

TOWN OF APEX ROADS AND STRUCTURES CONSTRUCTION CONTRACT

FOR

Construction of Apex Peakway Southwest Connector, Transportation Infrastructure Project #U-5928 over
South Salem St. and CSX Railroad
Apex, NC

SCOPE OF WORK

Construct Apex Peakway Southwest Connector over South Salem St. and CSX Railroad in accordance with Construction Plans titled “U-5928 Wake Final Plans Combined_20240722_Part1”; and Construction Plans titled “U-5928 Wake Final Plans Cross Sections_20240719_Part2”; and Construction Plans titled “U-5928 Wake Final Structure Plans Combined_20240709_Part3”.

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**PURCHASE ORDER #
ROADS AND STRUCTURES
CONSTRUCTION CONTRACT**

THIS ROADS AND STRUCTURES CONSTRUCTION CONTRACT (the or this “Contract”) is effective the ____ day of _____ 2024, by and between, S. T. Wooten Corporation, a North Carolina corporation with its principal business offices located at 3801 Black Creek Rd SE, Wilson, NC 27893 (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:

WHEREAS, Town is engaged in the planning and operation of public streets and roadways which require construction, installation, evaluation, testing, inspection and other related services; and

WHEREAS, the professional services of contractors from time to time are needed by the Town for the services as described above; and

WHEREAS, Contractor provides 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, the Town has complied with Article 8 of Chapter 143 of the North Carolina General Statutes in announcing its need for services of the nature described in this Contract through a “Request for Proposal” and associated advertisement.

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. DEFINITIONS

- A. “Contract Documents” is defined in Section 2 of this Contract.
- B. “Contractor” is the entity who has executed this Contract and furnished acceptable contract bonds.
- C. “Disadvantaged Business Enterprise” (DBE) is a firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.
- D. “Final Acceptance” is the date on which the Town accepts the construction as totally complete excluding any observation periods not specifically made a part of the Work by the Contract Documents. This includes inspection and acceptance of the Work by the Town and the Inspector.
- E. “Inspection” means the examination of Work completed or in progress to determine its compliance with the Contract Documents.
- F. “Inspector” is Rummel, Klepper, & Kahl, LLP, acting directly or through a duly authorized representative, or any other inspector hired by the Town for the same purpose. Inspector inspects materials, installation, fabrication, erection, placement of components and connections requiring special expertise to ensure compliance with the approved Construction Documents and referenced standards.
- G. “Liquidated damages” is the amount stated in the Contract Documents reasonably estimated in advance to cover the consequential damages associated with the Town’s loss in not being able to

use the Project for its intended purposes at the end of the Contract's completion date by reason of failure of the Contractor to complete the Work within the time specified. Liquidated damages does not include the Town's extended contract administration costs (including but not limited to, additional fees for architectural and engineering services, testing services, inspection services, commissioning services, etc.), such other damages directly resulting from delays caused solely by the Contractor, or consequential damages identified in the bid documents that may be impacted by any delay caused solely by the Contractor (e.g. delays in start other projects that are dependent on the completion of this Project, extension of leases and/or maintenance agreements for other facilities).

- H. "Project" is the total construction Work to be performed under the Contract Documents by the Contractor and the Contractor's subcontractors.
- I. "Subcontractor" shall be an individual, partnership, firm, joint venture, LLC or corporation to whom the Contractor, with the written consent of the Town, sublets any part of the Contract.
- J. "Surety" means the bonding company which is bound with and for the Contractor, and which engages to be responsible for the Contractor and the Contractor's acceptable performance of the Work.
- K. "Time of Completion" is the consecutive calendar days measured from the date established in the written Notice to Proceed.
- L. "Town" is the Town of Apex. The Town's authorized representative and the representative's delegee may carry out the Town's responsibilities under this Contract.
- M. "Written Notice" is defined as notice in writing delivered to either the Contractor or Town as identified in the Contract Documents, in person or by registered by mail.
- N. "Work", when used as a noun, is the furnishing of all labor, materials, equipment and incidentals necessary or convenient to the successful completion of the Project, or any part, portion or phase thereof, and the carrying out of all duties and obligations imposed by the Contract.

2. SCOPE OF SERVICES

The Contractor agrees to provide all materials, equipment, machinery, tools, apparatus, power, sanitary facilities, means of transportation, incidentals, and labor necessary for the proper and lawful construction of the Apex Peakway Southwest Connector, NCDOT TIP #U-5928 over South Salem St. and CSX Railroad (hereinafter "Project"). The Project is located in Apex, NC and extends from just north of the intersection of Apex Peakway with Chickadee Lane to the intersection with Yateley Lane. The Project includes, but is not necessarily limited to, the following elements:

1. A bridge over South Salem Street and CSX Transportation railroad.
2. A connector loop from Apex Peakway to South Salem Street.
3. Retaining walls.
4. New sections of curb and gutter.
5. Sidewalks.
6. Storm drainage.
7. New traffic signals and supporting appurtenances.

Said construction will be performed in accordance with the "Contract Documents." The term "Contract Documents" includes this Contract and the following which are hereby incorporated into this Contract as fully contained herein:

- A. Construction Plan sheets titled "U-5928 Wake Final Plans Combined_20240722_Part1"; and Construction Plans titled "U-5928 Wake Final Plans Cross Sections_20240719_Part2"; and Construction Plans titled "U-5928 Wake Final Structure Plans Combined_20240709_Part3".

- B. Town of Apex Contract Proposal TIP Number: U-5928 sealed and dated July 22, 2024, including all Project Special Provisions (hereinafter “Contract Proposal”).
- C. Form FHWA-1273 –Revised October 23, 2023.
- D. NC DOT 2024 Standard Specifications for Roads and Structures (hereinafter “Standard Specifications”)
- E. NC DOT 2024 Roadway Standard Drawings
- F. US DOT Manual on Uniform Traffic Control Devices for Streets and Highways (11th Edition), as amended by the NC DOT Supplement to MUTCD.
- G. Bid Advertisement
- H. Instructions to Bidders
- I. Execution of Bid
- J. Bid Form
- K. Bid Form Submission
- L. Bid Bond
- M. Accepted Form of Proposal
- N. Notice of Award
- O. Performance & Payment Bonds
- P. Power of Attorney
- Q. Notice to Proceed
- R. Special Provisions
- S. Addenda:
 - 1. No. 1, Dated: July 19, 2024
- T. Certificate(s) of Insurance
- U. Affidavits

The 2024 North Carolina Department of Transportation Standard Specifications for Roads and Structures and the 2024 NC DOT Roadway Standard Drawings are modified only as identified in the Contract Proposal. The terms and conditions of this Contract are supplemental to and do not and are not intended to replace or modify the Contract Proposal, Standard Specifications, 2024 NC DOT Roadway Standard Drawings, US DOT Manual on Uniform Traffic Control Devices for Streets and Highways (11th Edition), as amended by the NC DOT Supplement to MUTCD, or Form FHWA-1273 –Revised October 23, 2023. It is understood by the Parties that, except where it would conflict with or be inconsistent with state or federal law, references to “Department”, “Department of Transportation”, or “Engineer” in the Standard Specifications shall also apply equally to the Town for the purposes of this Contract and all authorities, rights, decisions, and determinations granted to the “Department”, “Department of Transportation”, or “Engineer” in the Standard Specifications are shared by the Town pursuant to this Contract.

3. TIME OF COMMENCEMENT AND COMPLETION

- A. Contractor shall commence and complete the Work required in this Contract in accordance with the timelines and schedule provided in the Contract Proposal and Standard Specifications.
- B. For each day in excess of the completion date(s), liquidated damages, reasonably estimated in advance to cover the losses to be incurred by the Town by reason of failure of Contractor to complete the Work within the time specified, such time being of the essence in this Contract and a material

consideration thereof, shall be assessed in accordance with the terms of the Contract Proposal and Standard Specifications. If Contractor has not satisfactorily completed the work within the times specified in the Contract Documents, the Town may declare such delay a material breach of contract and default and may pursue all available remedies outlined in the Contract Documents as well as all other available legal and equitable remedies.

- C. Extension of the completion date, intermediate completion date, or intermediate completion time will be governed by the Contract Proposal and Standard Specifications.
- D. Contractor shall notify its Surety in writing of any granted extension of time.

4. CONSIDERATION AND PAYMENT OF SERVICES

In consideration of the above services, the Town will pay the Contractor, subject to additions and deductions as provided in the Contract Documents, as follows:

Total Sum: Twenty-one million, two hundred fifty-four thousand, four hundred sixty-three dollars & twelve cents (\$21,254,463.12).

Summary of Contract Award:

Alternate Bid: \$21,254,463.12

- A. Measurement of Quantities and Payment to the Contractor shall be governed by the Contract Proposal and Standard Specifications. No later than the fifth day of the month, the Contractor shall submit application for payment reflecting work completed during the preceding calendar month to the Inspector. The Inspector will prepare monthly progress/payment estimates and will review the Contractor's payment application and make a recommendation to the Town.
- B. Retainage: In accordance with the Contract Documents the Town will not retain any amount or percentage from progress payments or final estimates due the Contractor. Contractor shall not retain any amount or percentage from monies due its subcontractors or materials suppliers except as permitted by Subarticle 109-4(B) of the Standard Specifications.
- C. If payment in accordance with the pay application is recommended by the Inspector and approved by the Town, the Town will process payment within 30 days of approval. 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 applications for payment. 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. FINAL PAYMENT

- A. Upon completion, the Contractor shall submit to the Town all documents required for the processing of the final payment as detailed in the Standard Specifications. Final payment will be made within

forty-five (45) days after acceptance of all work by the Town and after receipt of the final pay request which shall include the Contractor's affidavit, sworn and notarized, in the following form: "This is to certify that all costs of materials, equipment, labor, subcontracted work, and all else entering into the accomplishment of this contract, including payrolls, have been paid in full, and no claims or liens exist against Contractor in connection with this Contract."

The Town may withhold payment for any of the reasons identified in the Contract Documents as well as the following reasons:

1. Faulty or defective work has not been corrected.
2. The unpaid balance remaining on the Contract is not sufficient to complete the work in the sole judgement and discretion of the Town.
3. To provide a sufficient contract balance to cover liquidated damages that will be assessed.
4. Evidence that subcontractors have not been paid.

6. CONSTRUCTION SUPERVISION AND INSPECTION OF WORK

Construction Supervision and Inspection of Work shall be governed by Section 105 of the Standard Specifications. In addition:

- A. Throughout the progress of the Work, the Contractor shall keep at the job site, a competent superintendent and supervisory staff satisfactory to the Town. The superintendent and supervisory staff shall not be changed without the consent of the Town unless said superintendent ceases to be employed by the Contractor or ceases to be competent as determined by the Contractor or Town. The superintendent and other staff designated by the Contractor in writing shall have authority to act on behalf of the Contractor, and instructions, directions or notices given to the superintendent shall be as binding as if given to the Contractor. However, directions, instructions, and notices shall be confirmed in writing.
- B. Contractor shall examine and study the drawings and specifications and fully understand the Project design and shall provide constant and efficient supervision to the Work. Should Contractor discover any discrepancies of any sort in the drawings or specifications, Contractor shall report them to the Town without delay. Contractor will not be held responsible for discrepancies in the drawings and/or specifications but shall be held responsible to report them should they become known to Contractor.
- C. Contractor is required to attend job site progress conferences as called by the Town or Inspector. The Contractor shall be represented at these job progress conferences by both home office and Project personnel. These representatives shall have authority to act on behalf of the Contractor. These meetings shall be open to subcontractors, material suppliers and any others who can contribute toward maintaining required job progress. It shall be the principal purpose of these meetings, or conferences, to effect coordination, cooperation and assistance in every practical way toward the end of maintaining progress of the Project on schedule and to complete the Project within the specified contract time. The Contractor shall be prepared to assess progress of the Work as required in the Contract Documents and to recommend remedial measures for correction of progress as may be appropriate.

- D. It is a condition of this Contract that the Work shall be subject to inspection during normal working hours and during any time Work is in preparation and progress by the Town and the Inspector designated by the Town, and those persons required by state law to test Work for official approval. The Contractor shall therefore provide safe access to the Work at all times for such inspections.
- E. Where special inspection or testing is required by virtue of any state laws, instructions of the Town or Inspector, specifications, or codes, the Contractor shall give adequate notice to the Town of the time set for such inspection or test. Such special tests or inspections will be made in the presence of the Town's representative and Inspector, and it shall be the Contractor's responsibility to serve ample notice of such tests.
- F. Should any Work be covered up or concealed prior to inspection and approval by the Town or Inspector, such Work shall be uncovered or exposed for inspection, if requested by the Town. Inspection of the Work will be made upon notice from the Contractor that the Work has been uncovered or exposed.

7. USE OF PREMISES

- A. Contractor shall confine its apparatus, the storage of materials and the operations of its workers to limits indicated by law, ordinances, permits or directions of the Town and shall not exceed those established limits in its operations.
- B. Contractor shall follow the Town's instructions regarding signs and advertisements.
- C. No firearms, any type of alcoholic beverages, or drugs (other than those prescribed by a physician) will be permitted at the job site.

8. PROTECTION OF WORK, PROPERTY AND THE PUBLIC

Contractor shall maintain and protect the Project consistent with Sections 104, 105, and 107 of the Standard Specifications. In addition:

- A. The Contractor shall be responsible for the entire site and the building or construction of the same and provide all the necessary protections, as required by the Town, and by laws or ordinances governing such conditions. Contractor shall be responsible for any damage to the Town's property, or of that of others on the job, by them, their personnel, or their subcontractors, and shall pay for or repair any such damages. Contractor shall be responsible for and pay for any damages caused to the Town.
- B. The Contractor shall provide cover and protect all portions of the Project being constructed when the Work is not in progress as needed, provide and set all temporary covers and all other materials necessary to protect all the Work on the Project, whether set by the Contractor, or any of the subcontractors. Any Work damaged through the lack of proper protection or from any other cause, shall be repaired or replaced without extra cost to the Town.
- C. The Contractor shall provide all necessary safety measures for the protection of all persons on the job and shall fully comply with all state laws or regulations to prevent accident or injury to persons on or about the location of the Work. Contractor shall clearly mark or post signs warning

of hazards existing and shall barricade excavations and similar hazards. Contractor shall protect against damage or injury resulting from falling materials and shall maintain all protective devices and signs throughout the progress of the Work.

- D. In the event of emergency affecting the safety of life, the protection of Work, or the safety of adjoining properties, the Contractor is hereby authorized to act at Contractor's own discretion, without further authorization from anyone, to prevent such threatened injury or damage.
- E. Any and all costs associated with correcting damage caused to adjacent properties of the construction site or staging area shall be borne by the Contractor. These costs shall include but not be limited to flooding, mud, sand, stone, debris, and discharging of waste products.

9. UTILITIES

Contractor shall provide necessary and adequate facilities for water, electricity, gas, oil, sewer and other utility services which may be necessary and required for completion of the Project. Any permanent meters installed shall be listed in the Contractor's name until Work has a Final Acceptance. The Contractor will be solely responsible for all utility costs prior to Final Acceptance. Coordination of the Work of the utility companies during construction is the sole responsibility of the Contractor and shall be governed by Section 105-8 of the Standard Specifications.

10. EXTRA WORK AND CHANGES IN THE WORK

Extra work and changes in the Works shall be governed by Sections 104-3 through 104-9 of the Standard Specifications.

11. TOWN'S RIGHT TO PERFORM WORK

If at any point during the performance or progress of the work, or during the period of guarantee, Contractor breaches the Contract, the Town, after seven (7) calendar days' written notice to the Contractor, may perform or have performed that portion of the Work in accordance with the terms of the Standard Specifications.

12. FINAL INSPECTION AND FINAL ACCEPTANCE

- A. Upon notification from the Contractor that the Project is complete and ready for inspection, the Town and the Inspector shall complete a final inspection to verify that the Project is complete. The Contractor shall schedule the final inspection at a time and date acceptable to the Town and Inspector.
- B. Inspection and Acceptance of the Project shall be governed by Section 105 of the Standard Specifications.

13. CORRECTION OF WORK PRIOR TO FINAL PAYMENT

- A. Any Work, materials, fabricated items or other parts of the Work which are not in accordance with the Contract shall be promptly removed from the Work site by the Contractor and shall be immediately replaced by new Work in accordance with the Contract Documents at no additional cost to the Town. Work or property of other contractors or the Town, damaged

or destroyed by virtue of such faulty Work, shall be made good at the expense of the Contractor.

- B. Correction of faulty Work described above shall commence within twenty-four (24) hours after receipt of notice from the Town, and shall make satisfactory progress, as determined by the Town, until completed.
- C. Should Contractor fail to proceed with the corrections in a timely fashion Town may complete the Work in accordance with the Contract Documents.

14. CORRECTION OF WORK AFTER FINAL PAYMENT

Neither the final payment or use of the Project by the Town, nor any provision of the Contract, nor any other act or instrument of the Town, shall relieve the Contractor from responsibility for negligence, or faulty material or workmanship, or failure to comply with the drawings and specifications. Contractor shall correct or make good any defects due thereto and repair any damage resulting there from, which may appear during the guarantee period following Final Acceptance of the Work. The Town will report any defects as they may appear to the Contractor and establish a time limit for completion of corrections by the Contractor. The Town will be the judge as to the responsibility for correction of defects.

15. DISADVANTAGED BUSINESS ENTERPRISE

Contractor is required to comply with the Disadvantaged Business Enterprise provisions and regulations provided in the Contract Proposal and Standard Specifications.

16. 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 Contract and the Contract Documents. This Contract shall be governed by the laws of the State of North Carolina.

Contractor shall obtain all required permits and inspections and shall give all notices required by law in performance of this Project. In the event Contractor observes that any drawings or specifications are not in compliance with any such rules, laws, or regulations, Contractor shall promptly notify the Town in writing. Contractor shall not perform any Work knowing it to be contrary to any laws, ordinances, codes, rules or regulations.

17. 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).

18. QUALITY AND WORKERSHIP

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 and in accordance with the Contract Documents.

19. SURETY

If at any time after the execution of this Contract and the surety bonds included in the Contract Documents for the faithful performance of the Contract, the Town shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the Work, the Contractor shall, at its expense, within five (5) days after the receipt of notice from the Town so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the Town. In such event no further payment to the Contractor shall be deemed to be due under this Contract until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the Town.

20. BOND REQUIREMENTS

Within ten (10) calendar days of the notice of award of the Contract, Contractor shall provide the Town of Apex with a contract payment bond and a contract performance bond executed by a surety company authorized to do business in North Carolina, each in an amount equal to 100 percent of the amount of the Contract. All bonds shall be in conformity with N.C.G.S. 44A-33 and countersigned by an authorizing agent of the bonding company.

Failure on the part of the Contractor to file acceptable bonds within the required timeframe shall be just cause for the forfeiture of the bid bond or bid deposit and rescinding award of the Contract. Award may then be made to the next lowest responsible bidder or the Work may be re-advertised.

21. CONTRACTOR'S WARRANTIES

The Contractor, in executing this Contract, unconditionally guarantees the materials and workmanship against latent and patent defects arising from faulty materials, faulty workmanship or negligence for a period of twelve (12) months following the Final Acceptance of the Work by the Town and shall replace all such defective materials or workmanship without cost to the Town. In the case where materials or equipment carry a manufacturer's warranty for any period in excess of twelve (12) months, then the manufacturer's warranty shall apply for that specific equipment or material. Specific warranty information and requirements are as detailed in the Standard Specifications.

Nothing in this section shall preclude the Town from bringing an action for latent defects caused by the negligence of the Contractor which is concealed, hidden, or not readily apparent to the Town at the time of Final Acceptance, in accordance with applicable law. Guarantees that are stipulated in the specifications or drawings shall govern those particular materials or equipment.

22. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and its agents, consultants, elected officials, and employees, from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance or failure of performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting there from, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, the Contractor's subcontractor, or the agents of either the

Contractor or the Contractor's subcontractor. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.

All indemnifications of the “Board” or “Department” referenced in the Standard Specifications shall apply equally and in the same capacity to the Town.

23. INSURANCE

Work under this Contract shall not begin until the Contractor has obtained all required insurance set forth below and verifying certificates of insurance have been provided to the Town. All required certificates of insurance, endorsements, and blanket additional insured policy provisions are attached and considered part of this Contract. These certificates shall document that coverages afforded under the policies will not be cancelled, reduced in amount or eliminated without written notice, by certified mail, to the Town of such alteration or cancellation. 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.

a. Worker’s Compensation and Employer's Liability

The Contractor shall provide and maintain, until Final Acceptance, Worker's compensation insurance as required by law, and as employer's liability coverage with a minimum limit of \$1,000,000.

b. Public Liability and Property Damage

The Contractor shall provide and maintain, until Final Acceptance, comprehensive general liability insurance, including coverage for premises operations, independent contractors, completed operations, products and contractual exposures, as shall protect such contractors from claims arising out of any bodily injury, including accidental death, as well as from claims for property damages which may arise from operations under this Contract, whether such operations be by the Contractor or by any subcontractor, or by anyone directly or indirectly employed by either of them and the minimum limits of such insurance shall be as follows:

Commercial General Liability:

Each Occurrence: Five Million (\$5,000,000)

General Aggregate: Five Million (\$5,000,000)

Products-Completed/Operations Aggregate: Five Million (\$5,000,000)

Such coverage for completed operations must be maintained for at least two (2) years following Final Acceptance of the Work performed under the Contract.

c. **Commercial Automobile Liability Coverage**

The Contractor shall purchase and maintain, until Final Acceptance, commercial automobile liability insurance as follows:

Combined Single Limit Per Accident: Two Million (\$2,000,000) for bodily injury, death of any person, and property damage covering vehicles owned, non-owned, and hired by Contractor and used during construction.

d. **Environmental Pollution Liability**

If the Work includes the use or release of pollutants Contractor shall maintain Environmental Pollution Liability in the following minimum amounts:

Each Occurrence: Two Million (\$1,000,000)

Aggregate: Four Million (\$4,000,000)

e. **Deductible**

Any deductible, if applicable to loss covered by insurance provided, is to be borne by the Contractor.

f. **Other Insurance**

The Contractor shall obtain such additional insurance as may be required by the Town or by the General Statutes of North Carolina including motor vehicle insurance, in amounts not less than the statutory limits.

Commercial General Liability and Commercial Automobile Liability limits can be satisfied under a combination of Primary and Umbrella/Excess Liability Insurance policies.

Waiver of Subrogation is required on General Liability, Auto Liability, Worker's Compensation and Umbrella policies.

Town of Apex is to be named as Additional Insured on General Liability and Automobile Liability policies.

g. **Proof of Carriage**

The Contractor shall furnish the Town with satisfactory proof of carriage of the insurance required before approval of the insurance is granted by the Town.

24. SUBCONTRACTORS

Contractor shall be fully responsible for Contractor’s own acts or omissions as well as those of any subcontractor retained to perform services pursuant to this Contract. Contractor acknowledges that no contractual relationship exists between a subcontractor and the Town regarding this Contract and that the subcontractor is acting as an agent or employee of the Contractor. Contractor acknowledges that the terms of this Contract apply to each subcontractor as it does to the Contractor and Contractor will take whatever steps necessary to bind all subcontractors working on this Project to these terms.

25. DEFAULT

In the event the Contractor fails to begin the Work pursuant to the Contract Documents within the time specified, or the progress of the Work is not maintained on schedule, or the Work is not completed within the time specified, or fails to perform the Work with sufficient staff and equipment or with sufficient materials to ensure the prompt completion of said Work, or shall perform the Work unsuitably or shall discontinue the prosecution of the Work, or if the Contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, or allow any final judgment to stand against Contractor unsatisfied for a period of forty-eight (48) hours, or shall make an assignment for the benefit of creditors, or for any other cause whatsoever shall not carry on the Work in an acceptable manner or breach any material term or condition of the Contract Documents, the Town shall have the right to declare default of the Contract. Breach of the Contract by the Contractor shall be governed by Section 108 of the Standard Specifications.

26. TERMINATION

The Town may terminate this Contract in accordance with the terms provided in Section 108 of the Standard Specifications.

27. NOTICE

Any formal notice, demand, or request required by or made in connection with this Contract shall be deemed properly made if delivered in writing in person by registered mail to the address specified below.

<p>TO CONTRACTOR:</p> <p>S. T. Wooten Corporation Attn: Matthew Davis PO Box 2408 Wilson, NC 27894-2408 Matthew.Davis@stwcorp.com</p>	<p>TO TOWN:</p> <p>Town of Apex Attn: Adam Stephenson PO Box 250 Apex, NC 27502 Adam.Stephenson@apexnc.org</p>
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28. NONWAIVER FOR BREACH

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

29. CONSTRUCTION

Should any portion of this Contract 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.

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

31. SEVERABILITY

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

32. COUNTERPARTS

This Contract 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.

33. MODIFICATION

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

34. BINDING EFFECT

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

35. 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 Contract 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.

36. INDEPENDENT CONTRACTOR

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

37. NON-APPROPRIATION

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

38. 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 Contract 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.

39. 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.

In witness thereof, the contracting parties, by their authorized agents, affix their signatures and seals this ____ day of _____, 2024.

Contractor: _____

Town of Apex

(Print name)

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