

# TOWN OF APEX FORMAL CONSTRUCTION CONTRACT

FOR

Construction of: Electric Utilities Department Solar, Apex, NC

## SCOPE OF WORK

Construct the project in accordance with Plans titled “Electric Utilities Department Solar” dated 01/09/2025 – IFC and including up to 02/26/25 – Rev 1, including the following sheets:

E001  
E002  
E011  
E101  
E102  
E103  
E501  
E502  
E503  
E504  
E601  
E602

**PURCHASE ORDER #**

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

**FORMAL CONSTRUCTION CONTRACT**

THIS CONTRACT is entered into this the \_\_\_\_ day of \_\_\_\_\_, 2025, by and between, \_\_\_\_\_, a \_\_\_\_\_ Corporation with its principal business offices located at \_\_\_\_\_ (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, operation, and utilization of town facilities which from time to time require construction, building, design, reconfiguration, renovation, installation, evaluation, testing, and other related projects; 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. SCOPE OF SERVICES.**

The Contractor agrees to provide all materials, equipment, machinery, tools, apparatus, means of transportation and labor necessary for the construction of Solar PV Installation, located at 2850 Milano Avenue, Apex, NC 27502, consistent with the “Contract Documents.” “Contract Documents” includes this Contract and the following which are hereby incorporated into this Contract as if fully contained herein:

- A. General Conditions
- B. Supplementary General Conditions (if any)
- C. Plan sheets titled “Electric Utilities Department Solar”, dated 01/09/2025 – IFC along with 02/26/25 – Rev1 including the following sheets: E001, E002, E011, E101, E102, E103, E501, E502, E503, E504, E601, E602  
by Optima Engineering.
- D. Bid Advertisement
- E. Instructions to Bidders
- F. Execution of Bid
- G. Bid Form
- H. Bid Form Submission

- I. Bid Bond
- J. Accepted Form of Proposal
- K. Notice of Award
- L. Performance & Payment Bonds
- M. Power of Attorney
- N. Notice to Proceed
- O. Special Provisions
- P. Addenda:
  - 1. No. \_\_\_\_\_ Dated: \_\_\_\_\_
  - 2. No. \_\_\_\_\_ Dated: \_\_\_\_\_
  - 3. No. \_\_\_\_\_ Dated: \_\_\_\_\_
  - 4. No. \_\_\_\_\_ Dated: \_\_\_\_\_
  - 5. No. \_\_\_\_\_ Dated: \_\_\_\_\_
- Q. Certificate(s) of Insurance

**2. TIME OF COMMENCEMENT AND COMPLETION.**

Contractor shall commence the work required in this Contract upon the issuance of a Notice to Proceed, and the Contractor shall complete entire work and reach Final Acceptance (as defined by the General Conditions) within 180 consecutive calendar days of the issuance of the Notice to Proceed (“time of completion”). For each day in excess thereof, liquidated damages, reasonably estimated in advance to cover the losses to be incurred by the Owner 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 the amount of \$50.00 per calendar day. If Contractor has not satisfactorily completed the work and reached Final Acceptance 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 this Contract as well as all other legal and equitable remedies. Any changes to the schedule(s) provided in the Contract Documents must be agreed to in writing by the Town and the Contractor.

If the Contractor is delayed at any time in the progress of its work by any act or negligence of the Town, its employees, or its separate contractor, by changes ordered in the work; by abnormal weather conditions; by any causes beyond the Contractor's control or by other causes deemed justifiable by Town, then the contract time may be reasonably extended in a written order from the Town upon written request from the Contractor within ten days following the cause for delay. Time extensions for weather delays, labor disputes, fire, delays in transportation, unavoidable casualties or other delays which are beyond the control of the Town do not entitle the Contractor to compensable damages for delays. Any Contractor claim for compensable damages for delays is limited to delays caused solely by the Town or its agents.

**3. 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:

\_\_\_\_\_ (\$\_\_\_\_\_).

Summary of Contract Award:

Base Bid: \$ \_\_\_\_\_  
Alternate A1: \$ \_\_\_\_\_  
Alternate A2: \$ \_\_\_\_\_  
Total: \$ \_\_\_\_\_

Contractor shall submit applications for payment reflecting work completed during the preceding calendar month to the Designer in accordance with the General Conditions. If certified by the Designer and approved by the Town, the Town will process all pay applications within 30 days after receipt from the Designer. 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.

Retainage:

In accordance with N.C.G.S 143-134.1, Town may withhold a percentage of payment until the project has been satisfactorily completed for projects costing more than \$100,000.00. For projects costing \$100,000.00 or more:

- a. Retainage withheld shall not exceed 5% at any time.
- b. The same terms shall apply to the general contractor and subcontractors alike.
- c. Following 50% completion of the project no further retainage will be withheld if the Contractor/subcontractor has performed satisfactorily and any nonconforming work identified in writing prior to that time by the architect, engineer, or Owner has been corrected by the Contractor and accepted by the architect, engineer, or Owner.
- d. Town may reinstate retainage if the Contractor/subcontractor does not continue to perform satisfactorily. Following 50% completion of the project, Town is authorized to withhold additional retainage from a subsequent payment application if the amount of retainage withheld falls below 2.5%.

Upon completion, the Contractor shall submit satisfactory evidence that all payrolls, material bills and other costs incurred by the Contractor in connection with the construction of the work have been paid in full. Final payment will be made within forty-five (45) days after Final Acceptance (as defined by the General and Supplementary General Conditions) and Final Acceptance of the work by the Town and after the Town has received all required warranty information, Operation and Maintenance Manuals, releases and waivers of liens, red-line drawings have been submitted to Designer as required, and receipt by the Owner of the final pay request which shall include the Contractor's affidavit 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."

The Town, or the Designer with the Town's approval, may withhold payment for any of the following reasons:

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

Payment will be released once the grounds for withholding payments has been removed.

#### **4. 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.

#### **5. CHANGE ORDERS.**

In the event Town has changes in the work not covered by the Contract, these changes will not invalidate or relieve Contractor from any guarantee it has given in this Contract. If a bond was required these changes will not relieve the surety or sureties of said bond. Changes in work shall not proceed without a Change Order approved by the Town. Change Orders will be governed by the General Conditions and Supplementary General Conditions. Any work performed pursuant to an approved change order shall be governed by the terms of this Contract.

#### **6. INDEMNIFICATION.**

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Designer and the agents, consultants, elected officials, and employees of the Owner and Designer, 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 article.

#### **7. 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 any attached specifications. 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.

All work under this Contract shall be performed in accordance with the North Carolina Building Code and all other applicable state or national codes.

**8. 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).

**9. QUALITY AND WORKMANSHIP.**

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. Contractor hereby certifies that he/she is a licensed general contractor as defined by N.C.G.S. 87-1.

**10. INSURANCE.**

Work under this Contract shall not begin until the Contractor has obtained all required insurance. The Contractor shall maintain insurance as detailed in the General Conditions and Supplementary General Conditions. 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. SUBCONTRACTORS.**

Contractor shall be fully responsible for his/her 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 the subcontractor and the Town in regards to 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.

**12. DEFAULT.**

In the event of default by the Contractor the terms in the General Conditions and Supplementary General Conditions shall control.

**13. TERMINATION FOR CONVENIENCE.**

Town shall have the right to terminate this Contract for the Town’s convenience in accordance with the General and Supplementary General Conditions.

**14. 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.

TO CONTRACTOR:	TO TOWN:  Town of Apex Attn: Daniel Edwards PO Box 250 Apex, NC 27502 Daniel.edwards@apexnc.org
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**15. 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.

**16. 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.

**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 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.

**18. 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.

**19. 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.

**20. 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.

**21. BINDING EFFECT.**

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

**22. 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.

**23. 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.

**24. 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.

**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 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.

**26. 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.

**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.

**[The Remainder of This Page Intentionally Left Blank; Signatures Follow]**



**In witness thereof**, the contracting parties, by their authorized agents, affix their signatures and seals this \_\_\_\_ day of \_\_\_\_\_, 2025.

**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