

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER # Click here to PO #
PARTICIPATING ENTITY ADDENDUM TO
SOURCEWELL CONTRACT**

THIS PARTICIPATING ADDENDUM TO SOURCEWELL CONTRACT (hereinafter “Addendum”) is entered into this _____ day of _____, 2024 by and between, Blink Charging Co., a Nevada Company with its principal business offices located at 5081 Howerton Way, Suite A, Bowie, Maryland 20715 (“Blink”), and the Town of Apex, a municipal corporation of the State of North Carolina, (the “Town”). Town and Blink may collectively be referred to as “Parties” hereinafter.

WITNESSETH:

WHEREAS, on July 20, 2021 SemaConnect, Inc. entered into a contract with Sourcewell, a service cooperative that offers cooperative procurement solutions to government entities, to provide equipment, products, and services to Sourcewell and entities that access Sourcewell’s cooperative purchasing contracts (Participating Entities); and

WHEREAS, in 2022 Blink Charging Co. acquired SemaConnect, Inc. and all interests in their existing contracts, including the above referenced contract with Sourcewell, identified as Solicitation Number: RFP #042221, executed by the last party to sign on July 20, 2021, and available on the following website: <https://www.sourcewell-mn.gov/cooperative-purchasing/042221-sem> (hereinafter the “Contract”).

WHEREAS, the Contract contemplates services being provided by Blink to include a full turnkey solution that covers the deployment and operation of electric vehicle charging station infrastructure and necessary make-ready infrastructure as well as site assessment, preparation, and installation of hardware; and

WHEREAS, the Town desires to be a Participating Entity to said Contract as described in Section 5 of the Contract and as permitted by NC General Statute 143-129; and

WHEREAS, the Parties wish to add additional terms and conditions to the Contract and any associated Purchase Order by way of this Addendum.

The Town and Blink, for the consideration stated herein, agree to the following terms in addition to those provided in the Contract:

1. SCOPE OF SERVICES.

In accordance with the Contract, Blink agrees to provide and the Town agrees to purchase, the following equipment and services:

- a. Two dual port Level 2 chargers which Blink will install at the following locations:
 - i. 73 Hunter St, Apex, North Carolina

- b. Blink will provide Network and data portal access for a period of five (5) years from the date of execution of this Addendum.
- c. Blink will provide a full-service warranty with 97% uptime guarantee for a period five (5) years.

Specifications, warranties, guarantees, and performance standards for the above-described work shall be as identified in the Contract, specifically the SemaConnect response to RFP 042221 – Electric Vehicle Supply Equipment and Related Services.

2. TIME OF COMMENCEMENT AND COMPLETION.

This Addendum shall be effective upon the date of execution. Blink will provide and install the equipment within 120 days of the execution of this Addendum. If Blink does not satisfactorily commence or complete the work as scheduled, 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 Addendum must be agreed to in writing by the Town and Blink. Network and data portal access will be made available for a period of five (5) years from the date of equipment installation and activation and any full-service warranty provided by Blink shall remain in effect for five (5) years from the date of installation. This Addendum shall terminate 5 years from the date of equipment installation and activation. Network and data portal access as well as all warranties will remain in full force and effect during the term of this Addendum and shall survive the termination or non-renewal of the Contract.

3. CONSIDERATION AND PAYMENT OF SERVICES.

In consideration of the above services, the Town will pay Blink the total sum of \$29,348.20. Town will pay invoices from Blink within 30 days from receipt of invoice. Town has the right to require Blink to produce for inspection all of its records and charges to verify the accuracy of all invoices. Town shall pay Blink's invoices at times set forth above unless a bona fide dispute exists between Town and Blink concerning the accuracy of said invoice or the services covered thereby.

4. INDEMNIFICATION.

To the extent permitted by law, the Blink 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 Blink.

5. APPLICABILITY OF LAWS AND REGULATIONS.

Blink 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 Addendum and any attached specifications.

This Addendum 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 Addendum 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.

6. E-VERIFY COMPLIANCE.

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

7. ANTI-HUMAN TRAFFICKING.

Blink warrants and agrees that no labor supplied by Blink or the its subcontractors in the performance of this Addendum 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.

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. INSURANCE.

Blink shall maintain valid insurance coverages as described in Section 18 of the Contract 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, Blink's insurance shall be primary and non-contributory to other insurance. Blink 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 Blink 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.

10. PRE-PROJECT SAFETY REVIEW MEETING.

When specified by the Safety and Risk Manager, Blink 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.

11. DEFAULT.

In the event of substantial failure by Blink to perform in accordance with the terms of this Addendum, Town shall provide Blink with thirty (30) days' notice to cure the default. Town shall have the right to terminate Blink in the event the default is not cured within said timeline in which event Blink shall have neither the obligation nor the right to perform further services under this Addendum.

12. TERMINATION FOR CONVENIENCE.

Town shall have the right to terminate this Addendum for the Town’s convenience upon thirty (30) days written notice to Blink. Blink shall terminate performance of services on a schedule acceptable to the Town. In the event of termination for convenience, the Town shall pay Blink for all services satisfactorily performed.

13. NOTICE.

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

TO BLINK: Blink Charging Co.
Attn: General Counsel
5081 Howerton Way, Ste. A
Bowie, MD 20715
Legal@BlinkCharging.com

TO TOWN: Town of Apex
Attention: Matt Wetherell
PO Box 250
Apex, NC 27502
Matt.wetherell@apexnc.org

14. DELAY BEYOND THE CONTROL OF THE PARTIES.

Neither Blink nor Town, having taken commercially reasonable precautions, shall be in default of the provisions of this Addendum 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 natural disaster, fire, flood, earthquakes, storms, lightning, epidemic, pandemic, war, riot, civil disobedience, or other event reasonably outside of the parties’ control. Due to the ever-changing circumstances surrounding the COVID-19 pandemic, situations may arise during the performance of this Addendum that affect availability of resources and staff of Blink or the Town. There could be changes in anticipated performance times and service costs. Blink 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 Addendum 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.

15. NONWAIVER FOR BREACH.

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

16. CONSTRUCTION.

Should any portion of this Addendum 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.

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

18. SEVERABILITY.

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

19. COUNTERPARTS.

This Addendum 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.

20. MODIFICATION.

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

21. BINDING EFFECT.

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

22. ASSIGNMENT.

Blink 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 Addendum without the written consent of the Town. Nothing contained in this paragraph shall prevent Blink from employing such independent consultants, associates, and sub-contractors as it may deem appropriate to assist Blink in the performance of services rendered.

23. INDEPENDENT CONTRACTOR.

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

24. NON-APPROPRIATION.

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

25. 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 Addendum Blink hereby certifies that Blink is not listed on the Final Divestment List created by the North Carolina State Treasurer and that Blink 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, Blink hereby warrants and agrees that Blink 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 Addendum. 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 Addendum 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 Addendum and any related documents. If electronic signatures are used the Addendum 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.

Blink Charging Co.

Town of Apex

Name: _____
(type or print)

Randal E. Vosburg, Town Manager

(Signature)

Attest:

Title: _____

Allen L. Coleman, CMC, NCCCC
Town Clerk

Attest:

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

(Secretary, if a corporation)

Antwan Morrison, Finance Director