

## ELECTRICITIES SERVICES AGREEMENT

THIS AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is entered into by and between ElectriCities of North Carolina, Inc. (“ElectriCities”, a joint municipal assistance agency organized under Article 3, Chapter 159B of the General Statutes of North Carolina (the “General Statutes”), and The Town of Apex (“Member”), a municipal corporation organized under Chapter 160A of the General Statutes.

WHEREAS, ElectriCities is authorized by § 159B-44 of the General Statutes to, among other things, provide aid and assistance to any one or more municipalities, and to act for and on behalf of any one or more municipalities, in any activity related to, among other things, the operation and maintenance of an electric system; and

WHEREAS, Member desires that ElectriCities provide certain services to Member, as more particularly described herein, all pursuant to the terms and conditions set forth herein; and

WHEREAS, ElectriCities desires, through its employees, agents, and consultants to provide the services to Member all pursuant to the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual undertakings set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, IT IS AGREED:

### ARTICLE I.

#### SERVICES PROVIDED AND COMPENSATION FOR SERVICES RENDERED

1.1. ElectriCities agrees to provide those services to Member described in the written Statement of Work (Attachment I) attached hereto and made a part hereof (the “Services”). Member and ElectriCities, from time to time, may make changes in the Services, either adding to or deleting from the Services to be performed. Any changes in the Services shall be made by either a written amendment to the Statement of Work executed by both Member and ElectriCities, or the addition of a new Project with an additional Statement of Work and ElectriCities Fees. If such change(s) increase or decrease either the cost of or time required to perform the Services, the parties will mutually agree to an equitable adjustment to the compensation and/or the time to perform the Services.

1.2. Member agrees to pay ElectriCities according to the pricing specified in the written ElectriCities Fees (Attachment II). Unless otherwise specified in the Statement of Work or Attachment II, ElectriCities fees for performing the Services will be based primarily on the hourly rates specified in Attachment II. In addition, all third-party expenses incurred by ElectriCities in connection with providing the Services shall be paid by Member. Member agrees to pay ElectriCities for the Services provided and for third party expenses incurred upon presentation of invoice according to the terms set forth in the Statement of Work and Attachment II.

1.3. All Services provided pursuant to this Agreement shall be performed in accordance with Good Utility Practice, consistent and in compliance with all applicable laws, standards, codes, rules, regulations and operating procedures. "Good Utility Practice" shall mean, at a particular time, any of the practices, methods and acts which, in the objective exercise of reasonable judgment in light of the facts and circumstances (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the municipal electric industry prior thereto) known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with reliability and safety. Good Utility Practice is not intended to be limited to the optimum practice, method or act, to the exclusion of all others, but rather to be a number of possible practices, methods or acts. In evaluating whether any matter conforms to Good Utility Practice as used in this Agreement, the parties hereto shall take into account, among other factors, (A) the fact that each of ElectriCities and the Member is a public body and a body corporate and politic organized under the laws of the State of North Carolina, with the statutory duties and responsibilities thereof, and (B) the intended purposes and obligations of ElectriCities and the Member under this Agreement.

1.4. In providing the Services pursuant to this Agreement, ElectriCities may utilize, in addition to persons employed by ElectriCities, such other persons, firms or entities, independent of ElectriCities and/or Member ("Agents or Consultants"), as ElectriCities shall deem necessary and appropriate to assist it in performing its obligations under to this Agreement.

1.5. ElectriCities acknowledges that it is an independent contractor and will at all times act as such in providing the Services under this Agreement. ElectriCities is not an employee, partner, or agent of Member and has no authority to contract for or bind Member in any manner except to the extent specified in the Statement of Work. The parties agree that ElectriCities shall be responsible for and shall have full control over developing its own means and methods as it deems appropriate in providing the Services.

## ARTICLE II. PERFORMANCE WARRANTY

2.1. ElectriCities warrants that the Services shall be performed in accordance with Good Utility Practice, where applicable, and sound and generally accepted practices and industry standards by managerial and administrative personnel fully qualified in the respective disciplines required. ElectriCities shall be fully responsible for the quality, technical accuracy, and timely completion of the Services provided under this Agreement. ElectriCities shall, without additional compensation and at its sole cost and expense, correct or revise any errors, omissions, or other deficiencies in the Services performed for which ElectriCities, or its Agents, or its Consultants, is at fault.

ARTICLE III.  
INSURANCE

3.1. ElectriCities and Member shall obtain and maintain at all times during the term of this Agreement the minimum insurance coverage set forth below:

TYPE	LIMITS	
WORKER'S COMPENSATION	Statutory	
EMPLOYER'S LIABILITY	Each Accident Disease-	\$500,000
	Policy Limit Disease-	\$500,000
	Each Employee	\$500,000
COMMERCIAL GENERAL LIABILITY	Each Occurrence	\$1,000,000
	Aggregate	\$2,000,000

ElectriCities and Member both waive their respective rights of subrogation and the rights of subrogation of their insurers against each other as respects all Workers Compensation claims and each shall have their policies include a provision memorializing this waiver.

Commercial General Liability Policy shall be written on an occurrence form, including premises/operations, products-completed, operations, personal injury and contractual coverage.

All insurance policies shall be written by a fully qualified insurance company licensed to provide insurance in the state of North Carolina.

3.2. Prior to commencing any performances hereunder, and at all times during the term of this Agreement at the request of Member, ElectriCities shall submit satisfactory evidence to Member that such insurance is in effect and shall not be canceled until at least thirty (30) days prior written notice has been given to Member.

3.3. ElectriCities shall require that its Agents and Consultants providing Services shall maintain Workers' Compensation and Liability coverage as required in paragraph 4.1, subject to the same limits and conditions specified therein. ElectriCities and Member shall be included as additional insureds under the Commercial General Liability policy of the Agents on a primary and non-contributory basis.

3.4. Member and ElectriCities hereby waive their respective rights of recovery and release each other from any claim for damages caused to any of their property (including buildings, personal property, vehicles and equipment) to the extent such damages are covered by insurance and shall each have any insurance policies covering such properties endorsed to include waiver of subrogation.

ARTICLE IV.  
INDEMNIFICATION

4.1. To the fullest extent permitted by applicable law, ElectriCities shall indemnify, defend, and hold harmless Member against any and all losses, damages, expenses (including reasonable legal and other fees and expenses), liabilities or claims (or actions in respect thereof) to which Member may become subject caused by or arising from negligent or intentional acts, errors or omissions of ElectriCities or its Agents and Consultants in providing Services under this Agreement; provided, however, that ElectriCities shall not be required to indemnify Member in the event that any such loss, damage, expense, liability or claim is the result of negligence on the part of Member or its council members, employees, agents or attorneys. The indemnity provided under this paragraph will extend upon the same terms and conditions to the mayor, council members, employees, agents, and attorneys of Member (each an "Indemnified Party"). Such defense by ElectriCities extends, without limitation, to any and all expenses whatsoever reasonably incurred by any Indemnified Party in connection with investigating, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of, any loss, damage, expense, liability or claim referred to in this paragraph (or action in respect thereof), whether or not resulting in any liability. The indemnity will include the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein, if such settlement is affected with the written consent of ElectriCities. Neither the mayor, council members, agents, employees nor attorneys of Member shall be personally liable for the performance of any of Member's obligations to ElectriCities under this Agreement.

4.2. To the fullest extent permitted by applicable law, Member shall indemnify, defend and hold harmless ElectriCities against any and all losses, damages, expenses (including reasonable legal and other fees and expenses), liabilities or claims (or actions in respect thereof), to which ElectriCities may become subject, caused by or arising from negligent or intentional acts, errors or omissions of Member or its Agents in performing its obligations under this Agreement; provided, however, that Member shall not be required to indemnify ElectriCities in the event that any such loss, damage, expense, liability or claim is the result of negligence on the part of ElectriCities, or its officers, commissioners, directors, members, employees, agents or attorneys. The indemnity provided under this paragraph will extend upon the same terms and conditions to each officer, commissioner, director, member, employee, agent or attorney of ElectriCities (each an "Indemnified Party"). Such indemnity will also extend, without limitation, to any and all expenses whatsoever, reasonably incurred by any Indemnified Party in connection with investigating, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of, any loss, damage, expense, liability or claim referred to in this paragraph (or action in respect thereof), whether or not resulting in any liability. This indemnity will include the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein, if such settlement is affected with the written consent of Member. Neither the officers, commissioners, directors, members, employees, agents nor attorneys of ElectriCities shall be personally liable for the performance of any of ElectriCities' obligations under this Agreement.

ARTICLE V.  
TERM

5.1. The initial term of this Agreement shall be for a period of three (3) years after the date of this Agreement. Thereafter, this Agreement shall renew automatically for successive one-year terms unless terminated in accordance with the provisions of Article VII herein.

ARTICLE VI.  
TERMINATION

6.1. If Member, or, where appropriate, the governing body of Member, shall fail to perform any of its obligations or covenants set forth in this Agreement, ElectriCities may terminate this Agreement by serving written notice thereof upon Member specifying the reason(s) for such termination. If, after the expiration of thirty (30) days following the date of said notice, Member shall have failed to rectify the reason(s) given for termination, or if the reason(s) given for termination shall be of a nature that it cannot be completely rectified or remedied in said thirty (30) day period, this Agreement may be terminated by ElectriCities at any time thereafter; provided, however, that ElectriCities shall give Member not less than thirty (30) days written notice of the date it intends to terminate this Agreement.

6.2. If ElectriCities shall fail to perform any of its obligations or covenants set forth in this Agreement, Member may terminate this Agreement by serving written notice thereof upon ElectriCities specifying the reason(s) for the termination. If, after the expiration of thirty (30) days following the date of said notice, ElectriCities shall have failed to rectify the reason(s) given for termination, or if the reason(s) for termination shall be of a nature that it cannot be completely remedied in said thirty (30) day period, this Agreement may be terminated by Member at any time thereafter; provided, however, that Member shall give ElectriCities not less than thirty (30) days written notice of the date it intends to terminate this Agreement.

6.3. Notwithstanding any provision of this Agreement to the contrary, either party to this Agreement may terminate this Agreement upon written notice of the intent to terminate to the other party hereto not less than ninety (90) days prior to the intended date of termination.

6.4. In any event the Agreement is terminated for any reason, Member is required to pay ElectriCities for all services rendered up to the time of termination.

ARTICLE VII.  
DISPUTE RESOLUTION

7.1. Notwithstanding any other provision of this Agreement to the contrary, any dispute, disagreement or other controversy between the parties, either with respect to the interpretation of any provision of this Agreement or with respect to the provision of Services, shall be resolved as provided in this Section. Prior to the initiation of litigation or arbitration, the parties shall first attempt to resolve their dispute informally. Every effort should be made to resolve all disputes at the lowest possible level of authority. If the parties fail to agree through

normal channels and procedures, the parties shall attempt to resolve any disputes arising hereunder in the following manner. Upon the written notice of a dispute by a party, each party, within five (5) days after receipt of such notice, will designate an authorized representative whose task will be to meet for the purpose of endeavoring to resolve the noticed dispute within not more than sixty (60) days).

Initiation of litigation or arbitration for the resolution of a dispute may be commenced after the earlier of (i). the designated representatives concluding in good faith that amicable resolution through continued negotiation of the matter does not appear likely, or (ii) sixty (60) days after the initial notice of dispute is received.

Each party agrees to continue performing its obligations under this Agreement while a dispute is being resolved unless and until such obligations are terminated by the termination or expiration of this Agreement.

#### ARTICLE VIII. SURVIVAL

8.1. Where any covenants, obligations, indemnities or other provisions contained in this Agreement, or in any other instrument executed in connection with the transactions described herein, by its context or otherwise, evidences the intent of the parties that such provision should survive the termination of the Agreement, the provision shall survive the termination. Without limiting the generality of the foregoing, the parties specifically acknowledge and agree that all covenants, obligations and indemnities made in Sections 6 of this Agreement shall survive the termination.

#### ARTICLE IX. ASSIGNMENT

9.1. This Agreement shall not be assigned by either party without the prior written consent of the other party hereto. Any assignment of this Agreement without the prior written consent of the non-assigning party shall be void ab initio.

#### ARTICLE X. MODIFICATION

10.1. This Agreement may not be modified, altered or amended in any manner except (A) by an agreement in writing duly executed by each of the parties hereto, or (B) as may be required by law, regulation, governmental agency or court in order to be in compliance with law.

ARTICLE XI.  
SEVERABILITY

11.1. Should any portion of this Agreement become void or invalid, the remaining portions of this Agreement shall remain in full force and effect as if the void or invalid portion was severable and not a part of this Agreement.

ARTICLE XII.  
NOTICE

12.1. Any notices to be given hereunder by one party to another shall be in writing and delivered either by personal delivery or by overnight or regular mail. Mailed notices shall be addressed to the parties at the addresses appearing below. Each party may change its address by written notice in accordance with this paragraph.

If to ElectriCities:     Vice President, Operations  
                                   ElectriCities  
                                   1427 Meadow Wood Blvd  
                                   Raleigh, NC 27604

If to Member:            \_\_\_\_\_  
                                   \_\_\_\_\_  
                                   \_\_\_\_\_  
                                   \_\_\_\_\_

ARTICLE XIII.  
GOVERNING LAW

13.1. The obligations of each party under this Agreement shall be governed and interpreted under the laws of the state of North Carolina.

ARTICLE XIV.  
BINDING EFFECT

14.1. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

ARTICLE XV.  
NO IMPLIED WAIVER

15.1. Either party may, at any time, waive, solely for that party, compliance by the other party with any obligation, covenant or condition contained in this Agreement. No such waiver, however, shall be deemed to constitute the waiver of any other obligation, covenant or

condition in any other circumstance or the waiver of any other obligation covenant or condition. The failure by either party hereto from time to time to exercise any right or power provided herein shall not be construed as a waiver by such party to exercise such right or power at any subsequent time or against the other party.

ARTICLE XVI.  
COMPLIANCE WITH LAWS

16.1. Each party to this Agreement shall at all times comply with all applicable laws and regulations and shall obtain and maintain all licenses necessary for it to perform its obligations under to this Agreement.

ARTICLE XVII.  
COUNTERPARTS

17.1. More than one counterpart of this Agreement may be executed by the parties hereto, and each fully executed counterpart shall be deemed an original without production of the others.

ARTICLE XVIII.  
ENTIRE AGREEMENT

18.1. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, superseding any and all previous agreements, whether written or oral, between the parties relating to the subject matter hereof.

ARTICLE XIX.  
MISCELLANEOUS

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



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in each case by authority of their respective governing bodies duly given.

Executed the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_

ELECTRICITIES OF NORTH CAROLINA, INC.

By: \_\_\_\_\_

MEMBER

By: \_\_\_\_\_

## **ATTACHMENT I**

### STATEMENT OF WORK

#### **Project 1: Electric Vehicle Strategic Plan**

ElectriCities' contractor, Sagewell, will develop an Electric Vehicle Strategic Plan for the Town of Apex, NC. The plan will include four elements.

1. Individualized EV Value
  - a. Sagewell will use its models to assess the marginal value of electric vehicles to the City of Apex electric utilities department. This assessment will include estimating the electric load impact, in kilowatts of demand, of electric vehicles both with and without load management, and the impact of the additional kilowatt hours sales to margin contributions.
2. Assess EV Stock and Sales
  - a. Sagewell will make an assessment of the local car dealerships, existing stock, and pricing. Sagewell will recommend a roadmap for building relationships with local dealerships.
3. Utility Marketing
  - a. Sagewell will present keys to a successful electric vehicle informational website, guide programs (including the Bring You Own Charger program) and events, and specify organizations to contact to help market electric vehicles.
4. Utility Investments
  - a. Sagewell will recommend a strategy on what the Town of Apex should spend its money on to help invest in electric vehicles.

#### **Term**

The term of Project 1 shall commence upon the date of this Agreement and will continue until July 31<sup>st</sup>, 2020.

**ATTACHMENT II**

**ELECTRICITIES FEES**

**Project 1:**

The pricing below is in support of work to be performed by ElectriCities for Member as outlined in the Statement of Work (Attachment I) for Project 1. ElectriCities shall invoice Member for fees and the reimbursement of costs and payment shall be due within thirty (30) days after the date of the invoice.

<b>Phase 1</b>	
<b>Description</b>	<b>Fee</b>
Sagewell Professional Services	\$2,500  <i>Work is not anticipated to exceed \$2,500, which is 50% of the total cost of the project. ElectriCities will seek written approval from Member if the scope changes and the fee is to exceed \$2,500.</i>

Travel may be billed as incurred. This including expenses for overnight travel, meals, hotel & accommodations, etc. Mileage is billed at the active IRS mileage reimbursement rate.