID-19 pandemic.

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. 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.

28. 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.

29. DATA PRIVACY & SECURITY.

To the extent the Services require Contractor receive personal data or personal information from Town, Contractor may process any personal data or personal information, as those terms are defined in applicable privacy laws, in accordance with the requirements of the applicable privacy law relevant to the processing in providing Services hereunder. Applicable privacy laws may include any local, state, federal or international laws, standards, guidelines, policies or regulations governing the collection, use, disclosure, sharing or other processing of personal data or personal information with which Contractor or its clients

must comply. Such privacy laws may include (i) the EU General Data Protection Regulation 2016/679 (GDPR); (ii) the California Consumer Privacy Act of 2018 (CCPA); and/or (iii) other laws regulating marketing communications, requiring security breach notification, imposing minimum security requirements, requiring the secure disposal of records, and other similar requirements applicable to the processing of personal data or personal information. Contractor is acting as a Service Provider/Data Processor in relation to Town personal data and personal information, as those terms are defined respectively under the CCPA/GDPR. Town is responsible for notifying Contractor of any data privacy laws the data provided to Contractor is subject to and Town represents and warrants it has all necessary authority (including any legally required consent from data subjects) to transfer such information and authorize Contractor to process such information in connection with the Services described herein.

Contractor has established information security related operational requirements that support the achievement of Contractor's information security commitments, relevant information security related laws and regulations, and other information security related system requirements. Such requirements are communicated in Contractor's policies and procedures, system design documentation, and contracts with customers. Information security policies have been implemented that define Contractor's approach to how systems and data are protected. Town is responsible for providing timely written notification to Contractor of any additions, changes or removals of access for Town personnel to Contractor provided systems or applications. If Town becomes aware of any known or suspected information security or privacy related incidents or breaches related to this agreement, Town should timely notify Contractor via email at dataprotectionofficer@bakertilly.com.

Contractor does not treat de-identified data or aggregate consumer information as personal data or personal information, and Contractor reserves the right to convert Town personal data or personal information into de-identified data or aggregate consumer information for Contractor's own purposes. As a benefit of benchmarking Town to others in its industry, Town allows Contractor to enter its confidential accounting and/or financial data into the third party benchmarking software that Contractor utilizes. By signing this Agreement, Town expressly authorizes Contractor to make such disclosure of Town's confidential accounting and/or financial data, as Contractor may elect within its discretion, with the understanding that, in doing so, Town will not be specifically identified.

30. OWNERSHIP OF DELIVERABLES.

Unless otherwise stated in a specific statement of work, subject to Contractor's rights in Contractor's Knowledge (as defined below), Town shall own all intellectual property rights in the deliverables developed under the applicable statement of work ("Deliverables"). Notwithstanding the foregoing, Contractor will maintain all ownership right, title and interest to all Contractor's Knowledge. For purposes of this Agreement "Contractor's Knowledge" means Contractor's proprietary programs, modules, products, inventions, designs, data, or other information, including all copyright, patent, trademark and other intellectual property rights related thereto, that are (1) owned or developed by Contractor prior to the Effective Date of this Agreement or the applicable statement of work ("Contractor's Preexisting Knowledge") (2) developed or obtained by Contractor after the Effective Date, that are reusable from client to client and project to project, where Town has not paid for such development; and (3) extensions, enhancements, or modifications of Contractor's Preexisting Knowledge which do not include or incorporate Town's confidential information. To the extent that any Contractor Knowledge is incorporated into the

Deliverables, Contractor grants to Town a non-exclusive, paid up, perpetual royalty-free worldwide license to use such Contractor Knowledge in connection with the Deliverables, and for no other purpose without the prior written consent of Contractor. Additionally, Contractor may maintain copies of its work papers for a period of time and for use in a manner sufficient to satisfy any applicable legal or regulatory requirements for records retention.

31. CONTRACTOR ENTITY.

Baker Tilly US, LLP is an independent member of Baker Tilly International. Baker Tilly International Limited is an English company. Baker Tilly International provides no professional services to clients. Each member firm is a separate and independent legal entity and each describes itself as such. Baker Tilly US, LLP is not Baker Tilly International’s agent and does not have the authority to bind Baker Tilly International or act on Baker Tilly International’s behalf. None of Baker Tilly International, Baker Tilly US, LLP, nor any of the other member firms of Baker Tilly International has any liability for each other’s acts or omissions. The name Baker Tilly and its associated logo is used under license from Baker Tilly International Limited.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this 19 day of October, 2021.

Contractor

Name: Baker Tilly US

Name of Contractor (type or print)

By: Vicki Hellenbrand

(Signature)

Title: Managing Partner

Attest:

(Secretary, if a corporation)

Town of Apex

Catherine Crosby, Town Manager

Attest:

Donna Hosch, Town Clerk

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

Vance Holloman, Finance Director