

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

AMENDMENT TO TOWN OF APEX  
CONSTRUCTION CONTRACT

This Amendment to Town of Apex Construction Contract (the or this “Amendment”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between the Town of Apex, a municipal corporation of the State of North Carolina, (“Town”) and FSC II, LLC dba Fred Smith Company, a North Carolina limited liability corporation with its principal business offices located at 701 Corporate Center Drive Suite 101 Raleigh NC 27607 (the “Contractor”). Town and Contractor may hereinafter be referred to collectively as the “Parties.”

**WITNESSETH**

WHEREAS, Town and Contractor entered into a contract entitled, “Town of Apex Greenway Construction Contract” on or about January 30th, 2024 (the “Contract”) for the construction of Beaver Creek Greenway Extension Phases 1, 2 and 1A; and

WHEREAS, the Parties desire to update certain provisions of the Contract to remove the withholding of retainage and replace FHWA 1273 with the revised October 23, 2023 version; and

WHEREAS, both Parties wish to memorialize the same through this Amendment.

NOW, THEREFORE, in consideration of the foregoing, the Parties do hereby agree to amend the Contract as follows:

1. Section D (“Retainage”) of Paragraph 4 of the Contract, entitled “CONSIDERATION AND PAYMENT OF SERVICES,” is hereby amended (such that no retainage will be withheld) to read as follows:

D. INTENTIONALLY DELETED.

2. FHWA-1273. FHWA-1273 – Revised October 23, 2023 “Required Contract Provisions Federal-Aid Construction Contracts” is attached to this Amendment and hereby physically incorporated into the Contract. The Contractor agrees to comply with the provisions of FHWA-1273-Revised October 23, 2023.

3. Effective Date. This Amendment shall be effective upon execution by both Parties. The Contract will continue in full force and effect except as amended herein.

IN WITNESS WHEREOF, the Parties have entered into this Amendment effective this \_\_\_ day of \_\_\_\_\_, 2024.

**FSC II, LLC dba Fred Smith Company**

**Town of Apex**

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
Shawn Purvis, Interim 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