

THIS PROFESSIONAL SERVICES CONTRACT (“Contract”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between, \_\_\_\_\_, a North Carolina 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, the Town is engaged in the utilization and operation of Town infrastructure and roads which from time to time require design, revision, engineering, evaluation, surveying, testing, architectural services and other related projects; and

WHEREAS, the professional services of engineers, architects, surveyors and others are at times needed by the Town for the services as described above; and

WHEREAS, Contractor provides professional 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, pursuant to N.C.G.S. 143-64.31, it is the public policy of the State of North Carolina that municipalities announce all requirements for architectural, engineering, and surveying services, and select firms qualified on the basis of demonstrated competence and qualifications, and negotiate contracts for services at a fair and reasonable fee with the best qualified firm unless the project is exempted in writing by the municipality in accordance with N.C.G.S. 143-64.32; and

WHEREAS, the Town has announced the requirements for said services and selected Contractor in accordance with the criteria and procedure provided in N.C.G.S. 143.64.31.

NOW THEREFORE, the Town and the Contractor, for the consideration stated herein, agree as follows:

#### 1. SCOPE OF SERVICES.

The Contractor agrees to perform for the Town the following services:

1. A visual evaluation of the town road system for asphalt roadways. The information gathered will include physical characteristics and pavement distress types. This survey will be conducted at break points established by road centerlines. A shapefile will be provided by the Town of Apex.
2. The pavement condition evaluation shall be performed in accordance with Publication No. FHWA-RD-03-031, Distress Identification Manual for the Long-Term Pavement Performance Program (Fourth Revised Edition), June 2003 utilizing distresses that the Town currently employs as follows:

##### I. Cracking

- Fatigue Cracking
- Block Cracking
- Reflection Cracking at Joints
- Transverse Cracking

II. Patching and Potholes

III. Surface Deformation

- Rutting
- Shoving

IV. Surface Defects

- Raveling

3. Identify maintenance needs, estimate costs, and calculate pavement condition ratings for each road segment.
4. The production of summary tables, an alphabetical listing, and a priority listing for the street system shall be included. Begin and end descriptions will reflect centerline break points.
5. Development of separate technical reports with tables and figures to summarize the condition of town streets and maintenance needs. These reports shall contain all collected pavement data and recommended maintenance and preservation activities.
6. A shapefile shall be provided to the Town of Apex containing all collected pavement data, and recommended maintenance and preservation activities.

Further information regarding the services to be provided is detailed in the attached “\_\_\_\_\_”, dated \_\_\_\_\_ (hereinafter “Proposal”) which is incorporated herein. In the event of a conflict between the terms of the attached Proposal and this Contract, this Contract shall control.

**2. SPECIFICATIONS.**

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.

**3. TIME OF COMMENCEMENT AND COMPLETION.**

Contractor shall commence the work required in this contract no later than five (5) days after the date of execution of this Contract, and the Contractor shall complete entire work no later than \_\_\_\_\_, 20\_\_\_. If Contractor has not satisfactorily commenced or completed the work within the times specified, 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 Contract must be agreed to in writing by the Town and the Contractor.

**4. CONSIDERATION AND PAYMENT OF SERVICES.**

In consideration of the above services, the Town will pay the Contractor the total sum of \$\_\_\_\_\_. Costs attributed to specific services and hourly rates are as shown in the attached Proposal. In the event the Town requests that any service shown in the Proposal not be performed, the total sum designated in this section shall be reduced by the corresponding amount attributed to that particular service as shown in the Proposal. Invoices from Contractor for services performed shall be paid by the Town within thirty (30) days from receipt of invoice. 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 invoices. 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. INDEMNIFICATION.**

To the extent permitted by law, the Contractor agrees to 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 the Contractor.

## **6. 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.

## **7. 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).

## **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.**

The Contractor shall maintain valid general liability insurance in the minimum amount of \$1,000,000, commercial automobile liability insurance in the minimum amount of \$2,000,000, 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, the contractor's insurance shall be primary and non-contributory to other insurance. Additionally, the contractor shall maintain professional liability insurance in the minimum amount of \$1,000,000 and maintain and show proof of workers' compensation insurance, and employer's liability insurance in the minimum amount of \$1,000,000. The Contractor 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 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.

## **10. PRE-PROJECT SAFETY REVIEW MEETING.**

When specified by the Safety and Risk Manager, the Contractor shall attend a pre-project safety review meeting with Town representatives and the Safety and Risk Manager prior to the start of work.

**11. DEFAULT.**

In the event of substantial failure by Contractor to perform in accordance with the terms of this Contract, Town shall have the right to terminate Contractor upon seven (7) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this Contract.

**12. OWNERSHIP OF DOCUMENTS.**

All designs, drawings, specifications, calculations, notes and other works developed in the performance of this Contract shall become the property of the Town and may be used on any other design or construction without additional compensation to the Contractor. The use of the documentation, including specifications, by any person or entity, for the purpose other than as set forth in this Contract, shall be at the full risk of such person or entity and the Contractor shall be relieved of any liability whatsoever, including claims for personal injury, property damage, or death as a result of such other use. The Parties acknowledge and agree that nothing in this section shall limit the ownership rights, access, or use of the above referenced works by the Contractor.

**13. DEFAULT.**

In the event of substantial failure by Contractor to perform in accordance with the terms of this Contract, Town shall have the right to terminate Contractor upon seven (7) days written notice in which event Contractor shall have neither the obligation nor the right to perform further services under this Contract.

**14. TERMINATION FOR CONVENIENCE.**

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

**15. 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 or deposited in the United States mail, postage prepaid, to the address specified below.

TO CONTRACTOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO TOWN: Town of Apex

Attention: Adam Stephenson  
PO Box 250  
Apex, NC 27502  
Adam.stephenson@apexnc.org

**16. DELAY BEYOND THE CONTROL OF THE PARTIES.**

Neither Contractor nor Town, having taken commercially reasonable precautions, shall be in default of the provisions of this Contract 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 Contract that affect availability of

resources and staff of Contractor or the Town. There could be changes in anticipated performance times and service costs. Contractor 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 Contract 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.

#### **17. 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.

#### **18. 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.

#### **19. 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.

#### **20. 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.

#### **21. 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.

#### **22. 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.

#### **23. BINDING EFFECT.**

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

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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 Contract 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.

**29. 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 Contract. For the purposes of this Contract “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.

**30. ELECTRONIC SIGNATURE.**

Pursuant to Article 40 of Chapter 66 of the North Carolina General Statutes (the Uniform Electronic Transactions Act) this Contract 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 Contract and any related documents. If electronic signatures are used the Contract 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 \_\_\_\_\_, 2022.

**Contractor:** \_\_\_\_\_

**Town of Apex**

By: \_\_\_\_\_  
(type or print name)

\_\_\_\_\_  
Catherine Crosby, Town Manager

\_\_\_\_\_  
(Signature)

Attest:

Title: \_\_\_\_\_

\_\_\_\_\_  
Allen L. Coleman, Town Clerk

Attest:  
  
\_\_\_\_\_  
(Secretary, if a corporation)

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

\_\_\_\_\_  
Finance Director